7-20-90
Vol. 55 No. 140
Pages 29553-29834

federal register

Friday
July 20, 1990

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

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Presidential Documents

Title 3—

The President

Proclamation 6158 of July 17, 1990

Decade of the Brain, 1990–1999

By the President of the United States of America

A Proclamation

The human brain, a 3-pound mass of interwoven nerve cells that controls our activity, is one of the most magnificent—and mysterious—wonders of creation. The seat of human intelligence, interpreter of senses, and controller of movement, this incredible organ continues to intrigue scientist and layman alike.

Over the years, our understanding of the brain—how it works, what goes wrong when it is injured or diseased—has increased dramatically. However, we still have much more to learn. The need for continued study of the brain is compelling: millions of Americans are affected each year by disorders of the brain ranging from neurogenetic diseases to degenerative disorders such as Alzheimer's, as well as stroke, schizophrenia, autism, and impairments of speech, language, and hearing.

Today, these individuals and their families are justifiably hopeful, for a new era of discovery is dawning in brain research. Powerful microscopes, major strides in the study of genetics, and advanced brain imaging devices are giving physicians and scientists ever greater insight into the brain. Neuroscientists are mapping the brain's biochemical circuitry, which may help produce more effective drugs for alleviating the suffering of those who have Alzheimer's or Parkinson's disease. By studying how the brain's cells and chemicals develop, interact, and communicate with the rest of the body, investigators are also developing improved treatments for people incapacitated by spinal cord injuries, depressive disorders, and epileptic seizures. Breakthroughs in molecular genetics show great promise of yielding methods to treat and prevent Huntington's disease, the muscular dystrophies, and other life-threatening disorders.

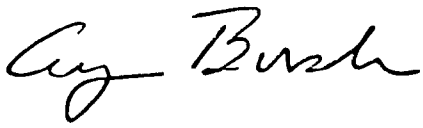
Research may also prove valuable in our war on drugs, as studies provide greater insight into how people become addicted to drugs and how drugs affect the brain. These studies may also help produce effective treatments for chemical dependency and help us to understand and prevent the harm done to the preborn children of pregnant women who abuse drugs and alcohol. Because there is a connection between the body's nervous and immune systems, studies of the brain may also help enhance our understanding of Acquired Immune Deficiency Syndrome.

Many studies regarding the human brain have been planned and conducted by scientists at the National Institutes of Health, the National Institute of Mental Health, and other Federal research agencies. Augmenting Federal efforts are programs supported by private foundations and industry. The cooperation between these agencies and the multidisciplinary efforts of thousands of scientists and health care professionals provide powerful evidence of our Nation's determination to conquer brain disease.

To enhance public awareness of the benefits to be derived from brain research, the Congress, by House Joint Resolution 174, has designated the decade beginning January 1, 1990, as the "Decade of the Brain" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the decade beginning January 1, 1990, as the Decade of the Brain. I call upon all public officials and the people of the United States to observe that decade with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of July, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 90-17134
Filed 7-18-90; 12:11 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6159 of July 18, 1990

Rose Fitzgerald Kennedy Family Appreciation Day, 1990

By the President of the United States of America

A Proclamation

On July 22, 1990, Rose Fitzgerald Kennedy will celebrate her 100th birthday. It is fitting that, on this special occasion, we not only wish her much happiness, but also reflect upon the importance of an institution she has cherished and defended for years. That institution is the family.

In the inimitable shelter of family life, we gain a sense of identity and purpose. The love and knowledge passed from generation to generation provides us with a link to the past—and it gives us a stake in the future.

Through family life, our country's most cherished values and traditions are passed from one generation to the next. Indeed, as members of a family, we learn important lessons about love and commitment, duty and fidelity, and respect and concern for others. It is through our parents and other close relatives that most of us discover how great God's love for mankind must be, and it is through them that we learn His Commandments and the importance of obeying them. Because we carry these lessons with us each time we leave home to participate in the life of our communities and country, and because the family provides a model of human relationships after which all other social institutions are fashioned, its strength and integrity are vital to the strength and well-being of our entire Nation.

Throughout her adult life, Rose Fitzgerald Kennedy has worked to advance the idea that strong and loving families, built on the rock of religious faith, are the foundation of a strong and caring society. By example in word and deed, she has encouraged her children—and, indeed, all Americans—to use their gifts for the benefit of their fellowman. Her children have clearly heard the call to serve, and, today, we remember three who demonstrated that serving others often requires great courage and sacrifice: Joseph, Jr., who was killed in a bombing raid over Europe during World War II; President John F. Kennedy, who advanced this Nation's policy of peace through strength and later fell victim to an assassin's bullet; and Robert Kennedy, who, as Attorney General, proved to be a steadfast friend of the civil rights movement and, like his brother Jack, later died at a gunman's hands.

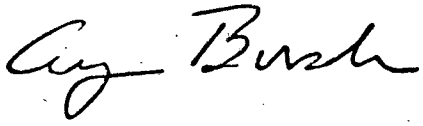
Today, the legacy of service begun by Rose Kennedy is being carried on through her surviving children and grandchildren and through programs and institutions she had helped to establish. Her well-known efforts on behalf of persons with mental and physical disabilities not only continue to inspire others, but also continue to underscore the inestimable value of every human life and the untold potential of each and every individual.

Time and again, Rose Kennedy has shown us the meaning of faith and courage, even when cruelly tested by personal tragedy and loss. On her 100th birthday, we salute this strong and devoted wife and mother, and we thank her for reminding so many Americans of the importance of faith in God and love of family and friends.

In honor of Rose Fitzgerald Kennedy on her 100th birthday, the Congress, by Senate Joint Resolution 315, has designated July 22, 1990, as "Rose Fitzgerald Kennedy Family Appreciation Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim July 22, 1990, as Rose Fitzgerald Kennedy Family Appreciation Day. I urge all Americans to observe this day by reflecting upon the importance of whole and healthy families to us as individuals and as a Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of July, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 90-17133
Filed 7-18-90; 12:10 pm]
Billing code 3195-01-M

Rules and Regulations

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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.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: To reflect the move of the Atlanta Regional Office (ATRO), the Merit Systems Protection Board is amending its rules of practices and procedures by changing ATRO's address as listed in 5 CFR part 1201, appendix II.

EFFECTIVE DATE: April 23, 1990.

FOR FURTHER INFORMATION CONTACT: Martin Baumgaertner, Acting Director, Office of Regional Operations, (202) 653-7980.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedures, Civil rights, Government employees.

Accordingly, the Board amends part 1201 as follows:

PART 1201—[AMENDED]

1. Authority for title 5 CFR part 1201 continues to read:

Authority: 5 U.S.C. 1204 and 7701.

2. Appendix II to part 1201 is amended by revising item number 1 in the second paragraph to read as follows:

Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals

* * * * *

1. Atlanta Regional Office, 401 West Peachtree Street, NW., 10th Floor, Atlanta, GA 30308 (Alabama, Florida, Georgia, Mississippi, North Carolina, and South Carolina).

* * * * *

Dated: July 16, 1990.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 90-16936 Filed 7-19-90; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 90-106]

Black Stem Rust; Addition to Protected Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Black Stem Rust Quarantine and Regulations by adding the State of Wyoming to the list of States designated as protected areas. This action is warranted because Wyoming meets the criteria for a State to be designated as a protected area. The intended effect is to prevent the reintroduction of rust-susceptible varieties of black stem rust hosts into Wyoming.

EFFECTIVE DATE: August 20, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 645, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

Black stem rust is one of the most destructive plant diseases of small grains known to exist in the United States. The disease is caused by a fungus which reduces the quality and yield of wheat, oats, barley, and rye crops by robbing host plants of food and water. The fungus lives on a variety of host plants that are species of the genera *Berberis, Mahoberberis,* and *Mahonia,* and can spread from host-to-host by way of wind-borne spores.

The Black Stem Rust Quarantine and Regulations in 7 CFR 301.38 *et seq.* (referred to below as the regulations), quarantine the conterminous 48 States and the District of Columbia and govern the interstate movement of certain plants of the genera *Berberis, Mahoberberis,* and *Mahonia* in order to prevent the development of new races of black stem rust.

The criteria for designating a State as a protected area is set forth in § 301.38-3(a). Under the regulations, interstate movement of all *Berberis, Mahoberberis,* and *Mahonia* are allowed from, to, and between nonprotected areas without restrictions. Rust-resistant varieties are allowed to move into or through protected areas if accompanied by a certificate verifying that the plants are rust resistant. Interstate movement of rust-susceptible *Berberis, Mahoberberis,* and *Mahonia* into or through protected areas is prohibited, except with a limited permit (which is issued under certain circumstances, as described in the regulations). State officials within the protected areas are responsible for issuing the certificates required for interstate movement, and for inspecting every plant nursery within the State at least once each year to ensure that they are free of rust-susceptible plants.

On March 27, 1990, we published in the **Federal Register** (55 FR 11208-11209, Docket Number 89-152), a document proposing to amend § 301.38-3(c)(1) of the regulations by adding Wyoming to the list of protected areas. Our proposal invited the submission of written comments, which were required to be received on or before May 29, 1990. We did not receive any comments. Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

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

Federal restrictions on the interstate movement of plants of the genera *Berberis, Mahoberberis,* and *Mahonia* are limited to movements into or through protected areas. With the addition of Wyoming, the protected areas include 16 States and part of a 17th. Rust-resistant varieties of these plants will be allowed to move into or through Wyoming if accompanied by a certificate verifying that the plants are rust-resistant. Interstate movement of rust-susceptible *Berberis, Mahoberberis,* and *Mahonia* into or through Wyoming will be prohibited, except with a limited permit. Nurseries in Wyoming do not propagate *Berberis, Mahoberberis,* and *Mahonia;* therefore, this rule will not affect them. Nor are we aware of any shipments of rust-susceptible varieties of these species into Wyoming.

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

Paperwork Reduction Act.

This rule contains no 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 7 CFR Part 301

Agricultural commodities, Black stem rust, Plant diseases, Plant pests, Plants (Agriculture), Quarantine Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR part 301 is amended as follows:

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, 164–167; and 450; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.38–3 [Amended])

2. In § 301.38–3, paragraph (c)(1) is amended by removing the word "and" before "Wisconsin" and the period following "Wisconsin" and adding in its place", and Wyoming.".

Done in Washington, DC, this 16th day of July 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–16967 Filed 7–19–90; 8:45 am]

BILLING CODE 3410–34–M

Farmers Home Administration

7 CFR Part 1944

Program Regulations: Rural Housing-Congregate Housing; Correction

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects a final rule regarding congregate housing published June 29, 1990 [55 FR 26636] with an effective date of July 30, 1990.

Concomitantly with the publication of this rulemaking action, FmHA is publishing amendments pursuant to the provisions of the Housing and Urban Development (HUD) Reform Act of 1989, Public Law 101–235, which were effective on June 16, 1990. That rulemaking action, in part, amends 7 CFR part 1944, subpart E, and contains two Amendments which conflict with the aforementioned congregate housing final rule. The purpose of this document is to correct these conflicts.

Accordingly, Amendment No. 16 on page 26644 (§ 1944.213) is corrected by replacing references to paragraphs (b)(5), (b)(6), (b)(11) and (b)(12) with references to paragraphs (c)(5), (c)(6), (c)(11) and (c)(12) respectively.

In addition, Amendment No. 20 on page 26647 (Exhibit A–6 of Subpart E of Part 1944) is corrected by redesignating the added paragraph from paragraph VIII to paragraph IX.

EFFECTIVE DATE: July 30, 1990.

FOR FURTHER INFORMATION CONTACT: Eileen Nowlin, Senior Loan Specialist, Multi-Family Housing Processing Division, Farmers Home Administration, USDA, room 5349–S, Washington, DC 20250, telephone (202) 382–1608.

Dated: July 12, 1990.

Leigh Nalley,

Acting Administrator, Farmers Home Administration.

[FR Doc. 90–16970 Filed 7–19–90; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Parts 1910, 1940, 1944, 1951, and 1965

Section 515 Rural Rental Housing Loan Policies, Procedures, and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comment.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations for Section 515 Rural Rental Housing Loan Policies, Procedures, and Authorizations. This action is being taken as a result of recently enacted legislation. The intended effect of this action is to provide procedural guidance as it pertains to, title II, section 206—Prohibition on Prepayment of new rural rental housing loans; section 207—Equity takeout incentive for new rural rental housing loans and title IV, section 401—Accountability in awards of assistance; remedies and penalties, for new rural housing loans.

DATES: Interim rule effective June 16, 1990. Written comments must be submitted on or before September 18, 1990.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Rebecca Johnson, Senior Loan Officer, Multi-Family Housing Processing Division, USDA, Farmers Home Administration, Room 5337, South Agriculture Building, Washington, DC 20250, telephone 202–382–1604.

SUPPLEMENTARY INFORMATION:

Classification

This interim rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

Background

The Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235 indicates the following under the prohibition on prepayment of new rural housing loans. That section 502(c)(1) of the Housing Act of 1949 is amended to include that the Secretary may not accept an offer to prepay or request refinancing in accordance with subsection (b)(3) of any loan made or insured under section 515 pursuant to a "contract entered" into on or after the date of the enactment of the Department of Housing and Urban Development Reform Act of 1989. For these loans the Secretary of Agriculture is authorized to guarantee an equity loan (in the form of a supplemental loan). Additionally, a guaranteed equity loan can only be authorized if the Secretary of Agriculture determines, after taking into account local market condition, that there is reasonable likelihood that the housing will continue as decent, safe, and sanitary housing for the remaining life of the original loan on the project made or insured, and that such an equity loan is necessary to provide a fair return on the owner's investment in the housing; such action is the least costly for the Government that is consistent with carrying out the purposes of the Housing Act of 1949; and will not impose an undue hardship on tenants.

The amount of the guaranteed equity loan authorized shall not exceed the difference between the outstanding principal on the rural rental housing loan secured by the project and 90 percent of the current appraised value. In no event, however, will the amount of the authorization for the guaranteed equity loan exceed 30 percent of the amount of the original rural rental housing loan on the project. The amount of loans guaranteed will be subject to limits provided in appropriation Acts. In order that the amortization on these guaranteed equity loans does not create a rent overburden to the tenant nor deter the owners investment, the owner shall make monthly payments from project income to a special equity loan reserve account. This special reserve account will be handled under a separate rulemaking document.

Section 401 requires the accountability and disclosure of assistance received by applicants, factors which caused such assistance to be granted and the process by which the Government determines the amount and kind of assistance to be awarded.

Regulatory Flexibility Act

La Verne Ausman, Administrator, Farmers Home Administration, has determined that this action will not have a significant impact on a substantial number of small entities because the revisions provide clarification of existing regulations and the annual volume of the program is expected to continue to decline. FmHA anticipates funding approximately 850 applications nationwide.

Environmental Impact Statement

This document has been reviewed according to 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the action does not constitute a major Federal action significantly affecting the quality of the human environment and according to the National Environment Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.415 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983).

Discussion of Interim Rule

It is the policy of the Department to publish notice of proposed rulemaking with a comment period before rules are issued, even though 5 U.S.C. 553, exempts rules relating to loans, grants, benefits or contracts. However, exemptions are permitted where an agency finds for good cause, that compliance would be impracticable, unnecessary or contrary to the public interest. This rulemaking package is being issued to implement the requirements of Public Law 101–235, dated December 15, 1989, which required for implementation within 180 days of enactment. Because of this short timeframe, this rulemaking document is issued as an Interim Rule. Since these changes are legislatively mandated within a short timeframe, it would not be possible to publish the regulation as a proposed rule with a 60-day comment period and then publish a final rule with a 30-day implementation period, as required in section 534 of the Housing Act of 1949, as amended. Comments will be accepted for a 60-day period after publication of this interim rule. FmHA will consider such comments before issuing a final rule.

The Department of Housing and Urban Development Reform Act was enacted into law on December 15, 1989. All Section 515 loans made pursuant to contracts entered into on or after December 15, 1989, are covered by the provisions, and loan instruments will carry the prescribed provisions appertaining thereto. The Agency has, therefore, interpreted section 206 to mean "the time a contract is entered into" as the date on which Form FmHA 1944–51 "Multiple Family Housing Obligation-Fund Analysis" is delivered to the applicant entity, delivered being synonymous with the date that appears in block 51 of the aforementioned Form FmHA 1944–51. Consequently, those loans made pursuant to a contract entered into on or after December 15, 1989, will need to have the prepayment prohibition included in the mortgage instruments. Section 401(a) of the Act amends the Housing Act of 1949 by adding section 536(a) (1), (2), and (3) which requires that the availability of assistance and the formula allocation technique for the distribution of rural housing funds among the States be published each year. Beginning in Fiscal Year 1991, a Notice regarding the availability of funding for all rural housing funds will be published when funding is available. This Notice is called, Exhibit A of FmHA Instruction 1940–L. Currently a copy of the Notice showing the State allocations for Fiscal Year 1990 is available in any FmHA field office. The formulas used to allocate loan and grant program funds among the States was first published on June 10, 1985, and remains in effect at this time. If any revisions to those published allocation formulas are made, those revisions will be published first as a proposed rule for public comment, prior to usage in determining State funding allocations. If no revisions are made to the existing formulas, the formulas will remain as originally published.

The Act further requires that all applicants for rural rental housing disclose any related assistance from the Federal Government, a State, a unit of general local government, or any Agency or instrumentality, that is expected to be made available with respect to the project for which the applicant is seeking assistance. Such related assistance shall include but not be limited to any loan, grant, guarantee, insurance payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance. The preapplication form and related documentation, both require financial information be submitted when seeking

Federal assistance. However, the Agency will require the applicant to disclose all sources of assistance and how they are to be used. The applicant will be required to update those disclosures within 30 days of any substantial change. The Agency shall adjust the amount of assistance given to any applicant in accordance with any changes determined, when necessary. The Agency, in concert with the National Council of State Housing Agencies (NCSHA), a coordinating Agency for State housing agencies, has developed a procedure for handling this requirement as it relates to tax credits. Those procedural requirements will allow for making necessary adjustments at various processing intervals with regard to low-income tax credits.

List of Subjects

7 CFR Part 1910

Applicants, Credit, Marital status, Discrimination, Sex discrimination.

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs-Housing and Community Development, Low and moderate income housing-Rental, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing, Mobile homes. Subpart E—Rural Rental Housing Loan policies, Procedures and Authorizations.

7 CFR Part 1951

Account servicing, Grant programs—housing and community development, Loan programs—Reporting requirements, Rural areas.

7 CFR Part 1965

Administrative practices and procedures, low-and moderate income housing-rental, Mortgages.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1910—GENERAL

1. The authority citation for part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 FR 2.23 and 2.70.

Subpart A—Receiving and Processing Applications

2. Section 1910.1 is amended by adding paragraph (d) to read as follows:

§ 1910.1 General.

* * * * *

(d) When processing RRH loans, the instructions for what needs to be submitted for a preapplication review are outlined in subpart E of part 1944 of this chapter.

3. Section 1910.4 is amended by revising paragraph (i) to read as follows:

§ 1910.4 Processing applications.

* * * * *

(i) *Timeliness.* Except for RRH and LH loans, written notice of eligibility or ineligibility will be sent to each applicant, not later than 30 days after receipt of a complete application; and for farmer program loan applications, each application must be approved or disapproved and the applicant notified in writing of the action taken not later than 60 days after receipt of a completed application. Receipt of a signed copy of Form 1940–1, "Request for Obligation of Funds," by the applicant is considered written notice for loan approval. For RH loans, if a determination of eligibility cannot be made within 30 days from the date of receipt of the complete application, the applicant will be notified, in writing of the circumstances causing delay, and the approximate time needed to make a decision. RRH and LH preapplications must be determined eligible and feasible (RRH preapplications must also be ranked) and the applicant notified in writing as prescribed by subpart E of part 1944 of this chapter and subpart L of part 1940 of this chapter, not later than 45 days after receipt of a complete preapplication. If an applicant is given an adverse decision, the applicant will be given appeal rights as provided in subpart B of part 1900 of this chapter. The letter will contain the ECOA paragraph set forth in § 1910.6(b)(1) of this subpart.

* * * * *

PART 1940—GENERAL

4. The authority citation for part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; and 2.70.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

§ 1940.551 [Amended]

5. Section 1940.551 is amended by revising paragraph (c) to read as follows:

* * * * *

(c) The actual amounts of funds, as computed by the methodology and formulas contained herein, allocated to a State for a funding period are distributed to each State Office by an exhibit to this subpart. The exhibit is available for review in any FmHA State Office. The exhibit also contains clarifications of allocation policies and provides further guidance to the State Directors on any suballocation within the State. That portion of the exhibit which deals with the Rural Housing Programs will be published in the **Federal Register.**

PART 1944—HOUSING

6. The Authority Citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1489; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

7. Section 1944.205 is amended by adding the following new definitions:

§ 1944.205 Definitions.

* * * * *

Interested Parties. Any person who has or will have a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project or activity shall include but not be limited to any developers, contractors, and consultants involved in the application for assistance under this title or the planning, development, or implementation of the project or activity. Residency of an individual in housing for which assistance is being sought shall not, by itself, be considered a pecuniary interest.

* * * * *

Other Government Assistance. Any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof. Such related assistance shall include but not be limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form or direct or indirect assistance.

* * * * *

Pecuniary Interest. Financial concern or financial gain.

* * * * *

State Agency. This is the Housing Finance Agency within a State that has been given the responsibility to allocate low-income tax credits.

* * * * *

§ 1944.212 [Amended]

8. Section 1944.212(b)(6)(iv) is amended by changing the reference

"§ 1944.213(a) (1) and (2)" to "§ 1944.213(b) (1) and (2)."

9. Section 1944.213 is amended by redesignating current paragraphs (a) through (d) as (b) through (e), respectively, by adding a new paragraph (a), and by revising the heading of newly designated paragraph (b) to read as follows:

§ 1944.213 Limitations.

(a) *Loan Limits.* The Department of Housing and Urban Development Reform Act of 1989, Public Law 101-235 requires that the Secretary certify that assistance provided any housing project is not more than is necessary to make the project affordable. Pursuant to this Act the applicant must disclose, with the preapplication package, other Government assistance as defined in § 1944.205 of this subpart proposed for the project. The aggregate amount of assistance will be taken into account when determining the FmHA loan amount to be granted. Exhibits A-6 and A-9 provide for required documentation regarding assistance being sought for the proposed project. Additionally, SF 424.2 requires that the applicant/entity disclose all assistance being sought.

(b) *State Director's loan limitation.* * * *

§ 1944.213 [Amended]

10. Section 1944.213 is amended in the newly designated paragraph (b)(3) by changing the reference paragraph (a) (1) and (2) to (b) (1) and (2).

§ 1944.213 [Amended]

11. Section 1944.213 is amended in the newly designated paragraph "(c)(7)(i)" by changing the reference "§ 1944.213(c)" to "§ 1944.213(d)."

12. Section 1944.215 is amended by revising paragraph (e) to read as follows:

§ 1944.215 Special conditions.

* * * * *

(e) *Refinancing RRH Loans.* Each borrower, except those borrower(s) whose loans were made pursuant to contracts entered into on or after December 15, 1989, must agree to refinance the unpaid balance of the RRH loan when requested by the Agency. The rates and terms of the refinanced loan must be considered reasonable by the Agency, and still permit the units to be rented to eligible tenants at rental rates within their payment ability. The refinancing of a loan must comply with the restrictions indicated in § 1944.236 (b)(5) of this subpart and subpart F of part 1951 of this chapter.

* * * * *

§ 1944.215 [Amended]

13. Section 1944.215(1) is amended by changing the reference "§ 1944.213(a)(2)" to "§ 1944.213(b)(2)."

§ 1944.223 [Amended]

14. Section 1944.223(b) is amended by changing the reference "§ 1944.213(b) (1) or (2)" to "§ 1944.213."

15. Section 1944.231 is amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), by revising newly designated paragraphs (a)(5), and paragraphs (a)(2) and (b)(2), and by adding new paragraphs (a)(3), (a)(9)(i)(D) and (a)(9)(iii) to read as follows:

§ 1944.231 Processing preapplications.

* * * * *

(a) * * *

(2) Upon receipt of the Form SF 424.2 and all other required information and materials, the District Director will thoroughly review the package for completeness, accuracy, eligibility, and conformance with program policy and regulations. A determination of eligibility, feasibility and ranking should be sent to the applicant by issuing Form AD-622, "Notice of Preapplication Review Action," not later than 45 days after receipt of a completed preapplication. (Ranking will be in accordance with the priority rating system). Incomplete preapplications will be returned immediately, not later than 15 days, to the applicant for completion. The District Director will use a check sheet and provide written documentation regarding all information not received.

(3) In cases where the District Director determines the applicant is not eligible, he/she will inform the applicant by issuing Form AD-622, and include the applicants' appeal rights in accordance with subpart B of part 1900 and the ECOA statement in subpart A of part 1910 of this chapter. Each District Director should assure he/she does not impose different processing conditions, standards and timeliness among applicants when reviewing preapplications.

* * * * *

(5) Processing of loan requests within annual allocations will be based on the priority points received.

* * * * *

(9) * * *

(i) * * *

(D) In accordance with Exhibit A-9 of this subpart, a copy of AD-622 and related documentation is to be sent to the State Agency for all proposals determined eligible and ranked high enough for current year funding.

* * * * *

(iii) In accordance with Exhibit A-9 of this subpart, after a preapplication is determined eligible, feasible and ranks high enough for funding in the current fiscal year, a copy of the AD 622 and attachments is to be forwarded to the State Agency.

* * * * *

(b) * * *

(2) The State Director will evaluate the preapplication and the District Director's written and detailed eligibility and feasibility determination and recommendation. The evaluation will include a review of the proposed project by the State Office Architect and an in depth review by the rural housing staff in accordance with documentation submitted as required by Exhibit A-6 of this subpart.

* * * * *

§ 1944.231 [Amended]

16. Section 1944.231 paragraph (a)(9)(i)(B) is amended by changing the reference "§ 1944.231(b)" to "§ 1944.231(a)", and paragraph (b)(3)(iii) is amended by changing the reference "§ 1944.213(a)" to "§ 1944.213(b)."

17. Section 1944.235 is amended by adding paragraph (a)(5) to read as follows:

§ 1944.235 Actions subsequent to loan approval.

(a) * * *

(5) The applicant will certify as to the availability or non availability of other government assistance as defined in § 1944.205 of this subpart immediately prior to loan closing. If other government assistance becomes available prior to loan closing, the loan amount will be decreased in accordance with paragraph (e)(3) of this section.

18. Section 1944.235(c)(1)(iv) is amended by changing the reference "§ 1944.213(a)(2)" to "§ 1944.213(b)(2)" and reference "§ 1944.213(c)" to "§ 1944.213(d)."

19. Section 1944.236 is amended by revising paragraph (b)(5) and adding a new paragraph (b)(6) to read as follows:

§ 1944.236 Loan closing.

* * * * *

(b) * * *

(5) For all section 515 RRH loans, made pursuant to a contract entered into prior to December 15, 1989, the following language will be included in the mortgage:

The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for

occupancy as provided in section 515 of title V of the Housing Act of 1949 and FmHA regulations then extant during this _____ (15 years for unsubsidized and 20 years for subsidized loans) year period beginning _____ (the date of last loan on the project is closed). No person occupying the housing will be required to vacate prior to the close of such _____ (15 years for unsubsidized and 20 years for subsidized loans) year period because of early repayment. The borrower understands that should an unsubsidized project be converted to subsidized within 15 years from the date the last loan on the project is closed, that the period will be increased by 5 years. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing or that Federal or other financial assistance provided to the residents of such housing will no longer be provided. A tenant may seek enforcement of this provision as well as the Government.

(6) For all section 515 RRH loans made pursuant to a contract entered into on or after December 15, 1989, the following language will be included in the mortgage:

The borrower and any successors in interest agree to use the housing for the purpose of housing people eligibile for occupancy as provided in section 515 of title V of the Housing Act of 1949, and FmHA regulations then extant during the full term of this mortgage. No eligible person occupying housing will be required to vacate nor any eligible person denied occupancy for housing prior to the close of such period because of a prohibited change in the use of the housing. A tenant may seek enforcement of this provisions as well as the Government.

* * * * *

20. Section 1944.237 is amended by revising paragraph (a) to read as follows:

§ 1944.237 Subsequent RRH loans.

(a) A subsequent RRH loan is made to an applicant/borrower to complete, improve, repair, make modifications and/or expand the project initially financed by FmHA, or for equity and/or other purposes when authorized by the provisions of subpart B of part 1965 of this chapter to avert prepayment. All subsequent loans made pursuant to a contract entered into on or after December 15, 1989, cannot be prepaid.

* * * * *

21. Section 1944.238 is added to read as follows:

§ 1944.238 Prohibition against prepayment.

The Agency shall not accept an offer to prepay, or request refinancing of any loan made or insured under section 515 pursuant to a contract entered into on or after December 15, 1989. For purposes of this requirement, the date a "contract is entered into" is the date on which the Form FmHA 1944-51 is mailed or delivered to the applicant/borrower.

22. Section 1944.246 is added to read as follows:

§ 1944.246 Loan approval.

(a) *Authority.* Loans will be approved in accordance with this subpart and subpart A of part 1901. The State Director may redelegate loan approving authority in writing to State Office employees.

(b) *Loan approval action*—(1) *Responsibilities of loan approving official.* The loan approving official is responsible for reviewing the docket to determine that the proposed loan complies with established policies and all pertinent regulations. In making this review, the loan approving official will determine that:

(i) The applicant is eligible and has legal authority to contract for a loan and enter into the required statements.

(ii) The location of the housing meets the requirements outlined in § 1944.215(p) of this subpart.

(iii) The funds are requested for authorized purposes.

(iv) The proposed loan is sound.

(v) The security is adequate.

(vi) All preapproval requirements have been met, including the applicant's execution of Form FmHA 400-4.

(vii) For projects with four or less units, the State Director has taken the necessary action to comply with § 1944.406 of subpart I of part 1940 of this chapter.

(viii) All other requirements will be met.

(2) *Approval or disapproval of a loan*—(i) *Approval.* Before the loan approving official executes documents evidencing loan approval, a complete review of the proposed management and rental procedures must be made to assure compliance with title VI of the civil Rights Act of 1964 and the Rehabilitation Act of 1973. If the loan approving official is assured of compliance, he/she may execute the loan approval documents. When a loan is approved, Form FmHA 1944-51 will be completed according to the instructions on the Forms Manual Insert. The approving official will insert a statement in block 48 of Form FmHA 1944-51 advising the applicant that the amount of the loan may decrease if other government assistance as defined in § 1944.205 of this subpart becomes available to the applicant before loan closing.

(ii) *Disapproval.* If a loan is disapproved after the docket has been developed, the reason for the action will be shown on the original Form FmHA 1944-51 and the form will be initialed and dated. The District Director will notify the applicant of the reasons for disapproval. The disapproved docket will then be handled in accordance with subpart A of part 2033 of this chapter. If disapproval is not at the applicant's request or by mutual agreement, the applicant will be notified that it may request a further review of the decision in accordance with subpart B of part 1900 of this chapter.

(3) *OGC closing instructions.* For a loan to an organization, or an individual in special cases, the approved docket, including any title evidence, will be sent through the State Office to OGC for preparation of closing instructions and any special legal documents required for closing. A certified copy of a loan resolution or the original executed witnessed loan agreement must be supplied by the applicant in time to be included in the docket. No docket will be considered which does not include the required resolution or agreement. The OGC will route the docket, including closing instructions and any legal documents, to the District Office through the State Office.

23. Section 1944.250 is revised to read as follows:

§ 1944.250 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0047. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 40 hours per response, with an average of 7 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to The Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575-0047), Washington, DC 20503.

24. Exhibit A-6 of subpart E of part 1944 is amended by adding a new paragraph VIII to read as follows:

Exhibit A-6—Information to be Submitted With Form SF-242.2, "Preapplication for Federal Assistance".

* * * * *

VIII. *Disclosures by Applicants.*

(A) Applicants will submit information regarding any other government assistance as defined in § 1944.205 of this subpart from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is expected to be made available with respect to the project for which the applicant is seeking.

(B) The applicant will submit the names of any interested parties as defined in § 1944.205 of this subpart.

(C) The applicant will also submit a report detailing the expected sources and uses of funds that are to be made available for the project.

(D) The disclosures required in paragraphs (A)–(C) will be updated within 30 days of any substantial change during the period of the application process.

25. Exhibit A–8 of subpart E of part 1944 is amended by redesignating paragraphs (8) through (15) as paragraphs ((9) through (16), and by adding a new paragraph (8) to read as follows:

Exhibit A–8—Information To Be Submitted With Application for a Rural Rental Housing (RRH) Loan

* * * * *

(8) If there is any change in related assistance available to the applicant from other government agencies or in the interested parties as defined in § 1944.205 of this subpart, it must be disclosed at this time.

* * * * *

26. Exhibit A–9 of subpart E of part 1944 is added to read as follows:

Exhibit A–9—Administrative Process for Combining Farmers Home Administration (FmHA) Assistance With Low-Income Housing Tax Credits

I. The State Agency is required under section 42 of the U.S. Internal Revenue Code to select projects to receive low income housing tax credits from among applications according to tax credit allocation plans developed by the State Agencies. Each application submitted to the State Agency is to be evaluated to determine the amount of credit necessary to make the proposal financially feasible and viable. When making this evaluation, the State Agency is required to consider the "sources and uses" of funds and the total financing planned for the project as well as the proceeds expected to be generated by reason of tax benefits.

A. FmHA will review preapplications from applicant/entities seeking FmHA assistance when those applicant/entities submit Form SF 424.2, "Application for Federal Assistance for Construction," and required supporting material. When a preapplication is determined by FmHA to be eligible, feasible, and has sufficient points to be funded, such information is conveyed to the applicant by way of an AD–622 "Notice of Preapplication Review Action". The State Agency will also be sent a copy of the Form AD–622 by FmHA and a copy of the financial assistance package on which FmHA based its preliminary determination regarding funding. It is, however, the responsibility of the applicant/entity to apply to their respective State agencies for a tax credit allocation. Likewise, when a preapplication is determined by FmHA to be eligible and feasible but lacks sufficient priority points, or if a preapplication is rejected by FmHA, the applicant(s) and the State Agency will only receive a copy of the Form AD–622, in accordance with § 1944.231(a)(9)(i) of this subpart.

1. Under the State allocation plan criteria, only projects receiving a favorable review, which reflect they are likely to be funded in the current fiscal year, will be eligible to apply to the State agency for low income tax credit allocations. It is the responsibility of the applicant to provide the State Agency with any additional information or clarification of funding sources as may be necessary. The State Agency will then evaluate the applicant/entity's request for a tax credit allocation using the Form AD–622 and any attachments. When the evaluation is completed, a copy of the tax credit reservation will be transmitted to FmHA by the State Agency.

2. After FmHA finalizes its processing of Form SF 424.2 and related materials constituting a full application, FmHA will submit to the State Agency a copy of Form 1944–51, "Multiple Family Housing Obligation-Fund Analysis," as well as a copy of the updated financial assistance package, on the same date it is delivered to the applicant/entity. It is the applicant's responsibility to follow-up with the State agency once the form 1944–51 has been issued.

3. The State Agency will then be ready to evaluate the project based on any changes in funding sources and amounts resulting from the FmHA obligation. A formal tax credit commitment is made by the State Agency at this time and a copy of the tax credit commitment notice will be sent to FmHA by the State Agency. Since the loan obligation and the tax credit commitment are likely to occur in one calendar year and the final loan closing and the tax credit allocation in a later calendar year, the State Agency will award a carryover commitment to the project. A carryover commitment provides that the project must be placed in service by the end of the second calendar year following the year in which the carryover is awarded.

B. At loan closing the FmHA will send the final terms of the funding level to the State Agency. The State Agency will make a final tax credit award calculation based upon any changes in the FmHA funding levels which may have taken place between obligation and closing. The State Agency will allocate the tax credits based on documentation received either at loan closing or immediately after loan closing. A duly executed "Low-Income Housing Credit Allocation Certification", Form 8609 (Department of The Treasury, Internal Revenue Service) will be transmitted to FmHA by the State Agency. The Form 8609 will be retained in the project file for the life of the loan, along with supporting final documentation on the sources and uses of funds upon which the Low Income Housing Tax Credit Allocation was made.

II. In evaluating projects to determine tax credit awards, the State Agency may rely upon the debt terms and loan amounts determined by FmHA. If FmHA also applies rental assistance to units in the projects, the State Agency may rely on FmHA's judgment and determination that such assistance is necessary.

III. The State Agency and FmHA will transmit the appropriate documentation to each other within 7 working days of each event. Facsimile transmissions are permissible and appropriate. Materials transmitted and correspondence received will be retained by FmHA as part of the permanent project file.

IV. The Form 8609 will be issued by the State Agency in accordance to legal requirements that the amount of low income tax credit in concert with other assistance is not more than is necessary to provide affordable housing.

V. The FmHA State Director will make a certification by memorandum to the FmHA Administrator that the assistance provided to the project is not more than is necessary to make the project affordable. This certification will be based on FmHA processing and the State Agency's certification, via Form 8609. The State Director's Certification Memorandum and State Agency certification will be filed in the FmHA loan docket with loan security instruments and kept as a permanent part of the loan file for the life of the loan.

PART 1951—SERVICING AND COLLECTIONS

27. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

28. Section 1951.251 is revised to read as follows:

§ 1951.251 Purpose.

This subpart prescribes the policies to be followed when analyzing a borrower's needs for continued Farmers Home Administration (FmHA) supervision, further credit and graduation. All borrowers' loan account(s) will be reviewed for graduation in accordance with this subpart, except Guaranteed, Watershed, Resource Conservation and Development, Rural Development Loan Funds, Rural Rental Housing loans made pursuant to contracts entered into on or after December 15, 1989, and Intermediary Relending Program loans.

PART 1965—GENERAL

29. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart B—Security Servicing for Multiple Housing Loans

§ 1965.55 [Amended]

30. Section 1965.55(a)(1) is amended by changing the reference "§ 1965.89" to "§ 1965.88."

31. The current § 1965.89 is redesignated as § 1965.88 and a new § 1965.89 is added to read as follows:

§ 1965.89 Equity take-out for loans made after December 15, 1989.

For loans made or insured pursuant to contracts entered into on or after December 15, 1989, equity loans may be guaranteed by FmHA after a 20-year period has elapsed from the date of the loan, to ensure that the project remains in the FmHA program for the remaining life of the original loan. The following steps will be followed when a borrower wishes to receive this equity:

(a) Borrower submits a plan requesting an equity loan which ensures that the cost of amortizing the loan doesn't result in the displacement of very low-income tenants or substantially alter the income mix of the tenants in the project.

(b) FmHA will determine whether the housing will continue to remain decent, safe, and sanitary and that the local housing market is such that the housing will continue to meet the needs of eligible tenants for the remaining life of the initial loan.

(c) If the conditions outlined in paragraph IV C 1 of Exhibit E of this subpart are met, FmHA will offer to guarantee an equity loan to the borrower which may be repaid from a reserve account funded in accordance with subpart C of part 1930 of this chapter. In addition it must be determined that such an equity loan would not impose any undue hardship on tenants or unreasonable cost to the Federal Government. The guaranteed loan will not exceed the lesser of:

(1) The amount determined and calculated in accordance with the incentive loan instructions contained in paragraph IV C 2 d of Exhibit E of this subpart.

or

(2) 30 percent of the original loan on the project

(d) If the borrower indicates preliminary acceptance of this loan, an application will be completed in accordance with subpart E of part 1944 of this chapter and two appraisals will be conducted in the manner outlined in paragraph VI A of Exhibit E of this subpart for loans to nonprofit organizations.

(e) When the actual amount of the guaranteed equity loan is determined, the borrower will indicate acceptance of the loan.

32. Section 1965.90 is amended by revising the introductory text of paragraph (b)(2) to read as follows:

* * * * *

§ 1965.90 Payment in full.

* * * * *

(b) * * *

(2) *Applicability of prepayment restrictive use clause to loans approved between December 21, 1979, and December 14, 1989, or subsequently made subject to these restrictions.* For any mutiple family housing loan approved on or after December 21, 1979, and before December 15, 1989, or which has been subsequently made subject to prepayment restrictive-use provisions, prepayment may be accepted only if the title to the real property is made subject to the applicable restrictive-use clause set out at paragraphs (b)(2)(i) or (b)(2)(ii), or upon granting an exception in accordance with paragraph (b)(3) of this section. The restrictive-use period is: fifteen or twenty years from the date on which the last loan was closed or the loan was subsequently made subject to such provisions as a result of a servicing action as specified in this subpart (fifteen years if the loan has not received interest credit, rental assistance, or Section 8 assistance under a Housing Assistance Payment contract; twenty years if the loan has received any of these forms of assistance). Loans made pursuant to a contract entered into on or after December 15, 1989, cannot be prepaid.

* * * * *

33. Exhibit E of Subpart B is amended by revising Section II to read as follows:

Exhibit E—Prepayment of Loans Not Subject to Restrictive-Use Provisions

* * * * *

II. *Loans Not Covered by This Exhibit:* For loans approved between December 21, 1979 and December 14, 1989, or made subject to restrictive-use provisions due to covered servicing actions or transfers, prepayment will continue to be processed in accordance with the procedures outlined in § 1965.90 of this subpart. All loans made pursuant to contracts entered into on or after December 15, 1989, Cannot be Prepaid.

* * * * *

Dated: June 11, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 90-16971 Filed 7-19-90; 8:45 am]

BILLING CODE 3410-07-M

Food Safety and Inspection Service

9 CFR Part 310

[Docket No. 86-012F]

RIN 0583-AA48

Use of Air During Slaughter Operations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On January 24, 1990, the Food Safety and Inspection Service (FSIS) published a proposed rule to allow the use of compressed air in the abdominal cavity of swine to facilitate skinning operations and to minimize the loss of body fat. This provision was inadvertently omitted in the proposed rule and the final rule of the same title published respectively on January 13, 1989 (54 FR 1370) and September 5, 1989 (54 FR 36755) by FSIS. The final rule amended the Federal meat inspection regulations to provide for the approval of several procedures which have been field tested and found acceptable for the inflation of carcasses and parts of carcasses with compressed air injected during dressing operations to facilitate head skinning and the removal of hides and foot hair. A provision allowing the injection of compressed air into swine was discussed in the preamble of the proposed and final rules as one of the approved uses of air, on an experimental basis, during the dressing operation and was intended to be included in the regulation.

EFFECTIVE DATE: August 20, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Jill Hollingsworth, Director, Slaughter Inspection Standards and Procedures Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3219.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 1989, FSIS published a final rule (54 FR 36755), which allowed permanent approval of those compressed air injection activities listed in the preamble. Following publication of the final rule, it was found that one air injection activity concerning the injection of air into the abdominal cavity of swine to facilitate the skinning operation, which was discussed in the preamble, was inadvertently left out of both the proposed and final rule. On January 24, 1990, FSIS published in the **Federal Register** (55 FR 2386), a proposed rule to allow the use of compressed air in the abdominal cavity

of swine to facilitate the skinning operation in order to add "to minimize loss of body fat" to this provision to the rule. This document serves to amend the final rule published September 5, 1989. The added paragraph (D) under part 310 is reprinted below in its entirety.

Comments on the Proposed Rule

FSIS did not receive any comments in response to the proposed rule.

List of Subjects in 9 CFR Part 310

Animal diseases, Meat inspection.

Done at Washington, DC, on: July 16, 1990.

Ronald J. Prucha,

Acting Administrator, Food Safety and Inspection Service.

Accordingly, 9 CFR part 310 of the Federal meat inspection regulations is amended as set forth below.

PART 310—POST-MORTEM INSPECTION

1. The authority citation for part 310 continues to read as follows:

Authority: 21 U.S.C. 601–695; 33 U.S.C. 1254(b); 7 CFR 2.17, 2.55.

2. Section 310.13 is amended by removing the word "or" at the end of paragraph (a)(2)(iv)(B), by removing the period at the end of paragraph (a)(2)(iv)(C) and adding in its place the words "; or", and by adding paragraph (a)(2)(iv)(D) to read as follows:

§ 310.13 Inflating carcasses or parts thereof; transferring caul or other fat.

(a) * * *

(2) * * *

(iv) * * *

(D) Compressed air injected into the abdominal cavity of swine to facilitate the skinning operation and to minimize the loss of body fat.

* * * * *

[FR Doc. 90–16853 Filed 7–19–90; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg. B; Docket No. R-0692]

Equal Credit Opportunity; Preemption of Ohio Law

AGENCY: Board of Governors of Federal Reserve System.

ACTION: Preemption determination.

SUMMARY: The Board is publishing in final form a determination that a provision of the Ohio Revised Code is inconsistent with the Equal Credit Opportunity Act and Regulations B and therefore is preempted.

EFFECTIVE DATE: July 23, 1990.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (2020) 452–3667; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) General. The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act. Section 705(f) of the ECOA authorizes the Board to determine, for purposes of preemption, whether an inconsistency exists between a provision of the ECOA and a state law relating to credit discrimination. If a state law is inconsistent and provides no greater protection for credit applicants than federal law, the state law is preempted to the extent of the inconsistency. In such a case creditors in that state may not follow the inconsistent state requirement.

The Board received a request to determine whether certain provisions of Ohio law are inconsistent with, and therefore preempted by, the ECOA and the Board's Regulation B (12 CFR part 202), which implements the ECOA. The inconsistency involves the treatment of applicants in credit transactions on the basis of age. Both the federal and the Ohio law prohibit credit discrimination on the basis of age. Federal law permits creditors to treat elderly applicants more favorably in all credit transactions, however, while Ohio law allows creditors to favor elderly applicants only in limited types of credit transactions.

In response to this request the Board examined Ohio law, Ohio Revised Code section 4112.021, to determine whether its provisions are inconsistent with the ECOA and Regulation B. On May 16, 1990, the Board published a preliminary determination (55 FR 20275). In that notice, the Board proposed to preempt the Ohio law to the extent that it bars a creditor from offering more favorable terms to elderly applicants, or permits creditors to consider age in a manner inconsistent with or less protective than the federal law in real estate transactions or other transactions covered under the state law. Four comments on the proposed determination were received during the comment period, which ended on June 13, 1990. All commenters concurred with the Board's preliminary determination.

The Board is now publishing a final determination regarding the Ohio statute and the ECOA provisions. This determination is issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's rules regarding delegation of authority (12 CFR part 265).

(2) *Analysis of ECOA, Regulation B, and Ohio law.* The ECOA and Regulation B generally prohibit credit discrimination on the basis of age. Nevertheless, a creditor may take age into account in a credit transaction as set forth below.

—A creditor may consider a credit applicant's age to determination if the applicant is of a legal age to enter into a binding contract.

—A creditor may offer more favorable credit terms to "elderly" applicants. Elderly is defined in § 202.2(o) of the regulation as a person age 62 or older.

—A creditor may take age directly into account in an empirically derived, demonstrably and statistically sound, credit scoring system of credit evaluation with one limitation: an applicant who is 62 years old or older must be treated at least as favorably, on the basis of age, as anyone who is under 62.

—A creditor using a judgmental system of credit evaluation may relate a credit applicant's age to other information about the applicant that the creditor considers in evaluating creditworthiness but may not take age directly into account in any aspect of the credit transaction (except to favor an elderly applicant).

—A creditor may establish a special purpose credit program based on age provided the program meets the requirements of § 202.8(a)(3) of the regulation.

The relevant provision of Ohio law, Ohio Revised Code, section 4112.021(B)(1)—"Unlawful discriminatory practices in credit transactions"—is set forth below. Under Ohio law, discrimination on the basis of age—meaning any age eighteen years or older—is generally prohibited in most credit transactions.

"(B) It shall be an unlawful discriminatory practice:

(1) For any creditor to:

(a) Discriminate against any applicant for credit in the granting, withholding, extending, or renewing of credit, or in

the fixing of the rates, terms, or conditions of any form of credit, on the basis of * * * age * * * except that this * * * shall not apply with respect to any real estate transaction between a financial institution, a dealer in intangibles, or any insurance company as these terms are defined * * * and its customers; * * *

(e) Impose any special requirements or conditions * * * upon any applicant or class of applicants on the basis of * * * age in circumstances where similar requirements or conditions are not imposed on other applicants similarly situated, unless the special requirements or conditions that are imposed with respect to age are the result of a real estate transaction excepted under division (B)(1)(a) of this section or the result of programs that grant preferences to certain age groups administered by instrumentalities or agencies of the United States, a state, or a political subdivision of the state; * * * "

Under Ohio law, the favorable treatment of credit applicants age 62 years or older generally would be unlawful because section 4112.021(B)(1) prohibits discrimination (favorable or unfavorable) on the basis of age. This is clearly inconsistent with the ECOA and Regulation B, which allow for favorable treatment of elderly applicants in all instances.

Ohio law does permit consideration of age or the imposition of special requirements or conditions with respect to age in real estate transactions specified in the statute. Thus, a creditor is permitted to take age directly into account without limitation in all real estate transactions. Also, a creditor may impose special requirements or conditions with respect to age in government-administered credit programs granting preferences to certain age groups. But the Ohio law does not permit a creditor, other than a governmental body, to establish a special purpose credit program granting preferences to certain age groups.

(4) *Determination and effect of preemption.* Based on its analysis, the Board has determined that the provisions of Ohio law section 4112.021(B)(1), with regard to the treatment of age in a credit transaction, apply in a manner that is contrary to the ECOA and the rules in Regulation B (in particular, §§ 202.6(b)(2) and 202(8)(c)). Section 202.11(b)(iv) deems to be inconsistent with the ECOA and Regulation B and less protective of an applicant a state law that prohibits asking or considering age in an empirically derived, demonstrably and statistically sound, credit scoring system, to determine a pertinent element of creditworthiness, or to favor an elderly applicant. The Ohio law is inconsistent with federal law, and is preempted by the ECOA and Regulation B to the extent of that inconsistency. Thus, the state of Ohio is barred from prohibiting creditors from asking or considering the age of an applicant in such instances. The state of Ohio also is barred from permitting creditors to consider age in a manner inconsistent with or less protective than the ECOA and Regulation B in real estate and other credit transactions covered by § 4112.021 of the state law.

List of Subjects in 12 CFR Part 202

Banks; Banking; Civil rights; Consumer protection; Credit; Federal Reserve System; Marital status discrimination; Minority groups; Penalties; Religious discrimination; Sex discrimination; Women.

Board of Governors of the Federal Reserve System.

Dated: July 16, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-16993 Filed 7-19-90; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 220

[Regulation T; Docket No. R-0702]

Application of the Arranging Section to Broker-Dealer Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: The Board is adopting an interpretation to clarify that broker-dealers may purchase debt securities from an issuer for resale pursuant to Securities and Exchange Commission Rule 144A (17 CFR 230.144A) and may make markets in such securities under the investment banking service exception to the arranging section in Regulation T (12 CFR 220.13). The interpretation is necessary to avoid frustrating the goals of the SEC in adopting Rule 144A. It will eliminate the uncertainty broker-dealers might have that compliance with the procedures laid out in Rule 144A could result in a violation of section 7(c) of the Securities Exchange Act of 1934 and Regulation T adopted thereunder (12 CFR part 220).

EFFECTIVE DATE: July 16, 1990.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Scott Holz, Attorney, Division of Banking Supervision and Regulation, (202) 452-2781. For the hearing impaired *only*, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson, (202) 452-3544.

SUPPLEMENTARY INFORMATION:

Public Comment

The procedures of 5 U.S.C. 553(b) regarding notice, public comment, and deferred effective date were not followed in connection with this interpretation because such rulemaking procedures do not apply to interpretations.

List of Subjects in 12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Investments, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

Under the Board's authority pursuant to sections 7 and 23 of the Securities and Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), 12 CFR part 220 is amended as follows:

PART 220—CREDIT BY BROKERS AND DEALERS

1. The authority citation for part 220 continues to read as follows:

Authority: Secs. 3, 7, 8, 17 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q and 78w).

2. Section 220.131 is added to read as follows:

§ 220.131 Application of the arranging section to broker-dealer activities under SEC Rule 144A.

(a) The Board has been asked whether the purchase by a broker-dealer of debt securities for resale in reliance on Rule 144A of the Securities and Exchange Commission (17 CFR 230.144A) [1] may be considered an arranging of credit permitted as an "investment banking service" under § 220.13(a) of Regulation T.

(b) SEC Rule 144A provides a safe harbor exemption from the registration requirements of the Securities Act of 1933 for resales of restricted securities to "qualified institutional buyers," as defined in the rule. In general, a "qualified institutional buyer" is an institutional investor that in the aggregate owns and invests on a discretionary basis at least $100 million in securities of issuers that are not affiliated with the buyer. Registered broker-dealers need only own and invest on a discretionary basis at least

[1] Rule 144A, 17 CFR 230.144A, was originally published in the Federal Register at 55 FR 17933, April 30, 1990.

$10 million of securities in order to purchase as principal under the rule. Section 4(2) of the Securities Act of 1933 provides an exemption from the registration requirements for "transactions by an issuer not involving any public offering." Securities acquired in a transaction under section 4(2) cannot be resold without registration under the Act or an exemption therefrom. Rule 144A provides a safe harbor exemption for resales of such securities. Accordingly, broker-dealers that previously acted only as agents in intermediating between issuers and purchasers of privately-placed securities, due to the lack of such a safe harbor, now may purchase privately-placed securities from issuers as principal and resell such securities to "qualified institutional buyers" under Rule 144A.

(c) The Board has consistently treated the purchase of a privately-placed debt security as an extension of credit subject to the margin regulations. If the issuer uses the proceeds to buy securities, the purchase of the privately-placed debt security by a creditor represents an extension of "purpose credit" to the issuer. Section 7(c) of the Securities Exchange Act of 1934 prohibits the extension of purpose credit by a creditor if the credit is unsecured, secured by collateral other than securities, or secured by any security (other than an exempted security) in contravention of Federal Reserve regulations. If a debt security sold pursuant to Rule 144A represents purpose credit and is not properly collateralized by securities, the statute and Regulation T can be viewed as preventing the broker-dealer from taking the security into inventory in spite of the fact that the broker-dealer intends to immediately resell the debt security.

(d) Under § 220.13 of Regulation T, a creditor may arrange credit it cannot itself extend if the arrangement is an "investment banking service" and the credit does not violate Regulations G and U. Investment banking services are defined to include, but not be limited to, "underwritings, private placements, and advice and other services in connection with exchange offers, mergers, or acquisitions, except for underwritings that involve the public distribution of an equity security with installment or other deferred-payment provisions." To comply with Regulations G and U where the proceeds of debt securities sold under Rule 144A may be used to purchase or carry margin stock and the debt securities are secured in whole or in part, directly or indirectly by margin stock (see 12 CFR 207.2(f), 207.112, and 221.2(g)), the margin requirements of the regulations must be met.

(e) The SEC's objective in adopting Rule 144A is to achieve "a more liquid and efficient institutional resale market for unregistered securities." To further this objective, the Board believes it is appropriate for Regulation T purposes to characterize the participation of broker-dealers in this unique and limited market as an "investment banking service." The Board is therefore of the view that the purchase by a creditor of debt securities for resale pursuant to SEC Rule 144A may be considered an investment banking service under the arranging section of Regulation T. The market-making activities of broker-dealers who hold themselves out to other institutions as willing to buy and sell Rule 144A securities on a regular and continuous basis may also be considered an arranging of credit permissible under § 220.13(a) of Regulation T.

By order of the Board of Governors of the Federal Reserve System, July 16, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-16994 Filed 7-19-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 270 and 272

[Docket No. RM89-16-001; Order No. 523-A]

Order Of Implementation

(Issued July 10, 1990).

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order denying rehearing.

SUMMARY: On April 18, 1990, the Federal Energy Regulatory Commission issued a final rule in Order No. 523, 55 FR 17,425 (Apr. 25, 1990), amending the Commission's regulations to conform to the provisions of the Natural Gas Wellhead Decontrol Act of 1989.

The final rule amended § 272.103 of the regulations to add several categories of natural gas deregulated pursuant to the Decontrol Act, revised § 270.202(h)(2) to clarify the effect of the Decontrol Act on percentage-of-proceeds contracts, and deleted § 270.207. This order denies rehearing of Order No. 523.

EFFECTIVE DATE: This order is effective July 10, 1990.

FOR FURTHER INFORMATION CONTACT: Richard Mattingly, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington DC, (202) 208-0847.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Order No. 523-A Order Denying Rehearing

(Issued July 10, 1990).

On April 18, 1990, the Commission issued Order No. 523,[1] implementing the Natural Gas Wellhead Decontrol Act of 1989.[2] The Commission amended § 272.103 of its regulations to incorporate several categories of natural gas deregulated prior to January 1, 1993 pursuant to the Decontrol Act and ruled on several issues involving application of the Decontrol Act to particular types of transactions and categories of gas. Among other things, the Commission held that temporarily released gas sold to third parties is decontrolled during the period of release.

Timely applications for rehearing of Order No. 523 were filed by a group of gas producers designated as Identified Producers,[3] Arkla Exploration Company (Arkla), and Shell Oil Company (Shell). Identified Producers and Arkla argue that the Commission erred in holding that the sale of temporarily released to third parties is deregulated, and that

[1] 55 FR 17,425 (April 25, 1990).

[2] Pub. L. No. 101-60, 102 Stat. 157 (1989).

[3] Union Pacific Resources Company, Pennzoil Exploration and Production Company, Pennzoil Gas Marketing Company, and Ashland Exploration, Inc.

under the terms of the Decontrol Act such sales remain regulated. Shell argues that the Commission erred in *not* holding that all sales following a sale of released gas, including subsequent sales to the original purchaser, are also decontrolled. Coastal Gas Marketing Company requests clarification, or in the alternative rehearing, of the status of sales which follow a first sale of released gas to third parties. Coastal argues that all such subsequent sales are decontrolled. Based on a review of the requests for rehearing, the Commission finds that no facts or arguments have been presented which would warrant modification of Order No. 523. The requests for rehearing are therefore denied.

Identified Producers and Arkla argue that the Commission's decision concerning the status of temporarily released gas is inconsistent with the express terms of NGPA section 121(f)(2) as added by the Decontrol Act. The Act provides that gas sold in a first sale, after a pre-enactment contract ceases to apply, is decontrolled. Identified Producers and Arkla argue that the original underlying contract is not terminated by a temporary release and thus presumably the contract continues to "apply" and that as a result all gas sold during the release remains regulated. These parties also rely on language in the Senate Committee Report on the Decontrol act suggesting that temporarily released gas remains regulated.

These arguments are without merit. Section 121(f)(2) provides that decontrol occurs at such time as a pre-enactment contract "ceases to apply" after the date of enactment.[4] There can be no doubt that when gas is temporarily released and sold to a third party the original contract under which it is released ceases to apply while the gas is temporarily released. Such contract is in no way binding upon or applicable to a sale of the released gas to a new purchaser. Of course, the original contract applies to subsequent sales to the original purchaser after the release period ends. In short, the position advocated by Identified Producers and Arkla would require the Commission to hold that a contract under which gas is temporarily released continues to "apply" when the released gas is sold to third parties under a separate contract. In the Commission's judgment, this proposition is illogical and erroneous. With regard to the cited language in the Senate Committee Report, this language could arguably be interpreted as suggesting that temporarily released gas remains regulated. However, we believe such an interpretation would be flatly inconsistent with the express language of the statute.

Identified Producers and Arkla also argue that the Commission's decision on the released gas issue is flawed on procedural grounds. They argue that the Commission's decision was not based on proper notice and comment procedures. These arguments are likewise without merit. While the released gas issue was not specifically identified in the original NOPR, nevertheless a number of parties commented on the issue, including Marathon Oil Company, Undersigned Producers,[5] Mobil Exploration and Producing U.S. Inc., Amoco Production Company, and Columbia Gas Transmission Corporation. These comments were filed as requests for rehearing or clarification (and answers thereto) filed in response to the Commission's order in Union Pacific Fuels, Inc., Docket No. CI89-465-001, 50 FERC ¶ 61,062 (1990), in which the Commission stated that temporarily released gas would not be deemed decontrolled. The released gas issue was subsequently severed from Docket No. CI89-465-001, 51 FERC ¶ 61,045, for decision in this rulemaking. The Commission considered the rehearing requests and related filings in Docket No. CI89-465-001 in ruling on the released gas issue in Order No. 523. In the Commission's judgment the record in this docket was fully adequate for purposes of resolving the released gas issue. The comments considered by the Commission reflected a full discussion of the arguments both for and against treating released gas as decontrolled. The Commission has reviewed that matter in ruling on the requests for rehearing. Accordingly, the procedural arguments against Order No. 523 are rejected.

Shell argues that the Commission did not go far enough in Order No. 523 in determining the extent of decontrol of temporarily released gas. Shell argues that once gas becomes decontrolled through a release, it is thereafter forever decontrolled, even when sold at a later date to the original purchaser under the terms and conditions of the old contract from which the gas was released.

The Commission rejects this interpretation. First, the Commission does not agree that under a temporary release the original contract on longer applies to the original contracting parties. The contract is merely inoperative during the release period. Once the release period ends, the contract applies with full force and effect. Moreover, the Act itself expressly provides the means by which the contracting parties may achieve decontrol. Under section 121(f)(2) parties may voluntarily terminate their contracts, in which case the gas is decontrolled. The parties may also agree under section 121(f)(3) that the gas under the contract is to be decontrolled even though the contract remains in force. In light of these available methods for directly achieving decontrol, it is unnecessary and would be unreasonable to hold that a temporary release indirectly accomplishes decontrol. We believe that the normal intent of parties under release agreements is that once the release period ends, the parties return to the *status quo ante.* We decline to adopt an interpretation of the Act that would provide otherwise.

Coastal Gas Marketing requests clarification concerning the status of resales of temporarily released gas sold to third parties. Coastal status that while the sale of released gas to a third party is treated as decontrolled under Order No. 523, the status of that gas in subsequent sales requires clarification. Coastal argues that all subsequent resales should also be treated as decontrolled.

The Commission cannot agree with Coastal's request for clarification-rehearing. NGPA sections 121(f) (1), (2) and (3), as added by the Decontrol Act define the terms and circumstances under which gas is decontrolled. These sections speak exclusively in terms of contracts. Order No. 523 is likewise structured in terms of contracts. Each contract is considered separately. Therefore, a marketer may buy gas from producers in both regulated and deregulated transactions. If the marketer's resale is a first sale and is made under a pre-enactment contract, that sale is not deregulated unless or until it satisfies one of the criteria under sections 121(f) (1), (2) or (3). We continue to believe that the status of natural gas must be determined under the Decontrol Act on a contract by contract basis and do not find Coastal's arguments persuasive.

For the foregoing reasons the requests for rehearing are denied.

[4] Section 121(f)(2) reads as follows: *Expiring or Terminating Contracts.*—In the case of natural gas to which a first sale contract applies on the date of enactment of the Natural Gas Wellhead Decontrol Act of 1989, but to which such contract ceases to apply after such date of enactment, subtitle A shall not apply to any first sale of such natural gas delivered after such contract ceases to apply.

[5] Chevron U.S.A. Inc., Conoco Inc., OXY USA Inc., Shell, Texaco Inc., Union Oil Company of California, and Union Texas Petroleum, Inc.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 90-16965 Filed 7-20-90; 8:45 am]

BILLING CODE 5717-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Bond Release

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

ACTION: *Final rule; approval of amendment.*

SUMMARY: OSM is announcing the approval with certain exceptions of proposed Program Amendment Number 42 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were initiated by Ohio and are intended to clarify certain requirements for filing performance bond and for releasing performance bond, to clarify the applicability of different types of bond to the permit area, and to adopt a system for release of performance bond according to the type of the bond and the order in which different types of bonds were filed.

EFFECTIVE DATE: July 20, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232; (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated December 5, 1989 (Administrative Record No. OH-1243), Ohio submitted proposed Program Amendment No. 42. This proposed amendment was initiated by Ohio to clarify certain requirements for filing performance bond and for releasing of performance bond, to clarify the applicability of different types of bond to the permit area, and to adopt a system for release of performance bond according to the type of the bond and the order in which different types of bond were filed. The proposed amendment would revise the Ohio program at Ohio Administrative Code (OAC) section 1501:13-7-01(A)(4), (5), and (6)(a) (i) and (ii), and at OAC section 1501:13-7-05 (A)(1), (A)(2)(b), (A)(2)(b)(iv), (A)(2)(c)(ii), (B)(2)(c), and (B)(4) through (B)(4)(e).

Nonsubstantive changes are proposed throughout these two sections of the OAC to correct paragraph letter notations and to improve the clarity of the regulations.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments to the Ohio program. Only those revisions of particular interests are discussed below. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below correct paragraph letter notations and change language to improve the clarity of the rules.

(1) General Requirements and Applicability of Bonding

(a) OAC 1501:13-7-01(A)(4)

This paragraph is being rewritten to specify that no area affected by a coal mining and reclamation operation shall be identified with a specific performance bond, except that those areas within a permit which are bonded through the Performance Bond Fund provided for by OAC 1501:13-7-09 may be identified with that specific performance bond. The language proposed for deletion from this rule prohibited identifying affected areas with specific bonds except as provided in an agreement entered into pursuant to paragraph (A)(5) of rule OAC 1501:13-7-01.

There is no direct Federal counterpart to the proposed provision to prohibit the identification of specific performance bond with a specific area affected within a permit. However, the provision is not inconsistent with the Federal requirements concerning performance bonds. Both the Federal requirements at 30 CFR part 800 and the Ohio program at OAC 1501:13-7-01 require performance bonds for all lands to be disturbed by surface coal mining and reclamation operations, and both require that the bond or bonds be filed prior to the disturbance of any surface acreage.

The Ohio rule at OAC 1501:13-7-09, which is referenced in this proposed rule change, pertains to a proposed performance bond fund that is not currently part of the approved Ohio program, but which Ohio has submitted to OSM as part of proposed Ohio Program Amendment No. 32 (Administrative Record Number OH-0994). OSM is currently reviewing Amendment No. 32 and has not approved the new proposed provisions at OAC 1501:13-7-09, for inclusion in the Ohio program. Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM.

Therefore, the Director finds the amendment to be consistent with the Federal requirements for performance bonds at 30 CFR 800 with the exception noted above. Pending the outcome of the Director's review of Ohio's proposed amendment No. 32, the Director is not acting at this time on that part of Ohio's proposed amendment at OAC 1501:13-7-01(A)(4) which states "except for those areas covered by bond submitted under rule 1501:13-7-09 of the Administrative Code."

(b) OAC 1501:13-7-01(A)(5)

This paragraph is being rewritten to specify that surety bonds, certificates of deposit, cash, and letters of credit shall apply to the permit area and to all revisions to the permit, including incidental boundary revisions and adjacent area permits. The amendment also states that bond posted through the Performance Bond Fund provided for by OAC 1501:13-7-09 shall apply only to those areas designated in accordance with OAC 1501:13-7-09(C). The language proposed for deletion from OAC 1501:13-7-01(A)(5) prohibited specific combinations of types of performance bond within the same

permit unless the area or areas to which the bond liability attaches were identified. In effect, therefore, the proposed amendment eliminates requirements for identification of bonds with specific permit areas.

While there is no direct Federal counterpart to the proposed amendment, the amendment is not inconsistent with the Federal regulations at 30 CFR 800.11, 800.13 and 800.16 governing bonding. The Federal regulations require that performance bond be posted and accepted by the regulatory authority prior to affecting any surface areas, or increments. The Federal regulations also require that performance bond liability shall be for the duration of the mining operation and for a period which is coincident with the operator's period of extended responsibility for successful revegetation and reclamation.

The Director finds that the proposed amendment renders the Ohio program to be no less effective than the Federal regulations. However, as discussed above at Finding 1(a), Ohio's reference to the Ohio regulations at OAC 1501:13-7-09 cannot be approved at this time because OAC 1501:13-7-09 is currently under review as part of the proposed amendment No. 32 and is not part of the approved Ohio program. Therefore, the Director is deferring a decision on that part of proposed OAC 1501:13-7-01(A)(5) which states "Bond posted under rule 1501:13-7-09 of the Administrative Code shall apply to those areas designated in accordance with paragraph (C) of rule 1501:13-7-09 of the Administrative Code."

(c) OAC 1501:13-7-01(A)(6)(a)

The proposed amendment to paragraph (A)(6)(a)(i) would delete the requirement that the permittee or applicant shall identify on the permit application map where mining will begin and the direction in which mining will proceed. The Federal regulations at 30 CFR 800.11(b)(3) require that the operator shall identify the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided for in the application (under 30 CFR parts 780 and 784) and shall specify the bond amount for each area or increment. Specifically, the Federal regulations at 30 CFR 780.14(b)(2) require that the permit application map show the area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation.

While the proposed Ohio amendment at OAC 1501:13-7-01(A)(6)(a)(i) would delete the requirement to show on the permit application map where the mining will commence and the direction in which mining will proceed, the Ohio program retains a similar requirement at OAC 1501:13-4-04. The approved Ohio program at OAC 1501:13-4-04(J)(17) requires the permit application map to show the "point at which mining operations will begin and the point at which mining operations will end on the permit area." In addition, the approved Ohio provisions at 1501:13-7-01(A)(6)(b) and (c), which are not being amended, continue to provide requirements concerning the identification of incremental areas on an annual map, and the posting of additional incremental bond concurrently with submittal of the annual map. The Director finds, therefore, that the proposed amendment renders the approved Ohio program to be no less effective than the Federal regulations and can be approved.

The proposed amendment to paragraph (A)(6)(a)(ii), formerly paragraph (A)(6)(a)(iii), would delete the words "coal mining operations begin" and replace them with the words "the permit is issued." With this change, Ohio has adopted the Federal language at 30 CFR 800.11(a) which requires the permittee to file a performance bond before the permit is issued. The Director finds, therefore, that the proposed rule is no less effective than the Federal regulations.

(2) Procedures, Criteria, and Schedule for Bond Release

(a) OAC 1501:13-7-05(B)(2)(c)

This paragraph is being rewritten to specifically include the "failure to achieve the crop yields for prime farmland required for Phase II bond release by paragraph (F)(5)(f) of rule 1501:13-9-15 of the Administrative Code" as an allowable reason to separate and individually bond a portion of an incremental area and to extend reclamation responsibility for that portion of the area. The Federal regulations at 30 CFR 800.13(b) provide that isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the regulatory authority. The Federal regulation also specifies that such areas shall be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure.

The approved Ohio provisions at OAC 1501:13-7-05(B)(2)(c) are currently consistent with the restrictions and limitations identified in the Federal regulation described above, and the proposed Ohio amendment does not alter that consistency. That is, the restrictions concerning the use of the Ohio provision concerning the separation and bonding of isolated areas which require extended liability will apply to the proposed provision concerning prime farmland which fails to achieve required crop yields. The Director finds, therefore, that the proposed amendment is no less effective than the Federal regulations at 30 CFR 800.13(b).

(b) OAC 1501:13-7-05(B)(4)

This new paragraph is being added to specify the order of release of different types of performance bond. The proposed rule would allow certificates of deposit and cash to be released in any manner and order determined by the Chief of the Division of Reclamation, Ohio Department of Natural Resources. Other types of performance bond shall be released according to the following order first by type of bond and, within a bond type, in the order in which they were filed:

(1) Bond submitted through the Performance Bond Fund provided for by OAC 1501:13-9-07;
(2) Self bond as provided for by OAC 1501:13-7-04;
(3) Surety bond;
(4) Letters of credit; and
(5) Any remaining collateral bond.

Although there is no Federal counterpart to the proposed rule, the proposed rule is not inconsistent with the Federal provisions concerning bond release. Since the proposed rule only affects the order in which bonds are released, and does not change the approved Ohio requirements concerning the schedule of bond release at OAC 1501:13-7-05(B)(3) the approved Ohio rules remain no less effective than the Federal requirements. As discussed at finding 1(a) above, however, Ohio's reference to OAC 1501:13-9-07 concerning the Performance Bond Fund cannot be approved at this time because OAC 1501:13-7-09 is currently under review as part of Ohio proposed Amendment No. 32 and is not part of the approved Ohio program. Therefore, the Director is deferring a decision on that part of proposed OAC 1501:13-7-05(B)(4)(a) which states "performance bond submitted under rule 1501:13-7-09 of the Administrative Code."

IV. Summary and Disposition of Comments

The public comment period announced in the December 20, 1989, **Federal Register** (54 FR 52044) ended January 19, 1990. No comments from the public were received.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio Program. The U.S. Department of Agriculture, Soil Conservation Service questioned whether the proposed change at OAC 1501:13-7-05(B)(2)(c), which specifically identifies areas of prime farmland which have failed to achieve the crop yields for prime farmland required for Phase II release, would encourage operators to "walk away" from (not reclaim) those small areas. In response, the Director notes the following.

The Ohio program offers sufficient safeguards to assure the reclamation of the separately bonded sites, and sufficient incentives to assure that the reclamation is performed by the operator. For example, the approved Ohio rules concerning bonding and bond release will pertain to the separately bonded incidental area(s). Consequently, the amount of bond retained must be sufficient to assure the reclamation of the affected area(s). The Ohio bond forfeiture rules at OAC 1501:13-7-06, in addition to assuring the reclamation of the forfeited area or areas, also specify that forfeiture does not relieve a permittee from the responsibility for complying, and does not prevent the permittee from being subject to civil penalties for not complying with any order or notice of violation related to a forfeiture.

Other comments provided by the Soil Conservation Service do not pertain to the provisions being amended and, therefore, will not be discussed here.

The U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency responded and stated that they had no comment on the proposed amendments. The U.S. Department of Labor responded and stated that the proposed amendments are outside the jurisdiction of the agency.

V. Director's Decision

Based on the above Findings, and except as noted below, the Director is approving the Ohio Program Amendment No. 42 as submitted by Ohio on December 5, 1989. As discussed at Findings 1(a), 1(b), and 2(b), the Director is deferring a decision on the inclusion of references to OAC 1501:13-7-09 at proposed OAC 1501:13-7-01(A)(4), 1501:13-7-01(A)(5), and 1501:13-7-05(B)(4) pending the outcome of OSM's review of proposed OAC 1501:13-7-09 as included in Ohio's Program Amendment No. 32. The Director is amending 30 CFR part 935 to implement this decision.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Ohio program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Ohio of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 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 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 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 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 13, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

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 935—OHIO

1. The authority citation for part 935 continues to read as follows:

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

2. In § 935.15, a new paragraph (oo) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(oo) The following amendments to the Ohio regulatory program, as submitted to OSM on December 5, 1989, are approved, with the exceptions noted herein, effective July 20, 1990: Amendment No. 42 which concerns revisions to the Ohio regulatory program bonding and bond release provisions at Ohio Administrative Code (OAC) sections 1501:13-7-01(A)(4), (A)(5), and (A)(6)(a)(i) and (ii); 1501:13-7-05(A)(1), (A)(2)(b), (A)(2)(b)(iv), (A)(2)(c)(ii), (B)(2)(c), and (B)(4) to (B)(4)(e). Action is being deferred on the proposed provisions at OAC 1501:13-7-01(A)(4), 1501:13-7-01-(A)(5), and 1501:13-7-05(B)(4) which would add a reference to those provisions of rule OAC 1501:13-7-09, pending the outcome of OSM's review of Ohio's Program Amendment No. 32 which contains the proposed program amendments at OAC 1501:13-7-09.

[FR Doc. 90-16941 Filed 7-19-90; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 936

Oklahoma Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule, approval of amendment.

SUMMARY: On August 24, 1989, the State of Oklahoma submitted to OSM a proposed amendment to its abandoned

mine land reclamation (AMLR) plan. The proposed amendment provides new procedures for the ranking of eligible reclamation projects affected by surface and underground coal mining processes that qualify for funding under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.)* OSM is announcing approval of the amendment.

EFFECTIVE DATE: July 20, 1990.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior (Secretary) approved the Oklahoma AMLR program submitted on June 30, 1981. Information pertinent to the general background, revisions, and amendment to the initial program submission, as well as the Secretary's findings and disposition of comments can be found in the January 21, 1982, **Federal Register** (47 FR 2991).

The Secretary has adopted regulations that specify the content requirements of a State's reclamation plan and the criteria for plan approval (30 CFR part 884). The regulations provide that a State may submit to the Director of OSM proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope of the plan or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving the amendment or revision.

II. Submission of Proposed Amendment

By letter dated August 8, 1989, Oklahoma submitted a reclamation plan amendment to OSM (Administrative Record No. AML-OK 42). The proposed amendment concerns the project selection criteria as specified in 30 CFR 884.13(c)(2). The Oklahoma Conservation Commission (OCC) has submitted revised project scoring criteria to ensure that projects involving threats to the public health and safety are addressed before lower priority problems.

For the purposes of AML project site selection, OCC has proposed two matrices. One matrix would be used to evaluate surface mine sites and the other for underground mines. This was done because the hazards associated with the two types of mines are very different and difficult to compare.

On November 1, 1989, OSM announced receipt of the proposed amendment in a **Federal Register** notice (54 FR 46079) and in that same notice, opened the public comment period and provided an opportunity for a public hearing on the adequacy of Oklahoma's proposed amendment. The public comment period ended on November 16, 1989. The public hearing scheduled for November 16, 1989, was not held because no one requested an opportunity to testify.

III. Director's Findings

After a thorough review, the Director finds in accordance with 30 CFR 884.15, that the amendment submitted on August 8, 1989, meets the requirements of SMCRA and 30 CFR chapter VII.

Project rankings and selection procedures are described in general terms in 30 CFR 874.13. Specifically, reclamation projects should reflect the priorities set out in section 403 of SMCRA and should be completed in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810-14819, March 6, 1980).

OSM regulations do not provide any specific methodology for selecting and ranking projects. However, OSM did develop a model AMLR plan to assist the States in developing their reclamation plans. As part of this model, a site evaluation matrix was designed together with an objective, quantifiable method for ranking specific priority problems. The site matrix contains certain environmental, socio-economic, programmatic, and technical factors. Each site has a specific priority; therefore, each site can be ranked numerically depending on the matrix score. The higher ranking projects within each priority are then selected for funding in a State's annual grant request.

In the course of reviewing this amendment, OSM found the amendment fully satisfies the requirements of 30 CFR 884.13(c)(2). Oklahoma's original AMLR plan included a provision for ranking and identifying projects to be funded. However, the past ranking factors require some improvement. This amendment identifies new ranking factors with specific criteria for assigning numerical values that will provide more precise and usable evaluation of projects to be funded.

IV. Summary of Disposition of Comments

The Director solicited public comments and provided the opportunity for a public hearing on the proposed amendment. Because no one requested an opportunity to testify at a public hearing, a hearing was not held.

No comments were received on the proposed amendment.

V. Director's Decision

Based on the above finding, the Director is approving the proposed amendment submitted by Oklahoma on August 8, 1989. The Federal regulations at 30 CFR part 936 codifying decisions concerning the Oklahoma AMLR program are being amended to implement this decision. The final rule is being made effective immediately.

VI. Procedural Requirements

1. Federal Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 *et seq.*

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On October 4, 1985, OMB granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State reclamation plans or amendments. Therefore, this action is exempt from preparation of a regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No burden would be imposed upon entities operating in compliance with the Act.

3. Compliance With the National Environmental Policy Act

Approval of state AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 2. appendix 1.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 12, 1990.

W. Hord Tipton,

Deputy Director, Oeprations and Technical Services.

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

PART 936—OKLAHOMA

1. The authority citation for part 936 continues to read as follows:

Authority: (30 U.S.C. 1201 *et seq.*).

2. Section 936.20 is revised to read as follows:

§ 936.20 Approval of Oklahoma Abandoned Mine Land Reclamation Plan.

The Oklahoma Abandoned Mine Land Reclamation Plan was approved on July 20, 1981. Oklahoma's Plan Amendment submitted on April 8, 1989, is approved. Copies of the approved Plan and Amendment are available at:

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Dr., suite 550, Tulsa, OK 74135.

Oklahoma Conservation Commission, 2800 N. Lincoln, room 160, Oklahoma City, OK 73105.

[FR Doc. 90-16942 Filed 7-19-90; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-90-16]

Special Local Regulations; Bluewater Offshore Grand Prix, St. Clair River, Lake Huron, Port Huron, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Bluewater Offshore Grand Prix. This event will be held on the St. Clair River and lower Lake Huron from 11 a.m. (EDST) until 1 p.m. (EDST) on 3 September 1990. The regulations are needed to provide for the safety of life on navigable waters prior to and just after the start of this event.

EFFECTIVE DATE: These regulations become effective at 10:30 a.m. (EDST) until 11:30 a.m. (EDST) on 3 September 1990.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District until 8 June 1990, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Bluewater Offshore Grand Prix will be conducted on the St. Clair River, (just north of the Fort Gratiot Range Lights), Port Huron, MI, to lower Lake Huron. The start of this event only takes place in the St. Clair River. This event will have an estimated sixty to seventy-five, 21 to 50 foot high performance offshore powerboats which could pose hazards to navigation in the area. In order to provide for the safety of life and property, the Coast Guard will restrict recreational vessel traffic one half hour prior to, and one half hour after the start of this event. This one hour closure will allow the powerboats to clear the St. Clair River, within this section of the St. Clair River to the Lake Huron Cut Lighted Buoy No. 4 in lower Lake Huron. Recreational vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander, (Officer in Charge, U.S. Coast Guard Station Port Huron, MI).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a final regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principals 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.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

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

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

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

2. Part 100 is amended to add a temporary § 100.35-0916 to read as follows:

§ 100.35-0916 Bluewater Offshore Grand Prix, St. Clair River, Lake Huron, Port Huron, MI

(a) *Regulated area.* That portion of the St. Clair River and Lake Huron enclosed by the United States shoreline and the following lines: (1) on the south, an east-west line starting at the U.S. shoreline and running east to the International Border at latitude 42 degrees 59.5 minutes North, (vicinity of the Fort Gratiot Range Rear Light (LLNR 9420)); (2) on the east, a line northeasterly along the International Border to the Lake Huron Cut Lighted Buoy No. 2 (LLNR 9450) and then due north to Lake Huron Cut Lighted Buoy No. 3 (LLNR 9455); and (4) on the west, a line south to Lake Huron Cut Lighted Buoy No. 1 (LLNR 9445), thence southwest to shore at the Fort Gratiot Light (LLNR 9430) in position 43 degrees .04 minutes North, 082 degrees 25.4 minutes West.

(b) *Special Local Regulations.* (1) The above area will be closed to recreational vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 10:30 a.m. (EDST) until 11:30 a.m. (EDST), on 3 September 1990.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any recreational vessel not authorized to participate in the event desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of

any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(7) This section is effective at 10:30 A.M. (EDST) until 11:30 A.M. (EDST) on 3 September 1990.

Dated: July 9, 1990.

G. A. Penington,

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

[FR Doc. 90-16974 Filed 7-19-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Parts 100 and 165

[CGD 90-044]

Safety and Security Zones; Issuance of Temporary Rules

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list includes safety zones, security zones, and special local regulations that were established between April 1, 1990 and June 30, 1990 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the past published list.

ADDRESSES: The complete text of any temporary regulation may be examined at, and is available on request from, Executive Secretary, Marine Safety Council (G-LRA-2), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Novak, Executive Secretary, Marine Safety Council at (202) 267-1477.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated.

Non-major safety zones, special local regulations, and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period April 1, 1990 through June 30, 1990 unless otherwise indicated.

Docket No.	Location	Type	Date
1-90-065	New York Harbor, N.Y	Safety Zone	June 12, 1990.
1-90-070	Hudson River, Troy, N.Y	Safety Zone	June 4, 1990.
1-90-073	Hudson River, Albany, N.Y	Safety Zone	June 4, 1990.
1-90-075	Newburyport Grand Prix, Newburyport, MA	Safety Zone	June 12, 1990.
1-90-076	Ambrose Channel, Lower Bay, Upper Bay, and Hudson River, N.Y	Safety Zone	June 12, 1990.
1-90-078	Pawtuxet Cove, R.I	Safety Zone	June 4, 1990.
1-90-081	East River, N.Y	Safety Zone	June 21, 1990.
1-90-082	Hudson River, N.Y	Safety Zone	June 21, 1990.
1-90-083	Hudson River, N.Y	Safety Zone	June 6, 1990.
1-90-094	Hudson River, Upper Bay, Lower Bay, and Ambrose Channel, N.Y	Safety Zone	June 21, 1990.
1-90-097	Upper New York Harbor, N.Y	Security Zone	June 19, 1990.
1-90-098	Upper Bay New York, Anchorage Channel, N.Y	Safety Zone	June 19, 1990.
1-90-100	Arthur Kill, Port Socony, N.Y	Safety Zone	June 25, 1990.
1-90-101	Kill Van Kull, Newark Bay, N.J	Safety Zone	June 20, 1990.
1-90-102	Coney Island Channel, Brooklyn, N.Y	Safety Zone	June 25, 1990.
1-90-108	Lower New York Bay, Sandy Hook Channel, N.J	Safety Zone	June 22, 1990.
1-90-110	Lower New York Bay, Sandy Hook Channel, N.Y	Safety Zone	June 26, 1990.
05-90-42	Pagan River, Isle of Wight County, VA	Special Local	June 25, 1990.
13-90-09	Elliott Bay, Seattle, WA	Special Local	June 27, 1990.
13-90-10	Lake Union, Seattle, WA	Special Local	June 27, 1990.
13-90-11	Commencement Bay, Tacoma, WA	Special Local	June 27, 1990.
COTP Boston 90-053	Boston Inner Harbor	Safety Zone	June 16, 1990.

Dated: July 16, 1990.

Bruce P. Novak,

Executive Secretary, Marine Safety Council.

[FR Doc. 90-16976 Filed 7-19-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD1-90-111]

Drawbridge Operation Regulations; Piscataqua River, Maine/New Hampshire

AGENCY: Coast Guard.

ACTION: Final temporary rule.

SUMMARY: At the request of New Hampshire Department of Transportation and the Maine-New Hampshire Interstate Bridge Authority (M-NHIBA), the Coast Guard is temporarily amending the regulations governing the Sarah M. Long (Route 1 Bypass) drawbridges over the Piscataqua River, at mile 4.0 between Kittery, Maine and Portsmouth, New Hampshire. The regulation amendment temporarily suspends for the period of 9 July 1990 through 27 August 1990, the requirement to maintain the secondary recreational channel in the fully open position except for the passage of trains. The number of openings of the main draw for commercial vessels less than 100 gross tons and recreational vessels will continue to be limited between 6 a.m. and 7 p.m. The draw will open to half-hour intervals at 15 minutes before and 15 minutes after the hour. Additional openings of the main draw will be provided as needed to minimize vessel congestion and enhance marine safety. This change is being made because the lifting mechanism for the secondary recreational draw experienced a mechanical failure and ongoing contractual repairs necessitated the draw to be maintained in the closed position to facilitate said repairs. This action will relieve the bridge owner of the burden of having to open the secondary draw for a 50 day period, however, the main draw will remain operational to provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on 9 July 1990.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: This temporary deviation from the regulations is issued under 33 CFR 117.35(d).

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project officer, and Lieutenant John Gately, project attorney.

Discussion of Final Temporary Regulations

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for these regulations and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying its effective date would be contrary to the public interest since the implementation of these temporary regulations is necessary to facilitate the New Hampshire Department of Transportation's (NHDOT) completion of contracted repairs, while the repair parts for the secondary draw are being fabricated. NHDOT has indicated that approximately 10 sportfishing vessels use the secondary draw per day and that additional openings of the main draw will be provided as needed to minimize vessel congestion and enhance marine safety. The vertical clearance of the secondary recreational draw in the closed position above means high and mean low water is 5 MHW and 13 MLW feet respectively while the main draw provides 18 MLW and 10 MHW feet respectively in the closed position.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This is based upon the fact that the closure of the secondary draw will not prevent the passage but just require scheduling of the movement of recreational and small commercial vessels that are normally able to utilize that draw. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.700(c)(2) and § 117.531(c)(2) are suspended for the period of July 9, 1990 through August 27, 1990 and the introductory text of paragraph (c) of both sections is republished and § 117.531(c)(3) and § 117.700(c)(3) are added to read as follows for the period July 9, 1990 through August 27, 1990. Because this is a temporary rule, this paragraph will not be codified in the CFR.

Maine

§ 117.531 Piscataqua River.

* * * * *

(c) The draw of the Sarah M. Long (Route 1 Bypass) bridge, mile 4.0, shall open as follows:

* * * * *

(3) Repair of secondary recreational draw. The secondary recreational draw need not be opened for the passage of any vessel and paragraph (c)(2) of this section is suspended from 7 a.m., July 9, 1990 through 11 p.m., August 27, 1990, inclusive.

New Hampshire

§ 117.700 Piscataqua River.

* * * * *

(c) The draw of the Sarah M. Long (Route 1 Bypass) bridge, mile 4.0, shall open as follows:

* * * * *

(3) Repair of secondary recreational draw. The secondary recreational draw need not be opened for the passage of any vessel and paragraph (c)(2) of this section is suspended from 7 a.m., July 9, 1990 through 11 p.m., August 27, 1990, inclusive.

Dated: July 6, 1990.

R. I. Rybacki,

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

[FR Doc. 90-16812 Filed 7-19-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD8-90-12]

Drawbridge Operation Regulations; Bayou Lafourche, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule—revocation.

SUMMARY: This amendment revokes the regulations for the Southern Pacific Transportation Company swing span bridge across Bayou Lafourche, at Lafourche, Lafourche Parish, Louisiana, because the drawspan has been converted to a fixed span. Notice and public procedure have been omitted from this action due to the conversion of the span.

EFFECTIVE DATE: This regulation becomes effective on August 20, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Rose Payne, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes regulations that are now meaningless because they pertain to a drawspan that has been converted to a fixed span. Consequently, this action 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). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, and because this action will not have a significant impact on a substantial number of small entities, this rulemaking is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)).

Drafting Information

The drafters of this regulation are Ms. Rose Payne, project officer, and Lt. J. A. Wilson, project attorney.

Federalism Implications

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

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.465 is amended by removing paragraph (e), and revising paragraph (d) to read as follows:

§ 117.465 Lafourche Bayou.

* * * * *

(d) The draws of the Southern Pacific railroad bridge, mile 69.0 at Lafourche, and all bridges upstream of the Southern Pacific railroad bridge need not be opened for the passage of vessels.

Dated: July 6, 1990.

J. M. Loy,

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

[FR Doc. 90-16975 Filed 7-19-90; 8:45 am]

BILLING CODE 4910-14-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1280

[RIN 3095-AA06]

Photographing and Filming the Exterior and Interior of the National Archives Building and Other NARA Facilities in the Washington, DC, Area

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: This rule sets forth the conditions under which the exterior and interior of the National Archives Building and the interior of other NARA-occupied buildings containing archival materials in the Washington, DC, area may be filmed or photographed by groups such as news organizations and commercial or freelance film crews. The rule will require all persons and groups, other than individuals who are filming or photographing the National Archives Building without artificial lights for their own personal use, to obtain the permission of the National Archives Public Affairs Staff (NSI) before filming or photographing the National Archives Building from property under the control of the Archivist of the United States. Permission from NSI will also be required to film or photograph the interior of other space in the Washington, DC, area assigned to the National Archives and Records Administration used for archival storage and research. The rule does not apply to the use of privately owned microfilming equipment to film archival records and donated historical materials at the National Archives Building. The regulations governing this activity are found at 36 CFR 1254.90 through 1254.102.

The rule is being promulgated to protect archival records and donated historical materials maintained at the National Archives Building, the Washington National Records Center, and the Pickett Street Annex; to enhance the safety of persons who use the National Archives Building and other NARA facilities in the Washington, DC, area, including researchers, exhibit patrons, and Government employees; to prevent disruption both of the conduct of official business and of the timely provision of NARA services to the general public; and to ensure that the use of areas in and around the National Archives Building which are under the Archivist's control is compatible with those areas' designation either as non-public or limited public forums.

EFFECTIVE DATE: August 20, 1990.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202-501-5110 (FTS 241-5110).

SUPPLEMENTARY INFORMATION: This rule is being promulgated without a prior notice of proposed rulemaking under the provisions of the Administrative Procedure Act, 5 U.S.C. 553(a)(2), which states that notices of proposed rulemaking do not have to be published in the **Federal Register** when they involve "a matter relating to * * * public property." Rules governing the public's use of the National Archives Building and other property assigned to NARA fall within the scope of this exemption.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1280

Archives and records, Federal buildings and facilities.

For the reasons set forth in the preamble, chapter XII of title 36, Code of Federal Regulations, is amended as follows:

PART 1280—PUBLIC USE OF FACILITIES

1. The authority citation for part 1280 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. In subpart B, 1280.12, 1228.14, 1228.16, 1228.18, 1228.20, 1228.22, and 1280.24 are redesignated as §§ 1280.16, 1228.18, 1228.20, 1228.22, 1228.24, 1228.26, and 1280.28, respectively, and new §§ 1280.12 and 1280.14 are added to read as follows:

§ 1280.12 Filming or photographing the exterior of the National Archives Building.

(a) *Definition.* "Property under the control of the Archivist" includes the Pennsylvania Avenue NW., entrance between 7th and 9th Streets including the area within the retaining walls on either side of the entrance, inclusive of the statues, and the steps leading up to the entrance of the building; on the 7th Street, 9th Street, and Constitution Avenue NW., sides of the building, all property between the National Archives Building and the street, including the sidewalks and other grounds; the steps leading up to the Constitution Avenue NW., entrance; the Constitution Avenue entrance; and the portico area between the steps and the Constitution Avenue entrance. Use of the sidewalks and other grounds on the Pennsylvania Avenue side of the National Archives Building not under the control of the Archivist of the United States is controlled by the National Park Service and/or the Pennsylvania Avenue Development Corporation.

(b) *Applicability.* This section applies to all persons and groups who wish to film or photograph the exterior of the National Archives Building from property under the control of the Archivist of the United States, except for individuals who wish to film or photograph the exterior of the National Archives Building for their own personal use.

(c) *Pennsylvania Avenue entrance.* Persons and groups must obtain the permission of the National Archives Public Affairs Officer or his/her designee (NSI), either in writing or by telephone, before filming or photographing the Pennsylvania Avenue entrance of the National Archives Building. Filming and photographing will be permitted only for the purpose of providing background to stories about either NARA or a researcher who has made use of National Archives holdings. Press interviews will not be permitted unless NARA or other Government employees are being interviewed in connection with official business.

(d) *Constitution Avenue entrance.* Permission to film or photograph the Constitution Avenue entrance, the portico, or the steps leading to these areas will only be granted if the filming or photographing to be done relates to interviews done with NARA or other Government employees or to the coverage of NARA-sponsored programs, e.g., Constitution Day programs.

(e) *Conditions and restrictions.* The following conditions and restrictions apply to all persons and groups granted permission under this section:

(1) Permission to film or photograph will not be granted to persons or groups wishing to promote commercial enterprises or commodities, or to persons or groups involved with political, sectarian, or similar activities.

(2) Filming or photographing may not impede ingress or egress of visitors to the National Archives Building.

(3) Permission to film or photograph the exterior of the National Archives Building does not constitute approval or sponsorship by NARA of the persons or groups involved, of their activities or views, or of the uses to which the works depicting the National Archives Building are put.

(4) Permission to film or photograph does not release the perons or groups involved from liability for injuries to persons or property that result from their activities on property to which the Archivist controls access.

(5) Persons and groups granted permission to film or photograph under this section must conduct their activities at all times in accordance with the regulations contained in subpart A of this part (§§ 1280.1 through 1280.8).

§ 1280.14 Permission for filming the interior of the National Archives Building, the Washington National Records Center, and the Pickett Street Annex.

(a) *Applicability.* (1) This section applies to all persons and groups who wish to film or photograph the interior of the National Archives Building, the interior of the Washington National Records Center, and interior of the Pickett Street Annex, with the following exceptions:

(i) Individuals covered by § 1280.16 of this chapter; and

(ii) Individuals who have permission to use privately-owned microfilming equipment to film archival records and donated historical materials under the provisions of §§ 1254.90 through 1254.102 of this chapter.

(2) This section does not apply to the following areas within the National Archives Building, which are covered by §§ 1280.22 through 1280.28 of this chapter:

(i) Conference rooms;

(ii) The National Archives Theater; and

(iii) The Archivist's Reception Room.

(b) *Permission for filming or photographing.* Persons and groups must obtain the permission of the Public Affairs Officer or his/her designee before filming or photographing the interior of the National Archives Building, the Washington National Records Center, and/or the Pickett Street Annex. Permission must be requested in writing at least one week prior to the proposed activity. Filming and photographing will only be permitted for the purpose of providing background to stories about NARA or a researcher making use of National Archives holdings. Press interviews will not be permitted unless NARA or other Government employees are being interviewed in connection with official business. Filming or photographing will not be permitted in areas of the buildings not open to the general public or to researchers, or in records storage (stack) areas.

(c) *Conditions and restrictions.* The following conditions and restrictions apply to all persons and groups granted permission under this section:

(1) Permission to film or photograph will not be granted to persons or groups wishing to promote commercial enterprises or commodities, or to persons or groups involved with political, sectarian, or similar activities.

(2) Persons and groups must be accompanied at all times by a member of the Public Affairs Staff when in the National Archives Building, Washington National Records Center, or Pickett Street Annex for other than research purposes (see part 1254 of this chapter for regulations on research use of records and donated historical materials.)

(3) The filming and photographing of documents shall take place only in areas designated by the NARA Public Affairs Staff. NARA may limit or prohibit use of artificial light in connection with the filming or photographing of documents.

(4) Interviews with NARA staff and researchers shall take place only in areas designated by the NARA Public Affairs Staff.

(5) Approved film and photography sessions will normally be limited to two hours.

(6) Persons and groups are subject at all times to the regulations set forth at subpart A of this part.

(7) Permission to film or photograph under this section does not constitute approval or sponsorship by NARA of the persons or groups involved, of their activities or views, or of the uses to which the works depicting the facilities are put.

(8) Permission to film or photograph under this section does not release the persons or groups involved from liability for injuries to persons or property that

result from their activities on NARA property.

3. Newly redesignated § 1280.16 is revised to read as follows:

§ 1280.16 Filming or photographing documents in exhibit areas for personal use.

Filming or photographing documents or exhibits in the Exhibition Hall, the Pennsylvania Avenue lobby, or any other exhibit areas in the National Archives Building without supplemental artificial light sources, or tripods, or similar equipment is permitted for personal use at any time during regular hours. However, such activities may not take place on the steps or ramp leading to the Declaration of Independence, the Constitution, and the Bill of Rights.

4. In newly redesignated § 1280.18, paragraph (b) is revised to read as follows:

§ 1280.18 Artificial lighting in public areas.

* * * * *

(b) Ladders, scaffolding, and tripods may be used before regular hours, but must be kept at a distance from documents greater than the height of the equipment.

* * * * *

Dated: June 27, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90-17019 Filed 7-19-90; 8:45 am]

BILLING CODE 7515-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-3808-9]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: WI

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: USEPA is approving Wisconsin's request to redesignate a sub-city area within Milwaukee from nonattainment to attainment for carbon monoxide (CO), because the Wisconsin Department of Natural Resources (WDNR) has submitted sufficient data to support it. Under the Clean Air Act (CAA), a designation can be changed if sufficient data are available to warrant it.

EFFECTIVE DATE: This final rulemaking becomes effective on August 20, 1990.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following address:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 886-6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.350. An area's designation may be revised whenever sufficient data become available to warrant a redesignation.

Milwaukee's current CO nonattainment area is defined (40 CFR 81.350) to be bounded by:

North 75th Street and West Beckett Street on the east; West Perkins Avenue on the south; North 77th Street on the West, and West Hope Avenue and Marion street on the North.

On May 4, 1987, pursuant to section 107(d)(5) of the CAA, the WDNR requested that the Milwaukee nonattainment area be redesignated to attainment of the CO NAAQS. This redesignation request is based on CO monitoring data from the period of March 1985 through March 1987, which covered the most recent 8 quarters of available CO monitoring data prior to WDNR's submission. In addition, no CO standard violations have been monitored in the Milwaukee area since the State's submission.

USEPA analyzed Wisconsin's request in relationship to its redesignation policies.[1] USEPA proposed to approve Wisconsin's Milwaukee CO redesignation request on December 15, 1988, (53 FR 50428), based on the following reasons: (1) There were no monitored CO violations, (2) the State had implemented both a vehicle inspection and maintenance program and the transportation control measures contained in Milwaukee's approved CO State Implementation Plan (SIP—March 9, 1984, 49 FR 8920), and (3) emission reductions from these programs along with those from the Federal Motor Vehicle Emission Control Program were deemed sufficient both to explain the observed improvement in CO concentrations to levels below the NAAQS and to maintain the NAAQS.

During the public comment period, one set comments was received. Summarized below is USEPA's evaluation of its significant elements.

Comment

It is clear from the notice of proposed rulemaking that Wisconsin has met the requirements outlined in the notice of proposed rulemaking for redesignation to attainment. Most importantly, there have been no monitored violations of the CO NAAQS in Milwaukee since WDNR's submission, including the 8 consecutive calendar quarters prior to the State's submission. Wisconsin's CO monitoring network and its modeling of CO concentrations demonstrating attainment of the CO NAAQS have been approved by the USEPA (49 FR 8920). The USEPA should give final approval to Wisconsin's redesignation request.

Response

USEPA agrees that the State of Wisconsin has met the requirements for the redesignation of the Milwaukee area to attainment of the CO NAAQS. The area's monitoring data continue to show no current violation of the CO standards, and the State has implemented its current, approved CO SIP. The CO emission reductions due to the implementation of the SIP are sufficient to explain the observed improvements in CO concentrations to levels below the NAAQS.

Conclusion

USEPA is approving the redesignation request for an area within Milwaukee, Wisconsin from nonattainment to attainment for the pollutant CO because the WDNR has demonstrated that the area has attained the CO NAAQS.

Today's action makes final the action proposed at December 15, 1988, (53 FR 50428). As noted elsewhere in this notice, USEPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established at 54 FR 2214, January 19, 1989. On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the

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[1] USEPA's redesignation requirements implementing the CAA are found in four memoranda: Richard G. Rhoads, to Directors of Air and Hazardous Materials Divisions of Air Managements, Region I-X, "Section 107 Redesignation Criteria", June 12, 1979; Sheldon Meyers to Air and Waste Management Division Directors, "Section 107 Designation Policy Summary", April 21, 1983; G.T. Helms to Air Branch Chiefs, "Section 107 Questions and Answers", December 23, 1983; and Richard G. Rhoads, to Gary L. O'Neal, "Summary of NAAQS Interpretation", May 27, 1983. The policies expressed in these memoranda are discussed in more detail in USEPA's proposal rulemaking of December 15, 1988, (53 FR 50428).

requirements of section 3 of Executive Order 12291 for a period of 2 years.

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

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

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental Protection, National parks, Wilderness areas, Carbon monoxide.

Authority: 42 U.S.C. 7401–7642.

Date: June 27, 1990.

Ralph Bauer,

Acting Regional Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Wisconsin

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

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

Authority: 42 U.S.C. 7401–7642.

2. Section 81.350 is amended by adding Milwaukee County under AQCR 239 within the table "Wisconsin—CO" to read as follows:

§ 81.350 Wisconsin

* * * * *

WISCONSIN—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * * * *		
AQCR 239:		
* * * * *		
Milwaukee County.	X	
* * * * *		

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[FR Doc. 90–17022 Filed 7–19–90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–608; RM–6497, RM–6756, RM–6757, RM–6758, RM–6759]

Radio Broadcasting Services; Arcadia, Goulds, Immokalee, LaBelle, North Naples, Palmdale, and Venus, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 252C3 for Channel 252A at Arcadia, Florida, and modifies the license of Station WOKD(FM) to specify operation on the higher class channel. In addition, this action substitutes Channel 252C for Channel 252A at Goulds, Florida, modifies the license for Station WRTO(FM) to specify the higher class channel, substitutes Channel 221A for Channel 252A at Immokalee, Florida, modifies the license for Station WCOO(FM) to specify the new channel, and substitutes Channel 223A for Channel 221A at LaBelle, Florida, and modifies the license for Station WKZY(FM) to specify the new channel. *See* 54 FR 05979, February 7, 1989. Channel 252C3 can be allotted to Arcadia in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.6 kilometers (12.8 miles) northwest to avoid a short-spacing to Station WRWX(FM), Channel 253A, Sanibel, Florida. The coordinates for Channel 252C3 at Arcadia are North Latitude 27–20–07 and West Longitude 82–01–18. Channel 252C can be allotted to Goulds in compliance with the Commission's minimum distance separation requirements at WRTO's licensed site at coordinates North Latitude 25–32–24 and West Longitude 80–28–07. Channel 221A can be allotted to Immokalee in compliance with the minimum distance separation requirements at WCOO's licensed site at coordinates North Latitude 26–21–19 and West Longitude 81–21–03. Channel 223A can be allotted to LaBelle in compliance with the minimum distance separation requirement at WKZY's licensed site at coordinates North Latitude 26–48–46 and West Longitude 81–21–16. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 30, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–608, adopted July 3, 1990, and released July 16, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended in the entry for Arcadia, Florida, by adding Channel 252C3 and removing Channel 252A; in the entry for Goulds, Florida, by adding Channel 252C and removing Channel 252A; in the entry for Immokalee, Florida, by adding Channel 221A and removing Channel 252A; and in the entry for LaBelle, Florida, by correcting "Labelle" to read "LaBelle" and by adding Channel 223A and removing Channel 221A.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–16847 Filed 7–19–90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89–334; RM–6716, RM–7046]

Radio Broadcasting Services; Stuart and Boone, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Coon Valley Communications, allots Channel 300A to Stuart, Iowa, as the community's first local FM service. Channel 300A can be allotted to Stuart in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 300A at Stuart are North Latitude 41–30–18 and West Longitude 94–19–06. At the request of G.O. Radio Boone, Inc., the Commission substitutes Channel 252C3 for Channel

252A at Boone, Iowa, and modifies its license for Station KZBA to specify the higher powered channel. Channel 252C3 can be allotted to Boone with a site restriction of 12.3 kilometers (7.6 miles) southeast to avoid a short-spacing to Station KEMB, Channel 252A, Emmetsburg, Iowa, and Station KLSN, Channel 255A, Jefferson, Iowa, as well as to accommodate petitioner's desired transmitter site. The coordinates for Channel 252C3 at Boone are North Latitude 41-57-55 and West Longitude 93-48-50. With this action, this proceeding is terminated.

DATES: Effective August 30, 1990. The window period for filing applications for Channel 300A at Stuart, Iowa, will open on August 31, 1990, and close on October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-334, adopted June 29, 1990, and released July 16, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under Iowa, is amended by removing Channel 252A and adding Channel 252C3 at Boone, and by adding Stuart, Channel 300A.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-16849 Filed 7-19-90; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 503

[APD 2800.12A CHGE 8]

General Services Administration Acquisition Regulation; Anti-Lobbying

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12A), is amended to add Subpart 503.8 to establish timeframes for submission of disclosure forms and to designate the office responsible for preparing the report to Congress in accordance with Federal Acquisition Regulation (FAR) 3.804(b); and to provide agency procedures for processing suspected violations of 31 U.S.C. 1352, "Limitation on the Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions." The intended effect of this rule is to implement the antilobbying coverage in Federal Acquisition Circular (FAC) 84-55 and provide procedural guidance to GSA contracting activities.

EFFECTIVE DATE: July 6, 1990.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the Federal Register for public comment because it merely revises the GSAR to conform with the Federal Acquisition Regulation as amended by FAC 84-55 which had already undergone the public comment process.

B. Background

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. This rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it amends the GSAR as necessary to conform with FAR (FAC 84-55), by providing internal operating procedures to GSA contracting activities. The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and assigned OMB Control Number 0348-0046.

List of Subjects in 48 CFR Part 503

Government procurement.

PART 503—[AMENDED]

1. The authority citation for 48 CFR part 503 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Subpart 503.8 is added to read as follows:

Subpart 503.8 Limitation on Payment of Funds To Influence Federal Transactions

503.804 Policy.

503.806 Processing suspected violations.

Subpart 503.8—Limitation on Payment of Funds To Influence Federal Transactions

503.804 Policy

Contracting officers shall submit a copy of each disclosure form received in accordance with FAR 3.803 or 3.804 to the Office of GSA Acquisition Policy (VP) immediately upon receipt. The Office of GSA for Acquisition Policy will prepare the agency report to Congress in accordance with FAR 3.804(b).

503.806 Processing suspected violations

Contracting officers shall submit evidence of suspected violations of 31 U.S.C. 1352, Limitation on the Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions, to the Assistant Inspector General for Investigation or the Regional Inspector General for Investigation. The Office of Inspector General will investigate and, if appropriate, prepare a report and recommendation to the Department of Justice.

Dated: July 16, 1990.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 90-16998 Filed 7-19-90; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 574

[Docket No. 87-12; Notice 3]

RIN 2127-AC18

Federal Motor Vehicle Safety Standards: Tire Selection and Rims for Passenger Cars, and New Non-Pneumatic Tires for Passenger Cars

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

ACTION: Final rule.

SUMMARY: This notice amends Standard No. 110, Tire Selection and Rims, and Standard No. 120, Tire Selection and Rims for Vehicles Other Than Passenger Cars, to permit new passenger cars, multipurpose passenger vehicles, and light trucks equipped with passenger car tires to be equipped with a non-pneumatic spare tire. These standards had required all new vehicles to be equipped with pneumatic tires. The notice also establishes requirements requiring non-pneumatic tires to bear a label stating that the tires are to be used only as a temporary spare tire and only at limited speeds. It requires the manufacturer to place a placard in the vehicle and information in the owner's manual explaining the proper use of these tires. In addition, the notice establishes Standard No. 129, New Non-Pneumatic Tires for Passenger Cars, which includes definitions relevant to non-pneumatic tires and specifies performance, testing, and additional labeling requirements for these tires. In particular, the new standard contains performance requirements related to physical dimensions, lateral strength, strength (in vertical loading), tire endurance, and high speed performance. The agency has determined that these requirements provide the basic tests to ensure the structural integrity of non-pneumatic tires. To ensure an even higher degree of safety, a non-pneumatic tire must be labeled for use only as a temporary spare tire at limited speeds. NHTSA believes that these performance requirements together with these labels ensure the safety of non-pneumatic tires.

DATES: *Effective Date:* The rule is effective on August 20, 1990.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than August 20, 1990.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 87-12; Notice 3 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Shadle, Office of Vehicle Safety Standards National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-5273.

SUPPLEMENTARY INFORMATION:

I. General Information

Federal Motor Vehicle Safety Standard No. 110, Tire Selection and Rims, (49 CFR 571.110) specifies requirements for the selection of tires to be used on passenger cars. Standard No. 120, Tire Selection and Rims for Vehicles Other Than Passenger Cars, (49 CFR 571.120) specifies similar requirements for the selection of tires to be used on vehicles other than passenger cars. The purpose of these standards is to prevent tire overloading and to facilitate the proper matching of a tire and rim to a vehicle. They also require a vehicle manufacturer to place in each new vehicle a placard bearing information to ensure use at the proper inflation.

Section S4.1 of Standard No. 110 requires passenger cars to be equipped with tires that meet the requirements of § 571.109, "New Pneumatic Tires—Passenger Cars." (49 CFR 571.109) Section S5.1.1 of Standard No. 120 similarly requires vehicles other than passenger cars to be equipped with pneumatic tires that meet the requirements of Standard No. 109 or Standard No. 119 "New Pneumatic Tires for Vehicles Other Than Passenger Cars." (49 CFR 571.119)

Standard No. 109 expressly applies only to new pneumatic tires which it defines as "mechanical device(s) * * * (that) contain the *gas* of fluid that sustains the load." (emphasis added) The standard specifies tire dimensions and laboratory test requirements for bead unseating resistance, tire strength (in vertical loading), tire endurance, and high speed performance; defines tire load ratings; and specifies labeling requirements for new pneumatic tires used on passenger cars.

The practical effect of Standard No. 109's applicability to only pneumatic tires, together with Standard No. 110's requirement that passenger cars must be equipped with tires that meet Standard No. 109's requirements, is to prohibit any new passenger car from being equipped with non-pneumatic tires. Similarly, Standard Nos. 109, 119 and 120 together prohibit any vehicle subject to Standard No. 120 from being equipped with non-pneumatic tires.

A non-pneumatic tire is a mechnical device which serves the same function as a pneumatic tire. That is, it transmits the vertical load and tractive forces from the roadway to the vehicle and generates the tractive forces that provide the directional control of the vehicle. However, the non-pneumatic tire differs from the pneumatic tire in that the former does not rely on air pressure or the containment of any gas or fluid for providing those functions. A non-pneumatic tire may be designed in many different ways. For instance, it may be solid rubber to which tread is attached; it may be part of an assembly in which the wheel is attached to the tire and tread; or it may contain the tread, tire, rim, and wheel. Further, many different materials may be used in constructing the tire assembly. Because non-pneumatic tires present an emerging technology, it is likely that tire manufacturers may develop new designs and use materials that are currently not known or contemplated.

In view of Standard No. 109's and Standard No. 110's prohibition of tires other than pneumatic tires on motor vehicles, General Motors (GM) petitioned the agency to amend Standard No. 109 to allow non-pneumatic spare tire assemblies for temporary use on passenger cars. The petitioner suggested performance requirements and test conditions for non-pneumatic tires that would address characteristics such as the endurance, high speed performance, strength (in vertical loading), and lateral strength of the non-pneumatic tire. In large part, GM used the existing requirements in Standard No. 109 as a guide for selecting the performance requirements and test conditions for the requested amendment. It changed the requirement and test related to the bead unseating resistance, which specifically relates to pneumatic tires, and also changed the test procedure and strength requirements for the tire's ability to withstand concentrated vertical loads. In addition, GM suggested certain labeling requirements including a warning that the tires would be for temporary use.

GM submitted its petition in connection with its work with Uniroyal Goodrich Co. (Uniroyal) to develop a spare non-pneumatic tire which it intends for only temporary use. The petitioner believes that the agency's adoption of its requested amendment would reduce the weight and size of the spare tires used in passenger cars, resulting in reduced costs, improved reliability and servicability, and minor improvements in fuel economy. Because

a non-pneumatic tire is not dependent on air pressure, it would not be subject to problems associated with low inflation pressure such as a blow out or bead unseating during hard cornering.

On September 23, 1987, NHTSA issued a notice announcing the grant of GM's petition and requesting comments about non-pneumatic tires. (52 FR 35740) The notice invited comment about what requirements would be necessary to ensure the safe use of a non-pneumatic tire. In response to that notice, NHTSA received comments from various motor vehicle and tire manufacturers as well as the Rubber Manufacturers Association. NHTSA considered each of these comments in developing a notice of proposed rulemaking (NPRM) which it published on April 7, 1989 (54 FR 14109).

II. Notice of Proposed Rulemaking

In the NPRM, NHTSA proposed to amend Standard No. 110 to permit the use of non-pneumatic tires on passenger cars, but only as a temporary spare and to establish a new standard for non-pneumatic tires. The notice requested comments concerning whether Standard No. 129 should permit the use of a non-pneumatic spare tire on light trucks currently equipped with compact temporary spare tires subject to Standard No. 109. As a general proposition, the NPRM explained that in developing the new safety standard, the agency desired to formulate a generic one that would be applicable to as many potential designs of non-pneumatic tires as possible rather than one that was based on a specific design, which might inadvertently restrict future developments and skew innovations toward the initial design.

More specifically, the notice proposed three amendments to Standard No. 110. First, it proposed that section S4.1 be amended to allow passenger cars to be equipped with a non-pneumatic spare tire. Second, the notice proposed that Standard No. 110 contain additional labeling requirements and vehicle placarding requirements explaining that such tires should be used only as a spare tire on a temporary basis at speeds not to exceed 50 mph. Third, the notice proposed that safety information about the use of a non-pneumatic tire be included in the owner's manual of the passenger car.

The proposed new safety standard was Standard No. 129, New Non-Pneumatic Tires for Passenger Cars. According to the proposal, the new standard, which was patterned after Standard No. 109, would include definitions relevant to non-pneumatic tires and specify performance requirements, testing procedures, and labeling requirements for these tires. To regulate performance, the new standard would contain performance requirements and tests related to physical dimensions, lateral strength, strength (in vertical loading), tire endurance, and high speed performance. While the agency considered proposing requirements related to additional factors such as handling and braking, it tentatively determined that the proposed requirements would adequately ensure motor vehicle safety by providing the basic tests necessary to ensure the structural integrity and durability of non-pneumatic tires.

The NPRM also proposed to supplement the labeling requirements in Standard No. 110 by including in Standard No. 129 labeling requirements similar to those set forth in section S4.3 of Standard No. 109 for size designation, load rating, rim size and type designation, manufacturer or brand name, certification, and the tire identification number. The notice proposed to allow methods of marking other than "molding," provided the marking was permanent because the agency tentatively concluded that it might be difficult to mold the required information on some types of anticipated non-pneumatic tire designs. The agency also tentatively concluded that the temporary use and maximum speed labeling requirements would provide an extra margin of safety related to handling and braking. In addition, the agency noted that compact pneumatic T-type tires that are currently used as temporary spare tires have been shown to be safe, even though they are not subject to performance requirements beyond those applicable to full size tires in Standard No. 109. The agency believed that in some respects this comparison was relevant since, like the compact T-type pneumatic tires, the non-pneumatic tires allowed by these amendments would be limited to use as temporary spare tires.

The agency tentatively concluded that the proposed performance requirements, together with the proposed labeling requirements, would remove a restriction in the existing standards on technological innovation while still ensuring that the new non-pneumatic tires met the need for safety.

III. The Comments and the Agency Response

NHTSA received 13 comments in response to the NPRM. In general, all commenters supported the proposal to permit a vehicle to be equipped with a non-pneumatic spare tire. The agency has considered the points in the comments in developing this final rule. The commenters' significant points are addressed below, along with the agency's response to the comments. For the convenience of the reader, this notice follows the regulatory text's order.

A. Proposal To Amend Standard No. 110

Definitions

The NPRM proposed to add definitions to paragraph S3 for "non-pneumatic spare tire assembly," "non-pneumatic tire," "non-pneumatic tire assembly," "rim," and "wheel center member." The agency intended these definitions to be general in order to better ensure a generic standard appropriate to any type of non-pneumatic tire. These definitions were patterned after analogous definitions in NHTSA's safety standard for pneumatic tires and SAE Recommended Practice J328a, "Wheels—Passenger Cars—Performance Requirements and Test Procedures."

The agency received two comments about the proposed definitions. Michelin requested that the definition of a "non-pneumatic spare tire assembly", which was defined as a device "intended for temporary use in place of one of the pneumatic tires and rims that are fitted to a passenger car * * *", be revised to state that the NPSTA be "in support of" as well as "in place of." According to the commenter, this modification would allow future NPSTAs to be fitted on tire and wheel assemblies without removing the deflated pneumatic tire. The agency has decided not to adopt Michelin's suggestion which is beyond the scope of the current proposal and its test procedures. Further, the agency needs more information about devices used "in support of" a deflated pneumatic tire, especially about the procedures for testing them while they are mounted on a deflated pneumatic tire. Therefore, NHTSA has decided not to expand the definition as requested by Michelin.

Uniroyal suggested that the agency move the definition of "rim" from the definition section (S3) to the requirements section (S4.4). The agency has decided not to adopt this suggestion which is unnecessary and contrary to standard regulatory drafting. The agency notes that it is modifying the definition of "rim" to "non-pneumatic rim" and "test rim" to "non-pneumatic test rim." This change will help to distinguish between conventional firms for pneumatic tires and rims for non-pneumatic tires. The notice adopts this distinction throughout Standards 110, 120, and 129.

Labeling Requirements

The NPRM proposed labeling requirements for non-pneumatic spare tires and tire assemblies in section S6 of Standard No. 110. The proposal specified that the information had to be "permanently molded, stamped, or otherwise permanently marked into or onto both sides" and not be smaller than a given size. The proposal explained that it was proposing to allow different methods of permanent marking in addition to molding, the labeling method required in Standard No. 109, because it might be difficult to mold the required information into or onto some non-pneumatic tire and assembly designs. It also proposed that the labeling on each non-pneumatic spare tire would state "FOR TEMPORARY USE ONLY," "MAXIMUM 50 M.P.H.," and the size designation(s) of the pneumatic tire(s) that the non-pneumatic tire was intended to replace. This notice will respond separately to each of the commenter's concerns.

Uniroyal requested the agency to modify the requirement that non-pneumatic spare tires be "permanently molded, stamped, or otherwise permanently marked into or onto both sides" to allow a permanently affixed label to contain the require information. It specifically stated that paper or plastic labels should be allowed as an alternative technique to comply with S6. NHTSA notes that the key criterion related to informational marking requirements is that the message be useful and understandable for the lifetime of the tire. Thus, a message must be permanent, legible, and conspicuous. After reviewing Uniroyal's request, the agency believes that affixing a permanent label on a non-pneumatic tire would not meet these ends. The agency is concerned that a paper label would not be permanent given that it would be exposed to environmental factors such as rain, snow, road salt, car wash brushes and detergents. The agency is especially concerned that there is nothing to prevent a paper label from disintegrating when exposed to the elements or being rubbed off by a curb. Similarly, there is nothing to prevent the printing on the label from becoming illegible. The agency therefore has decided not to permit a label as an alternative technique to comply with S6.

Section S6(a) contained a proposal that each non-pneumatic spare tire be labeled "FOR TEMPORARY USE ONLY." The NPRM explained that this mandatory warning would be in the interest of motor vehicle safety by encouraging the limited use of non-pneumatic tires as a replacement for T-type temporary spare tires. The agency further believed such labeling would provide consumers with valuable guidance about this new type of tire. All commenters mentioning the proposal to require temporary use labeling agreed that it had merit given the current level of technology and agreed that the extended use of a non-pneumatic tire would be inappropriate.

Section S6(b) contained a proposal that each non-pneumatic spare tire be labeled "MAXIMUM 50 M.P.H." The NPRM stated that this maximum speed warning, like the temporary use warning, would be in the interest of safety. The notice further explained that the Economic Commission for Europe (ECE) Regulation 64 contains a maximum speed warning of 80 kilometers per hour (49.7 m.p.h.) in response to concerns over the potential for some degradations in the braking and handling performance of a vehicle fitted with a temporary spare tire. The notice continued that even though these concerns did not directly relate to a tire's structural failure, the agency believed that a maximum speed warning would improve the total safety of the vehicle because any potential problems associated with handling, control, stability, and braking are typically exacerbated at faster speeds. It also stated that a maximum speed warning would serve to deter some motorists from driving with a non-pneumatic tire on an extended basis.

NHTSA received four comments on the proposal to require a maximum speed warning of 50 m.p.h. While Goodyear and Firestone supported the proposal, Uniroyal and General Motors opposed it, stating that it should be at the discretion of the vehicle manufacturer, the entity responsible for the vehicle's braking, handling, and other performance characteristics. Uniroyal stated that such a requirement is unnecessary since T-type pneumatic spares are not required to have such labeling. It also commented that the maximum speed labeling in ECE Regulation 64 is inapplicable to the non-pneumatic spare, since the non-pneumatic tire would be subject to more stringent performance requirements. GM commented that a maximum speed labeling requirement was not warranted, stating that "there is no generic technical or safety reason for it," a non-pneumatic spare tire is not different from current temporary compact spare tires, the maximum recommended speed of 50 m.p.h. might unduly alarm some drivers, and consumers might misinterpret the "50 m.p.h. speed" label as a "50 mile use" restriction.

After reviewing the maximum speed labeling requirement in light of these comments, NHTSA continues to believe that such a requirement would be in the interest of safety. The agency notes that according to information provided by Uniroyal, there are some differences in performance characteristics between non-pneumatic spare tires and pneumatic spares. For instance, the non-pneumatic tire tends to "nibble," i.e., generate lateral forces when crossing a longitudinal road irregularity. While differences with conventional pneumatic spare tires are not significant enough to justify a prohibition of non-pneumatic tires, these relative shortcomings, which might alarm a driver unfamiliar with them, appear to be exacerbated at greater speeds. Until more experience is gained with non-pneumatic tires, the agency believes that GM's claim that there is no safety reason to justify maximum speed labeling is premature. The agency notes that GM included a 50 m.p.h. maximum speed marking on its pneumatic temporary spare tire for the first five years after its introduction, suggesting that a newly introduced temporary tire design should contain such a maximum speed warning. Based on the above considerations, the agency concludes that to satisfy the Vehicle Safety Act's mandate, the 50 m.p.h. maximum speed marking must be a mandatory requirement and not be left to the manufacturers' discretion.

Section S6(c) of Standard No. 110 contained a proposal that the non-pneumatic tire be labeled with the "size designation(s) of the pneumatic tires that this non-pneumatic tire spare assembly is intended to replace, or at the manufacturer's option, capable of replacing." All those who commented on this provision opposed it, stating that the requirement could result in lengthy information that might confuse consumers. For instance, a consumer might mistakenly conclude that a 15 inch non-pneumatic tire could replace any 15 inch pneumatic tire. They claimed that this incorrect assumption could be dangerous given the potential for many vehicle specific non-pneumatic tire and tire assembly designs. In place of this proposal, Uniroyal, Firestone, and GM suggested that the tires be labeled with a vehicle manufacturer's part number, with GM recommending a "non-pneumatic spare tire identifying code (e.g., "ABC") as an alternative. The State of Connecticut recommended that the non-pneumatic spare tire be labeled to indicate specifically the vehicle(s) on which it is intended to be used. In contrast, Goodyear and Uniroyal criticized requiring vehicle specific

marking, stating that the labeling on a tire with multiple vehicle applications could be lengthy, confusing, and thus possibly dangerous.

After reviewing these comments, NHTSA has determined that instead of designations of the pneumatic tires replaced, a "non-pneumatic tire identifying code" ("NPTIC") should be required to identify a non-pneumatic tire. Like the tire size designation of a pneumatic tire, the NPTIC's purpose is to provide consumers information about the proper application of a non-pneumatic tire. The agency believes that this method of identification is superior to requiring a non-pneumatic tire to be labeled with the pneumatic tire size or the non-pneumatic spare tire's specific vehicle application(s) given the potential for many different non-pneumatic tire designs. A manufacturer may still mark specific vehicle application(s) on the tire provided that the additional information did not obscure or confuse the required information. Manufacturers are urged, therefore, to avoid unnecessarily long vehicle application information or unnecessarily long identifying codes. Based on the above considerations, the manufacturer will be required to label a non-pneumatic spare tire or spare tire assembly with a "non-pneumatic tire identification code," (NPTIC), which is defined in section S3 of Standard 129. A manufacturer also is required to place the NPTIC on the vehicle placard and in the owner's manual. In addition, the NPTIC will replace any reference in the regulatory text to the "non-pneumatic tire size designation."

Vehicle Placarding

Section S7 of Standard No. 110 contained proposed requirements for vehicle placards. Under the proposal, the placard would state, in letters not less than 1.0 inch high, "CAUTION—USE AS SPARE TIRE," and in letters not less than 0.5 inches high, "FOR TEMPORARY USE ONLY," "MAXIMUM 50 M.P.H.," and the size designation of the pneumatic tire to be replaced. The agency believed that this information would help explain that a non-pneumatic tire should be used only as a spare tire at limited speeds for a limited period of time.

Volkswagen commented that the size of the lettering proposed in S7.1 would result in a placard that was too large to easily fit in the trunk. Thus, it requested that the standard require the words to be "legible and conspicuous," or in the alternative, to change the 1.0 inch requirement to ⅝ inch and the ½ inch requirement to ¼ inch. NHTSA rejects the first suggestion because the Vehicle Safety Act requires its requirements to be stated in objective terms. However, it has decided to adopt the requested size reductions which the agency believes will be less intrusive but still conspicuous.

GM and Uniroyal opposed the vehicle placarding requirements as being unnecessary and costly. GM based its opposition to these requirements on its earlier arguments against the labeling requirements. NHTSA believes that the placarding requirements are necessary for the reasons provided in support of the labeling requirements in S6. The agency also disagrees that placarding would be unreasonably costly, especially since most vehicle trunks currently contain a placard explaining the use of jacks and spare tires. The information required by this provision could be easily added to that placard. Even for a vehicle without such a placard, the cost of adding a placard would be minimal.

Uniroyal claimed that the words "Danger" and "Caution" might unduly alarm consumers. NHTSA notes that the placard's purpose is to ensure that a person installing a non-pneumatic spare tire on a vehicle is made aware of its proper use and that it should be used only as a spare tire, even if he or she fails to notice the labeling on the tire itself. Because the word "caution" is not essential to this purpose and some consumers might be unduly alarmed by this word, the agency is modifying the placard to state "IMPORTANT—USE OF SPARE TIRE" rather than "CAUTION—USE OF SPARE TIRE."

Supplementary Information

Section S7.2 of Standard No. 110 proposed that the owner's manual of a passenger car equipped with a non-pneumatic spare tire contain information explaining its proper use. This information, which was patterned after ECE Regulation 64, included instructions that a non-pneumatic tire should be used only as a spare tire at limited speeds for a limited period of time, that the driver should drive with caution when using a non-pneumatic tire, that he or she should replace it with a pneumatic tire and rim as soon as possible, and that a vehicle should not be operated with more than one non-pneumatic tire at one time.

Uniroyal and GM objected to the proposal to require an owner's manual to contain information about a non-pneumatic tire's use. Uniroyal restated its view that non-pneumatic tires should not be singled out for informational requirements with which pneumatic spare tires are not required to comply. GM stated that requiring warnings on the tire, on a placard, and in the owner's manual was a "costly redundancy" that would discourage the use of such tires.

NHTSA continues to believe that the requirements in S7.2 provide valuable safety information about non-pneumatic tires, a new type of tire design with which consumers will be less familiar than temporary pneumatic tires. As for GM's criticism that this requirement would result in a "costly redundancy," the agency believes that requiring the safety information to appear in each of the proposed locations provides a safety benefit. It is reasonable to label the tire since a motorist must handle the tire itself before installing it on the vehicle. It is also reasonable to require the information on a placard in the trunk near where the spare tire is stored, because a motorist may not notice the information on the tire, especially at night or during inclement weather. Similarly, it is reasonable to supplement these brief messages with more detailed information in the owner's manual, since a motorist typically consults his or her owner's manual when seeking detailed information about vehicle usage.

In response to GM's concern that these warnings might discourage motorists from using non-pneumatic tires, the agency has modified some of the wording. As with the placard's wording, the agency has substituted the word "IMPORTANT" for "CAUTION" to make the label less threatening. It has also changed S7.2(b) to state "An instruction to drive carefully when the non-pneumatic tire is in use, and to install the proper pneumatic tire and rim at the first reasonable opportunity." The agency believes that this wording will continue to convey guidance concerning the proper use of non-pneumatic tires while helping to avoid arousing "undue concern."

B. Standard No. 129

Application

The agency proposed in section S2 of Standard No. 129 that the new standard apply to "new temporary spare non-pneumatic tires for use on passenger cars." In other words, the proposal, in conjunction with the proposed amendment to Standard No. 110, would permit a non-pneumatic tire to be used as a spare tire on passenger cars. The NPRM explained that the petitioner only sought to allow non-pneumatic tires as a replacement for T-type pneumatic temporary tires on passenger cars. It further noted that 95 percent of T-type tires were used on passenger cars with the remaining 5 percent on light trucks. The agency requested comments concerning whether Standard No. 129

should permit the use of a non-pneumatic spare tire on light trucks currently equipped with compact temporary spare tires subject to Standard No. 109.

No commenter supported limiting the use of non-pneumatic tires to passenger cars. Instead, Chrysler, Goodyear, Uniroyal, RMA, Firestone, and GM commented that the agency should extend the applicability of Standard No. 129 to permit use of non-pneumatic spare tires on light trucks and similar vehicles that use passenger car temporary tires. For instance, Uniroyal stated that the agency should not restrict the non-pneumatic spare tire to passenger cars given that many new light trucks and vans are equipped with passenger car tires.

NHTSA agrees with the comments and has decided to permit the use of a non-pneumatic spare tire on any vehicle that is equipped with passenger car tires. Accordingly, the agency is revising section S5.1.1 to permit the use of a non-pneumatic temporary spare tire assembly on vehicles subject to Standard No. 120 such as light trucks provided that the vehicle is equipped with passenger car tires. In addition, amendments, like those to Standard No. 110, are made to Standard No. 120 to include new informational requirements for tire labeling, vehicle placarding, and the owner's manual.

Definitions

Commenters made suggestions to modify certain proposed definitions. Firestone recommended that the portion of the definition for "non-pneumatic tire" stating that the tire "does not rely on the containment of any gas or fluid" be changed to state that the tire "does not primarily" rely on such containment (emphasis added). NHTSA has decided to reject Firestone's suggestion and adopt the definition as proposed because the suggested change would inject uncertainty about whether a tire should be classified as pneumatic or non-pneumatic. For instance, it might be ambiguous whether a pneumatic tire with "run-flat" capability is a non-pneumatic tire under Firestone's suggested definition.

Goodyear, Uniroyal, and RMA suggested that the definition for "tread" be changed by deleting reference to the tread's being "intended to wear away during normal use of the tire." NHTSA agrees with this suggestion which will make the definition for "tread" in Standard No. 129 consistent with the one in Standard No. 109.

Uniroyal suggested that the definition for "maximum tire width," should be changed so that it uses the phrase "exterior edges" in place of "outer and inner surfaces" which appears in reference to "carcass" and "tread." The agency has decided to adopt the suggested wording which it believes provides a more generic and thus more appropriate definition.

The agency is introducing a definition for "Non-pneumatic tire identification code" (i.e., "NPTIC") in response to comments that a non-pneumatic tire should not be labeled with the size of the pneumatic tire it is intended to replace, but should be labeled with other identifying information. In the section above about labeling requirements, the notice explains that the agency agrees with the commenters that the NPTIC would be in the interests of safety. The reader should refer to that section for a more extensive discussion of this issue.

As discussed earlier, the terms "rim" and "test rim" have been changed to "non-pneumatic rim" and "non-pneumatic test rim." This will help distinguish between rims used with pneumatic tires and those used with non-pneumatic tires. Corresponding changes have been made throughout the regulatory text.

Performance Requirements and Testing Procedures in Standard No. 129

General Considerations. The NPRM proposed certain performance requirements and testing procedures for non-pneumatic tires. In developing a proposed standard for non-pneumatic tires, the agency reviewed the petition, the docket comments responding to the agency's request for comments, and the purpose for and mechanics of the requirements and tests for pneumatic tires in Standard No. 109. As a result of this analysis, the agency proposed the following requirements which it believed would ensure the safety of non-pneumatic tires. These included a lateral strength requirement instead of Standard No. 109's bead unseating requirement; and requirements for strength (in vertical loading), tire endurance, and high speed performance with modifications to take into account a non-pneumatic tire's lack of air pressure. The agency also proposed requirements related to the non-pneumatic tire assembly's size and construction, load rating, and a tread wear indicator. NHTSA tentatively concluded that the lateral strength, strength (in vertical loading), endurance, and high speed requirements would assure the structural integrity and durability of a non-pneumatic tire. The agency further believed that these performance requirements together with the proposed labeling requirements explaining that a non-pneumatic tire should be used only as a temporary spare tire and at limited speeds would assure their safety. Therefore, it decided not to propose additional tests beyond those equivalent to the ones in Standard No. 109. The agency's consideration of comments addressing these factors will be discussed separately.

Lateral Strength Performance Requirements

Section S4.2.2.3 of Standard No. 129 proposed requirements related to the lateral strength of a non-pneumatic tire. Such a tire would be required to show no visual evidence of tread or carcass separation, cracking, or chunking at forces comparable to those specified in Standard No. 109's bead unseating test for compact temporary pneumatic tires. The agency explained that the bead unseating test is intended, in part, to evaluate the loss of air of a tubeless pneumatic tire. In that regard, it would not be helpful in evaluating the lateral strength of a non-pneumatic tire. Nevertheless, because the bead unseating test also evaluated a pneumatic tire's resistance to lateral forces, the agency believed that a comparable test for non-pneumatic tires would be beneficial in determining their structural integrity.

The NPRM explained that GM, in its petition, recommended adopting the same test device used in the bead unseating test of pneumatic tires in Standard No. 109. The agency rejected this recommended test fixture because the unseating "blocks" might be inappropriate for other non-pneumatic tire designs and thus would be too specific to be included in a generic standard. Instead, the agency proposed a lateral strength test device that it believed was generic and appropriate for any anticipated non-pneumatic tire design. The proposed test block was patterned after a standard barrier type curb defined by the American Association of State Highway and Transportation Officials' (AASHTO) in its publication, "A Policy on Geometric Design of Highways and Streets—1984." The proposed test was intended to evaluate the strength of a non-pneumatic tire in response to loads that would result from contact with a curb or similar road feature. The agency sought comments concerning the design of the proposed test device, test procedure, and performance requirements intended to evaluate the lateral strength of non-pneumatic tires.

Goodyear requested that the non-pneumatic tires not be subject to a lateral strength test, claiming that such a

test was unnecessary and inappropriate. It also claimed that the intent of Standard No. 109's bead unseating test is solely "air retention," as evidenced by its application to tubeless but not tubed pneumatic tires.

NHTSA disagrees with Goodyear's comments and believes that the lateral strength requirement will effectively measure a non-pneumatic tire's resistance to lateral loads. The agency believes that this test will also help evaluate the possibility of the tire's separation from the rim or wheel center member or the tire's "cracking," "chunking," or similar damage. The agency notes that the reason that Standard No. 109's bead unseating test is applied to tubeless tires only is because that failure mode is unique to tubeless pneumatic tires. Thus, its application to tubed pneumatic tires would be unnecessary and inappropriate.

Uniroyal, RMA, and Firestone each recommended that the lateral test force block be made lighter and smaller to make testing easier and safer. The lateral force test block shown in Figure 2 and referenced in S5.2, would have weighed 120 pounds and have been 6.5 inches in height, 14 inches in depth and 18 inches in width. Uniroyal commented that the block's depth could be reduced by 7 inches which would reduce the block's weight by over 50 percent. Firestone stated that the width should be retained to ensure that the test block would envelop the side wall of each tire.

After reviewing these comments, NHTSA believes that the test block size can be reduced to facilitate testing without adversely affecting the test procedure's effectiveness. In particular, the agency is adopting Uniroyal's recommendation to reduce the depth by 7 inches by removing 3½ inches from each end of the block and to reduce the height by removing one inch from the bottom of the block. After reviewing Firestone's concerns about the block's "envelopment" of a non-pneumatic spare tire, the agency concludes that it is necessary to widen the test block to 23 inches. The agency calcualted that these changes will reduce the test block's weight to approximately 55 pounds, a 53 percent reduction.

Section S5.2 of the NPRM also proposed test requirements related to a non-pneumatic tire's lateral strength. Section S5.2.2.1 specified distances between the test block and the tire being tested. Uniroyal recommended that the agency add another distance expressed as "B = A − 1," explaining that without this modification certain tires would not pass the proposed requirement due to immediate contact with the wheel rim or other member. Thus, in anticipation of future non-pneumatic tire designs with a section height of less than 2 inches above the wheel rim or center member, the agency is including the additional distance requested by Uniroyal.

Vertical Strength Requirements

NHTSA proposed a strength test in S5.3 of Standard No. 129 that was intended to measure the tire's ability to resist concentrated vertical loads. The proposed test would have required a cylindrical steel plunger to be forced into the non-pneumatic tire at a rate of two inches per minute. The tester would then have evaluated the breaking energy for each test point in terms of inch pounds.

In the NPRM, the agency considered also proposing a "cleat" test, like the one suggested in GM's petition, which would have required a non-pneumatic tire to withstand a load exerted by a "cleat." This "cleat" would be ½ inch thick with the edge, that is forced against the tread of the non-pneumatic tire, rounded with ¼ inch radius, and the "cleat" would be one inch wider than the non-pneumatic tire's tread width. The agency tentatively rejected the cleat device because it believed that the plunger test would better simulate real world hazards and because the petitioner did not provide sufficient documentation in support of its test device. The agency expressly requested comments on both the plunger test and the cleat test.

Goodyear provided extensive comments in opposition to any vertical strength test requirements. It argued that the main concern addressed by the "tire strength" requirement in Standard No. 109 is puncture resistance (i.e., the integrity of the air chamber in resistance to vertical forces exerted by nails and similar penetrating objects). It believed that such a concern was not applicable to a non-pneumatic tire. Alternatively, Goodyear stated that if a strength test were deemed necessary, then GM's cleat test would be more appropriate because it evaluated a non-pneumatic tire's capability to withstand loading from curbs, potholes, or railroad tracks. While Uniroyal, RMA, Firestone, and GM also stated that the cleat test would be superior to a plunger test, no commenter supported the plunger test.

NHTSA continues to believe that a vertical strength test is necessary to evaluate a non-pneumatic tire's structural integrity. However, after reevaluating the proposal in light of the comments, the agency agrees that a cleat test, similar to the one requested in GM's petition, would better evaluate the real world problems that will most likely cause a non-pneumatic tire to experience a structural failure.

The agency notes that the plunger test used in Standard No. 109 is well suited for evaluating the energy absorbing capability and structural integrity of a pneumatic tire under conditions of maximum deformation. The plunger pushing against the center of the pneumatic tire's tread will deflect the tire to the maximum extent possible before forcing the tire against the rim. However, the cleat test would be inapplicable for a pneumatic tire which would experience a "pneumatic" failure when the tire's sidewall would be pinched against the rim flanges, long before the energy absorbing capability or structural integrity of the tire could be tested adequately.

In contrast, the situation is reversed for non-pneumatic tires. The "concentrated" type of load used in the plunger test could lead to a "puncture" (i.e., penetration by the plunger) of a non-pneumatic tire, but would not lead to a "pneumatic" failure. For instance, Uniroyal stated that its non-pneumatic tire continued to perform without any problems after it was "punctured" by several nails. The agency further notes that there is nothing inherent in a non-pneumatic tire's design that would be expected to lead to failure as the result of a particular type of impact. Based on these considerations, the agency believes that a cleat test that places stress on the entire cross section of a non-pneumatic tire appears to better address real world hazards to which such tires would be vulnerable than would a plunger type test.

As for the measurement of a non-pneumatic tire's strength, NHTSA believes that such a tire should be capable of absorbing energy at a level comparable to the pneumatic temporary tires that it is intended to replace. The NPRM proposed in S4.2.2.4 that the appropriate minimum breaking energy would be 1,950 inch pounds for tires with load ratings below 880 pounds and 2,600 inch pounds for tires with load ratings 880 pounds or above.

Uniroyal recommended that S4.2.2.4 be amended so that the minimum breaking energy would be 525 inch pounds for tires with load ratings below 880 pounds and 700 inch pounds for load ratings of 880 pounds or above. After reviewing Uniroyal's extensive comments in support of the reduced energy levels, NHTSA still believes that the proposed levels are appropriate to ensure a non-pneumatic tire's ability to withstand road hazards. The agency notes that the proposed energy levels are more comparable to the energy

levels that a pneumatic temporary spare tire is required to withstand. Given the agency's belief that it is appropriate to require the non-pneumatic tires to be capable of absorbing energy at a level comparable to the pneumatic temporary spare tires that they are intended to replace, the agency has decided to adopt the energy levels as proposed rather than to adopt Uniroyal's suggested energy levels. The agency's review of Uniroyal's data further indicates that the higher energy levels will better protect against real world hazards.

After reviewing S4.2.2.4, NHTSA has decided to modify its language related to a non-pneumatic tire's failure. As proposed, this section stated "Each tire shall meet the requirements for minimum breaking energy when tested in accordance with S5.3 to the strength requirements * * *" Because a non-pneumatic tire is unlikely to "break," the agency has decided to adopt the statement in the petition and express the requirement in terms of "no visual evidence of tread or carcass separation, cracking or chunking." The agency notes that this will be consistent with the requirements for lateral strength, tire endurance, and high speed performance, which are all expressed in this manner. As a result, the title of the table "Breaking energy" will be changed to "Minimum Energy Level."

Other Performance Requirements

The NPRM proposed requirements for tire endurance in section S4.2.2.5 and high speed performance in section S4.2.2.6. The proposals, which were patterned after the requirements in Standard No. 109, were intended to determine the structural integrity and durability of the tire under accelerated laboratory conditions. The agency received no comments about these tests and has decided to adopt them as proposed.

In the NPRM, the agency decided not to propose additional performance requirements explaining its tentative conclusion that the proposed requirements together with the labeling requirements would be adequate to ensure motor vehicle safety. In response to the 1987 request for comments, commenters who expressed an opinion on the matter all stated that no additional performance requirements were necessary. Similarly, in response to the NPRM, no commenter recommended requiring additional performance requirements. After reviewing the matter, the agency is reaffirming its tentative conclusion that the preformance requirements, as proposed, together with the labeling requirements, will ensure safety and thus is not requiring any additional performance requirements.

Labeling Requirements in Standard 129

As explained earlier in this notice, the agency is adopting new labeling requirements in S6 of Standard No. 110 and S8 of Standard No. 120. The reader should refer to the discussions in earlier sections of this notice about such issues as a label's permanency, information to be provided about the tire's temporary use and maximum speed, and the tire size labeling/non-pneumatic tire identification code.

In addition to those requirements, the NPRM proposed certain other labeling requirements for non-pneumatic tires. Most of these proposed requirements were patterned after the labeling requirements set forth in section S4.3 of Standard No. 109 for size designation, load rating, rim size and type designation, manufacturer or brand name, certification, and tire identification number.

GM requested that a load rating not be required on a non-pneumatic tire, claiming this information might cause a motorist to use a non-pneumatic spare tire that would be inappropriate for a vehicle. The agency disagrees with the comment, noting that a tire's load rating is a straight-forward item of information that has been required on pneumatic tires without confusing consumers. The agency believes this information is necessary for safety because some vehicle owners have been known to increase a vehicle's load capacity by the addition of "helper springs" or "air shocks" to permit the towing of a trailer. Thus, by not requiring load rating information, the agency would increase the potential for a motorist to unknowingly use a vehicle equipped with the non-pneumatic tire in an unsafe manner.

Uniroyal commented that S4.3(f), which proposed requiring labeling with part 574's tire identification number, should be amended given that that number refers, in part, to tire size. As the agency noted above in its discussion of tire size designations and the NPTIC, it believes that use of the NPTIC is preferable to use of tire size. While the agency agrees that a change is therefore necessary to reflect the NPTIC, it has decided to accomplish this by amending part 574 to apply to non-pneumatic spare tire assemblies and by amending 574.5(b) to expressly refer to the NPTIC. Section 574.4, "applicability," and 574.6, "identification mark," are also revised to expressly refer to non-pneumatic tires and tire assemblies.

Tire and Rim/Wheel Center Member Matching Information

Section S4.4 proposed that each manufacturer list information about the rim or wheel center member expected to be used with a non-pneumatic tire. The information would be provided to either NHTSA or a tire and rim standardization organization such "The Tire and Rim Association." The proposal, which was patterned after section S4.4 of Standard No. 109 for pneumatic tires, is intended to ensure the dissemination of information about the proper use of non-pneumatic tires with rims.

Uniroyal recommended changing the first sentence of S4.4 to exempt from the section's requirements, a non-pneumatic spare tire that is an integral part of a non-pneumatic spare tire assembly. The agency agrees that such an exemption is appropriate given the section's purpose is to provide information about the matching of non-integral tires and rims.

GM suggested adding a provision which would allow the required information to be disseminated by inclusion in the "vehicle manufacturer's service parts publications for the vehicle on which it is to be used." The commenter believed this change would help prevent the agency and manufacturers from being "deluged" with descriptions of non-pneumatic rims and wheel center members. Based on its experience with pneumatic tires, NHTSA has decided to reject GM's suggestion because the proposed requirement, i.e., the submission of this information to the agency or through the industry's standardization organizations, will be a more effective way to disseminate this information.

After reviewing this provision, NHTSA has decided to modify S4.4. to require the submission to include the NPTIC. This modification to require the inclusion of the NPTIC rather than the tire size is a conforming change made to reflect another change addressed earlier in the notice. In addition, the agency notes that it proposed in the definition of "test rim" in S3 to require each tire and rim matching information listing to include the load rating. After further review, the agency has determined that it is more appropriate to include this requirement in section S4.4.

IV. Effective Date

The NPRM stated that the proposal would become effective January 16, 1991. Uniroyal commented that such advance notification is associated with revisions of regulations that affect products already in the marketplace to

afford manufacturers time to comply with the changes. Uniroyal then requested that the 180 day period be eliminated or substantially reduced.

NHTSA notes that section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. After reviewing the request, NHTSA agrees that there is "good cause" not to require the full 180 day lead-in period given that this amendment will facilitate the introduction of certain tires without imposing any mandatory requirement on manufacturers and that the public interest will be served by not delaying the introduction of these alternative tire designs. Therefore, the agency has determined that there is good cause to set an effective date 30 days after publication of the final rule.

V. Economic and Other Impacts

The agency has considered the costs and other impacts of this rulemaking, and a Final Regulatory Evaluation has been prepared and placed in the Docket. Based on this evaluation, the agency has determined that the proposal is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation's regulatory policies and procedures.

This rulemaking provides manufacturers with another option in their selection of a spare tire assembly. Currently, both full-size and compact pneumatic spare tires are available as options. At this point, some manufacturers are developing a compact non-pneumatic spare tire that is expected to compete primarily with its compact pneumatic counterpart. However, the agency cannot precisely predict the extent of the non-pneumatic tire's use.

Compact non-pneumatic spare tires may have a variety of performance benefits. A prototype has been developed by GM and Uniroyal that has some significant preliminary competitive advantages in reduced storage volume (37 percent), lower weight (24 percent), improved reliability and serviceability (no need to maintain air pressure), and minor fuel savings (½ gallon of gasoline per vehicle per year). The agency also anticipates the use of less expensive materials and of a production process that will be less labor-intensive than that for conventional pneumatic tires. In addition, increased competition between the non-pneumatic and pneumatic compact spare tires could lead to cost savings. Thus, while some near-term capital costs might be incurred to purchase new equipment to manufacture the non-pneumatic spare tires and tire assemblies, the long-term cost effect of this rulemaking should be a cost savings.

Some potential disadvantages of the non-pneumatic tire are its non-standard appearance (prototype versions viewed by the agency were even more non-standard in appearance than current compact pneumatic spare tires) and its limited real-world performance record. Further, its overall ride quality and performance as a spare tire remain to be judged, especially by the general public. However, given the interest and support of vehicle and tire manufacturers, the compact non-pneumatic spare tire seems to have the potential to be a competitive product, at least in the compact spare tire market.

The quantitative impacts of the rulemaking are dependent upon the market share gained by the non-pneumatic tire. Each year, 236 million tires are manufactured for passenger cars and light trucks of which 7.7 million units (7.3 million for passenger cars and 0.4 for light trucks) are compact pneumatic spare tires. Because compact spare tires represent only 3.3 percent of the total tire market, the introduction of compact non-pneumatic tires is not expected to significantly impact the tire industry. As for the expected impact on the wheel industry, 75 million units are manufactured each year of which 10.3 percent are compact spare tires. Accordingly, the potential impact on the wheel industry could be larger than that on the tire industry. Nevertheless, the agency expects that the impact would still not be significant. As noted in the Preliminary Regulatory Evaluation, the agency is not aware of any significant lasting effect caused by the introduction on compact pneumatic tires, which presented a similar situation to the tire and wheel industries.

Based on the agency's review of this rulemaking under the Regulatory Flexibility Act, I certify that it would not have a significant economic impact on a substantial number of small entities. The parties affected by this proposal would be tire and wheel manufacturers who supply original spare tire equipment to new passenger car and light truck vehicle manufacturers. None of these manufacturers are known to be small entities. Small organizations and small governmental entities may be affected by the rulemaking, as purchasers of new cars, but any economic impact should be beneficial due to the potential for reduced spare tire costs to consumers. Similarly, the agency does not anticipate that this rulemaking will be significant given the relatively small market share of temporary pneumatic tires, the item of equipment most likely affected by this rule.

NHTSA has considered the environmental implications of this rule in accordance with the National Environmental Policy Act and has determined that the rulemaking would not have a significant adverse effect on the human environment. In fact, the possible weight reduction from compact non-pneumatic tires would appear to improve fuel efficiency, thus reducing some adverse impacts on the environment. The GM/Uniroyal prototype also indicates that a smaller amount of materials can be used to produce the compact non-pneumatic tires, and this should also serve to reduce impacts on the environment.

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

In its analysis, the agency considered the rulemaking's likely effect on the States and possible alternatives to the rulemaking. The agency has determined that this rule will not affect the laws in 45 States. While it will preempt laws in the five remaining States, Arkansas, North Carolina, Pennsylvania, Washington, and Wisconsin, to the extent that their prohibitions on use of non-pneumatic tires apply to passenger cars and light trucks, its actual impact will not be significant for several reasons. First, the agency understands that these laws are primarily intended to prohibit the use of non-pneumatic tires on large, heavy duty vehicles since those vehicles have the potential to damage roadways. However, the amendment does not affect the prohibition insofar as it applies to those vehicles. Instead, the amendment merely permits the limited use of a non-pneumatic tire as a spare tire on passenger cars and light trucks. Second, North Carolina's and Washington's laws about non-pneumatic tires expressly acknowledge the agency's preemptive authority to regulate tires. Third, the absence of any comments from these States suggests that they did not view the rulemaking as significant. Therefore, the agency does not expect any significant adverse impact on vehicles, highways, or other State concerns from such limited use.

The agency's only alternative would have been to continue prohibiting manufacturers from equipping passenger

cars or light trucks with a non-pneumatic spare tire. Based on the agency's review of the amendment and relevant information, including the commenters' universal support of the amendment, the agency has decided that the Federalism implications are not significant enough to require the preparation of a Federalism Assessment or prevent the amendment's adoption.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending Standard No. 110, *Tire Selection and Rims*, and Standard No. 120, *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars*, and is establishing Standard No. 129, *New Non-Pneumatic Tires for Passenger Cars*, in title 49 of the Code of Federal Regulations as part 571 as follows:

PART 571—[AMENDED]

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

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50

§ 571.110 [Amended]

2. Paragraph S2 of Standard 110 is revised to read as follows:

S2 *Application.* This standard applies to passenger cars and to non-pneumatic spare tire assemblies for use on passenger cars.

3. Paragraph S3 of Standard No. 110 is amended by adding the following definitions in the proper alphabetical location:

Non-pneumatic rim is used as defined in § 571.129.

Non-pneumatic spare tire assembly means a non-pneumatic tire assembly intended for temporary use in place of one of the pneumatic tires and rims that are fitted to a passenger car in compliance with the requirements of this standard.

Non-pneumatic tire and *non-pneumatic tire assembly* are used as defined in § 571.129.

Rim is used as defined in § 571.109.

Wheel center member is used as defined in § 571.129.

* * * * *

4. Paragraph S4.1 of Standard No. 110 is revised to read as follows:

S4.1 *General.* Passenger cars shall be equipped with tires that meet the requirements of § 571.109, *New Pneumatic Tires—Passenger Cars*, except that passenger cars may be equipped with a non-pneumatic spare tire assembly that meets the requirements of § 571.129, *New Non-Pneumatic Tires for Passenger Cars* and S6 and S8 of this standard. Passenger care equipped with such an assembly shall meet the requirements of S4.3(e), S5, and S7 of this standard.

* * * * *

5. Paragraph S4.3 (c), (d), and (e) is revised to read as follows:

* * * * *

(c) Vehicle manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight and, subject to the limitations of S4.3.1, for any other manufacturer-specified vehicle loading condition;

(d) Vehicle manufacturer's recommended tire size designation; and

(e) For a vehicle equipped with a non-pneumatic spare tire assembly, the non-penumatic tire identification code with which that assembly is labeled pursuant to the requirements of S4.3(a) of § 571.129, *New Non-Pneumatic Tires for Passenger Cars.*

* * * * *

6. Standard No. 110 is amended by adding paragraphs S5, S6, S7, and S8 to read as follows:

S5 *Load Limits for Non-Pneumatic Spare Tires.* The highest vehicle maximum load on the tire for the vehicle shall not be greater than the load rating for the non-pneumatic spare tire.

S6 *Labeling Requirements for Non-Pneumatic Spare Tires or Tire Assemblies.*

Each non-pneumatic tire or, in the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, each non-pneumatic tire assembly shall be permanently molded, stamped, or otherwise permanently marked into or onto both sides in letters or numerals not less than 0.156 inches high, the information specified in paragraphs S6 (a) through (b). Except, in the case of a non-pneumatic tire assembly which has a particular side that must always face outward when mounted on a vehicle, the information shown in paragraphs S6 (a) through (b) shall only be required on the outward facing side. The information shall be positioned on the tire or tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of any non-pneumatic rim or wheel center member designated for use with that tire in this standard or in Standard No. 129.

(a) FOR TEMPORARY USE ONLY; and

(b) MAXIMUM 50 M.P.H.

S7 *Requirements for Passenger Cars Equipped With Non-Pneumatic Spare Tire Assemblies.*

S7.1 *Vehicle Placarding Requirements.* A placard, permanently affixed to the inside of the vehicle trunk lid or an equally accessible location adjacent to the non-pneumatic spare tire assembly, shall display the information set forth in S6 in block capitals and numerals not less than 0.25 inches high preceded by the words "IMPORTANT—USE OF SPARE TIRE" in letters not less than 0.375 inches high.

S7.2 *Supplementary Information.* The owner's manual of the passenger car shall contain, in writing in the English language and in not less than 10 point type, the following information under the heading "IMPORTANT—USE OF SPARE TIRE":

(a) A statement indicating the labeling related to appropriate use for the non-pneumatic spare tire including at a minimum the information set forth in S6 (a) and (b) and in S4.3(e);

(b) An instruction to drive carefully when the non-pneumatic spare tire is in use, and to install the proper pneumatic tire and rim at the first reasonable opportunity; and

(c) A statement that operation of the passenger car is not recommended with more than one non-pneumatic spare tire in use at the same time.

S8 *Non-Pneumatic Rims and Wheel Center Members*

S8.1 *Non-Pneumatic Rim Requirements.* Each non-pneumatic rim that is part of a separable non-pneumatic spare tire assembly shall be constructed to the dimensions of a non-pneumatic rim that is listed pursuant to S4.4 of § 571.129 for use with the non-pneumatic tire, designated by its non-pneumatic tire identification code, with which the vehicle is equipped.

S8.2 *Wheel Center Member Requirements.* Each wheel center member that is part of a separable non-pneumatic spare tire assembly shall be constructed to the dimensions of a wheel center member that is listed pursuant to S4.4 of § 571.129 for use with the non-pneumatic tire, designated by its non-pneumatic tire identification code, with which the vehicle is equipped.

* * * * *

§ 571.120 [Amended]

7. Paragraph S3 of Standard 120 is revised to read as follows:

S3 *Application.* This standard applies to multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles, to rims for use on those vehicles, and to non-pneumatic spare tire assemblies for use on those vehicles.

* * * * *

8. Paragraph S5.1.1 of Standard No. 120 is revised to read as follows:

S5.1.1 Except as specified in S5.1.3, each vehicle equipped with pneumatic tires for highway service shall be equipped with tires that meet the requirements of § 571.109, *New Pneumatic Tires—Passenger Cars*, or § 571.119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars*, and rims that are listed by the manufacturer of the tires as suitable for use with those tires, in accordance with S4.4 with § 571.109, or S5.1 of § 571.119, as applicable, except that vehicles may be equipped with a non-pneumatic spare tire assembly that meets the requirements of § 571.129, *New Non-Pneumatic Tires for Passenger Cars*, and S8 and S10 of this standard. Vehicles equipped with such an assembly shall meet the requirements of S5.3.6, S7, and S9 of this standard.

9. The introductory text of paragraph S5.3.2 of Standard No. 120 is revised to read as follows:

S5.3.2 *Vehicles Manufactured on or after December 1, 1984.* Each vehicle manufactured on or after December 1, 1984, shall show the information specified in S5.3.3 through S5.3.5, and in the case of a vehicle equipped with a non-pneumatic spare tire, also that specified in S5.3.6, in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high and in the format set forth following this section. This information shall appear either—

* * * * *

10. Paragraph S5.3.6 is added to Standard No. 120 to read as follows:

S5.3.6 The non-pneumatic tire identification code, with which that assembly is labeled pursuant to S4.3(a) of § 571.129.

11. Standard 120 is amended by adding paragraphs S7, S8, S9, and S10.

S7 *Load Limits for Non-Pneumatic Spare Tires.* The highest vehicle maximum load on the tire for the vehicle shall not be greater than the load rating for the non-pneumatic spare tire.

S8 *Labeling Requirements for Non-Pneumatic Spare Tires or Tire Assemblies.* Each non-pneumatic tire or, in the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, each non-pneumatic tire assembly shall be permanently molded, stamped, or otherwise permanently marked into or onto both sides in letters or numerals not less than 0.156 inches high, the information specified in paragraphs S6 (a) through (b). Except, in the case of a non-pneumatic tire assembly which has a particular side that must always face outward when mounted on a vehicle, the information shown in paragraphs S6 (a) through (b) shall only be required on the outward facing side. The information shall be positioned on the tire or tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of any non-pneumatic rim or wheel center member designated for use with that tire in this standard or in Standard No. 129.

(a) FOR TEMPORARY USE ONLY; and

(b) MAXIMUM 50 M.P.H.

S9 *Requirements for Vehicles Equipped With Non-Pneumatic Spare Tire Assemblies*

S9.1 *Vehicle Placarding Requirements.* A placard, permanently affixed to the inside of the spare tire stowage area or equally accessible location adjacent to the non-pneumatic spare tire assembly, shall display the information set forth in S8 in block capitals and numerals not less than 0.25 inches high preceded by the words "IMPORTANT—USE OF SPARE TIRE" in letters not less than 0.375 inches high.

S9.2 *Supplementary Information.* The owner's manual of the vehicle shall contain, in writing in the English language and in not less than 10 point type, the following information under the heading "IMPORTANT—USE OF SPARE TIRE":

(a) A statement indicating the labeling related to appropriate use for the non-pneumatic spare tire including at a minimum the information set forth in S8 (a) and (b) and in S5.3.6;

(b) An instruction to drive carefully when the non-pneumatic spare tire is in use, and to install the proper pneumatic tire and rim at the first reasonable opportunity; and

(c) A statement that operation of the vehicle is not recommended with more than one non-pneumatic spare tire in use at the same time.

S10 *Non-Pneumatic Rims and Wheel Center Members*

S10.1 *Non-Pneumatic Rim Requirements.* Each non-pneumatic rim that is part of a separable non-pneumatic spare tire assembly shall be constructed to the dimensions of a non-pneumatic rim that is listed pursuant to S4.4 of § 571.129 for use with the non-pneumatic tire, designated by its non-pneumatic tire identification code, with which the vehicle is equipped.

S10.2 *Wheel Center Member Requirements.* Each wheel center member that is part of a separable non-pneumatic spare tire assembly shall be constructed to the dimensions of a wheel center member that is listed pursuant to S4.4 of § 571.129 for use with the non-pneumatic tire, designated by its non-pneumatic tire identification code, with which the vehicle is equipped.

* * * * *

12. Part 571 is amended by the addition of 49 CFR 571.129 which would read as follows:

§ 571.129 Standard No. 129; new non-pneumatic tires for passsenger cars.

S1 *Scope.* This standard specifies tire dimensions and laboratory test requirements for lateral strength, strength, endurance, and high speed performance; defines the tire load rating; and specifies labeling requirements for non-pneumatic spare tires.

S2 *Application.* This standard applies to new temporary spare non-pneumatic tires for use on passenger cars.

S3 *Definitions.*

Carcass means the tire structure except for the tread which provides the major portion of the tire's capability to deflect in response to the vertical loads and tractive forces that the tire transmits from the roadway to the non-pneumatic rim, the wheel center member, or the vehicle and which attaches to the vehicle or attaches, either integrally or separably, to the wheel center member or non-pneumatic rim.

Carcass separation means the pulling away of the carcass from the non-pneumatic rim or wheel center member.

Chunking means the breaking away of pieces of the carcass or tread.

Cracking means any parting within the carcass, tread, or any components that connect the tire to the non-pneumatic rim or wheel center member and, if the non-pneumatic tire is integral with the non-pneumatic rim or wheel center member, any parting within the non-pneumatic rim, or wheel center member.

Load rating means the maximum load a tire is rated to carry.

Maximum tire width means the greater of either the linear distance between the exterior edges of the carcass or the linear distance between the exterior edges of the tread, both being measured parallel to the rolling axis of the tire.

Non-pneumatic rim means a mechanical device which, when a non-pneumatic tire assembly incorporates a wheel, supports the tire, and attaches, either integrally or separably, to the wheel center member and upon which the tire is attached.

Non-pneumatic test rim means with reference to a tire to be tested, any non-pneumatic rim that is listed as appropriate for use with that tire in accordance with S4.4.

Non-pneumatic tire means a mechanical device which transmits, either directly or through a wheel or wheel center member, the vertical load and tractive forces from the roadway to the vehicle, generates the tractive forces that provide the directional control of the vehicle and does not rely on the containment of any gas or fluid for providing those functions.

Non-pneumatic tire assembly means a non-pneumatic tire, alone or in combination with a wheel or wheel center member, which can be mounted on a vehicle.

Non-pneumatic tire identification code means an alphanumeric code that is assigned by the manufacturer to identify the tire with regard to its size, application to a specific non-pneumatic rim or wheel center member or application to a specific vehicle.

Test wheel center member means with reference to a tire to be tested, any wheel center member that is listed as appropriate for use with that tire in accordance with S4.4.

Tread means that portion of the tire that comes in contact with the road.

Tread separation means pulling away of the tread from the carcass.

Wheel means a mechanical device which consists of a non-pneumatic rim and wheel center member and which, in the case of a non-pneumatic tire assembly incorporating a wheel, provides the connection between the tire and the vehicle.

Wheel center member means, in the case of a non-pneumatic tire assembly incorporating a wheel, a mechanical device which attaches, either integrally or separably, to the non-pneumatic rim and provides the connection between the non-pneumatic rim and the vehicle.

S4 *Requirements.*

S4.1 *Size and Construction.* Each tire shall be designed to fit each non-pneumatic rim or wheel center member specified for its non-pneumatic tire identification code designation in a listing in accordance with section S4.4.

S4.2 *Performance Requirements*

S4.2.1 *General.* Each tire shall conform to the following:

(a) Its load rating shall be that specified in a submission made by a manufacturer, pursuant to S4.4(a), or in one of the publications described in S4.4(b) for its non-pneumatic tire identification code designation.

(b) It shall incorporate a tread wear indicator that will provide a visual indication that the tire has worn to a tread depth of 1/16 inch.

(c) It shall, before being subjected to either the endurance test procedure specified in S5.4 or the high speed performance procedure specified in S5.5, exhibit no visual evidence of tread or carcass separation, chunking or cracking.

(d) It shall meet the requirements of S4.2.2.5 and S4.2.2.6 when tested on a test wheel described in S5.4.2.1 either alone or simultaneously with up to 5 tires.

S4.2.2 *Test Requirements.*

S.4.2.2.1 *Test Sample.* For each test sample use:

(a) One tire for physical dimensions, lateral strength, and strength in sequence;

(b) A second tire for tire endurance; and

(c) A third tire for high speed performance.

S4.2.2.2 *Physical Dimensions.* For a non-pneumatic tire assembly in which the tire is separable from the non-pneumatic rim or wheel center member, the dimensions, measured in accordance with S5.1, for that portion of the tire that attaches to that non-pneumatic rim or wheel center member shall satisfy the dimensional specifications contained in the submission made by an individual manufacturer, pursuant to S4.4(a), or in one of the publications described in S4.4(b) for that tire's non-pneumatic tire identification code designation.

S4.2.2.3 *Lateral Strength.* There shall be no visual evidence of tread or carcass separation, cracking or chunking, when a tire is tested in accordance with S5.2 to a load of:

(a) 1,500 pounds for tires with a load rating less than 880 pounds;

(b) 2,000 pounds for tires with a load rating of 880 pounds or more but less than 1,400 pounds.

(c) 2,500 pounds for tires with a load rating of 1,400 pounds or more, using the load rating marked on the tire or tire assembly.

S4.2.2.4 *Tire Strength.* There shall be no visual evidence of tread carcass separation, cracking or chunking, when a tire is tested in accordance with S5.3 to a minimum energy level of:

Load rating	Minimum energy level
Below 880 pounds	1950 inch pounds.
880 pounds and above	2600 inch pounds.

S4.2.2.5 *Tire Endurance.* When the tire has been subjected to the laboratory endurance test specified in S5.4, using, if applicable, a non-pneumatic test rim or test wheel center member that undergoes no permanent deformation, there shall be no visual evidence of tread or carcass separation, cracking or chunking. In the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, the assembly shall undergo no permanent deformation with the exception of wear of the tread.

S4.2.2.6 *High Speed Performance.* When the tire has been subjected to the laboratory high speed performance test specified in S5.5, using if applicable, a non-pneumatic test rim or test wheel center member that undergoes no permanent deformation, there shall be no visual evidence of tread or carcass separation, cracking or chunking. In the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, the assembly shall undergo no permanent deformation with the exception of wear of the tread.

S4.3 *Labeling Requirements.* Each non-pneumatic tire or, in the case of a non-pneumatic tire assembly in which the non-pneumatic tire is an integral part of the assembly, each non-pneumatic tire assembly shall be permanently molded, stamped, or otherwise permanently marked into or onto both sides of the tire or tire assembly in letters or numerals not less than 0.078 inches high, the information shown in paragraphs S4.3 (a) through (f). Except, in the case of a non-pneumatic tire assembly of which one side always must face outward when mounted on a vehicle, the information shown in paragraphs S4.3 (a) through (f) shall only be required on the outward facing side. The information shall be positioned on the tire or tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of any non-pneumatic rim or wheel center member designated for use with that tire in S4.4 of this standard or in 49 CFR 571.110 or 49 CFR 571.120.

(a) The non-pneumatic tire identification code;

(b) Load rating, which, if expressed in kilograms, shall be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole pound;

(c) For a non-pneumatic tire that is not an integral part of a non-pneumatic tire assembly, the size and type designation of the non-pneumatic rim or wheel tire assembly that is contained in the submission made by a manufacturer, pursuant to S4.4(a), or in one of the publications described in S4.4(b) for that tire's non-pneumatic tire identification code designation;

(d) The name of the manufacturer or brand name;

(e) The symbol DOT in the manner specified in part 574 of this chapter, which shall constitute a certification that the tire conforms to applicable Federal motor vehicle safety standards;

(f) The tire identification number required by § 574.5 of this chapter;

(g) The labeling requirements set forth in S6 of Standard No. 110 (§ 571.110), or S8 of Standard No. 120 (§ 571.120).

S4.4 *Non-Pneumatic Tire Identification Code and Non-Pneumatic Rim/Wheel Center Member Matching Information.* For purposes of this standard, S8 of 49 CFR 571.110 and S10 of 49 CFR 571.120, each manufacturer of a non-pneumatic tire that is not an integral part of a non-pneumatic tire assembly shall ensure that it provides a listing to the public for each non-pneumatic tire that it produces. The listing shall include the non-pneumatic tire identification code, tire load rating, dimensional specifications and a diagram of the portion of the tire that attaches to the non-pneumatic rim or wheel center member, and a list of the non-pneumatic rims or wheel center members that may be used with that tire. For each non-pneumatic rim or wheel center member included in such a listing, the information provided shall include a size and type designation for the non-pneumatic rim or wheel center member, and dimensional specifications and a diagram of the non-pneumatic rim or portion of the wheel center member that attaches to the tire. A listing compiled in accordance with paragraph (a) of this section need not include dimensional specifications or a diagram of the non-pneumatic rim or portion of the wheel center member that attaches to the tire if the non-pneumatic rim's or portion of the wheel center member's dimensional specifications and diagram are contained in each listing published in accordance with paragraph (b) of this section. The listing shall be in one of the following forms:

(a) Listed by manufacturer name or brand name in a document furnished to dealers of the manufacturer's tires or, in the case of non-pneumatic tires supplied only as a temporary spare tire on a vehicle, in a document furnished to dealers of vehicles equipped with the tires, to any person upon request, and in duplicate to the Office of Vehicle Safety Standards, Crash Avoidance Division, National Highway Traffic Safety Administration, U.S. Department of Transportation, Washington, DC 20590; or

(b) Contained in publications, current at the date of manufacture of the tire or any later date, of at least one of the following organizations:

The Tire and Rim Association
The European Tyre and Rim Technical Organization
Japan Automobile Tire Manufacturers' Association, Inc.
Deutche Industrie Norm
British Standards Institute
Scandinavian Tire and Rim Organization
Tyre and Rim Association of Australia

S5 *Test Procedures.*

S5.1 *Physical Dimensions.* After conditioning the tire at room temperature for at least 24 hours, using equipment with minimum measurement capabilities of one-half the smallest tolerance specified in the listing contained in the submission made by a manufacturer pursuant to S4.4(a), or in one of the publications described in S4.4(b) for that tire's non-pneumatic tire identification code designation, measure the portion of the tire that attaches to the non-pneumatic rim or the wheel center member. For any inner diameter dimensional specifications, or other dimensional specifications that are uniform or uniformly spaced around some circumference of the tire, these measurements shall be taken at least six points around the tire, or, if specified, at the points specified in the listing contained in the submission made by an individual manufacturer, pursuant to S4.4(a), or in one of the publications described in S4.4(b) for that tire's non-pneumatic tire identification code designation.

S5.2 *Lateral Strength.*

S5.2.1 *Preparation of the tire.*

S5.2.1.1 If applicable, mount a new tire on a non-pneumatic test rim or test wheel center member.

S5.2.1.2 Mount the tire assembly in a fixture as shown in Figure 1 with the surface of the tire assembly that would face outward when mounted on a vehicle facing toward the lateral strength test block shown in Figure 2 and force the lateral strength test block against the tire.

S5.2.2 *Test Procedure.*

S5.2.2.1 Apply a load through the block to the tire at a rate of 2 inches per minute, with the load arm parallel to the tire assembly at the time of engagement and the first point of contact with the test block being the test block centerline shown in Figure 2, at the following distances, B, in sequence, as shown in Figure 1:

B=A—1 inch
B=A—2 inches
B=A—3 inches
B=A—4 inches
B=A—5 inches, and
B=A—6 inches.

However, if at any time during the conduct of the test, the test block comes in contact with the non-pneumatic test rim or test wheel center member, the test shall be suspended and no further testing at smaller values of the distance B shall be conducted. When tested to the above procedure, satisfying the requirements of S4.2.2.3 for all values of B greater than that for which contact between the non-pneumatic test rim or test wheel center member and the test block is made, shall constitute compliance to the requirements set forth in S4.2.2.3.

S5.3 *Tire Strength.*

S5.3.1 *Preparation of the Tire.*

S5.3.1.1 If applicable, mount the tire on a non-pneumatic test rim or test wheel center member.

S5.3.1.2 Condition the tire assembly at room temperature for at least three hours.

S5.3.2 *Test Procedures.*

S5.3.2.1 Force the test cleat, as defined in S5.3.2.2, with its length axis (see S5.3.2.2(a)) parallel to the rolling axis of the non-pneumatic tire assembly, and its height axis (see S5.3.2.2(c)), coinciding with a radius of the non-pneumatic tire assembly, into the tread of the tire at five test points equally spaced around the circumference of the tire. At each test point, the test cleat is forced into the tire at a rate of two inches per minute until the applicable minimum energy level, as shown in S4.2.2.4, calculated using the formula contained in S5.3.2.3, is reached.

S5.3.2.2 The test cleat is made of steel and has the following dimensions:

(a) Length of one inch greater than the maximum tire width of the tire.

(b) Width of one-half inch with the surface which contacts the tire's tread having one-quarter inch radius, and

(c) Height of one inch greater than the difference between the unloaded radius of the non-pneumatic tire assembly and the minimum radius of the non-pneumatic rim or wheel center member, if used with the non-pneumatic tire assembly being tested.

S5.3.2.3 The energy level is calculated by the following formula:

$$E = \frac{F \times P}{2}$$

where
E=Energy level, inch-pounds;
F=Force, pounds; and
P=Penetration, inches

S5.4 *Tire Endurance.*

S5.4.1 *Preparation of the tire.*

S5.4.1.1 If applicable, mount a new tire on a non-pneumatic test rim or test wheel center member.

S5.4.1.2 Condition the tire assembly to 100±5 °F. for at least three hours.

S5.4.2 *Test Procedure.*

S5.4.2.1 Mount the tire assembly on a test axle and press it against a flat-faced steel test wheel 67.23 inches in

diameter and at least as wide as the maximum tire width of the tire to be tested or an approved equivalent test wheel, with the applicable test load specified in the table in S5.4.2.3 for the tire's non-pneumatic tire identification code designation.

S5.4.2.2 During the test, the air surrounding the test area shall be 100±5 °F.

S5.4.2.3 Conduct the test at 50 miles per hour (m.p.h.) in accordance with the following schedule without interruption: The loads for the following periods are the specified percentage of the load rating marked on the tire or tire assembly:

	Percent
4 hours	85
6 hours	90
24 hours	100

S5.4.2.4 Immediately after running the tire the required time, allow the tire to cool for one hour, then, if applicable, detach it from the non-pneumatic test rim or test wheel center member, and inspect it for the conditions specified in S4.2.2.5.

S5.5 *High Speed Endurance.*

S5.5.1 After preparing the tire in accordance with S5.4.1, if applicable, mount the tire assembly in accordance with S5.4.2.1, and press it against the test wheel with a load of 88 percent of the tire's load rating as marked on the tire or tire assembly.

S5.5.2 Break in the tire by running it for 2 hours at 50 m.p.h.

S5.5.3 Allow to cool to 100±5 °F.

S5.5.4 Test at 75 m.p.h. for 30 minutes, 80 m.p.h. for 30 minutes and 85 m.p.h. for 30 minutes.

S5.5.5 Immediately after running the tire for the required time, allow the tire to cool for one hour, then, if applicable, detach it from the non-pneumatic test rim or test wheel center member, and inspect it for the conditions specified in S4.2.2.6.

S6 *Nonconforming tires.* Any non-pneumatic tire that is designed for use on passenger cars that does not conform to all the requirements of this standard, shall not be sold, offered for sale, introduced or delivered for introduction into interstate commerce, or imported into the United States, for any purpose.

* * * * *

13. Figures 1 and 2 are added following the text of Standard No. 129, appearing as follows:

* * * * *

BILLING CODE 4910-59-M

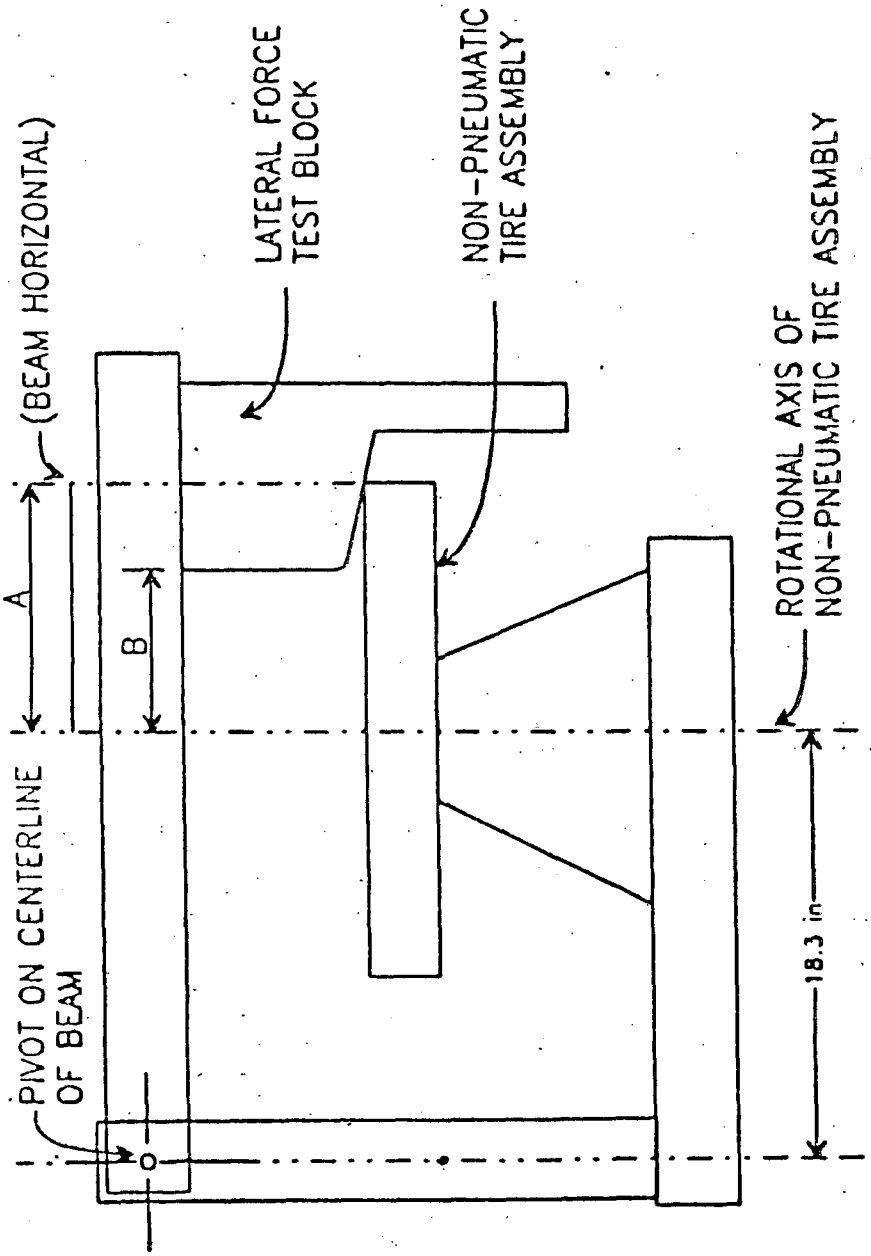

FIGURE 1 - LATERAL FORCE TEST FIXTURE (DIMENSIONS IN INCHES)

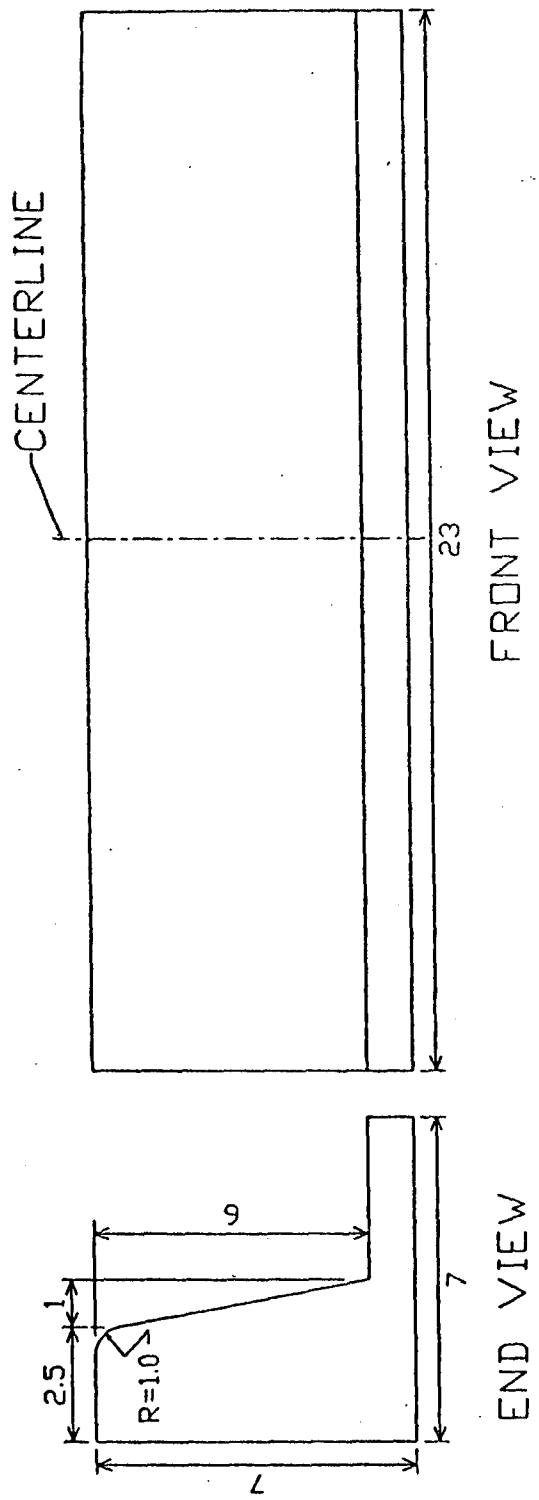

FIGURE 2 - LATERAL FORCE TEST BLOCK

DIMENSIONAL TOLERANCE IS +/- 0.050 INCH

DIMENSIONS ARE IN INCHES

BILLING CODE 4910-59-C

PART 574—[AMENDED]

§ 574.4 [Amended]

14. The first sentence of 574.4 *Applicability* is revised to read as follows:

This part applies to manufacturers, brand name owners, retreaders, distributors, and dealers of new and retreaded tires, and new non-pneumatic tires and non-pneumatic tire assemblies for use on motor vehicles manufactured after 1948 and to manufacturers and dealers of motor vehicles manufactured after 1948. * * *

* * * * *

§ 574.5 [Amended]

15. The first sentence of 574.5 *Tire identification requirements* is revised to read as follows:

Each tire manufacturer shall conspicuously label on one sidewall of each tire it manufactures, except tires manufactured exclusively for mileage-contract purchasers, or non-pneumatic tires or non-pneumatic tire assemblies, by permanently molding into or onto the sidewall, in the manner and location specified in Figure 1, a tire identification number containing the information set forth in paragraphs (a) through (d) of this section.

* * * * *

16. Section 574.5 is amended by adding the following to the end of the opening paragraph:

* * * * *

Each manufacturer of a non-pneumatic tire or a non-pneumatic tire assembly shall permanently mold, stamp or otherwise permanently mark into or onto one side of the non-pneumatic tire or non-pneumatic tire assembly a tire identification number containing the information set forth in paragraphs (a) through (d) of this section. In addition, the DOT symbol required by the Federal motor vehicle safety standards shall be positioned relative to the tire identification number as shown in Figure 1, and the symbols to be used for the other information are those listed above. The labeling for a non-pneumatic tire or a non-pneumatic tire assembly shall be in the manner specified in Figure 1 and positioned on the non-pneumatic tire or non-pneumatic tire assembly such that it is not placed on the tread or the outermost edge of the tire and is not obstructed by any portion of the non-pneumatic rim or wheel center member designated for use with that non-pneumatic tire in S4.4 of Standard No. 129 (49 CFR 571.129).

* * * * *

17. Section 574.5(b) is amended by adding the following after the first sentence:

* * * For a new non-pneumatic tire or a non-pneumatic tire assembly, the second group, of not more than two symbols, shall be used to identify the non-pneumatic tire identification code.* * *

* * * * *

18. Section 574.6, *Identification mark*, is revised to read as follows:

§ 574.6 Identification mark.

To obtain the identification mark required by 574.5(a), each manufacturer of new or retreaded pneumatic tires, non-pneumatic tires or non-pneumatic tire assemblies shall apply in writing to "Tire Identification and Recordkeeping," National Highway Traffic Safety Administration, Department of Transportation, Washington, DC 20590, identify itself as a tire manufacturer or retreader and furnish the following information:

(a) The name, or other designation identifying the applicant, and its main office address.

(b) The name, or other identifying designation, of each individual plant operated by the manufacturer and the address of each plant, if applicable.

(c) The type of tires manufactured at each plant, e.g., pneumatic tires for passenger cars, buses, trucks or motorcycles; pneumatic retreaded tires; or non-pneumatic tires or non-pneumatic tire assemblies.

Issued on July 12, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90-16711 Filed 7-19-90; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 55, No. 140
Friday, July 20, 1990

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

Farmers Home Administration

7 CFR Part 1924

Complaints and Compensation for Construction Defects

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulation governing the compensation for construction defects program. This program enables FmHA borrowers with loans made under section 502 of the Housing Act of 1949 to apply for compensation to correct defects in newly constructed dwellings which the builder cannot or will not correct. Currently, the program is based on whether complaints are justified or non-justified. FmHA proposes to amend the regulation to classify defects as structural or non-structural and provide specific guidance on handling each category of defects. In addition, FmHA proposes to add provisions for handling complaints involving manufactured housing, and dwellings or units covered by warranties other than, or in addition to, the builder's warranty. The intended effect of the action is to clarify the procedure for compensating borrowers for construction defects which are due to circumstances beyond the borrower's control.

DATES: Comments must be received on or before September 18, 1990.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address. The collection of information requirements contained in this rule have been submitted to Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from fifteen minutes to two hours, with an average of seventeen minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Office, OIRM, room 404-W, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robin H. Ponton, Loan Specialist, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, 14th and Independence Avenue SW., room 5313, Washington, DC 20250, telephone: (202) 382-1452.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.410 Low Income Housing Loans (*section 502 Rural Housing Loans*).

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91-190), an Environmental Impact Statement is not required.

Supplementary Information

The following revisions have been made:

This regulation has been completely revised to clarify eligibility criteria and to incorporate provisions to handle complaints involving manufactured housing. Specifically, the changes are as follows:

Section 1924.252 has been revised to clarify the Agency's policy for handling complaints about construction defects, and to clarify the contractor's responsibility for making repairs.

Section 1924.253 has been revised by deleting the definitions of justified complaint and not justified complaint; revising the definitions of newly constructed dwelling and structural defect; and adding the definitions of newly constructed manufactured home (unit) and non-structural defect.

Former § 1924.266 has been renumbered to § 1924.258 and revised to provide guidance on notifying borrowers of the provisions of this subpart.

Former § 1924.256 has been renumbered to § 1924.259 and revised to clarify handling of borrower's complaints about construction defects. In addition, paragraph (e)(5) has been added to state that a borrower's claim for compensation for construction defects may be denied if the original contractor was willing to correct the defects but the borrower refused to permit this.

Section 1924.260 has been revised to provide guidance on handling complaints about manufactured housing.

Section 1924.261 has been revised to provide guidance on handling complaints involving work covered by an independent or insured home warranty.

Former § 1924.257 has been renumbered to § 1924.265 and revised to provide specific eligibility criteria and clarify the process for filing a claim.

Former § 1924.258 has been renumbered to § 1924.266 and revised to provide more specific criteria for determining if defects are eligible for compensation. Paragraph (a)(3) has been revised to make acceptance of a voluntary conveyance consistent with

subpart A of part 1955 of this chapter and subpart C of part 1965 of this chapter. Paragraph (a)(4)(ii)(A) has been revised to provide that funds for temporary living expenses may not exceed the established Government per diem rate. Paragraph (a)(4)(ii)(D) has been added to require the borrower to provide a strict accounting of the use of funds advanced for temporary living expenses. Paragraph (b) has been revised to state that items required under the construction contract but not completed by the contractor are not eligible for compensation, nor is work done under the self-help or borrower method programs which is not covered by a contractor's warranty.

Former § 1924.260 has been renumbered to § 1924.271 and revised to update references.

Former § 1924.261 has been renumbered to § 1924.273 and revised to change the time frame for decision-making from 30 days to 60 days.

Former § 1924.262 has been renumbered to § 1924.274 and revised to correct the reference to subpart A of this part.

Former § 1924.263 has been renumbered to § 1924.276 and revised to require that debarment be initiated against contractors, as companies and individuals, even if the contractor has gone out of business.

Former § 1924.265 has been incorporated into § 1924.266.

List of Subjects in 7 CFR Part 1924

Construction and repair, Housing, Loan programs—Agriculture, Loan—Housing and community development, Low and moderate income housing, Claims, Construction complaints, Construction defects.

Accordingly, as proposed, Chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

2. Subpart F (consisting of §§ 1924.251 through 1924.300) of part 1924 is revised to read as follows:

Subpart F—Complaints and Compensation for Construction Defects

Sec.
1924.251 Purpose.
1924.252 Policy.
1924.253 Definitions.
1924.254–1924.257 [Reserved]
1924.258 Notification of borrowers.
1924.259 Handling dwelling construction complaints.
1924.260 Handling manufactured housing (unit) construction complaints.
1924.261 Handling complaints involving dwellings covered by an independent or insured home warranty plan.
1924.262–1924.264 [Reserved]
1924.265 Eligibility for compensation for construction defects.
1924.266 Purposes for which claims may be approved.
1924.267–1924.270 [Reserved]
1924.271 Processing applications.
1924.272 [Reserved]
1924.273 Approval or disapproval.
1924.274 Final inspection.
1924.275 [Reserved]
1924.276 Action against contractor.
1924.277–1924.300 [Reserved]

Subpart F—Complaints and Compensation for Construction Defects

§ 1924.251 Purpose.

This subpart contains policies and procedures for receiving and resolving complaints concerning the construction of dwellings and construction, installation and set-up of manufactured homes (herein called "units"), financed by the Farmers Home Administration (FmHA), and for compensating borrowers for structural defects under section 509(c) of the Housing Act of 1949, as amended. Provisions of this subpart do not apply to dwellings financed with guaranteed section 502 loans.

§ 1924.252 Policy.

FmHA is responsible for receiving and resolving all complaints concerning the construction of dwellings and the construction, installation and set-up of units financed by FmHA. FmHA must determine whether defects are structural or non-structural. If the defect is structural and is covered by the builder's/ dealer-contractor's (the "contractor") warranty, the contractor is expected to correct the defect. If the contractor cannot or will not correct the defect, the costs of correcting the defect may be paid by the Government, or the borrower may be compensated for correcting the defect, under the provisions of this subpart. If the defect is non-structural but is covered under the provisions of the contractor's warranty, the contractor is still expected to correct the defect. However, if the contractor cannot or will not correct a non-structural defect covered under the provisions of the contractor's warranty, the Government will not pay the costs for correcting the defect, nor will the borrower be compensated for doing so.

§ 1924.253 Definitions.

As used in this subpart, the following definitions apply:

(a) *Newly constructed dwelling.* One which:

(1) Is financed with a section 502 insured loan;

(2) Was constructed substantially or wholly under the contract method;

(3) Was not more than one year old and not previously occupied as a residence at the time financial assistance was granted unless FmHA has extended the conditional commitment issued on a newly constructed dwelling in accordance with subpart A of part 1944 of this chapter; and

(4) Had the required construction inspections performed by FmHA, the Department of Housing and Urban Development (HUD), or the Veterans Administration (VA).

(b) *Newly constructed manufactured home (unit).* One which:

(1) Is financed with a section 502 insured loan;

(2) Was not more than one year old and not previously occupied as a residence at the time financial assistance was granted; and

(3) Is built to the Federal Manufactured Home Construction and Safety Standards (FMHCSS) and is certified by an affixed label as shown in Exhibit F of subpart A of part 1944 of this chapter.

(c) *Non-structural defect.* A construction defect which does not affect the overall useful life, habitability, or structural integrity of the dwelling or unit. Some non-structural defects may be covered under the contractor's warranty. Examples of non-structural defects include, but are not limited to:

(1) Cracks attributed to normal curing or settlement.

(2) Cosmetic defects in cabinets, woodwork, floorcovering, wallcovering, ornamental trim, etc.

(3) Improper or incomplete seeding or sodding of yard, or failure of trees, shrubs, grass and other landscaping items to thrive.

(4) Improper grading of yard, unless the grade is causing damage which may lead to a structural defect.

(d) *Structural defect.* A defect in the dwelling or unit, installation or set-up of a unit, or a related facility or a deficiency in the site or site development which directly and significantly reduces the useful life, habitability, or integrity of the dwelling or unit. The defect may be due to faulty material, poor workmanship, or latent causes that existed when the dwelling

or unit was constructed. The term includes, but is not limited to:

(1) Structural failures which directly and significantly affect the basic integrity of the dwelling or unit such as in the foundation, footings, basement walls, slabs, floors, framing, walls, ceiling, or roof.

(2) Major deficiencies in the utility components of the dwelling or unit or site such as faulty wiring, or failure of sewage disposal or water supply systems located on the property securing the loan caused by faulty materials or improper installation.

(3) Serious defects in or improper installation of heating systems or central air conditioning.

(4) Defects in or improper installation of safety and security devices, such as windows, external doors, locks, smoke detectors, railings, etc., as well as failure to provide or properly install devices to aid occupancy of dwellings by handicapped individuals, where required.

(5) Defects in or improper installation of protective materials, such as insulation, siding, roofing material, exterior paint, etc.

§§ 1924.254–1924.257 [Reserved]

§ 1924.258 Notification of borrowers.

FmHA will notify by letter all borrowers who receive section 502 RH financial assistance for a newly constructed dwelling or unit of the provisions of this subpart. Subsequent owners of eligible dwellings will also be notified in accordance with this section. Borrowers will be notified within 30 days after the loan is closed, or within 30 days after final inspection, whichever is later. FmHA will also notify and advise borrowers of the construction defects procedure at any time construction defects are apparent and favorable results cannot be obtained from the contractor.

§ 1924.259 Handling dwelling construction complaints.

(a) Each borrower who complains about construction defects will be requested to make a written complaint using a format specified by FmHA. All known defects will be listed. An oral complaint may be accepted if making a written complaint will impose a hardship on the borrower. If an oral complaint is made, FmHA will notify the contractor on behalf of the borrower.

(b) The borrower will be informed that if, after 30 calendar days, the defects have not been corrected or other satisfactory arrangements made by the contractor, the borrower should notify FmHA using a format specified by FmHA.

(c) FmHA will advise the contractor in writing of the borrower's complaint, the time and date of planned inspection by FmHA personnel, and request that the contractor accompany the inspector and borrower on a joint inspection of the property in an attempt to resolve the complaint.

(d) If, prior to the planned inspection, the contractor informs FmHA that the alleged defect(s) has been or will be corrected within 30 calendar days, FmHA will notify the borrower.

(e) If the case is not resolved as outlined in paragraph (d) of this section, FmHA will notify the borrower, contractor and manufacturer, if applicable, in writing of FmHA's findings and who has been determined responsible for correcting the defect(s).

(1) If the defects are determined to be covered under the contractor's warranty, FmHA will advise the contractor that the repairs must be completed within 30 calendar days or other time period agreed to by the borrower, the contractor, and FmHA.

(2) FmHA will further advise the contractor and/or manufacturer that if the defect(s) are not corrected, the Government will consider compensating the borrower for the costs of correcting the defect(s). In such a case, the contractor and/or manufacturer may be liable for costs paid by the Government and may be subject to suspension and/or debarment pursuant to subpart M of part 1940 of this chapter (available in any FmHA office). Even if the manufacturer is determined to be solely responsible for the defect, the contractor will still be held liable for correction of the defect.

(3) Should a contractor refuse to correct a defect after being officially requested in writing to do so, formal suspension and debarment proceedings against the contractor (as a company and as individual(s)) will be instituted promptly in accordance with subpart M of part 1940 of this chapter (available in any FmHA office). The contractor's failure to reply to official correspondence or inability to correct a defect constitutes noncompliance.

(4) If the contractor is willing to correct legitimate defects but the borrower refuses to permit this, the facts will be documented in the borrower's case file. If the borrower chooses to file a claim for compensation for these defects, the circumstances of the borrower's refusal will be reviewed and may be sufficient grounds for disapproval of the claim.

§ 1924.260 Handling manufactured housing (unit) construction complaints.

Borrowers with complaints about manufactured housing must contact the dealer-contractor from whom the unit was purchased. If the dealer-contractor cannot resolve the complaint, the borrower should contact the appropriate State Administrative Agency (SAA) or HUD. If the complaint is still not resolved, it will be handled under § 1924.259 of this subpart.

§ 1924.261 Handling complaints involving dwellings covered by an independent or insured home warranty plan.

Borrowers with complaints about dwellings covered by an independent home warranty plan must first complete the complaint resolution process for the warranty plan. If the complaint is not resolved in this manner, it will be handled under § 1924.259 of this subpart.

§§ 1924.262–1924.264 [Reserved]

§ 1924.265 Eligibility for compensation for construction defects.

(a) To be eligible for assistance under this subpart, the following criteria must be met:

(1) The approval official, in consultation with the State Architect/Engineer and/or Construction Inspector, must determine that:

(i) The construction is defective in workmanship, material or equipment, or

(ii) The dwelling or unit has not been built in substantial compliance with the approved drawings and specifications, or

(iii) The dwelling or unit does not comply with the FmHA construction standards in effect at the time the loan was approved or the conditional commitment was issued, or

(iv) The property does not meet code requirements.

(2) The claim must be for one or more of the following:

(i) To pay for repairs;

(ii) To compensate the owner for repairs;

(iii) To pay emergency living or other expenses resulting from the defect; or

(iv) To acquire title to property.

(3) The dwelling or unit must be newly constructed as defined in § 1924.253 of this subpart and financed with an insured section 502 RH loan.

(4) The claim seeking compensation from FmHA must be filed with FmHA within 18 months after the date financial assistance is granted. Claims filed beyond the 18-month period must have been documented by FmHA in the borrower's case file or on part 1 of the Form FmHA 1924–4, prior to expiration of the 18-month period. For loans made

to buy an existing dwelling or manufactured housing unit, financial assistance is granted on the date the loan is closed. for loans made to construct a new dwelling or erect a new manufactured housing unit, financial assistance is granted on the date of final construction inspection and acceptance by the borrower and FmHA. Claims must be submitted by completing the designated form.

(5) Any obligation of the contractor to correct the defect(s) under a contractor's warranty must have expired, or the contractor is responsible for making corrections under the contractor's warranty but is unable or unwilling to do so.

(b) Subsequent owners of eligible dwellings or units who are also section 502 borrowers may be eligible to receive compensation for construction defects. These owners will be notified in accordance with § 1924.258 of this subpart. However, the claim for compensation must be filed in accordance with paragraph (a)(4) of this section within the 18-month period established for the original rural housing (RH) borrower.

§ 1924.266 Purposes for which claims may be approved.

(a) *Eligible purposes.* A claim may be approved to:

(1) Pay, or reimburse the borrower for costs already paid, to repair major structural defects which are completed in accordance with plans and specifications approved by FmHA. Repairs must be made by a reputable licensed contractor and a warranty covering the repairs will be issued by the contractor when the repairs are completed. Payment will be based on actual cost of the development and the borrower must provide evidence to reasonably establish the development cost. Workmanship and materials used in repairs must be consistent with the level of quality specified in the original dwelling or unit specifications and/or comparable to the items being replaced. Payment may be made:

(i) To cover damages which are a direct result of the defect to permanent enhancements made, such as landscaping, completion of unfinished living spaces, etc., of the dwelling or unit, installation or set-up of the unit, or related facilites, and

(ii) For costs approved by FmHA for professional reports by engineers, architects or others needed to determine cause of or means to repair the defect.

(2) Reimburse the borrower for funds expended for emergency repairs. Emergency repairs are those repairs necessary to preserve the integrity of the structure, to prevent damage or further damage to personal property or fixtures in the dwelling or unit and related facilities, or to prevent or eliminate immediate health hazards. Receipts or other evidence or borrower's expenditures must be provided.

(3) Acquire title to the property by the Government and, when appropriate, compensate the claimant for any loss of borrower contribution at the time the loan was closed. Conveyance of properties under this section will be handled in accordance with § 1955.10 of subpart A of part 1955 of this chapter.

(i) Before FmHA accepts a conveyance, the borrower must attempt to sell the dwelling or unit in accordance with § 1965.125(a) of subpart C of part 1965 of this chapter. If the property is sold, FmHA will:

(A) Pay the borrower's relocation expenses, including temporary living expenses as prescribed in paragraph (a)(4) of this section, until another suitable property can be located;

(B) Pay related sales expenses, as prescribed in § 1965.125(a)(2)(i) of subpart C of part 1965 of this chapter, if the property is sold for less than the debt against it;

(C) Release the borrower from personal liability for the remaining FmHA debt; and

(D) Process an application for a new RH loan if the borrower so desires and is still eligible for FmHA assistance.

(ii) Compensation for properties taken into inventory under this paragraph may not exceed the difference between the present market value of the security as established by the appraisal when the loan was made and the amount of the FmHA loan and any prior liens.

(iii) A borrower contribution which may be compensated for under this paragraph may be such things as:

(A) A borrower's land or cash contribution,

(B) Development work done by the borrower under the self-help program or borrower method of construction, the cost of which was not included in the loan funds,

(C) Attorney fees, abstract costs or title insurance costs actually paid by the claimant in connection with closing the loan.

(4) Pay or reimburse the borrower for temporary living expenses, miscellaneous expenses, storage of household goods and moving expenses incurred as a result of the defect.

(i) Payment under this paragraph may be made under either of the following circumstances:

(A) The property is acquired by the Government in accordance with subpart A of part 1955 of this chapter and FmHA determines that the dwelling is not habitable and the severity of the defect(s) prevents the property from being repaired and made suitable as a permanent residence for the borrower.

(B) The property is not acquired by the Government but FmHA determines that the dwelling is not habitable or must be vacated in order to repair the defects.

(ii) Claims for compensation under paragraph (a)(4) of this section are limited as follows:

(A) Compensation may be granted for temporary living expenses for not more than 45 calendar days per claim unless a longer period is authorized by FmHA. Compensation will be paid for actual cost to the claimant not to exceed the Government per diem rate for the area where the borrower's dwelling or unit is located. Reimbursement may be claimed for expenses such as food, lodging, laundering, etc., which would not have been incurred had the claimant remained in the house.

(B) Compensation may be granted for actual miscellaneous expenses not to exceed $200 to cover such items as utility connect and disconnect fees.

(C) Compensation may be granted for moving and storage expenses not to exceed $2,500 unless authorized by FmHA and not to exceed the actual cost of moving the claimant household with personal belongings a distance of not more than 50 miles from the original residence. Compensation for storage expenses may not exceed that amount paid to store household furnishings for 45 days.

(D) A strict accounting of the use of such funds must be maintained by the borrower and will be verified by FmHA.

(5) Compensate the claimant for reasonable interest paid on loans obtained for the sole purpose of correcting structural defects or other approved purposes under this section.

(b) *Ineligible purposes.* Compensation will not be granted for:

(1) Completion of a dwelling or unit or installation of materials/items required under the construction contract and/or specifications.

(2) Defective items which were not completed under the contract method and supported by a builder's warranty. Work performed under the borrower method or self-help program without a warranty by a responsible party is not eligible for compensation.

(3) Damage caused by defective design, workmanship, or material in making enhancements to or remodeling the dwelling or unit or related facilities which were not financed or approved by FmHA.

(4) The loss of past, present or future wages or salary directly or indirectly resulting from the defect.

(5) Treatment for physical or psychological damages including medical and dental claims.

(6) Death benefits or funeral expenses.

(7) Damages encountered as a result of war, civil disorder, flood, tornado, lightning, earthquake or acts of nature which the structure was not designed to withstand.

(8) Damages resulting from the homeowner's negligence or failure to properly maintain the property.

(9) Damage to personal property.

§§ 1924.267-1924.270 [Reserved]

§ 1924.271 Processing applications.

An application for compensation for construction defects shall be submitted by the claimant to FmHA on the designated form. The application shall be completed in its entirety. All structural defects and claims for which compensation is sought will be listed. Borrowers will be told not to incur any expenses for repairs or temporary living expenses, except for emergency situations, until funds have been allocated the request has been approved under § 1924.273 of this subpart.

§ 1924.272 [Reserved]

§ 1924.273 Approval or disapproval.

Claimants will be notified in writing of the decision on the claim within 60 days of the date the designated form is signed by the borrower. If the claim or any part of the claim is denied at any level, the claimant will be informed in writing of the reason(s) for the denial and advised of appeal rights in accordance with subpart B of part 1900 of this chapter.

§ 1924.274 Final inspection.

Except for emergency repairs, all repair work must be performed in accordance with subpart A of this part. In all cases, FmHA will make a final inspection of the repair work performed before final payment is made for the work.

§ 1924.275 [Reserved]

§ 1924.276 Action against contractor.

If FmHA pays for correction of construction defects which are the responsibility of the contractor, debarment proceedings will be initiated against the contractor in accordance with subpart M of part 1940 of this chapter (available in any FmHA office), even if the contractor has gone out of business, declared bankruptcy, cannot be located, etc. The debarment will be pursued in both the contractor's company name and the principal parties as individuals. If the manufacturer of the defective product is determined to be solely responsible, no action will be taken against the contractor. In such a case, debarment will be initiated against the manufacturer. An assignment of the borrower's claim against the contractor or other party will be obtained if it appears to the approval officials, with any necessary advice from the Office of the General Counsel, that recovery is reasonably possible.

§§ 1924.277-1924.300 [Reserved]

Dated: March 26, 1990.

LaVerne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 90-16966 Filed 7-19-90; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Parts 1930, 1944, 1951, 1955 and 1965

Rural Rental Housing Displacement Prevention

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its rural rental housing (RRH) and labor housing (LH) regulations which deal with prepayment of loans and incentives and other actions taken by the Federal Government to avert prepayment. The action is being taken to alleviate the problems caused by the displacement of tenants from projects after the FmHA loans are prepaid. An interim rule with request for comment dealing with the issue was published April 22, 1988, as mandated by the provisions of Subtitle C, "Rural Rental Housing Displacement Prevention," portion of the Housing and Community Development Act of 1987. Comments covered many issues and pointed to the need for change in many separate regulations. The intended effect is to publish a proposed rule with the suggested revisions and offer a new opportunity for comment.

DATES: Comments must be submitted on or before September 18, 1990.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration (FmHA), Room 6346, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit any comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Arlene Halfon, Senior Loan Specialist, Multiple Housing Servicing and Property Management Division, FmHA, Room 5329, South Agriculture Building, Washington, DC 20250, telephone (202) 447-3187.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions or significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under Nos. 10.427, Rural Rental Assistance Payments (Rental Assistance); 10.415, Rural Rental Housing Loans; 10.405, Farm Labor Housing Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 3015, subpart V, this program/activity is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (P.L. 96-354), the Administrator, FmHA, has determined that this action will not have a significant economic impact on a substantial number of small entities because only one to two hundred borrowers will likely attempt to prepay annually.

General Information

Background and Statutory Authority

The Housing and Community Development Amendments to the Housing Act of 1949, signed into law in 1979, and the Housing and Community Development Act of 1980, interpreted in § 1965.90 of subpart B of Part 1965 of this chapter, provided that FmHA Section 514 and Section 515 Multi-Family Housing borrowers who received loans prior to December 21, 1979, and who have not subsequently become subject to restrictions due to specified servicing actions, may prepay their loans and remove their housing from the low- and moderate-income market with minimal restrictions. Those who received loans on or after December 21, 1979, are only eligible to prepay after their restrictive-use requirements expire in either 15 or 20 years from the date of the loan or the servicing action. In some areas of the country, prepayment of loans was leading to severe problems for displaced tenants and threatened to lead to acute housing shortages for low- and moderate-income people. To keep these problems from growing severe, FmHA, in June 1987, issued revised regulations to ease the burden of displacement on tenants. There were several legislative-mandated moratoriums on prepayment and the latest legislative action on this issue was the passage of the Housing and Community Development Act of 1987. This law included provisions dealing with "Rural Rental Housing Displacement Prevention." As part of the law, Congress mandated that FmHA issue regulations to carry out the legislation within 60 days of enactment. This was done by an interim rule with request for comments, published on April 22, 1988 (53 FR 13244). This proposed rule addresses all the comments, provides additional guidance to field offices on implementation of the law, and makes changes in additional regulations which the law impacts and/or in which changes must be made to be consistent with these provisions.

Since an interim rule is already in effect, this proposed rule would primarily clarify procedures in the interim rule and not make any additional major changes. This proposed rule differs from the interim rule, however, in that:

1. An entirely new subpart E to part 1965 will deal with all prepayments of multi-family housing loans.

2. Several regulations are being changed to bring their provisions into compliance with the prepayment requirements. These regulations include:

Subpart C of Part 1930 including Exhibits B and E dealing with rent increases and rental assistance; subpart D of Part 1944 dealing with Labor Housing; subpart E of Part 1944 dealing with rental housing loan making; subpart L of part 1944 dealing with Tenant Greivances and Appeals; subpart F of part 1951 dealing with graduation; subpart N of part 1951 dealing with unauthorized assistance; and subpart B of part 1965 dealing with transfers, reamortizations and payments in full.

3. Subparts A and C of part 1955 dealing with foreclosures and sale of inventory property are being amended to provide the same protections to tenants in foreclosed and inventory projects as are provided in prepaying projects. Guide acceleration notices are being published for comment. However, since they will be guides only, comments will be analyzed but the letters will not be published as part of the Code of Federal Regulations.

4. Guide notification letters to tenants, and a checklist of prepayment request items (Guide Letters 1965-E-1 through E-5, Exhibit C of 1965-E, "Checklist for Requesting Prepayment," and Acceleration Letters 1955-A-1 and 1955-A-2) are being published for comment. However, the final versions of these items will not be published as part of the Code of Federal Regulations.

A summary of the comments received to the interim rule and the decisions made follow.

Fifteen comments were received to the interim rule: Eight from tenant advocacy groups (one submitted two comments); four from borrowers or borrower organizations; one from an FmHA employee; one from a State housing agency; and one from an individual whose affiliation is unknown. Most comments were quite lengthy and covered a multiplicity of issues.

There were many comments pointing out discrepancies between FmHA Instruction 1965-B, Exhibit E, which was the regulation dealing only with prepayments for borrowers not subject to restrictive-use provisions, and existing prepayment regulations. Exhibit E had been published as a separate entity in order to have the emergency procedure by mandated timeframes. It is now being merged with the other procedure and discrepancies are eliminated.

A borrower organization suggested that the requirements for a complete prepayment request were unclear and a checklist should be provided. This has been done and is shown for comment purposes only as Exhibit C to FmHA Instruction 1965-E.

It was suggested that FmHA must determine an owner's ability to prepay before any tenant notifications, offers of incentive or further consideration of the prepayment request is made. The evidence necessary to make this determination has been made part of the original prepayment request. No request will be considered nor notifications sent until it has been demonstrated that the borrower has the ability to prepay the loan. On the other hand, a borrower organization felt that, within the constraints of the new law, the possibility of prepayment could never be demonstrated. In response to suggestions, we provided, as part of the checklist in Exhibit C, several alternative means of providing evidence of the ability to prepay.

A borrower organization suggested that incomplete prepayment requests should be placed on the list but not acted upon until complete information is received. We did not follow this suggestion; it would be too cumbersome to keep track of the status of incomplete requests and all borrowers should be treated equitably. In addition, the law is clear that benefits will accrue to those wishing to prepay in the order in which a (complete) request is received.

One comment said that the information for the prepayment report needed to be more thoroughly documented for accuracy. We feel that by listing required information to be submitted as a full prepayment request on the recommended checklist, this problem was resolved.

There were many comments concerning the notification to tenants. These dealt with tenant notifications prior to the determination that the prepayment request was complete and accurate; tenants not being kept advised of the status of the prepayment request; tenants not being advised of the conditions under which prepayment is being accepted; tenants not being advised of appeals by the borrower concerning the request; and tenants not being given sufficient information about other projects and their rights to move to them and keep their rental assistance. No one suggested that tenants should not be notified until after the decision on

the acceptability of prepayment was made; it was probably recognized that this would be in violation of the law. The guide notification letter (FmHA Guide Letter 1965-E-3) had always been intended to serve as a guide, but suggested that appropriate modifications must be made for unique circumstances. This letter has been revised, however, to give better guidance to the District Offices on tenant notifications to cover all the suggested points. The procedure also now requires that two letters be sent: one (FmHA Guide Letter 1965-E-3 is a guide), advising of the request to pay and of actions FmHA must take before prepayment is accepted and, a second (FmHA Guide Letter 1965-E-5 is a guide), advising when and the conditions under which prepayment will be accepted. The notice to tenants advising that prepayment has been accepted (FmHA Guide Letter 1965-E-2) now is more explicit as to protections that remain after prepayment, and advise where specific definitions of these restrictions may be found. The procedure mandates that tenants must be fully advised of the status of prepayment requests and the decisions being made at all points in the process. A Guide Letter of Priority Entitlement (LOPE) in FmHA Guide Letter 1965-E-4 is now also provided. All guide letters written for tenants (FmHA Guide Letters 1965-E-2, 1965-E-3, E-4, and E-5) are now written in plain language which should be more comprehensible.

One comment said that "Letter of Entitlement" was being used interchangeably with "Letter of Priority Entitlement" (LOPE). Another stated that "public agency" was not always included with "non-profit corporation." The wording has been made consistent in both cases.

One comment felt that tenants should be able to utilize their LOPE letter indefinitely. We did not accept that suggestion. It was felt that at some point, FmHA should no longer be involved with a project which has prepaid, or with the tenants living at the project, so long as the prepayment was properly accepted.

Several tenant advocacy groups felt that the law states that all borrowers who submit legitimate requests to prepay must be offered incentives prior to any determination as to whether the prepayment may be legally accepted. The initial interim rule put the determination of eligibility to prepay the loan and its possible acceptance prior to the offering of any incentives. It was felt that this was a legitimate reading of the law and so change to the interim rule was written to accomplish this. The suggestion was also followed for this proposed rule. However, it was felt that the outcome wouldn't be much different since most borrowers probably decide prior to making a request whether they would accept an incentive or preferred to prepay with a restriction in their releases. It should be noted that the incentive offer when repayment without restrictions would be legally acceptable or when the borrower is willing to accept restrictions, could be minimal. In fact, one comment noted that the incentive offer could be continually renegotiated at various points in the process in order to try to induce the borrower to maintain the housing in the program. FmHA felt that this would lead to "negotiable" offers and "negotiable" responses and a good deal of "bargaining" rather than best offers and honest responses. There is now provision for the incentive offer to be modified and the borrower to reconsider the incentive offer, after the determination has been made by FmHA as to whether the prepayment offer may be accepted. (§ 1965.215(f))

An FmHA employee wondered how transfer of Rental Assistance (RA) across State lines would be accomplished. If a displaced tenant with RA moves to a project in another State, the unit of RA the tenant was receiving would be transferred to another project in the same State at the State Director's option. A unit of RA for use by the tenant would be assigned to the project to which the tenant was moving from the National Office reserve.

A tenant advocate suggested that prepayments should not be accepted with restrictive-use restrictions unless the borrower can prove that rents can be maintained at their current level without the FmHA subsidy. It was determined that, if the borrower accepts the restriction in the deed of release, FmHA must assume the borrower can comply with the legal obligation. It was felt that so long as tenants were advised that the restrictions were in effect, that tenants and tenant advocacy groups would enforce these provisions. We are, therefore, requiring that tenants be notified of any conditions which make the prepayment acceptable. It was pointed out that a temporary rent subsidy or an "agreement" not to raise rents is not sufficient for acceptable of prepayment. This has been clarified in the procedure. (§ 1965.215(b)(4)).

Most of the tenant advocates wanted to be certain that displacement was defined to include rents which were not affordable, and that all decisions be based on the availability of affordable rents at the project or in the larger community. "New or increased rent overburden" was added to all places where necessary to define displacement: the definition of "displacement" itself; explanations of restrictive-use clauses; evaluations of affordable housing in the community; etc.

One comment noted that the 180-day notifications period could be waived if there were no adverse effects on tenants in accepting the prepayment sooner, but that "adverse effects" was not defined. We have now states that the lease with current rents and conditions must be extended for the period ending no sooner than 180 days from the date an acceptable complete prepayment request is received. (§ 1965.215(e)(2)).

Many of the comments stated that there was not enough direction being given to District Offices in making many of the determinations: On whether prepayment could be accepted; whether safe, decent and affordable housing is available in the market area; on the extent of the incentive offer; how to determine impact on minorities; how to ensure that rental housing will be made available to each tenant upon displacement; how to determine the market area. It was suggested that better guidance be given in the regulation, that a computer model be established, that an expert be hired to make these decisions, and that an all-inclusive matrix be generated, among other suggestions.

Guidelines in each of these areas have been spelled out in the following sections:

Whether prepayment may be accepted: (§ 1965.215(b);

Whether safe, decent, and affordable housing is available in the market area: § 1965.215(b)(1)(iii);

Extent of the incentive offer: § 1965.213 and Exhibit D of 1965-E;

Determination of impact on minorities: § 1965.215(b)(2);

Ensuring availability of housing for displaced tenants: § 1965.215(d) (3) and (4);

The market area is being defined as the area which would be used in a current initial market analysis for the project: § 1965.202.

A model was developed and is being presented as Exhibit D to 1965-E for determining the present value of foregone profits and lost opportunities for other investments to be used in setting the incentive offer. We particularly invite comments and suggestions to this model and invite suggestions for alternative methods for determining the incentives to be offered.

The model provides for three levels of incentives based on calculated financial loss to the borrower by keeping the project in the FmHA program for an additional 20 years. These levels are: (1) Those borrowers for whom conversion to conventional housing would allow them to receive rents in excess of those currently being received for the FmHA project (the model utilizes FmHA rents that are those based on the Note Rate of interest, and not 1 percent, since those are the rents being received by the borrower, whether from the tenant or through FmHA subisdy); (2) those borrowers who could not receive higher rents in the conventional market than they could from FmHA but could still make a profit in the conventional market; and (3) those borrowers who could not receive higher rents nor make a profit by converting to conventional housing but are being reimbursed for the commitment to maintain their housing in the FmHA program for 20 years. The model provides for a method of calculating present value of foregone profit and foregone opportunity and distributes this value, with a predetermined formula, between equity loans and increased return on investment.

In response to the suggestion that the rationale for all decisions be well-documented, this was included in the instruction. (§ 1965.213(b) and 1965.215(a).)

One comment was that there was no provision in the law for looking at the local market when determining which incentive to offer. We felt the law supports our interpretation by talking about fair return on investment and least costly alternative. These evaluations can only be made by looking at the housing market and alternative uses for the housing in the local economy.

Several borrower organizations felt that limiting the increased return on investment to 10 percent of initial contribution would be unfair in inflated economies. We have changed the maximum return on investment to two percentage points (rounded to the nearest .25 percent) above the 30-year treasury note rate at the time the incentive offer is made. The basis for the return could be increased to the borrower's equity in the project at the time any incentive, including an equity loan is made. (§ 1965.213(a)(3).)

Two tenant advocacy agencies felt that relatives costs of transfers to non-profits must be evaluated prior to the offer of an incentive. They wished us to include costs of a new transfer in 20 years, local tax incentives to non-profits, and tax credits to profit-motivated transferees. It is clear that the law provides for incentives to current borrowers to be offered before any consideration of sale to non-profits, and indeed it is possible that, if the suggestion were followed, FmHA would offer an incentive which is lower than the borrower will accept and for some reason no sale to a non-profit will take place. In addition, there is no way FmHA offices could make accurate decisions based on possible future sales and tax law. This suggestion was therefore rejected.

One comment said we should clarify that in the case of an equity loan with transfer to avert prepayment, National Office approval for the loan is not required. This has been done. (§ 1965.65(b)(3).)

One borrower felt that those who requested prepayment during the moratorium period should be given priority for funding. Priorities for funding are determined by law. Those who legitimately tried to prepay during or before the moratorium, however, did not have to provide additional evidence that it was a legitimate prepayment request and, because alternative uses were apparent, would be offered the maximum level of incentive. In addition, this would no longer be relevant by the time this final rule is published. Other commenters felt that we should clarify that incentives and sales to non-profits would be prioritized by date of initial application. We felt that keeping this priority but maintaining it only for those ready to be processed would be the only way to ensure the use of all funds and not hold up processing loans while waiting for those with earlier requests to complete the process if they were unduly slow.

There were several suggestions that tenants be given the right to appeal acceptance of prepayment and rent increases, and not just to request a review of the decision. Tenants are given the right to comment prior to acceptance of the prepayment, and a prepayment should not have been accepted if there would be significant negative impact on tenants. We have now more clearly defined displacement and availability of alternative housing by using rent/income guidelines, so the decisions by FmHA should be less subjective.

The review allows for the determination of improper procedures in accepting prepayment. (§ 1965.215(d)(3)(ix)) Similarly, a review is allowed for rent increases due to prepayment as it is for all other rent increases. (§§ 1965.204(b), 1965.214(f), and 1965.217(e)(3)) Tenants will be advised of, and allowed to participate in, any borrower appeals. (§ 1965.206(b)(2)(vii))

There was some confusion on the use of the varying restrictive-use provisions. We think these uses are now clearer; an explanation for the use of each restriction, along with the restrictive-use clauses themselves are all placed in Exhibit A to FmHA Instruction 1965–E. There are separate restrictions for borrowers who become subject to restrictive-use provisions: (1) At loan making or servicing action (Exhibit A–1); (2) when they accept an incentive to not prepay (Exhibit A–1); and (3) when they purchase a prepaying project with full equity as a non-profit organization (Exhibit A–2). There are also restrictions for prepaid loans that: (1) had been subject to prepayment restrictions prior to the prepayment (Exhibit A–3); and (2) accepted one of three sets of restrictions in order to be allowed to prepay (Exhibits A–4).

Several comments noted that the restrictive-use provisions state that only tenants may enforce the provisions, although the law specifies that the housing must be maintained for the intended purpose for tenants and those who wish to occupy. This has been added in all places in the provisions to which it applies.

It was suggested that we not allow owners to provide incentives to protected tenants to move when the restrictive-use provisions would not be protecting new tenants to the project. We did not include such a provision because it would be too difficult to monitor. However, where restrictive-use provisions and/or outside subsidies would protect tenants for at least 2 years, LOPE letters and the ability to transfer RA will not be available, so as not to give priority to other projects to tenants who clearly do not need such a priority, and therefore reduce the supply of housing for tenants who do need it. This will make it more difficult for prepaying borrowers who accept restrictive-use provisions in order to prepay to induce affected tenants to leave. (§ 1965.215(d)(3)(vii))

It was felt that it should be clear that restrictive-use provisions restrict rents. It has been added that these provisions provide that rents cannot create new or increased rent overburden in accordance with FmHA procedures. (§ 1965.202)

Comments were received about appraisals dealing with "highest and best use" vs. "use of subsidized housing." All appraisals must be performed in accordance with FmHA procedure, which specifies that value will be determined based on intended

use, which is as rental housing. The property's best use as rental housing will determine the appraised value. One FmHA employee felt that appraisals for incentive equity loans should be contracted out since appraisals for sales to non-profits are. The law requires that appraisals for sales to non-profits be contracted out; there is no such requirement for incentive equity loans and at this time, we will continue to contract or do appraisals ourselves, based on the State's discretion. This may change in the future if it becomes more cost-effective to contract for all appraisals.

There were many comments from tenant advocacy groups dealing with eligibility and priority of competing non-profit organizations. The McKinney Homeless Act (P.L. 100–268) has also further defined eligible non-profit and local non-profit for the purposes of this regulation. Suggestions included limiting eligible non-profits to those which are broad-based, those whose primary mission is providing low-income housing, those (though defined as Regional) located closer to the project, and those with no identity of interest with the seller. All these suggestions, to a greater or lesser extent, some in compliance with the language of the new legislation, are included in the regulation. It was also suggested that unless purchase offers are not all for the same amount, FmHA, rather than the seller, should choose the purchaser, that only tax exempt non-profit organizations be eligible for these loans, and that only organizations where 50 percent of the Board of Directors are eligible to be tenants should be eligible purchasers. Except as determined by law or regulation, FmHA cannot choose between two similar entities. We also did not choose to limit eligibility to the extent suggested. A suggestion that a transferee not chosen by the borrower have appeal rights was not accepted, since this would not be a governmental decision.

It was suggested that the non-profit transferee must show feasibility for the project. Alternatively, it was suggested that feasibility of the project is not an issue since debt forgiveness must be available to all tenants. This has been clarified, with feasibility remaining important due to vacancy factors. In addition, we must be certain that RA is available to every tenant or prospective tenant who will need it, before deciding to fund a transfer and equity loan.

Other suggestions by both tenant and borrower organizations dealt with requirements for advertising and outreach to non-profit organizations, with tenant groups suggesting that borrowers must make greater outreach efforts, and borrower groups suggesting that non-profit organizations that are interested should be required to keep in contact with the District Office to get information on potential sales. It was also felt that non-profits (especially local ones) should be notified earlier (before the incentive offer is accepted or rejected) so they would have enough time to decide whether they wished to purchase. We kept all these requirements as they were. Non-profits who inform FmHA that they wish to be notified are notified when the prepayment request is received. There is no reason for any additional time to be given for any of the specific actions. Priority for purchase goes to local non-profit organizations even if their offer is received after advertising begins to regional and national organizations, so long as sufficient time has elapsed before advertising to the latter begins and a purchase offer has not yet been accepted by the borrower.

There were comments from tenant advocates and borrowers about the timelines for the steps in the process. Most said that they were not sufficient time limits for most of the process. Some misunderstood the timeframes already in the regulation. Several tenant advocates felt that the regulation would allow borrowers to prepay by delaying the various steps in the prepayment process, and thereby circumvent the 180-day period of sale to non-profits, or by waiting until a 15-month period with no funding was about to end and thereby prepaying without having to go through the remainder of the process. One believed that the 60-day priority for an offer by a local non-profit was not sufficiently long to complete the process. None of these events are actual possibilities and the first of these has been clarified in the regulation. Borrowers must advertise their projects for sale for a full 180-day period, not just advertise until the 180-day tenant notification period ends. The 180-day tenant notification period remains in effect even if the prepayment request takes place near the end of a 15-month period with no funds, and the offer of incentives must be made and rejected before a prepayment may be accepted. It is possible for funding to become available again while the borrower is at any point in this process. The 60-day advertising period to local non-profits only need be sufficient time to receive an offer, not to process the entire transfer. Time limits were added at all stages of the regulation, including the length of time a borrower may wait to prepay after a prepayment is accepted, without having the acceptance automatically withdrawn.

Both borrower and tenant groups objected to the manner in which we would allow prepayment if no funds had been available for a 15-month period. It was suggested that any one borrower need only be on the list 15 months, regardless of whether other borrowers were being funded and that, conversely, any one borrower must be on the list for a minimum of 15 months during periods when funding was available. Both opposing positions quoted from the house conference report to support their opinions. We were guided by the wording of the law and kept this requirement the way it had been in the interim rule.

It was pointed out that our method for handling debt forgiveness did not meet the requirements of the law in that not every tenant would be subsidized for all amounts above 30 percent of adjusted income. In the interim rule, it would have been impossible to handle it in the manner suggested due to the way the subsidy (debt forgiveness) was described in the HCD Act of 1987. The 1989 Congressional Appropriations Act (Pub. L. 100–460) has redefined debt forgiveness so that it may not be handled as RA and so all tenants will be protected in the way the law intended. (§ 1965.217(f))

One suggestion was that the owner who accepts 20 year restrictive-use provisions in order to prepay should be allowed to sell to a non-profit organization in less than 20 years. We did not accept any suggestions which would require that FmHA make equity loans earlier than required in order to maintain the housing; this would not be a cost-effective use of funds. We did allow, however, that non-FmHA owners with restrictive-use clauses need not try to sell their projects to a non-profit organization until they intended to take their housing out of the low- and moderate-income program if this occurs after the expiration of the 20-year period. (§ 1965.215(c)(1)(i) and Exhibit A–4(A))

Many comments of tenant advocates concerned lease guarantees and continued monitoring of compliance with restrictive-use provisions after the prepayment. It was also suggested that there be mandated lease clauses after prepayment spelling out rent and restrictive-use provisions and that addenda to leases of tenants entering the project after the prepayment request was received specify the status of the prepayment. We adopted the latter two recommendations. District Directors will

approve lease language advising tenants of any pending prepayment or operable restrictive-use provisions. (§§ 1965.206(b)(5) and 1965.215(d)(5)) However, restrictive-use will not continue to be monitored by FmHA. Tenants are advised of the restrictions, notices will be posted, and lease provisions will be approved by FmHA. We feel that by advising enough tenants and advocacy groups there will be sufficient oversight at the projects.

Several comments noted that the regulations do not protect tenants of projects in FmHA inventory, and there is no mention of projects in areas that are no longer defined as rural. We have modified all relevant procedures so that tenants are protected from government actions (accelerations, foreclosure, sale of inventory property) as they would be in voluntary borrower-prepaid projects. (§§ 1955.10(h)(6), 1955.15, 1955.18, FmHA Guide Letters 1955-A-1 or 1955-A-2, 1955.107, 1955.114(b), 1955.115(b) and 1965.203) All FmHA-funded projects are covered by these restrictions, whether in areas currently defined as rural or not.

One comment felt that post-1979 projects should be made subject to these same provisions since they probably will be when their restrictive-use provisions expire. We felt it was premature to do this since it would be 10 years before the problem could arise, and there may be Congressional action negating such regulations before then or requiring different sets of restrictions. The unilateral imposition of such restrictions by FmHA would be illegal since they would violate existing agreements without force of law.

A tenant advocacy group recommended that procedure state that reserve accounts must be transferred with the project. This has been clarified. (§§ 1965.214(h)(4) and 1965.217(e)(5))

It was pointed out that FmHA does not have sufficient procedures for its field staff to process subsequent loans, and this additional use of subsequent loans both as incentive equity loans and with the transfers to the non-profits would make codification of such procedures mandatory. We have fully stated the requirements for the loan application packages for both types of subsequent loans. (Exhibit A-9 to 1944-E and § 1965.65(f)(13))

There were general comments that the regulation is too confusing and complicated. We feel this problem has been somewhat alleviated by integrating the procedures for pre-December 21, 1979, loans and post-December 21, 1979, loans in one procedure. The procedure remains complex, however, because we are interpreting a highly complex and confusing law and trying to give adequate guidance to our field staff to carry out this law.

Many borrowers commented that the law and the regulation violates their loan agreements and were probably unconstitutional. FmHA cannot make decisions about the constitutionality of any laws. We were mandated by Congress to implement the Housing and Community Development Act of 1987 and this procedure does that.

There were also comments from tenant advocates and State agencies praising the effort to preserve low-income housing despite the expense of implementing the law and the complexity of the regulation.

There were several comments which either did not deal directly with the regulation, or apparently totally misinterpreted provisions of the regulation. Where the connection to the regulation could not be determined, there is no response to these comments.

List of Subjects

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low- and moderate-income housing—Rental, Reporting and recordkeeping requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low- and moderate-income housing—Rental, Mobile homes, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing, Farm labor housing, Grant programs—Housing and community development, Migrant labor, Public housing.

7 CFR Part 1951

Loan programs—Agriculture, Rent subsidies, Rural areas, Subsidies.

7 CFR Part 1955

Foreclosure, Government acquired property, Sale of government acquired property, and Surplus government property.

7 CFR Part 1965

Administrative practice and procedure, Low- and moderate-income housing—Rental, Mortgages, Prepayment, Tenant protections, Restrictive-use provisions.

Accordingly, FmHA proposes to amend Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1930—GENERAL

1. The authority citation for part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. Section 1930.124 is amended by removing "or" at the end of paragraph (a)(1)(v), by removing the period at the end of paragraph (a)(1)(vi) and adding, ", or", and by adding paragraph (a)(1)(vii) to read as follows:

§ 1930.124 Borrower budgets, reports, audits and analysis.

* * * * *

(a) * * *

(1) * * *

(vii) a transfer and subsequent loan to a non-profit corporation in order to avert prepayment.

* * * * *

3. Exhibit B to subpart C is amended by removing "§ 1965.90 of Subpart B of Part 1965 of this chapter" and adding "subpart E of part 1965 of this chapter" and paragraph XI to read as follows:

Exhibit B to Subpart C—Multiple Housing Management Handbook

* * * * *

XI. Rent Changes

It may be necessary as operating costs and/or revenues fluctuate to consider a change of rental rates to keep the project viable. Rent changes may also be necessary when loan amounts are increased to avert prepayment. Before any change of rental rates may occur, prior written consent of FmHA is required. The procedure to request and implement a rent change is specifically covered in Exhibit C of this subpart.

* * * * *

4. Exhibit E to subpart C is amended by adding a new paragraph II I, by redesignating paragraphs IV B 1 through 3 as paragraphs B 2 through 4, by adding a new paragraph IV B 1, by amending paragraph V A 2 to change the reference from "paragraph V C 5" to "paragraph V D 5," by redesignating paragraph V C and V D and adding a new paragraph V C, by revising newly redesignated paragraphs V D 5 b (3) and V D 5 c, by revising paragraph XI B 1 introductory text, by redesignating paragraphs XI B 1 a and b as paragraphs XI B 1 b and c, by adding a new paragraph XI B 1 introductory text and a, by revising paragraph XV B 3 b introductory text, and by redesignating paragraph XV B 3 c as paragraph XV B 3 e, and adding new paragraphs XV B 3 c and XV B 3 d to read as follows:

Exhibit E to Subpart C—Rental Assistance Program

* * * * *

II. * * *

I. *Debt Forgiveness RA.* RA allocated to projects purchased by non-profit corporations and public agencies to avert prepayment in an amount necessary to ensure that the monthly shelter payment made by each low-income family or person residing in the housing does not exceed the maximum shelter payment calculated in accordance with paragraph IV A 2 c of Exhibit B of this subpart. These units come from a different line item appropriation than regular RA.

* * * * *

IV. * * *

B. * * *

1. *Special Allocations.* If a unit of RA is to be allocated to a project to which a displaced tenant with a Letter of Priority Entitlement from another State is moving, the unit will be allocated to the appropriate State and the State Director will be advised of the project to which the unit should be assigned, in accordance with § 1965.215(d)(4)(v) of subpart E of part 1965 of this chapter.

* * * * *

V. * * *

C. *Debt Forgiveness RA.* Any project sold to a non-profit corporation or public agency to avert prepayment will receive the number of debt forgiveness RA units necessary to provide RA to all current or potential tenants who will be overburdened as a result of the sale.

D. * * *

5. * * *

b. * * *

(3) Third two digits—will always be 00.

c. The AMAS system will track RA and debt forgiveness RA agreements by number.

* * * * *

XI. * * *

B. * * *

1. First priority for assigning RA must always be given to eligible very low-income households or tenants with Letters of Priority Entitlement (LOPE) in the following order:

a. Tenants displaced due to prepayment or liquidation who have been issued a LOPE letter with RA priority rights.

* * * * *

XV. * * *

B. * * *

3. * * *

b. When a tenant receiving RA is, or will be, displaced from an FmHA project due to prepayment or liquidation, the RA the tenant was receiving will be transferred, or suspended and transferred, to any other FmHA project, regardless of location within the State, to which the displaced tenant moves. That tenant will be given first priority for a unit of RA, regardless of other priorities for the RA, if all the following conditions are met:

* * * * *

c. When a tenant receiving RA is, or will be, displaced from an FmHA project due to prepayment or liquidation and moves to an FmHA project in another State:

(1) The RA the tenant was receiving will be suspended and transferred to another project within the same State at the State Director's discretion; and

(2) If the project and tenant meet the criteria outlined in Paragraph XV B 3 b of this Exhibit, the project to which the tenant moves will be allocated a unit of RA by the National Office, if none is available within the State, and assigned to the displaced tenant is accordance with Paragraph XI C of this Exhibit.

d. If a project is transferred to a non-profit organization to avert prepayment, RA on the project may be suspended and transferred to another project within the State, and all RA needs for the project met with debt forgiveness RA.

* * * * *

PART 1944—HOUSING

5. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

6. Section 1944.158 is amended by adding paragraph (n) to read as follows:

§ 1944.158 Loan and grant purposes.

(n) To make "advances" in accordance with § 1965.217(d) of subpart E of part 1965 of this chapter to non-profit corporations and public agencies to avert prepayment of the loan.

7. § 1944.164(n) is amended in the title by adding the word "American" after the word "to".

8. Section 1944.164 is amended by revising the last sentence of paragraph (o) and the title of paragraph (p) to read as follows:

§ 1944.164 Limitations and conditions.

* * * * *

(o) *Refinancing LH loans.* * * * The provisions of part E of subpart 1965 of this chapter must be followed before the State Director can approve or accept prepayment or refinancing of the FmHA loan.

(p) *Restrictions on use of LH loan.* * * *

* * * * *

9. Section 1944.171 is amended by adding two sentences following the table in paragraph (d) to read as follows:

§ 1944.171 Preparation of completed loan and/or grant docket.

* * * * *

(d) * * *

For equity loans to be used as incentives to avert prepayment, follow directions in Exhibit A-9 of subpart E of part 1944 of this chapter. For subsequent loans in conjunction with transfers to non-profit corporations or public agencies to avert prepayment, follow the directions in § 1965.65(f) of subpart B of part 1965 of this chapter.

* * * * *

10. Section 1944.176 is amended by revising paragraph (c)(2) to read as follows:

§ 1944.176 Loan and/or grant closings.

* * * * *

(c) * * *

(2) For all LH loans, the following language shall be included in the mortgage:

The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in section 514 of Title V of the Housing Act of 1949 and FmHA regulations then extant during this 20 year period beginning _____ (the date the last loan on the project is closed). No eligible person occupying the housing shall be required to vacate nor shall any eligible occupant be denied occupancy, prior to the close of such 20 year period because of early prepayment. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing or that Federal or such other financial assistance provided to the residents of such housing will no longer be provided due to no fault, action, or lack of action on the part of the borrower. A tenant or individual wishing to occupy the housing may seek enforcement of this provision as well as the government.

* * * * *

Subpart E—Rural Rental Housing Loan Policies, Procedures and Authorizations

11. Section 1944.211 is amended by redesignating paragraphs (a)(10) through (a)(12) as (a)(11) through (a)(13) and adding a new paragraph (a)(10), and revising newly redesignated paragraphs (a)(11)(ii) introducing text and (a)(11)(ii)(B) to read as follows:

§ 1944.211 Eligibility requirements.

(a) * * *

(10) In the case of non-profit corporations to which projects are transferred and which receive subsequent loans to avert prepayment, meet the requirements of § 1965.216(c) of subpart E of part 1965 of this chapter.

(11) * * *

(ii) If operating in more than one community or on a county or regional basis and providing or planning to provide rental housing in more than one community, meet the following requirements in addition to those in paragraph (a)(11)(i) of this section with the exception of paragraph (a)(11)(i)(C) of this section:

* * * * *

(B) The organization's articles of incorporation and bylaws must include the requirements outlined in paragraph (a)(11)(ii)(A) of this section.

* * * * *

12. Section 1944.212 is amended by adding a new paragraph (p) to read as follows:

§ 1944.212 Loan purposes.

* * * * *

(p) Loan for "advances" to non-profit corporations or public agencies for indirect costs to develop an application package to purchase a project to avert prepayment.

13. Section 1944.213 is amended by adding a last sentence to paragraph (a)(1), by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), and by adding a new paragraph (a)(3) to read as follows:

§ 1944.213 Limitations.

(a) * * *

(1) * * * If the loan is made along with a transfer to avert prepayment, the loan may include the cost of developing the application up to a maximum of $10,000 in accordance with § 1965.217(d) of subpart E of part 1965 of this chapter.

* * * * *

(3) For equity loans to avert prepayment, the difference between 90 percent of appraised value of the project and current unpaid balance(s).

* * * * *

14. Section 1944.215 is amended by revising the last sentence in paragraph (e), revising paragraph (h), revising the introductory text of paragraph (l), adding a new paragraph (l)(3), and revising paragraph (p)(2) to read as follows:

§ 1944.215 Special conditions.

* * * * *

(e) * * * The refinancing of a loan must comply with the restrictions indicated in § 1944.236(b)(5) of this subpart, subpart F of part 1951 of this chapter, and subpart E of part 1965 of this chapter.

* * * * *

(h) *Nondiscrimination in use and occupancy.* The borrower will not discriminate or permit discrimination by any agent, lessee or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, age, sex, marital or familial status, mental or physical handicap or national origin, in accordance with subpart E of part 1901 of this chapter.

* * * * *

(l) *Establishing profit base on initial investment.* Applicants agreeing to operate on a limited profit basis will be permitted a return not to exceed 8 percent per annum on their initial investment determined at the time of loan approval. For equity loans to avert prepayment, the rate of return may be set in accordance with § 1965.213(a)(2)(iii) of subpart E of part 1965 of this chapter. This amount will be reflected in the loan agreement or loan resolution and will not be changed once it is determined. The initial investment may exceed the required 3 percent in § 1944.213(a)(3) of this subpart and may include the following:

* * * * *

(3) In the case of borrowers who have received incentives to avert prepayment, the value of the borrower's initial investment may be considered to include all equity above total upaid balance of all loans including the equity loan.

* * * * *

(p) * * *

(2) Project locations should promote an equal opportunity for the inclusion of all groups regardless of race, color, religion, sex, national origin, age, marital or familial status or physical or mental handicap thereby opening up nonsegregated housing opportunities for minorities.

15. Section 1944.236 is amended by revising paragraph (b)(5) and adding new paragraphs (b)(6) and (b)(7) to read as follows:

§ 1944.236 Loan closing.

* * * * *

(b) * * *

(5) For all section 515 RRH loans, the following language will be included in the mortgage:

The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in section 515 of title V of the Housing Act of 1949 and FmHA regulations then extant during this 20-year period beginning _____ (the date the last loan on the project is closed). No eligible person occupying the housing will be required to vacate nor any eligible applicant denied occupancy for housing prior to the close of such 20-year period because of early prepayment. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing or that such other financial assistance provided to the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower. A tenant or individual wishing to occupy the housing may seek enforcement of this provision as well as the Government.

(6) In the case of loans for equity, or subsequent loans to non-profit organizations to whom projects were transferred to avert prepayment, the provisions of Exhibit A-1 or A-2, as appropriate, of subpart E of part 1965 of this chapter will be used instead of the restrictions cited above.

(7) Loan transfers and closing to non-profit corporations or public agencies to avert prepayment will be handled in accordance with § 1965.217(e) of subpart E of part 1965 of this chapter.

* * * * *

16. Section 1944.237 is amended by revising paragraphs (a) and (e) and adding (f) and (g) to read as follows:

§ 1944.237 Subsequent RRH loans.

(a) A subsequent RRH loan is a loan made to an applicant/borrower to complete, improve, repair and/or expand the project initially financed by FmHA, or for equity and other purposes, when authorized by §§ 1965.213(a)(1) or 1965.217(d) of subpart E of part 1965 of this chapter, to avert prepayment.

* * * * *

(e) A subsequent loan will be subject to the restrictive-use provisions cited in § 1944.236(b)(5) of this subpart, except when the loan is made for equity and other purposes to avert prepayment. In the latter case, the provisions of Exhibits A-1 or A-2 of subpart E of part 1965 of this chapter will be used, as appropriate. The cited language for the subsequent loan only must be appended to the mortgage referencing all notes for a term beginning on the date of the loan closing. The advice of OGC should be sought in carrying out the provisions of this paragraph.

(f) See Exhibit A-9 of this subpart for directions on making incentive equity loans to avert prepayment.

(g) Applicants for loans along with transfers to non-profit corporations and public agencies to avert prepayment should follow § 1965.65(f) of subpart B of part 1965 of this chapter.

17. A new Exhibit A-9 is added to subpart E to read as follows:

Exhibit A-9 to Subpart E—Loans for Equity to Avert Prepayment

To apply for an equity loan to avert prepayment, the borrower should submit the following items in accordance with Exhibit A-6 and this Exhibit:

1. Form AD-625 with a narrative discussion of the borrower's equity loan request,
2. Current Financial Statement,
3. Proposed budget showing anticipated rents to cover revised financing package, including updated figures on required reserve contributions and return on investment (if any),
4. Data on current tentants' income, rents and RA, and incomes of those on the waiting list to show that new rents will not displace or prevent occupancy by eligible tenants unless sufficient RA is available.

If a transfer is to take place at the time the equity loan is closed, a complete transfer docket, in accordance with § 1965.65 of subpart B of part 1965 of this chapter, will also be required.

Subpart L—Farmers Home Administration Tenant Grievance and Appeal Procedure

18. Section 1944.553 is amended by adding a new paragraph (h) to read as follows:

§ 1944.553 Exceptions.

* * * * *

(h) *Displacement or other effects due to prepayment.* Prepayment of RRH loans is handled in accordance with §§ 1965.206(b)(2) (v) and (vii), 1965.214(f), 1965.215(d)(3)(ix), 1965.215(g) and 1965.217(e)(3) of subpart E of part 1965 of this chapter, with tenants given the opportunity to comment and request reviews of actions.

PART 1951—SERVICING AND COLLECTIONS

19. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

20. Section 1951.252 is amended by adding a last sentence to paragraph (c) to read as follows:

§ 1951.252 Definitions.

* * * * *

(c) * * * In the case of MFH loans, "reasonable rates and terms" would allow current and future eligible residents to continue to be served.

* * * * *

21. Section 1951.261 is amended by adding a new paragraph (d)(1)(vii) and adding a last sentence to paragraph (d)(3) to read as follows:

§ 1951.261 Graduation of FmHA borrowers to other sources of credit.

* * * * *

(d) * * *

(1) * * *

(vii) MFH borrowers whose projects have RA which is being utilized.

* * * * *

(3) * * * Tenant notification requirements and restrictive-use provisions, as outlined in §§ 1965.202, 1965.206(b)(2), 1956.215(d), and Exhibits A-3 and A-4 of subpart E of part 1965 of this chapter must also be addressed.

* * * * *

22. Section 1951.264 is revised to read as follows:

§ 1951.264 Special requirements for Multiple Housing borrowers.

All requirements of subpart E of part 1965 of this chapter must be met prior to graduation and acceptance of the full payment from a Multiple Housing borrower. The State Director will provide the National Office with a report as described in §§ 1965.215(d)(1) and 1965.219(c) of subpart E of part 1965 of this chapter. The original report and documentation for the responses will be retained indefinitely in the State Office.

Subpart N—Servicing Cases Where Unauthorized Loan or Other Financial Assistance was Received-Multiple Family Housing

23. Section 1951.651 is revised to read as follows:

§ 1951.651 Purpose.

This subpart prescribes the policies and procedures for servicing Multiple Family Housing (MFH) loans and/or grants made by Farmers Home Administration (FmHA) when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, any other direct financial assistance, or was not subjected to any restrictions required by law or regulation. As used in this subpart, MFH loans and grants are Section 515 Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) loans Sections 514 and 516 Labor Housing (LH) loans and grants.

24. Section 1951.652 is amended by adding a clause to the end of paragraph (g) to read as follows:

§ 1951.652 Definitions.

* * * * *

(g) *Recipient. * * * or was not subjected to a requirement for the assistance required by law or regulation.*

* * * * *

§ 1951.653 [Amended]

25. Section 1951.653 is amended by removing the last sentence.

26. Section 1951.654 is amended by adding a new paragraph (e) to read as follows:

§ 1951.654 Categories of unauthorized assistance.

* * * * *

(e) The recipient was not subjected to all obligations required by the assistance, such as restrictive-use provisions for MFH borrowers at the time the assistance was provided.

27. Section 1951.656(e) is amended by adding a clause at the end of the paragraph to read as follows:

§ 1951.656 Initial determination that unauthorized assistance was received.

* * * * *

(e) * * * or other loan provisions were not included in the instrument.

28. Section 1951.658 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1951.658 Decision on servicing actions.

* * * * *

(a) *Payment in full.* If the recipient agrees with FmHA's determination or will pay in a lump sum, the District Director may allow a reasonable period of time for the recipient to arrange for repayment. The amount due will be the amount stated in the letter as shown in Exhibit A of this subpart (available in any FmHA office). All tenant notifications and restrictive-use provisions must be followed when repayment is demanded. The requirements of subpart E of part 1965 will be followed with appropriate modifications for these situations. The District Director will remit collections as follows:

* * * * *

29. In Section 1951.661, paragraph (a)(1)(i) is amended by adding a clause to the end of the last sentence of the paragraph to read as follows:

§ 1951.661 Servicing options in lieu of liquidation or legal action to collect.

* * * * *

(a) * * *

(1) * * *

(i) *Correction of problem.* * * * or where a loan provision was omitted from a loan document, it will be inserted.

* * * * *

30. Section 1951.668 is amended by adding a new paragraph (c) to read as follows:

§ 1951.668 Servicing unauthorized assistance accounts.

* * * * *

(c) *Collection of unauthorized assistance.* Collection of unauthorized assistance will be made in accordance with appropriate sections of subpart K of part 1951 of this chapter. If full prepayment of a MFH loan is required, it will be accepted in accordance with all requirements of subpart E of part 1965 of this chapter and appropriate restrictive-use provisions will remain in the deeds of release.

PART 1955—PROPERTY MANAGEMENT

31. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

32. Section 1955.10 is amended by adding these sentences to the end of paragraph (h)(6) to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

* * * * *

(h) * * *

(6) * * * Tenants will be notified of the status of the project and of possible consequences of these actions. FmHA Guide Letters 1965–E–3 and 1965–E–5 may be used as a guide, but modified appropriately. A minimum of 180 days' notice to tenants is required before the project is removed from the FmHA programs and Letters of Priority Entitlement must be made available in accordance with § 1965.215(d)(4) of subpart E of part 1965 of this chapter.

* * * * *

33. Section 1955.15 is amended by revising the first sentence of introductory paragraph (d)(2), adding a new paragraph (d)(2)(v), revising the last sentence of paragraph (d)(3)(ii)(C), and by adding a new last sentence to paragraph (f)(1) to read as follows:

§ 1955.15 Foreclosure by the Government of loans secured by real estate.

* * * * *

(d) * * *

(2) *Acceleration of account.* Subject to paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section, the account will be accelerated using a notice substantially similar to Exhibits B, C, D, or E, of this subpart, or for rental housing FmHA Guide Letters 1955–A–1 or 1955–A–2 (available in any FmHA Office), as appropriate, to be signed by the official who approved the foreclosure. * * *

* * * * *

(v) For MFH loans, the acceleration notice will advise the borrower of all applicable portions of the prepayment requirements, in accordance with subpart E of part 1965 of this chapter. This includes the applicability of restrictive-use provisions to loan prepaid in response to acceleration notices and all tenant and agency notification requirements. It will also remind borrowers that rent levels cannot be raised in response to the acceleration, even after subsidies are cancelled or suspended. Tenants will be notifed of the status of the projects and of possible consequences of these actions. FmHA Form Letters 1965–E–3 and 1965–E–5 may be used as guides, but modified appropriately. A minimum of 180 days' notice to tenants is required before the project is removed from the FmHA program Letters of Priority Entitlement must be made available in accordance with § 1965.215(d)(4) of subpart E of part 1965 of this chapter.

* * * * *

(3) * * *

(ii) * * *

(C) * * * In the interim the tenants will continue rental payments in accordance with their leases and all rental rates, and lease renewals and provisions will be continued as if acceleration has not taken place.

* * * * *

(f) * * *

(1) * * * For MFH loans, the advertisement will state the restrictive-use provisions which purchasers will have included in their deeds.

* * * * *

34. Section 1955.18 is amended by adding paragraph (l) to read as follows:

§ 1955.18 Actions required after acquisition of property.

* * * * *

(l) *Effect on tenants of multifamily housing projects.* (1) When FmHA acquires the property, tenant leases and renewals will continue as before.

(2) When the property is sold outside the FmHA program, applicable restrictive-use provisions will be placed in the deeds, and all tenant rights will continue in accordance with provisions of subpart E of part 1965 of this chapter. FmHA Guide Letter 1965–E–2 will be posted at the project.

35. FmHA Guide Letters 1955–A–1 and 1955–A–2 of subpart A are added to read as follows:

FmHA Guide Letter 1955–A–1

Format for Notice of Acceleration to MFH Borrowers Liable for the Debt (Excludes Borrowers Who Were Discharged in Bankruptcy and Did Not Reaffirm the Debt.)

Certified Mail
Return Receipt Requested
(Name and Address)
Subject: Notice of Acceleration of Your Debt to the Farmers Home Administration, Demand for Payment of That Debt, and Notice of Your Opportunity to Have a Hearing Concerning This Action.

Dear

Please take note that the entire indebtedness due on the promissory note(s) and/or assumption agreement(s) which evidence the loan(s) received by you from the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture is declared due and payable upon proper notification to project tenants. The loans are described as follows:

Date of Instrument
Amount

The promissory note(s) and/ or assumption agreement(s) is(are) secured by real estate mortgage(s) [or deed(s) of trust] described as follows:

Recorded In:
Other Instrument
Place of Recordation
Book No.
Page No.

This acceleration of your indebtedness is made in accordance with the authority granted in the above-described real estate instrument(s).

The reason(s) for this acceleration of your indebtedness is(are) as follows:

[If the account is in monetary default, list this as one reason for accelerating. If the account is not in monetary default, see § 1955.15 (d)(2)(ii) of FmHA Instruction 1955–A.]

The indebtedness due is $_____ unpaid principal, and $_____ unpaid interest, as of _____ 19____, plus additional interest accruing at the rate of $_____ per day thereafter, plus any advances to be made by the United States for the protection of its security and interest accruing on any such advances. Unless full payment of your indebtedness is received and all actions as outlined in the attachment entitled "Tenant Protection Actions" are taken within 30 days of the date of this letter, the United States will take action to foreclose the above-described real estate instrument, suspend any rental assistance, cancel any interest credit, notify the tenants that foreclosure will be pursued, and pursue any other available remedies. Project rent rate levels may not be increased due to loss of subsidies.

The FmHA District Office should be contacted immediately to discuss the steps to take to pay this accelerated loan. Payment should be made by cashier's check, certified check, or postal money orders to the District Director of the Farmers Home Administration. If you do not comply with all requirements to prepay, or do not submit to the United States any payment sufficient to pay the entire indebtedness, or sufficient to comply with any arrangements agreed to between the Farmers Home Administration and yourself, the action or payment will not cancel the effect of this notice. Acceptance of such payment will be subject to agency regulations governing payments in full and the provisions of the Housing and Community Development Act of 1987. Such provisions normally require restrictive-use covenants be placed in effect at the time of the prepayment. If insufficient payments are received and credited to your account, or payment without tenant displacement protection actions are accepted, no waiver or prejudice of any rights which the United States may have for breach of any promissory note or covenant in the real estate instrument will result, and the Farmers Home Administration may proceed as though no such payment had been made.

[The above-described real estate instrument provides that the United States may foreclose without Court action by selling the real estate at public sale after (a minimum of 180 days). The Government intends to sell the property in this manner. No further notice is required to be given you concerning this foreclosure.]

(This paragraph will be omitted in States with judicial foreclosure or where it conflicts with State law.)

However, you have the opportunity to have an informal meeting with the decision maker (the undersigned) and/or an administrative appeal hearing before the foreclosure takes place. This is an opportunity to discuss why you believe the United States is in error in accelerating your account(s) and proceeding with foreclosure. If you desire to have an informal meeting with the decision maker or have any questions concerning the decision and/or facts used in making our decision, you should contact this office in writing to request a meeting. The request for an informal meeting must be sent to the undersigned no later than (give date 15 days after the mailing of the letter). Requests which are postmarked by the U.S. Postal Service on or before that date will be considered as timely received. You also have the right to an administrative appeal hearing with a hearing officer in lieu of, or in addition to, a meeting with this office. If you request an informal meeting with the decision maker, and the meeting does not result in a decision in which you concur, you will be given a separate time frame in which to submit your request for an administrative appeal. See the attachment for your appeal rights.

If you do not wish to have an informal meeting with the decision maker as outlined above, you may request an administrative appeal hearing with a member of the National Appeal Staff. The request for an administrative appeal must be sent to the National Appeals Staff, Area Supervisor, (show complete mailing address), no later than (give date 30 days after the mailing of the letter). Requests which are postmarked by the U.S. Postal Service on or before that date will be considered as timely received. If requesting an administrative appeal, please include a copy of this letter with your request.

If you fail to comply with the requirements outlined herein, the United States plans to proceed with foreclosure.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

United States of America

By _____

[*_____]

Farmers Home Administration, United States Department of Agriculture

Date: _____

Attachments

[Note: Send original to borrower and carbon copy to each party having an ownership interest based on the latest information contained in Agency records, unless OGC advises otherwise. Also send copy to National Office, Attn: MFH/SPM.]

[Attach a copy of Exhibit B-3 of FmHA Instruction 1900-B and "Tenant Protection Actions"]

Tenant Protection Actions

(1) Provide District Office with a current list of all residents along with their adjusted incomes so that District Office can:

(a) Notify tenants that the project is being prepaid;

(b) Send all tenants in the project Letters of Priority Entitlement (LOPE), for priority placement in other FmHA projects. (Note: Tenants may use the LOPE for placement on other waiting lists up to 180 days after receipt. There is no limit to the time a tenant may remain on a waiting list with a LOPE.)

(2) Extend all tenant leases at terms and rents current on date of acceleration for 180-days after accelerated loan is paid. (If tenent is receiving RA, the tenants' share of the rent will be reflected on the lease.)

(3) Execute restrictive-use provisions, as appropriate, for incorporation into releases of security instruments to be filed. (Note: Any tenants or applicants for occupancy protected by these restrictions may not have total shelter costs (rent and utilities) raised above 30 percent of adjusted income or current shelter costs, whichever is higher.)

FmHA Guide Letter 1955-A-2

Format for Notice of Acceleration to MFH Borrowers Discharged in Bankruptcy Who Have Not Reaffirmed the Debt.

Certified Mail

Return Receipt Requested

Subject: Notice of Acceleration of Your Farmers Home Administration Account and Notice of Your Opportunity to Have a Hearing Concerning This Action.

Dear:

Please take note that the Farmers Home Administration intends to enforce its real estate [mortgage(s), deed(s) of trust, etc.] given or assumed by you as security for the following-described promissory note(s) and/or assumption agreement(s):

Date of Instrument _____

Amount _____

The security instrument(s) referred to above are described as follows:

Recorded In:

Date of Instrument _____

Place of Recordation _____

Book No. _____

Page No. _____

The decision to foreclose is made in accordance with the authority granted in the above-described real estate instrument(s) for the following reason(s):

[If the account is in monetary default, list this as one reason for accelerating. If the account is not in monetary default, see § 1955.15(d)(2)(ii) of FmHA Instruction 1955-A.]

The balance of the account amounts to $_____ upaid principal, and $_____ unpaid interest, as of 19 , plus additional interest accruing at the rate of $_____ per day thereafter, plus any advances to be made by the United States for the protection of its security, and the interest accruing on any such advances.

Unless full payment of this account is received and all actions outlined in the attachment entitled "Tenant Protection Actions" are taken within 30 days from the date of this letter, the United States will take action to foreclose under the authority granted in the above-described instrument(s), suspend any rental assistance, cancel any interest credit, notify tenants that foreclosure will be pursued, and pursue any other available remedies. Project rent rate levels may not be increased due to loss of subsidies. Payment should be made by cashier's check, certified check, or postal money orders, to the District Director of the Farmers Home Administration. The FmHA District Office should be contacted immediately to discuss the steps to be taken to pay this accelerated account.

If you do not comply with all requirements to prepay, or do not submit to the United States any payment sufficient to pay the account in full, or sufficient to comply with any arrangements agreed to between the Farmers Home Administration and yourself, that action or payment will not cancel the effect of this notice. Acceptance of such payment will be subject to Agency regulations governing payments in full and the provisions of the Housing and Community Development Act of 1987. Such provisions normally require restrictive-use covenants be placed in effect at the time of the prepayment. If insufficient payments are received and credited to your account, or payment without tenant displacement actions are accepted, no waiver or prejudice of any rights which the United States may have for breach of any promissory note or covenant in the real estate instrument will result and the Farmers Home Administration may proceed as though no such payment had been made.

[The above-described real estate instrument provides that the United States may foreclose without Court action by selling the real estate at public sale after (a minimum of 180 days). The Government intends to sell the property in this manner. No further notice is required to be given you concerning this foreclosure.]

(This paragraph will be omitted in States with judicial foreclosure or where it conflicts with State law.)

However, you have the opportunity to have an informal meeting with the decisionmaker (the undersigned) and/or an administrative appeal hearing before the foreclosure takes place. This is an opportunity to discuss why you believe the United States is in error in accelerating your account(s) and proceeding

* Insert title of FmHA official authorized in § 1955.15 of FmHA Instruction 1955-A to accelerate the account, depending on loan type.

with foreclosure. If you desire to have an informal meeting with the decisionmaker or have any questions concerning the decision and/or facts used in making our decision, you should contact this office in writing to request a meeting. The request for an informal meeting must be sent to the undersigned no later than (given date 15 days after the mailing of the letter.) Requests which are postmarked by the U.S. Postal Service on or before that date will be considered as timely received. You also have the right to an administrative appeal hearing with a hearing officer in lieu of, or in addition to, a meeting with this office. If you request an informal meeting with the decisionmaker, and the meeting does not result in a decision in which you concur, you will be given a separate time frame in which to submit your request for an administrative appeal. See the attachment for your appeal rights.

If you do not wish to have an informal meeting with the decisionmaker as outlined above, you may request an administrative appeal hearing with a member of the National Appeals Staff. The request for an administrative appeal must be sent to the National Appeals Staff, Area Supervisor, (show complete mailing address), no later than (give date 30 days after the mailing of the letter). Requests which are postmarked by the U.S. Postal Service on or before that date will be considered as timely received. If requesting an administrative appeal, please include a copy of this letter with your request.

If you fail to comply with the requirements outlined herein, the United States plans to proceed with foreclosure.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

UNITED STATES OF AMERICA

By _____

[*]

Farmers Home Administration

United States Department of Agriculture

Date: _____

Attachments

*Insert title of FmHA official authorized in § 1955.15 of FmHA Instruction 1955–A to accelerate the account, depending on loan type.

[Note: Send original to borrower and carbon copy to each party having an ownership interest based on the latest information contained in Agency records, unless OGC advises otherwise. Also send copy to National Office ATTN: MFH/SPM.]

[Attach a copy of Exhibit B–3 of FmHA Instruction 1900–B and "Tenant Protection Actions"]

Tenant Protection Actions

(1) Provide District Office with a current list of all residents along with their adjusted incomes so that District Office can:

(a) Notify tenants that the project is being prepaid;

(b) Send all tenants in the project Letters of Priority Entitlement (LOPE), for priority placement in other FmHA projects. (Note: Tenants may use the LOPE for placement on other waiting lists up to 180 days after receipt. There is no limit to the time a tenant may remain on a waiting list with a LOPE.)

(2) Extend all tenant leases at terms and rents current on date of acceleration for 180-days after accelerated loan is paid. (If tenant is receiving RA, the tenants' share of the rent will be reflected on the lease.)

(3) Execute restrictive-use provisions, as appropriate, for incorporation into releases of security instruments to be filed. (Note: Any tenants or applicants for occupancy protected by these restrictions may not have total shelter costs (rent and utilities) raised above 30 percent of adjusted income or current shelter costs, whichever is higher.)

Subpart C—Disposal of Inventory Property

36. Section 1955.107 is amended by adding a sentence to the end of paragraph (c), redesignating paragraphs (d) and (e) as paragraphs (e) and (f), adding a new paragraph (d), and adding a new paragraph (g) to read as follows:

§ 1955.107 Sale of suitable property (CONACT).

* * * * *

(c) * * * The appraised value of the multifamily housing project will reflect any restrictive-use provisions which will remain with the property as well as tax credits, interest subsidies and RA.

(d) *Advertising multifamily housing projects.* Advertisements will advise prospective purchasers of restrictive-use provisions which will remain in the deeds of the multifamily housing projects.

* * * * *

(g) If it is possible that a multifamily housing project may be sold out of the FmHA program, tenants must receive 180 days' notification and all benefits available to tenants of prepaying projects, as described in subpart E of part 1965 of this chapter.

37. Section 1955.114 is amended by revising the first three sentences of paragraph (b) to read as follows:

§ 1955.114 Sales steps for program property (housing).

* * * * *

(b) *Multiple-family housing.* The sale price will be established in accordance with § 1955.113 of this subpart. Notification of known interested prospective offerors and advertising should be handled as set forth in § 1955.146 of this subpart. The sale information will include a sale price and any restrictions which will remain in the deeds, a date/time/location when offers will be drawn, and require all offerors to submit an application package comparable to that required by the respective loan program which will be reviewed by the State Director or designee. * * *

* * * * *

38. Section 1955.115 is amended by adding a setence to the end of paragraph (b) to read as follows:

§ 1955.115 Sales steps for nonprogram (NP) property (housing).

* * * * *

(b) * * * If the housing is sold out of the FmHA program, the closing of the sale may not take place until tenants have received all notifications and benefits for prepaying projects in accordance with subpart E of part 1965 of this chapter.

PART 1965—REAL PROPERTY

39. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—Security Servicing for Multiple Housing Loans

§ 1955.55 [Amended]

"40. Section 1965.55(a)(7) is amended to change the reference from "§§ 1965.90 of this subpart" to read "subpart E of this part."

"41. Section 1965.65 is amended by revising paragraphs (b)(3), introductory text, (c)(1), (c)(3), (c)(5), adding paragraphs (c)(10)(v) and (c)(10)(vi), revising introductory text of paragraph (f)(4), revising (f)(4)(i) and (f)(8), redesignating paragraphs (f)(13) and (f)(14) as paragraphs (f)(14) and (f)(51) and adding a new paragraph (f)(13) to read as follows:

§ 1955.65 Transfer of real estate security and assumption of loans.

* * * * *

(b) * * *

(3) The transferor should not receive any equity payment unless the total unpaid FmHA indebtedness is assumed, all real estate taxes are current, and the FmHA loan payment and the reserve account are on schedule, less any authorized withdrawals at the time of transfer. If the requirements of this paragraph cannot be met, the State Director may request the National Office to authorize an equity payment when all other alternatives, including liquidation, would not be in the best interests of the

FmHA and the tenants. The equity provisions of this section, which state that FmHA may not loan for equity, are not applicable if the equity payment is to be made by FmHA loan to avert prepayment. FmHA Instruction 1965–E applies to such cases. Any equity payment due the transferor should be paid in cash or cash equivalent at the time of transfer; if FmHA loan funds are used, it must be paid at the time of the transfer. However, if paid on terms, the terms and conditions must be documented in the file and the transferee must be able to show that the obligations can be met from outside sources of income without jeopardizing the operation of the project. Any equity payment to be made on terms shall not be considered an authorized debt payment of the project. Furthermore, any equity payment which is not paid in cash at closing is not authorized unless all of the following conditions are met as part of the transaction:

* * * * *

(c) * * *

(1) All transfers to eligible borrowers will subject the borrower to the appropriate restrictive-use provisions contained in Exhibits A–1 or A–2 of subpart E of this part.

* * * * *

(3) For rental projects, the transferor's project operating accounts, reserve account, any tenant security deposits, any balance remaining in the transferor's supervised bank account which are needed to complete project development, and any equipment purchased with project funds, will be transferred to the transferee. Any funds remaining in an RA contract not disbursed by the transferor, will be assigned to the transferee, unless RA is not needed for current eligible residents or another form of subsidy is to be used. Every attempt should be made to have the funds in the reserve account at the scheduled level and transferred to the transferee at the time of transfer. If an equity loan is to be made by FmHA, reserve and other accounts must be at the scheduled level at the time of transfer.

* * * * *

(5) A loan and/or grant may be made to the transferee in connection with a transfer subject to the policies and procedures governing the kind of loan and/or grant being made. Loan and/or grant funds may not be used, however, to pay equity to a transferor unless authorized in accordance with FmHA Instruction 1965–E to avert prepayment.

* * * * *

(10) * * *

(v) The equity investment and/or the authorized rate of return are increased in order to avert prepayment.

(vi) The transferee contributes funds to reimburse FmHA for the difference between the loan made to a non-profit organization to purchase a potentially prepaying project and the loan which would have been made if the last incentive offer had been accepted.

* * * * *

(f) * * *

(4) An appraisal will be required for each transfer, except those completed on a same terms basis for which the State Director is satisfied that the security is adequate. (An appraisal will always be required for transfers on new terms.) Unless an appraisal is required for a transfer to a non-profit organization to avert prepayment in accordance with § 1965.216(a) of subpart E of this part, an FmHA designated MFH appraiser will be responsible for preparing an appraisal report within 30 days of the District Director's receipt of the completed application when the total indebtedness will not be assumed, or the State Director may accept an independent appraisal provided by the transferor or transferee under the conditions later specified in this paragraph when the total debt is being assumed and the FmHA designated MFH appraiser is unable to complete an appraisal within 30 days of the District Office's receipt of the completed application. If the last appraisal is less than 1 year old and the transfer is within the State Director's authority, the FmHA designated appraiser may supplement the present appraisal report, in lieu of preparing a new appraisal, by attaching information on the present market value. A new appraisal will be prepared according to the requirements of FmHA Instruction 1922–B (available in any FmHA office) when the current appraisal is over 1 year old, or when the State Director determines a new appraisal report is needed. The conditions under which the State Director may accept an independent appraisal from the transferor or transferee in lieu of an FmHA prepared appraisal are:

(i) The expense of the appraisal will be paid by the transferee or transferor without obligation to FmHA unless required by subpart E of this part.

* * * * *

(8) All RRH, RCH and LH loans, including those approved prior to December 21, 1979, which are transferred to eligible applicants, will become subject to the restrictive-use provisions of Section 502(c) of Title V, Housing Act of 1949, as amended. The restrictive-use language set forth in the appropriate Exhibits A–1 or A–2 in accordance with §§ 1965.202, 1965.214(i) and 1965.216(c)(3) of FmHA Instruction 1965–E must be added, with the advice of OGC, to the assumption agreement, security instruments, and loan agreement/resolution. The restrictive-use period will begin on the date the transfer and assumption is closed.

* * * * *

(13) The following additional information is required for an equity loan to non-profit organization in conjunction with the transfer:

(i) Identify of Interest statement between transferor and transferee,

(ii) Statement of experience of organization and all principals,

(iii) Management Plan and Agreement in accordance with Exhibit B of FmHA Instruction 1930–C,

(iv) Proposed Application for Occupancy, Lease, and Occupancy Rules and Regulations in accordance with Exhibit B of FmHA Instruction 1930–C,

(v) Option,

(vi) Proposed budget showing anticipated rents with updated figures on required reserve contributions,

(vii) Data on current tenants' incomes, rents and RA, and incomes of those on the waiting list to show amount of RA which will be needed for current tenants and other eligible occupants,

(viii) If rehabilitation will be undertaken at the time of the loan, plans and specifications and method of construction must be outlined,

(ix) A breakdown of packaging and administration costs to be paid with any "advance" to non-profit organizations purchasing a project to avert prepayment,

(x) Any first year operations and maintenance expenses requested, with justification,

(xi) District Office comments and recommendations and the State Office evaluation.

* * * * *

§ 1965.65 [Amended]

42. Section 1965.65(f)(12) is amended in the last line of the table, by changing the words "* Loan Agreement" to "Loan agreement or resolution"; and in the unnumbered paragraph below footnote #3 by revising the parenthetical statement at the end of the paragraph to read: "(Subsequent loans will not be made to pay equity unless authorized in accordance with Subpart E of this Part to avert prepayment.)"

43. Section 1965.70 is amended by changing the reference to "§ 1965.90 of this subpart" in the introductory text to

read "Exhibit A-1 of subpart E of this part," adding the word "or" to the end of paragraph (b)(2); redesignating paragraph (b)(3) as (b)(4) and adding a new paragraph (b)(3), and revising paragraph (d)(8) to read as follows:

§ 1965.70 Reamortization.

* * * * *

(b) * * *

(3) An equity loan was made as an incentive to avert prepayment, or subsequent loans were made to a non-profit corporation or public agency to purchase a project whose owner wished to prepay.

* * * * *

(d) * * *

(8) The restrictive-use provisions of section 502(c) of Title V, Housing Act of 1949, as amended will apply. The appropriate restrictive-use language set forth in Exhibit A-1 of subpart E of this part for RRH, RCH or LH loans will be added, with the advice of OGC, to the loan agreement/resolution and security instruments as a condition of FmHA approval of the action. The restrictive-use period will begin on the date the reamortization agreement is effective.

* * * * *

§ 1965.77 [Amended]

44-45. Section 1965.77(d)(2)(iii) is amended by adding after "§ 1965.90 of this subpart" the words "and Subpart E of this Part."

46. Section 1965.90 is revised to read as follows:

§ 1965.90 Payment in full.

(a) *Borrower responsibility.* Borrowers must advise the District Office servicing the account 6 months prior to making a final installment.

(b) *FmHA responsibility.* The FmHA District Office must ensure payments in full and release of security are processed in accordance with Part 1866 of this chapter (FmHA Instruction 451.4) and other appropriate program requirements and regulations. FmHA's interest in the property insurance will be released in accordance with § 1806.4(a)(3) of subpart A of part 1806 of this Chapter (paragraph IV A 3 of FmHA Instruction 426.1). In all cases, references to County Supervisor will be construed to mean District Director when applied to multiple family housing borrowers.

(c) *Prepayment of multifamily housing loans.* If the borrower wishes to make the final payment of a multifamily housing loan prior to the final due date of the loan, subpart E of this part must be complied with.

§ 1965.92 [Amended]

47. Section 1965.92 is amended by changing references from "Exhibit D" to read "Exhibit A" in 2 places, and by adding the following phrase to the end of the last sentence of the paragraph: "within 30 days of the servicing action."

Exhibits A, B, C and E—[Removed]

48. Exhibits A, B, C and E are removed.

49. Subpart E of Part 1965 is added to read as follows:

Subpart E—Prepayment and Displacement Prevention of Multiple Family Housing Loans

Sec.
1965.201 General.
1965.202 Definitions.
1965.203 Non-profit organizations wishing to purchase projects when prepayment has been rejected.
1965.204 Processing prepayment requests and related rent increases.
1965.205 Borrower request to prepay.
1965.206 Review of request by District Office.
1965.207-1965.210 [Reserved]
1965.211 Determination of acceptance of prepayment for borrowers subject to restrictive-use provisions.
1965.212 Determination of FmHA action in processing prepayment requests.
1965.213 Offer of incentives to borrowers not subject to restrictive-use provisions.
1965.214 Processing of incentives.
1965.215 Determination of need and acceptance of prepayment.
1965.216 The borrower is not subject to restrictive-use provisions, no incentive agreement is reached between FmHA and the borrower, and the prepayment cannot be accepted.
1965.217 Processing applications for transfers to non-profit corporations or public agencies.
1965.218 Accepting prepayment when non-profit organizations do not apply to purchase or funds are not available.
1965.219 FmHA processing of prepayment.
1965.220-1965.221 [Reserved]
1965.222 Violations of restrictive-use provisions.
1965.223 Relationship with acceleration of accounts, bankruptcy, foreclosure or inventory properties.
1965.224-1965.249 [Reserved]
1965.250 OMB Control Number.

Exhibits to Subpart E

Exhibit A-1—Applicability of Restrictive-Use Provisions to Outstanding Loans Approved on or after December 21, 1979, or those approved Prior to December 21, 1979, and Subsequently Made Subject to These Restrictions Due to a Servicing Action, or an Incentive to Not Prepay the Loan When These Actions Took Place After (Effective Date of Regulation)
Exhibit A-2—Applicability of Restrictive-Use Provisions to Outstanding Loans Transferred to Non-Profit Organizations or Public Agencies in Order to Avert Prepayment of These Loans
Exhibit A-3—Applicability of Restrictive-Use Provisions to Prepaid Loans Made Subject to Restrictive-Use Provisions at the Time of Loan-Making, Applicable Servicing Action, an Incentive Was Accepted to Not Prepay, or When the Loan Was Transferred to a Non-Profit Organization or Public Agency to Avert Prepayment
Exhibit A-4—Applicability of Restrictive-Use Provisions to Prepaid Projects Whose Loan Was Not Subject to Restrictive-Use Provisions but Which Became Subject to Them as a Condition of Prepayment of Their Loan
Exhibit B—Report on Prepayment
Exhibit C—Checklist for Requesting Prepayment
Exhibit D—Methodology for Determining the Incentive to Be Offered to Keep Rural Rental Housing (RRH) Projects in Program for an Additional 20 Years
Exhibit D-1—Examples and Worksheets for Developing Prepayment Incentive

Subpart E—Prepayment and Displacement Prevention of Multiple Family Housing Loans

§ 1965.201 General.

Requests to pay Multiple Family Housing (MFH) loans in full require that certain actions be taken to ensure the affordability of housing for specified tenants for a guaranteed period of time. The requirement applies to projects not subject to restrictive-use provisions, as well as those that are. This subpart provides step-by-step guidance for use by Farmers Home Administration (FmHA) and MFH borrowers when prepayment requests are made. The steps outlined are mandated by the Rural Rental Housing Displacement Prevention Provisions of the Housing and Community Development Act of 1987.

§ 1965.202 Definitions.

Displaced Tenant. A displaced tenant is one who is either forced to move from a project or one who is experiencing new or increased rent overburden due to prepayment of a MFH loan.

Income Limits. Very-low, low- and moderate-income is defined in accordance with Exhibit C of subpart A of part 1944 of this chapter (available in any FmHA office).

Local Non-Profit Corporation or Public Agency. Any public agency or non-profit corporation meeting the conditions in § 1965.216(c) of this subpart which operates only in the local

community and its trade area. A public agency must be organized in accordance with State and local statutes. Non-profit corporations must have a broadly-based membership and board of directors reflecting various interests in the community or trade area. Either type of organization must include as one of its primary purposes developing or managing low-income housing or community development projects, which meet the requirements of § 1944.211 (a)(1)(i) of subpart E of part 1944 of this chapter. County-wide agencies/corporations may meet this definition of local organizations if, in the judgment of the District Office, the community's trade area is county-wide.

Market Area. The market or geographic area for use in determining the need for the housing will be the same as that which would be used for current initial loan-making feasibility.

Prepayment. A loan which has been paid by the borrower in full, before the loan maturity date. After a prepayment, no FmHA loan remains on the property and the property is removed from the FmHA program, although restrictive-use provisions may remain.

Regional or National Non-Profit Corporation or Public Agency. Any public agency or non-profit corporation meeting the conditions in § 1965.216(c) of this subpart, and § 1944.211(a)(10)(i) of subpart E of part 1944 of this chapter, which operates in an area larger than the local community and its trade area, or if a non-profit corporation does not also have a broadly-based membership and board of directors reflecting various interests in the community or trade area. One of the primary purposes of the organization need not be to develop or manage low-income housing or community development projects.

Rent Overburden. Shelter costs (rent and anticipated utility costs) exceeding 30 percent of tenant's adjusted income.

Restrictive-Use Provisions. Restrictive-use provisions restrict the use of the property to housing for very-low, low- and moderate-income tenants, whether the FmHA loan is in force or has been paid-in-full. The restrictions also protect tenants from rent increases that would create new or increased rent overburden in accordance with this section, as well as mandating that conditions of occupancy remain such that the housing would continue to serve the protected population. These restrictions apply to all loans approved since December 21, 1979, and those made subject to the provisions due to a servicing action, incentive to keep the loan in the program, or condition of prepayment in accordance with the remainder of this subpart and Exhibits A-1 or A-2 of this subpart. The applicability of specific restrictive-use provisions to active loans or loans that have prepaid, or request prepayment, are described, their conditions for use detailed, and required terminology stated in Exhibits A-1 through A-4 of this subpart.

§ 1965.203 Non-profit organizations wishing to purchase projects when prepayment has been rejected.

National and regional non-profit organizations interested in purchasing projects under this procedure should contact the National Office if they wish to be considered as purchasers in more than one State, or the individual State Office if they wish to be considered as purchasers within one State only. Local non-profit organizations and public agencies need only contact the applicable FmHA District Office. These organizations should submit their names, addresses, contact persons and the areas in which they wish to purchase. The notification to FmHA must be updated annually if the organization wishes to continue to receive notifications of pending prepayments. The National Office will not verify the eligibility of these organizations but will periodically forward the names to the State Offices. The State Office will periodically compile the list of interested non-profit organizations and public agencies and forward the list to appropriate District Offices.

§ 1965.204 Processing prepayment requests and related rent increases.

(a) *Chronological order of steps in processing prepayment requests.* FmHA's objective is to ensure that housing needed by low- and moderate-income individuals and families remains available to them for the longest possible time period. Therefore, prior to accepting payment in full of a FmHA MFH loan, certain actions must be taken by FmHA to accomplish this goal. FmHA must: determine the eligibility and ability of the borrower to prepay the loan; attempt to keep needed housing in the very low-, low-, and moderate-income market; ease the transition of the tenants that may be affected by the conversion of a federally-financed project to a conventionally-financed one. The remainder of this procedure provides the actions to be taken in the following chronological order:

(1) Borrower request for prepayment (see § 1965.205)

(2) Required notifications (see § 1965.206)

(3) Evaluation of project need by FmHA (see §§ 1965.211, 1965.212, 1965.213, 1965.215)

(4) FmHA offer and borrower decision on incentives (see §§ 1965.213 and 1965.214)

(5) Approval of prepayment under exception authority (see § 1965.215)

(6) Sale to non-profit organizations or public agencies (see §§ 1965.216 and 1965.217)

(7) Approval of prepayment in legitimate absence of transfer to non-profit organization or public agency (see §§ 1965.218 and 1965.219)

(8) Relationship of these procedures to other governmental actions (see § 1965.223)

(b) *Rent increases resulting from prepayment process.* If any rent increases are necessary due to equity loans or transfer and equity loan to avert prepayment, the procedures for tenant notification and comment, in accordance with paragraphs IV C and V B of Exhibit C to subpart C of part 1930 of this chapter will be followed. The reason for the rent increase will be given as "to repay the additional loan made in order to avert removal of (name of project) from the FmHA program."

§ 1965.205 Borrower request to prepay.

Borrowers seeking to prepay MFH loans (Rural Rental Housing (RRH) and Labor Housing (LH)), must submit a complete prepayment request to the District Director at least 180 days in advance of the anticipated prepayment date (unless an exception is granted in accordance with § 1965.215(e)(2) of this subpart). A prepayment request will not be considered complete until all the following items with verifiable documentation have been submitted (Exhibit C of this subpart may be used as a guide for this purpose):

(a) A written request to prepay on a specified date;

(b) Complete and well-documented information necessary to prepare the prepayment report as outlined in Exhibit B of this subpart and to provide the data necessary to make the determinations needed to make an incentive offer as outlined in Exhibit D of this subpart;

(c) Documentation of the ability to prepay under the conditions specified in the request;

(d) Certification that the housing will continue to be administered in accordance with Fair Housing Act policies; and

(e) A statement as to whether the borrower expects to have restrictive-use provisions remain in the releases.

§ 1965.206 Review of request by District Office.

Within 15 working days of receipt of a prepayment request, the District Office will determine whether the request is in accordance with § 1965.205 of this subpart, and the borrower has adequately documented the ability to prepay the mutifamily housing loan and will take the following action:

(a) *Receipt of incomplete requests.* If an incomplete request is submitted or there is inadequate documentation of the ability to prepay, the District Director will return it to the borrower, specifying what additional information is needed.

(b) *Receipt of complete requests.* If a complete prepayment request is submitted, the District Director will:

(1) *Acknowledge the request.* Send an acknowledgment letter to the borrower specifying the date of receipt of a complete request, and informing the borrower that prepayment commitments should not be finalized until the Agency issues a letter of consent.

(2) *Notify current tenants.* Notify each tenant of the project by Certified Mail, Return Receipt Requested, and prepare notices for the borrower to post in public areas of the project. The notices will remain posted until a final determination is made or the prepayment offer is withdrawn. The District Director will not visit to determine if submitted information is accurate or if prepayment will be accepted or denied before sending the notification to tenants. The letter, for which FmHA Guide Letter 1965-E-3 of this subpart may be used as a guide, will state the following:

(i) The borrower proposes to prepay the FmHA loan, on or after a specified date, and remove the housing from the FmHA program if all requirements imposed by FmHA are met;

(iii) What the likelihood is that prepayment will be accepted;

(iii) The level at which rents at the project are projected to be set if prepayment is accepted, any restrictive-use provisions which the borrower has agreed to maintain, whether and for how long section 8 or State or local subsidy will remain with the project and whether and when the borrower will be allowed to "opt-out";

(iv) That before deciding whether to accept the prepayment, FmHA must make a determination as to whether tenants would be displaced due to increased rents and whether there is alternative housing available in the community that is comparable in quality, size, location and rent structure;

(v) Except for total section 8 projects which will maintain the subsidy, a 30-day tenant comment period is available for tenants to present evidence on the proposed prepayment. Tenants will be allowed to review the information used to make any of the determinations regarding prepayment, or alternatives to prepayment and possible rent increases;

(vi) If there will be any displacement, tenants will be given immediate priority for other federally-financed housing;

(viii) Tenants will be kept apprised of all decisions reached regarding acceptance and dates of prepayment and will be given the opportunity to present evidence at any appeal hearings the borrower may request;

(viii) Tenants choosing to stay in their units if prepayment is accepted and pay the higher rents, with or without Federal, State, or other subsidy, are entitled to do so, unless evicted for a cause unrelated to prepayment.

(ix) Any other information relevant to the case.

(3) *Notify National Office.* Notify the FmHA State Director, who in turn will notify the Assistant Administrator, Housing, in the National Office, by Electronic Mail, using the format of FmHA Guide Letter 1965-E-1, "Status of Prepayment Request." National Office notification must be sent by the State Office within 20 working days of the receipt of a complete request.

(4) *Notify other agencies.* The FmHA State and District Offices, as appropriate, will send a letter of notification to other agencies. The agencies contacted will include interested non-profit organizations and other local, State and Federal agencies which provide housing assistance to low- and moderate-income people and organizations interested in purchasing a project which are on the list, compiled in accordance with § 1965.203 of this subpart, if the project is not subject to restrictive-use provisions. Letters to agencies which provide local housing assistance will apprise the organizations of the offer to prepay, the extent of any anticipated displacement, and the possibility of transfer with incentives or sale to a non-profit organization. Organizations wishing to purchase, will be advised that such a purchase may become available. Generally, the FmHA State Office will notify State and Federal agencies and the District Office will notify local agencies.

(5) *Notify new tenants.* The District Director will approve language to be used as addenda to leases of all tenants who move to the project while the prepayment request is pending, specifying the effect on the tenants if prepayment is accepted. The borrower will also provide these tenants a copy of any letters already sent to tenants to advise them of the status of the prepayment. The District Office will send them any additional correspondence sent to existing tenants.

§§ 1965.207-1965.210 [Reserved]

§ 1965.211 Determination of acceptance of prepayment for borrowers subject to restrictive-use provisions.

For those loans which are currently subject to restrictive-use provisions, a determination of need will be made in accordance with § 1965.215 of this subpart. In these cases §§ 1965.213 and 1965.214 to this subpart need not be followed. In the case of LH projects with any size grant, no incentive will be offered since the grant agreement obligates the borrower to operate the housing for its intended use for a 50-year period.

§ 1965.212 Determination of FmHA action in processing prepayment requests.

For loans approved prior to December 21, 1979, and not subsequently made subject to restrictive-use provisions, the District Office must evaluate the extent of the need for the housing, in order to determine the level of incentives to be offered to keep the housing in the FmHA program, and whether the prepayment may be legally accepted with or without restrictive-use provisions. Where the housing is needed, a reasonable effort must be made to enter into an agreement with the borrower to maintain the housing for low-income use. The guidance provided in §§ 1965.213 and 1965.215 (a), (b), and (c) of this subpart will be used.

§ 1965.213 Offer of incentives to borrowers not subject to restrictive-use provisions.

An incentive offer will be made to the borrower as an inducement to not prepay. This incentive may be processed to the current borrower or to any eligible transferee at the time of transfer.

(a) *Incentives available to be offered.* Subject to the availability of loan funds and RA, one or more of the following incentives will be offered:

(1) In RRH Projects, make a subsequent loan for equity for the difference between the current unpaid loan balance and a maximum of 90 percent of the project's appriased value. (See models in Exhibit D.) In the case of LH loans, no equity may be paid as an incentive.

(2) Rental assistance (RA) offered from a National Office reserve, for units in the project not currently receiving RA, based on availability, need of current tenants, and a market determination of

need of potential future tenants. RA will be offered as an incentive to:

(i) Protect current tenants and those on a waiting list likely to enter the project from rent overburden due to other incentives.

(ii) Correct a vacancy problem in projects in which there are no or minimal financial incentives granted.

(3) Increase the maximum return on equity.

(i) Return may be based on a maximum of borrower's remaining equity in the project, after receiving any incentive loans in accordance with this procedure.

(ii) The maximum return on investment will be a set rate which represents the 30-year Treasury Bill rate + 2% at the time of the offer. This rate will be updated quarterly and provided to the field by the National Office.

(iii) Regardless of any increased return on investment agreed to as part of the incentive offer, the actual withdrawal of the return remains subject to conditions specified in Paragraph XII B of Exhibit B of subpart C of part 1930 of this chapter.

(4) Convert full profit to limited profit loans, as Plan II or increase the interest subsidy for loans with Section 8 assistance to make contract rents more feasible. This would be done by converting the project to Plan II and charging overage up to rents established by the effective interest rate.

(b) *Selection of incentives offered.* The District Director will review local market conditions, tenant profiles, information submitted for the prepayment report, responses to the 30-day tenant comment period, and all other information required for determination of incentives as shown in Exhibit D. The District Director will determine the need for the housing for which prepayment has been requested, the likelihood it would continue to serve low- and moderate-income tenants if prepayment were accepted, and the possible alternative uses for the housing. He/she will evaluate the rent the borrower is likely to be able to receive if the project was converted to the conventional market. Thorough documentation of the methods used to make these determinations, the source of data used, and the information obtained will be placed in the running case record along with all supporting information.

(c) *Criteria for selection of incentives.* The incentives offered in accordance with this section will meet the following criteria:

(1) Those which would allow the project to maintain financial feasibility while serving the same tenants who are currently living in the project, with the amount of RA which can reasonably be expected to be available, and with any reamortization of accounts which is to take place;

(2) Those commensurate with the borrower's capability and willingness to continue to meet the purposes of the program;

(3) Those deemed necessary by local market conditions;

(4) Those determined to be the least costly alternative for the Federal Government;

(5) Those which provide a fair return to the borrower;

(6) Those commensurate with the alternative uses for the housing in the community.

(d) *Development of specific incentive package.* An incentive package will be developed in accordance with the model provided in Exhibit D. The model sets the incentives to be offered at levels consistent with the alternative uses for the housing. When the borrower is foregoing considerable financial gain by maintaining the housing in the FmHA program, and a prepayment attempt would likely have been made if no incentives were available, the incentive offer will be at the maximum allowable. The level of the offer is reduced as there are fewer financially lucrative alternative uses for the housing. Minimal offers are made to those with no alternative conventional use for the housing; only enough to reimburse them for committing themselves to a 20-year restrictive-use period and therefore foregoing possible other uses for their funds. In addition to the model, the following guidelines must be taken into account in all incentives offered:

(1) Incentive offers must be made whenever prepayment offers threaten to remove the housing from low-income and/or tenants would be adversely affected by a prepayment.

(2) Any incentive(s) offered should assure that the project would remain financially feasible while continuing to house the tenants living in the project at the time the incentive offer is made.

(3) Incentives offered should take into account the need for this housing as low-income housing in the community. Vacancy rates and waiting lists at this and other low-income projects must be analyzed. Market analyses for proposed projects should be utilized and tenant comments should be considered for this purpose. If a prepayment could be legally accepted with no restrictions, the incentive offered would not include an equity loan regardless of the size of the offer allowed by the model. In addtion, if we can be assured that the project will continue to serve low-income people (for instance, due to continued Section 8 subsidy and restrictive-use provisions) the incentive offer would be reduced accordingly.

(4) No incentive may be offered which will lead to displacement of any current tenants or to other than low- or moderate-income use for the 20-year restrictive-use period, assuming all servicing RA granted remains available for that period. Therefore, sufficient RA must be allocated to all tenants or potential tenants who need or are likely to need RA due to the incentive.

(5) An incentive should take into account past experience with the borrower. For instance, the incentive can be structured so that a much higher level incentive will be received if the project is sold to an acceptable purchaser than if retained by the same owner.

(e) *Letter to borrower with incentive offer.* A letter will be sent to borrowers not subject to restrictive-use provisions within 20 days of the end of the tenant comment period stating that:

(1) A one-time package of incentives is being offered to extend the low-income use of the housing (developed and enumerated in accordance with this section and Exhibit D of this subpart). The letter will state that "a total of $_____ worth of incentives is being offered subject to the maximum limits of the equity loan not exceeding the difference between _____% of the appraised value of the project and the unpaid balance and the return on investment not exceeding that established by project equity after any loan is made at a maximum of _____% rate of return. This offer is subject to a determination of borrower eligibility in accordance with Exhibit A-9 of Subpart E of Part 1944 of this chapter. This offer must be accepted or rejected within 30 days or the prepayment request will be voided.

(2) Appropriation limitations may restrict available incentives each year. The actual receipt of these incentives may not be forthcoming in the near future, although the offer is binding on FmHA and acceptance of the offer will be maintained on the prepayment waiting list until obligated.

(3) The waiting list will be maintained by the National Office based on the date of the original complete prepayment request, in accordance with § 1965.205 of this subpart.

(4) Any agreement entered into to accept these incentives will include a restrictive-use provision obligating the housing to the low- and moderate-income program for 20 years from the date the agreement is executed.

§ 1965.214 Processing of incentives.

(a) *Borrower does not respond to incentive offer.* If the borrower does not respond to the incentive offer within 30 days of the date of the letter, the State Office will advise the National Office by means of FmHA Guide Letter 1965-E-1 to remove the name from the waiting list. Tenants and any agencies notified in accordance with § 1965.206(b) of this subpart will be notified by the District Office that the borrower has ceased to pursue the prepayment request and prepayment will not take place.

(b) *Borrower rejects the incentive offer.* If the borrower rejects the incentive offer within 30 days, a determination of need will be made in accordance with § 1965.215 (a), (b), and (c) of this subpart.

(c) *Borrower indicates preliminary acceptance of the incentive package.* If the borrower indicates an intention to accept an incentive package which includes an equity loan, a complete loan application in accordance with Exhibit A-9 of subpart E of part 1944 will be submitted. The designated or contract appraiser will appraise the project, in accordance with FmHA Instruction 1922-B (available in any FmHA office), for its best possible use as rental housing in the community. The best use may be as conventional housing or subsidized housing depending on the local economy. If appraised as subsidized housing, the form and extent of subsidy, and tax credits available as well as restrictive-use provisions and other circumstances which affect the value of the project must be considered. The District Director will determine the amount of the loan, the number of RA units necessary, the amount of equity and the rate of return on investment to be offered. He/she will determine the feasibility of the loan, including any reamortization of existing loans, in terms of the effects of rents on current tenants and future operations. No equity loan will be made without sufficient RA to protect current tenants against new or increased rent overburden. The final offer will be made in writing to the borrower within 30 days of the receipt of a complete application, and the borrower may reject the offer within 5 days of receipt of the offer if not satisfied with the final determination.

(d) *Application for transfer with the incentive.* If a transfer is to take place at the time the incentive is made, a complete transfer docket, in accordance with § 1965.65 of subpart B of part 1965 of this chapter, will be submitted along with the application for the equity loan, if applicable, in accordance with paragraph (c) of this section. The evaluation of the transfer and any equity loan will be made as a package rather than individually. If a proposed transferee is determined by FmHA not to be eligible for the transfer and assumption, appeal rights will be provided. If the FmHA decision is upheld, the borrower will be given an additional 15 days to decide whether to accept the original incentive offer.

(e) *Notification to National Office that incentives are ready to be processed.* When the borrower indicates that the incentive package is acceptable, and the incentive is ready to be processed, the District Director will notify the State Office which in turn will notify the National Office in the format of FmHA Guide Letter 1965-E-1 of all required information.

(f) *Notification to tenants and agencies.* All agencies contacted in accordance with § 1965.206(b) of this subpart and all tenants will be advised that prepayment will not be taking place. If ownership is to be transferred, tenants will be so advised. Any rent increases resulting from acceptance of an incentive offer will be handled in accordance with § 1965.204(b) of this subpart. Tenants will be advised that a review by the State Director may be requested if it is felt that the provisions of this paragraph were not correctly followed.

(g) *Authorization to proceed.* The National Office will issue the authorizations to implement the incentives to the extent of availability of funds and RA. These authorizations will be issued in the order in which a complete prepayment request was received in accordance with § 1965.205 of this subpart. Authorizations for use of all available funds will be given even if those with earlier requests which are not ready to be processed are bypassed when those with later requests are ready to be processed. Any approval authorizations will be given at the same time.

(h) *Processing the incentives.* When authorization to proceed is received, the District Office will process the incentives, with or without a transfer and make the following amendments to the loan and RA agreements with the assistance of the Office of the General Counsel (OGC), as appropriate (Note: If the project is to be transferred at the time the incentive is processed, all obligations will be made to the transferee):

(1) If the rate of return on investment or the amount of investment is changed, an addendum will be added to the loan agreement modifying the relevant paragraph.

(2) If a conversion of profit type is made, the procedures of paragraph IV A 2 e of Exhibit B of subpart C of part 1930 of this chapter will be followed. If the interest subsidy is increased, a new Form FmHA 1944-7, "Interest Credit and Rental Assistance Agreement," will be entered into.

(3) Any change in the amount of RA will require executing a RA agreement or a change in the existing RA agreement, in accordance with section V C of Exhibit E of subpart C of part 1930 of this chapter.

(4) Loans for equity will be made in accordance with subpart E of part 1944 of this chapter. In accordance with § 1951.517(b)(1) of subpart K of part 1951 of this chapter, the equity loan will be a Predetermined Amortization Schedule System (PASS) loan and all existing loans on the project will be converted to PASS. All assumptions and transfers will be processed in accordance with § 1965.65 of subpart B of this part. All existing project loans will be reamortized in accordance with § 1965.70 of subpart B of this part, unless consolidation is not necessary to maintain feasibility of the project for the current tenants or reduce the level of monthly rental subsidies. All delinquent accounts must be brought current, cost items paid in full, project accounts brought current and remain with the project and taxes and other liens paid at closing.

(i) *Restrictive-use provisions.* The restrictive-use provisions contained in Exhibit A-1 of this subpart will be inserted in the deed, security instruments, loan agreement/resolution, assumption agreement, and/or reamortization agreement, as appropriate.

§ 1965.215 Determination of need and acceptance of prepayment.

(a) *Notification of acceptability of prepayment.* Within 15 days of the rejection of an incentive offer by a borrower not subject to restrictive-use provisions, or 30 days of a complete prepayment request by a borrower subject to these restrictions, the District Office will notify the borrower as to whether prepayment will be accepted. Prepayment may be accepted in accordance with paragraph (d) of this section, within 180 days of the determination that prepayment is acceptable, if the conditions specified in paragraph (c) of this section are met. Paragraph (b) of this section provides guidance for making the necessary determinations. Thorough documentation of the reason for the determination will be entered in the

running case record and appended to the prepayment report. To make the determination, the District Office will review:

(1) Local market conditions;
(2) Information submitted for the prepayment report;
(3) Responses to a 30-day tenant comment period; and
(4) Any other relevant information available.

(b) *Factors to consider in determining need for housing.* The following issues must be addressed when making the determinations required in paragraph (c) of this section, and the basis for evaluations and decisions must be fully-documented.

(1) *Determination that there is no longer a need for the housing and related facilities.* The determination may be made that there is no longer a need for the housing if:

(i) *Adequate alternative housing is available in the community.* Affordable (no new or increased rent overburden), decent, safe, sanitary and non-assisted alternative housing, or vacant assisted units for which there is no waiting list, are available to the tenants who are likely to be displaced as a result of the change or increase.

(ii) *No tenant will be displaced.* There will be no change in the use of the housing and related facilities, and no likely increase in rental or other charges as a result of prepayment which will create rent overburden, or which will cause the eligible tenants occupying the assisted housing at the time of the request to reasonably expect not to remain in the housing for the length of time they could have remained if restrictive-use provisions were imposed and/or not released.

(iii) *Prepayment will not adversely affect supply of low- and moderate-income housing in the community.* The changes likely to occur as a result of the prepayment will not have a substantial adverse effect on the supply of affordable, decent, safe, and sanitary housing available to individuals eligible for FmHA housing in the area in which the housing and related facilities are located. In areas where new low- and moderate-income units are being, or are anticipated to be, constructed, or in which tenants for prepaying projects will be moving ahead of other eligible tenants on the FmHA-waiting lists due to insufficient low- and moderate-income housing in the market area, the determination may not be made that loss of existing housing will have no adverse effect on supply.

(2) *Housing opportunities for minorities will not be materially affected.* The determination that housing opportunities for minorities will not be materially affected must include the assessment, with the FmHA State Civil Rights Coordinator's input, of:

(i) The percentage of minorities in the housing and in the market area of both the project wishing to prepay and in the project(s) to which displaced tenants are most likely to move.

(ii) Impact of the potential prepayment on minority residents in the project and in the market area. If either are areas of minority concentration, a determination as to whether minority tenants and members of the community will be forced to move to areas with traditional discriminatory practices. If they are not areas of minority concentration, a determination as to whether minorities will be forced to move to such areas if this housing is prepaid.

(iii) Vacancies and length of waiting lists in projects similar in minority concentration at both the project and the geographic area of the project being prepaid.

(iv) Whether prepayment of this loan will negatively affect the opportunity for decent, safe, and affordable housing of minority residents in the community who do not curently live at the project.

(3) *The housing is located on an individual farm.* The housing was designed to be occupied by on-farm laborers, cannot be separated from the rest of the farm for security purposes, and is no longer needed to house the laborers for that farm.

(4) *Period for determination of no displacement and/or availability of comparable housing.* The period for which tenant protections are in effect will be those of the restrictive-use provisions and not a period covered by a lease, a landlord guarantee, or a third-party rental subsidy. The determination must be made that the housing will not be needed in the long run. It may be necessary to review population projections for the community, as well as statistics on the availability of standard and substandard housing, including waiting lists and the income levels of residents of all grades of housing. If a long-term lease or landlord guarantee of rents for a specified period appears to be necessary, or if the rents will not be raised only because there is non-FmHA rent subsidy (e.g., section 8) at the project, then prepayment cannot be accepted unless the borrower and successors in interest are made subject to restrictive-use provisions. Similarly, if the available housing determined to be comparable is not expected to be available for a long period of time, because of age or because the owner may be allowed to "opt-out" of a Federal program, then restrictive-use provisions may be necessary if prepayment is to be accepted.

(c) *Conditions under which prepayment may be accepted.* Prepayment may be accepted if one of the following conditions are met, required restrictions are placed in the deed, deed of release, or satisfaction, as appropriate, and notification is made to the local Department of Housing and Urban Development (HUD) office if the project has section 8 subsidy:

(1) *The loan is not subject to restrictive-use provisions, but the borrower agrees to become subject to them as a condition of prepayment.* In accordance with Exhibit A–4 of this subpart, the borrower agrees to:

(i) Maintain the housing in the low- and moderate-income program for a minimum period of 20 years from the date of the last loan or servicing action and then offer to sell the housing to a qualified non-profit organization or public agency (Exhibit A–4(A)); or

(ii) Maintain the housing for current eligible tenants for the life of the project by ensuring they will not be displaced due to a change in the use of the housing or an increase in rental or other charges as a result of the prepayment. These tenants are protected so that none experience new or increased rent overburden until each voluntarily moves from the project. This provision may only be used if it is determined by FmHA that housing opportunities for minorities (as described in paragraph (b)(2) of this section) will not be materially affected as a result of the prepayment (Exhibit A–4(B)); or

(iii) Offer the project for sale to a non-profit organization or public agency, if it is over 20 years since the last loan on the project was obligated or the last applicable servicing action taken, and the housing will no longer be used to house low- and moderate-income people. (Exhibit A–4(C)).

(2) *The loan is subject to restrictive-use provisions and the borrower agrees to continue to adhere to these provisions after prepayment.* In accordance with Exhibit A–3 of this subpart the borrower agrees to continue to maintain the housing in accordance with the restrictions already in effect;

(3) *It is determined by FmHA that restrictions are not needed.* If actions in accordance with §§1965.206(b)(2) and 1965.215(d)(3) have been taken to ensure that alternative rental housing will be made available to each tenant upon displacement, the prepayment may be accepted without restrictions if:

(i) For loans not subject to restrictive-use provisions, it is determined by

FmHA that housing opportunities for minorities (in accordance with paragraph (b)(2) of this section) will not be materially affected as a result of the prepayment;

(ii) For loans subject to restrictive-use provisions, Federal or other financial assistance provided to residents will no longer be provided due to no fault, action or lack of action on the part of the borrower;

(iii) Regardless of whether or not the loan is subjet to restrictive-use provisions, FmHA determines there is no longer a need for the housing (in accordance with paragraphs (b)(1), (3) and (4) of this section).

(4) *LH loans for which there are LH grants at the same project.* If a prepayment is accepted on an LH loan for a project which also has an LH grant, restrictive-use provisions may only be released under conditions specified in the Grant Agreement.

(d) *Acceptance of prepayment.* If prepayment will be accepted, the District Office must do the following:

(1) *Notification to National Office and prepayment report.* Notify State Office which will send a report in the format of FmHA Guide Letter 1965–E–1 to the National Office saying that the prepayment has been accepted. Send a report, completed in the format of Exhibit B of this subpart, complete with all documentation, on each prepaid loan to the State Director for indefinite retention. Any information for the report supplied by the borrower must show documentation and verification by the District Office. For prepayment of on-farm labor housing units, only items relevant to the particular units need be completed. The State Office will forward a copy of this report to the National Office in accordance with § 1951.264 of subpart F of part 1951 of this chapter.

(2) *Notify agencies.* All agencies notified in accordance with § 1965.206(b)(4) of this subpart will be notified again. Agencies which may aide displaced tenants, will be advised of any anticipated displacement, the level at which post-prepayment rents will be set and restrictive-use provisions which will remain in the deeds of release. Other agencies will be advised that no offer to sell will be made.

(3) *Notify tenants.* The District Office will give tenants a second notice at least 60 days prior to the prepayment. The prepayment may not take place less than 180 days from the initial notification unless an exception is allowed in accordance with § 1965.215(e)(2). These notices will be sent certified mail and be posted at the project in public areas. Copies of the letter will remain posted at the project until prepayment is accepted and all leases expire. They will contain any of the following information which is appropriate for this case and any other relevant information necessary to allow tenants to make informed choices (FmHA Guide letter 1965–E–5 of this subpart is provided as a guide for this purpose):

(i) All relevant information has been reviewed and FmHA has decided to accept prepayment on (date).

(ii) At that time rents are expected to be set at _____.

(iii) the tenant will be affected by this change on (date lease expires, date of prepayment, or other mandated date, whichever comes latest.)

(iv) Fully detailed reason(s) that prepayment is being accepted, without or without restrictive-use provisions, and reasons for acceptance in less than 180 days (if applicable).

(v) (Being prepaid with restrictive-use provisions) all (current tenants/eligible tenants) may continue to occupy the housing until (they move voluntarily or no longer meet eligibility requirements/ end of restrictive-use period) and that rents for the protected tenants will never increase to exceed levels which create new or increased rent overburden as established by FmHA guidelines, in accordance with Title V of the Housing Act of 1949. A tenant, or those wishing to occupy (if applicable), as well as the government, may seek enforcement of the provisions.

(vi) (Total Section 8) that rents will continue to be subsidized by HUD until (end of restrictive-use period).

(vii) (Restrictive-use provisions or HUD or other subsidy will not remain with the project for a minimum of two years after prepayment) tenants in the project who may be displaced or experience rent overburden due to a prepayment, are eligible for certain benefits and the address and phone number of the District Office are being provided so tenants can call for information on these benefits and how to apply for them. The following are the benefits available:

(A) Eligibility for Letters of Priority Entitlement (LOPE) to other federally subsidized housing. Tenants may apply for these letters up until the day their rents are scheduled to be increased and that these letters will be valid for 60-days after they are issued. All LOPES will be issued in accordance with Title VI of the Civil Rights Act of 1964, as codified in subpart E of part 1901 of this chapter.

(B) Tenants currently receiving rental assistance will be able to continue to receive rental assistance when they move if they select housing in which they are eligible for RA in accordance with FmHA guidelines.

(C) That those tenants choosing to stay in their units after prepayment and pay the higher rents, with or without Federal, State or other subsidy, are entitled to do so, unless evicted for a cause unrelated to prepayment.

(viii) Tenants eligible for these benefits will also be sent:

(A) A list of names, locations, number of apartments, and unit sizes of other FmHA projects in the geographic area and whether they serve senior citizens or families, and

(B) The names and locations of other subsidized housing, and HUD and other agencies which administer housing subsidies or aid in relocation anywhere in the geographic area.

(ix) Tenants will be allowed to review the information used to make any of the determinations regarding prepayment, or alternatives to prepayment and possible rent increases and ask for review by the State Director if they feel prepayment was improperly accepted.

(x) Any other information pertinent to the particular case.

(4) *Issue Letters of Priority Entitlement (LOPE).* Upon request by a tenant for a LOPE, the District Director will prepare the letter (FmHA Guide Letter 1965–E–4 may be used as a guide). This letter will include:

(i) The affected tenant has 60 days to apply in writing to other FmHA RRH projects in any location in the country.

(ii) The tenant is to be placed at the top of all waiting lists in projects applied to which have units for which the tenant qualifies following only those tenants who entered the waiting list with a LOPE before this tenant has or following handicapped tenants on the list for handicapped units.

(iii) The tenant will not be removed from this position on the list until the tenant moves to a unit with a LOPE letter or is purged from the waiting list in accordance with Exhibit B to Subpart C of Part 1930 of this chapter.

(iv) Tenants with LOPES may occupy units for which they do not qualify if they agree to move to the first available suitable unit.

(v) If the tenant holding the LOPE letter has RA in the prepaying project, and uses the LOPE letter to move to a Plan II project for which they qualify for RA, the RA will be transferred to the project to which the tenant moves and the RA will be assigned to that tenant without competition. This RA will remain at the receiving project if the tenant then moves to another FmHA project.

(vi) That the tenant's current security deposit of (a specified amount) may be transferred directly to the receiving project, possibly after the tenant moves in, if it has not been released by the prepaying project by the moving date.

(vii) Tenants may also present these letters to receive preference on HUD waiting lists.

(5) *Approve tenant leases.* The District Office will approve language to be added to leases of tenants moving to the project detailing the status of their occupancy. Prior to accepting the prepayment, the District Office will review and approve a new tenant lease, to be used for all protected tenants during any applicable restrictive-use period. The lease will explain the restrictive-use provisions, who is protected, describe the limits on rents during the period of restrictions, that no tenant can have lease renewal denied for other than "good cause" (which cannot include income level), that charges, rules and regulations and services may not change substantially from those available at present, and all other provisions necessary (including Fair Housing Act provisions) to protect affected tenants. At the borrower's option, it may contain provisions for annual income certification. The approved lease, with signatures of both the borrower and the FmHA representative, will be maintained by the District Office until expiration of the restrictive-use period, although FmHA will not be responsible for monitoring compliance.

(6) The borrower will be advised that upon prepayment, FmHA will send a notice, using FmHA Guide Letter 1965–E–2 as a guide, to all tenants and that the borrower must keep this notice posted in public areas in the project until all restrictive-use provisions expire.

(7) *Payment in full and release of security.* FmHA will be certain that full payment has been received and release of security in accordance with § 1965.90 (b) of subpart B of part 1965 of this chapter.

(e) *Denial, postponement or withdrawal of prepayment request.* (1) Borrowers will be denied a request to prepay if conditions stated in § 1965.215 (b) and (c) of this subpart as required for prepayment cannot be met, or if information submitted with the prepayment request cannot be verified. If the borrower is denied a request to prepay, the District Director will provide a letter stating the reasons for the denial and the right to appeal the rejection along with the offer of incentives, in accordance with subpart B of part 1900 of this chapter and §§ 1965.213 and 1965.215 (a), (b), and (c) of this subpart.

(2) Prepayment requests will be denied if receipt of the request was less than 180 days in advance of the projected prepayment date, unless the District Office determines that there is sufficient time to review tenant comments and verify all information submitted for an accurate prepayment report, and FmHA verifies that all tenant leases, with current rents and conditions, are extended until a 180-day period from the date of the prepayment request. Prepayment will be postponed if necessary to allow the second tenant notification to be sent at least 60 days prior to the prepayment, unless all tenant leases, with all rents and conditions, are extended to the end of the 60 days.

(3) Prepayment authorizations will be cancelled if the prepayment is not received within 180 days of the approval of the prepayment.

(f) *Review of incentive offer by FmHA and borrower.* If the prepayment request is denied to borrowers not subject to restrictive-use provisions because of documented tenant displacement, and the alternative uses for the housing are determined to be greater than initially thought, the District Office may revise the incentive offer to the borrower. Any revised offer will be included in the notification to the borrower that the request to prepay was denied. If a new offer is made, the borrower will be given an additional 30 days to accept, reject or appeal the offer. If a new offer is not made, the borrower will be given 7 days to reconsider the initial offer. If the offer is accepted, the District Office will act in accordance with § 1965.214 (c) through (i) of this subpart.

(g) *Borrower appeals prepayment decision.* The borrower may appeal the decision to deny prepayment without restrictive-use provisions within 30 days of the receipt of the offer, in accordance with FmHA Instruction 1900–B. The incentive offer may be appealed at the same time if the borrower chooses. Tenants will be notified if a borrower appeal is pending and be given the right to represent their interests or have others represent their interests at the appeal hearing. Whether the decisions are upheld, reversed or modified, the borrower will be given an additional 30 days to respond to the incentive offer. Based on the borrower response and whether or not the loan is subject to restrictive-use provisions, the District Office will act in accordance with appropriate sections of this subpart. Borrowers subject to restrictive-use provisions will have no further recourse. Borrowers not subject to restrictive-use provisions will be treated in accordance with § 1965.216 of this subpart.

§ 1965.216 The borrower is not subject to restrictive-use provisions, no incentive agreement is reached between FmHA and the borrower, and the prepayment cannot be accepted.

If the borrower is not subject to restrictive-use provisions, no incentive agreement is reached between FmHA and the borrower, and the prepayment cannot be accepted in accordance with § 1965.215 (a), (b), and (c) of this subpart, because a need remains for the housing and therefore the borrower does not qualify for an exception, the borrower will be required to offer to sell the project to a non-profit organization or public agency. The following steps will be taken in this process:

(a) *Determination of fair market value.* Within 60 days of the termination of any appeals, or the decision to deny prepayment if there was no appeal, the housing's fair market value will be determined by two independent appraisers qualified to perform MFH appraisals, one of whom shall be selected by the State Office and paid by FmHA, and the other selected and paid by the borrower. The appraisals will be conducted in accordance with FmHA Instruction 1922–B (available in any FmHA office), for its best possible use as rental housing in the community. The best use may be as conventional housing or subsidized housing depending on the local economy. If appraised as subsidized housing, the form and extent of subsidy and tax credits available, as well as restrictive-use provisions and other circumstances which affect the value of the project, must be considered. If, after negotiation, the two appraisers fail to agree on the fair market value and, if they are within 5 percent of each other, the appraisals will be averaged. If not, the District Office and borrower will jointly select and pay a third appraiser, with FmHA and the borrower each paying half, who will complete an appraisal within 60 days, and whose appraisal shall be binding on the FmHA and the borrower.

(b) *Borrower attempts to sell the project to a non-profit organization or public agency.* The District Director will provide the borrower with the list of all the organizations which have expressed an interest in purchasing a project in the subject area. Within 10 days of the determination of fair market value, the borrower will be expected to contact each organization on the list individually with an offer to sell, and with enough information about the project to allow the prospective

purchaser to make an informed decision. The borrower must promptly provide any relevant information requested by any such organization. The offer to sell and all pertinent advertising must be maintained for a full 180 days. If the offering is suspended while eligibility of a non-profit organization to purchase is being evaluated, it will resume if the applicant is determined to be ineligible so that a total of at least 6 months active advertising and offering in the above manner has taken place.

(1) *Preference to local non-profit organizations or public agencies.* The borrower will first advertise the housing for sale to qualified local non-profit organizations or public agencies, as defined in § 1965.202 of this subpart. The District Director will be responsible for determining that all appropriate means have been utilized, including local media, and that all necessary information has been provided. Regardless of when the offers are received, if more than one qualified non-profit corporation or public agency submits offers to purchase the project, a local organization must be given preference over a regional or nationwide organization.

(2) *Advertising to Regional or Nationwide Organizations.* If no qualified local agency is found to purchase the housing within 60 days, the Distict Director will authorize the borrower to seek an existing qualified national or regional non-profit organization to purchase the housing. Advertising to the latter must begin between 60 and 120 days after advertising to local organizations begins. Purchase offers from regional or national organizations on the master list may not be accepted before the advertising begins to Regional or National non-profit organizations or public agencies. Advertisements will be placed, as appropriate, in national housing publications and other media, including those serving minority groups exclusively, determined appropriate by the State Office.

(c) *Qualifications of non-profit borrower to purchase.*

Notwithstanding the redquirements of § 1944.211(a)(10) of subpart E of part 1944 of this chapter, non-profit organizations for the purpose of this paragraph need not be broadly-based (unless qualifying as a local non-profit organization as defined in § 1954.202) nor organized solely to provide housing under sections 514 or 515. Non-profit organizations qualified to buy the housing through this procedure must:

(1) Be capable of managing the housing and related facilities for its remaining useful life, either by themselves or through a management agent.

(2) Agree that "no subsequent transfer of the housing and related facilities will be permitted during the remaining useful life of the housing and related facilities unless the Secretary determines that the transfer will further the provision of housing and related facilities for low-income families or persons, or there is no longer a need for such housing and related facilities." Generally, transfers from regional or nationwide organizations to qualified local non-profit organizations will be acceptable. However, under no condition will a transfer be approved to an entity in which the non-profit borrower or a member of the non-profit entity holds an ownership interest. If a project is transferred to a profit-motivated entity, the portion of the loan which exceeds the total loan which would have been placed on the property if the last incentive offer were accepted must be repaid at closing.

(3) Agree to obligate itself and successors in interest to maintain the housing for very-low- and low-income families or persons for its remaining useful life, although no currently eligible tenants will be required to move. The provision in Exhibit A-2 will be used and inserted in the deed, security instrument, loan agreement/resolution and/or assumption agreement, as appropriate. Subsequent transfers to profit-motivated entities will maintain these restrictions rather than having new restrictions, appropriate for the new organization, placed on the project.

(4) Show feasibility of the project, with anticipated funding which will be authorized in accordance with § 1965.217(d) of this subpart, and any regular RA or debt forgiveness RA allocations which can reasonably be anticipated to be available for the project at the time of the transfer.

(5) Have no identity of interest except as management agent between:

(i) Principals or persons or parties related to the principals or having a financial interest in the prepaying entity or any section 515 projects which have prepaid, and

(ii) Principals or persons or parties related to the principals or having a financial interest in the purchasing entity.

(d) *Priority to more experienced organization.* If more than one qualified organization meeting either the criteria of local or regional and nationwide apply to purchase the housing, the organization or agency with the most successful experience in developing and managing low-income housing or community development projects as determined by the District Office, and with the longest record of service to the community, will be given preference. The preference to local vs. regional and nationwide agencies takes priority over this preference.

§ 1965.217 Processing applications for transfers to non-profit corporations or public agencies.

(a) *Determining eligibility.* When an option is signed between a borrower and a non-profit corporation or public agency for sale of a project, the organization will file a complete application in accordance with § 1965.65(f) of subpart B of this part. FmHA will make a determination as to the eligibility of the borrower and feasibility of the proposed transfer and subsequent loan, considering any consolidation and reamortizing of the loans which will take place.

(b) *Non-profit organization not selected to purchase.* If a non-profit organization or public agency is not selected to purchase the project by FmHA either because it is found to be ineligible, the transfer is found to not be feasible or because the organization has lower priority than another applicant, appeal rights will be given in accordance with subpart B of part 1900 of this chapter.

(c) *Authorization for transfer.* When the transfer and loan(s) are ready to be processed, the National Office will be notified in the format of FmHA Guide Letter 1965-E-1. If the loan will exceed the State Director's approval authority, the entire case file should be sent to National Office for review. The National Office will give approval authority, if applicable, and authorize funding for purchase of projects which have completed the steps outlined in this subsection. Subject to the nationwide maximum funding allowed, the authorizations will be issued in the order of the date a complete prepayment request was received by the District Office in accordance with § 1965.205 of this subpart.

(d) *Special assistance available to non-profit organizations.* The loan(s) to the non-profit organization or public agency will be processed in accordance with subpart E of part 1944 of this chapter for the following purposes (in no case may the loan and transfer exceed 102 percent of the fair market value plus $10,000):

(1) Direct costs, not to exceeo $10,000, incurred in purchasing and assuming responsibility for the housing and related facilities. These costs, which must be based on written estimates, may include legal fees for purchasing

but not for organizing the entity, architectural fees, packaging fees and/or other expenses as authorized by the State Director. Funds for these direct costs may be provided in the form of an advance in accordance with § 1944.212 (p) of subpart E of part 1944 of this chapter. The advance may be reamortized for up to the remainder of a 50-year period at transfer and equity loan closing. The advances will be secured as a "Note Only" and bear a zero interest rate with a one-year, one payment only due date. Only one such advance may be made for the transfer.

(i) If the transfer and subsequent loan are closed, all costs provided by the advance will be accounted for at closing or repaid from the transferee's funds at that time.

(ii) If the transfer and subsequent loan is not closed, expended advance funds should be accounted for and the remainder repaid. Funds accounted for should be cancelled by means of Form FmHA 1956-2, "Cancellation or Charge-Off of FmHA Indebtedness."

(2) With proper justification, first year operating expenses not to exceed 2 percent of the project's appraised fair market value if current operating funds are not sufficient;

(3) Loan to pay for the equity in the RRH project as determined by the indendent appraisal.

(e) *District Office actions when transfer is authorized.* When notified by the National Office that the transfer may be processed, the District Office will:

(1) Submit to the State Office for approval the assumption in accordance with § 1965.65 of subpart B.

(2) Transfer the RA to the non-profit borrower in accordance with paragraph XV B 1 of Exhibit E of subpart C of part 1930 of this chapter unless debt forgiveness RA is used to replace current project RA.

(3) Notify tenants that prepayment of the loan will not be taking place and to whom the ownership of the housing is being transferred. Any rent increases resulting from the transfer and loan will be handled in accordance with § 1965.204(b) of this subpart. Tenants will also be advised that a review by the State Director may be requested if it is felt that the requirements contained in this procedure for transfers to non-profit organizations have not been properly followed.

(4) All existing project loans should be reamortized with trnasferred loans consolidated if necessary to maintain project feasibility and to reduce rental subsidy payments.

(5) All delinquent accounts must be brought current, cost items paid in full, project accounts brought current and transferred with the project taxes and all liens paid at closing. Deferred maintenance must be performed before the transferor may retain any equity.

(6) The restrictive-use provisions contained in Exhibit A-2 of this subpart will be inserted in the deed, security instruments, loan agreement/resolution, assumption agreement, and/or reamortization agreement, as appropriate.

(f) *Rental Subsidies.* No transfer will be approved unless there is sufficient RA available for every tenant or potential tenant who would experience rent overburden after the transfer. It must be assumed that all units vacated will be filled by the very low or low-income tenant. Sufficient debt forgiveness RA, in accordance with paragraph II I of Exhibit E of FmHA Instruction 1930-C, must be authorized for obligation when authorization to process the loan is given. The National Office will advise when authorization to process is given, whether RA will be transferred with the project, or if RA will be suspended and transferred to another project within the State. If the latter is done, all RA needs at the project will be met with debt forgiveness RA. Future priority for debt forgiveness RA and renewals will continue for projects transferred under this Section. If any RA is transferred with the project it will continue to benefit the tenant to whom it was assigned.

§ 1965.218 Accepting prepayment when non-profit organizations do not apply to purchase or funds are not available.

Prepayment without restrictions, may be accepted from borrowers who are not subject to restrictive-use provisions within 120 days of meeting the following requirements:

(a) *No offer to purchase.* (1) At least a 180-day period has expired since the offer to sell to a local non-profit organization or public agency was made and the offering has continued for the full 180 days.

(2) For at least a 60-day period of the 180 days the offer had also been made to regional and national organizations.

(3) There is documentation that all organizations whose names were provided by the District or State Office were contacted in accordance with § 1965.216(b) of this subpart and offered the housing for purchase.

(4) No qualified non-profit organization has made a bona fide offer to purchase the housing for its appraised fair market value and shown feasibility for such a purchase. (Note: An offer will be considered to be bona fide if there is a written offer to purchase at fair market value, even if contingent on FmHA funding when no funding is available.)

(b) *Funds are not available.* No funds have been available for funding to non-profit organizations for this purpose for any project in the country for a period of 15 months. (Note: This determination is not made based on the length of time the particular project has been on the waiting list.) National Office will periodically advise State Offices of the status of the waiting list and of the length of time since funds have last been available.

§ 1965.219 FmHA processing of prepayment.

When a transfer and loan cannot be processed to a non-profit organization, the District Office will take the following actions:

(a) *Notifications to tenants and agencies.* Notify tenants and agencies that prepayment is being accepted. The format of FmHA Guide Letter 1965-E-5 may be used for this purpose.

(b) *Payment in full and release of security.* FmHA will ensure payments in full and release of security in accordance with § 1965.90(b) of subpart B of this part.

(c) *Notification to National Office and prepayment report.* Notify State Office which will send a report in the format of Form FmHA 1965-E-1 to the National Office saying that the prepayment has been accepted. Send a report, completed in the format of Exhibit B of this subpart, complete with all documentation, on each prepaid loan to the State Director for indefinite retention. Any information for the report supplied by the borrower must show documentation and verification by the District Office. The State Office will forward a copy of this report to the National Office in accordance with § 1965.264 of subpart F of part 1951 of this chapter.

§§ 1965.220-1965.221 [Reserved]

§ 1965.222 Violations of restrictive-use provisions.

Should the District Office receive a written complaint or become otherwise aware of a violation of the prepayment restrictive-use clause, set out in Exhibits A-3 or A-4 of this subpart, by the owner of a previously FmHA-financed project, the following actions will be taken:

(a) The complainants will be informed that they may pursue enforcement through the courts.

(b) The FmHA District Office will conduct a preliminary evaluation of the complaint. This evaluation may necessitate the gathering of additional information. Should this preliminary evaluation indicate the complaint is not

valid, the complainant will be so informed. Should the preliminary evaluation indicate the complaint is or may be valid, then the complaint, all facts gathered, an evaluation report and District Office recommendation will be forwarded to the State Office for processing.

(c) If the State Office determines that a violation of the restrictive-use provisions has likely occurred, the Administrator will be contacted. The OGC will be asked to provide advice in such cases. The complaint may then be referred to the Department of Justice or other appropriate agency for enforcement. A copy of any complaint submitted to the Department of Justice or other appropriate agency with a request to seek enforcement of the restrictive-use provisions should be fowarded to the Administrator.

§ 1965.223 Relationship with acceleration of accounts, bankruptcy, foreclosure, or inventory properties.

(a) *Acceleration of accounts.* Accelerations of accounts will be prepared in accordance with FmHA Guide Letters 1955–A–1 or 1955–A–2. Any prepayment of an FmHA loan subject to restrictive-use provisions, prepaid in response to an acceleration of the account, will have the appropriate restrictive-use language inserted, with the advice of OGC, in the deed of release or satisfaction, as appropriate.

(b) *Foreclosure.* If a project is sold out of the program at a foreclosure sale, the restrictive-use provisions will be added to the deed in accordance with Exhibit A–3 or A–4 of this subpart.

(c) *Inventory property.* Restrictive-use provisions will be retained for projects being taken into or sold out of FmHA inventory in accordance with Exhibits A–1 through A–4 of this subpart, unless determinations are made in accordance with § 1965.215 (b) and (c)(3) of this subpart that these restrictions may be released. Tenants will receive all appropriate notifications as they would for prepaying projects.

(d) *Bankruptcy.* A bankruptcy proceeding will have no effect on the contractual requirement for restrictive-use.

§§ 1965.224–1965.249 [Reserved]

§ 1965.250 OMB Control Number.

The reporting and recordkeeping requirements contained in this regulation have been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980

Exhibits to Subpart E

Exhibit A–1—Applicability of Restrictive-Use Provisions to Outstanding Loans Approved on or After December 21, 1979, or Those Approved Prior to December 21, 1979, and Subsequently Made Subject to These Restrictions Due to a Servicing Action, or An Incentive to Not Prepay the Loan When These Actions Took Place After (Effective Date of Regulation)

Any Multiple Family Housing loan approved on or after December 21, 1979, or approved prior to that date and subsequently made subject to restrictive-use provisions due to a servicing action as described in § 1965.65(c)(1) or § 1965.70(d)(8) of subpart B of this part or an incentive to not prepay the loan as described in § 1965.214(i) of this subpart are subject to the restrictive-use provisions set out in their loan documents or security instruments. All such loans or servicing actions occurring after the effective date of this regulation will have the restrictions which are set out below in this Exhibit inserted in their deed, conveyance instrument, loan agreement/resolution, assumption agreement, interest credit agreement, or reamortization agreement, as appropriate. The provisions provide protection for a term of 20 years from the date on which the last loan was closed, or the loan was subsequently made subject to such provisions as a result of a servicing action or incentive to not prepay.

"The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in Section 514 or Section 515 of Title V of the Housing Act of 1949, and FmHA regulations then extant during this 20 year period beginning (the date the last loan on the project is closed, or date the project was last made subject to the prepayment restrictive-use provisions as a result of servicing actions or incentive to not prepay the loan, authorized under this subpart or other subparts). No eligible person occupying the housing shall be required to vacate, or anyone wishing to occupy denied occupancy prior to (date) because of early prepayment. The borrower will be released from these obligations before that date only when the Government determines that there is no longer a need for such housing or that such other financial assistance provided the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower. A tenant or individual wishing to occupy the housing may seek enforcement of this provision as well as the Government."

Exhibit A–2—Applicability of Restrictive-Use Provisions to Outstanding Loans Transferred to Non-Profit Organizations or Public Agencies in Order to Avert Prepayment of These Loans

Any Multiple Family Housing loan made subject to restrictive-use provisions due to a transfer and subsequent loan to a non-profit organization or public agency in order to avert prepayment of the loan as described in § 1965.217(e)(6) of this subject to restrictive-use provisions as set out below in this Exhibit. The provisions will protect only very-low and low-income individuals and families for the remaining useful life of the project and may not be superceded by new restrictions imposed by subsequent transfers. Eligible moderate-income tenants living at the project at the time of prepayment will not be required to move to comply with these restrictions and moderate-income applicants for housing will continue to take priority over ineligible applicants.

"The borrower and any successors in interest agree to use the housing for the purpose of housing very low- and low-income people eligible for occupancy as provided in FmHA regulations then extant during the remaining useful life of the project beginning (date of this transfer). A tenant or person wishing to occupy the housing may seek enforcement of this provision as well as the Government. No eligible person occupying the housing shall be required to vacate or low-income or very-low income person wishing to occupy denied occupancy prior to the end of the remaining useful life of the project, because of early prepayment. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing, or that such other financial assistance provided to the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower."

Exhibit A–3—Applicability of Restrictive-Use Provisions to Prepaid Loans Made Subject to Restrictive-Use Provisions at the Time of Loan Making, Applicable Servicing Action, an Incentive Was Accepted to Not Prepay, or When the Loan Was Transferred to a Non-Profit Organization or Public Agency to Avert Prepayment

Prepayments of project loans made subject to restrictive-use provisions due to the date on which the last loan on the project was made, as a result of a transfer or reamortization as set forth in §§ 1965.65(c)(1) or 1965.70(d)(8) of this subpart, as a result of accepting an incentive to not prepay as set forth in § 1965.214(i) of this subpart or due to a transfer to a non-profit organization or public agency in order to avert prepayment, and for which an exception to the restrictive-use provisions cannot be granted in accordance with § 1965.215(c)(3) of this subpart, may only be accepted if the title to the real property is made subject to the applicable restrictive-use provisions set out below in this Exhibit. Form FmHA 1965–E–2 sets forth the format for the notice required by the restrictions to be posted at the project.

"The owner and any successors in interest agree that the housing located on this property will be used only as authorized under Section 514 or 515 of Title V of the Housing Act of 1949, as amended, and FmHA regulations contained in FmHA Instruction

1965–E or other regulations than extant until (insert date as shown on existing restrictive-use provisions). A tenant or applicant for occupancy may seek enforcement of this provision as well as the Government. No eligible person occupying the housing shall be required to vacate or eligible person wishing to occupy, denied occupancy during such period because of early prepayment. The owner also agrees to keep a notice posted at the project, for the remainder of the restrictive-use period, in a place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for (insert "low- and moderate-income" or "very-low- and low-income" as shown on existing restrictive-use provisions) tenants for the remainder of the restrictive-use period."

Exhibit A-4—Applicability of Restrictive-Use Provisions to Prepaid Projects Whose Loan Was Not Subject to Restrictive-Use Provisions But Which Became Subject to Them as a Condition of Prepayment of Their Loan

Restrictive-use provisions for loans made prior to December 21, 1979, which were not made subject to restrictive—use provisions while the loans were in effect but which became subject to such restrictions, as specified in § 1965.215(c)(1) of this subpart and the conditions provided in paragraphs (A), (B) or (C) of this Exhibit, as a condition of prepaying the loan, are subject to the appropriate restrictions described in those paragraphs. FmHA Guide Letter 1965–E–2 of this subpart sets forth a guide for the format of the notice required by the restrictions to be posted at the project.

(A) *Restrictive-Use for 20 Years.* The owner enters into an agreement that obligates the utilization of the assisted housing and related facilities for the purposes specified in Section 514 or 515 for a minimum of a 20-year period, calculated from the date on which the last loan on the project was made or servicing action taken, and agrees that upon termination of the 20-year period, or when the borrower ceases to use the housing for the intended purpose, whichever is later, to offer to sell the assisted housing and related facilities to a qualified non-profit organization or public agency.

"The owner and any successors in interest agree to use the housing for the purpose of housing low- and moderate-income people eligible for occupancy as provided in FmHA regulations contained in FmHA Instruction 1965–E or other regulations than extant during this 20 year period beginning (date of the last loan or servicing action). A tenant or applicant for housing may seek enforcement of this provision as well as the Government. No eligible person occupying or wishing to occupy the housing shall be required to vacate or denied occupancy prior to (date period ends) because of early prepayment. The owner also agrees to keep a notice posted at the project, for the remainder of the restrictive-use period, in a place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for low- and moderate-income tenants for the remainder of the restrictive-use period. At the expiration of this period ending (date), or when the housing is to be removed from the target market, whichever comes later, the housing and related facilities will be offered for sale to a qualified non-profit organization or public agency, as determined by FmHA."

(B) *Restrictive-Use for Current Tenants for Project Life.* It is determined by FmHA that the conditions specified in § 1965.215(c)(1)(ii) of this subpart can be met and the owner enters into an agreement that no current tenants will be displaced, due to a change in the use of the housing, or an increase in rental or other charges, as a result of the prepayment, for as long as they wish to remain at the project.

"The owner and any successors in interest agree to use the housing for the purpose of housing eligible low- and moderate-income people occupying the unit at the time the prepayment was accepted, as provided in FmHA regulations contained in FmHA Instruction 1965–E or other regulations then extant. A tenant may seek enforcement of this provision as well as the Government. No eligible person occupying the housing shall be required to vacate prior to the end of the remaining useful life of the project because of early prepayment. The owner also agrees to keep a notice posted at the project, in a place available for tenant inspection, for the remaining useful life of the project, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates for current tenants will be consistent with those necessary to maintain the project for low- and moderate-income tenants."

(C) *Loans Over 20 Years Old.* It is over 20 years since the last loan on the project was obligated or servicing action taken, and the borrower enters into an agreement that at whatever time the housing will no longer be used to house low- and moderate-income people, it will be offered for sale to a non-profit organization or public agency.

"The owners and any successors in interest agree that when the housing is to be removed from the low- and moderate-income market, the housing and related facilities will be offered for sale to a qualified non-profit organization or public agency, as determined by FmHA."

Exhibit B—Report on Prepayment

1. Name of borrower.
2. Name of project.
3. Case and project number.
4. Date of all loan approvals, transfers and reamortizations.
5. Type of borrower entity and plan of operation.
6. The number of eligible households presently occupying units.
8. The estimate of the number of households that will be displaced as a result of prepayment.
9. The estimated relocation cost of the households being displaced.
10. An indication of the displaced household's ability to pay relocation costs.
11. The income distribution of the households presently in the project.
12. The number of elderly households in the project.
13. The present rents and rents projected after prepayment.*
14. The number and type of Section 8 or RA units, and whether Section 8 will continue after prepayment.*
    a. The earliest date borrower can "opt-out" of Section 8.
15. Any cause of displacement other than rent.*
16. The availability of other vacant units in the area and their rental structure.
17. The estimated replacement cost per units.*
18. The number of minority families in the housing, and percentage of minorities in the market area.
19. The District Office's recommendation on the final action.*
20. Date of prepayment.
21. Whether restrictive-use provisions are operable and date they expire.*.
22. Whether restrictive-use provisions will remain in release of security documents and, if an exception was granted, the basis for this exception.*
23. Which incentives were offered to remain in the program and reason for non-acceptance (if known).*
24. Whether housing was offered for sale to a non-profit organization or public agency and the result.*

*These items are not required for on-farm labor housing prepayment requests if the housing cannot be separated, for security purposes, from the farm.

Exhibit C—Checklist for Requesting Prepayment

—A. Request to prepay the Farmers Home Administration (FmHA) mortgage on a property at a designated location and remove it from the FmHA program.

—B. Date of anticipated prepayment (if less than 180 days, a statement that leases will be extended with all existing tenants at the project guaranteeing the current rents and living conditions for 180 days. These leases will be available for FmHA review prior to accepting the prepayment.)

—C. A signed certification that after the prepayment the borrower will continue to administer the housing in accordance with Fair Housing Policies.

—D. A statement as to whether the borrower expects to prepay with or without restrictions in the deed of release. If there are to be restrictions, what they are anticipated to be.

—E. Preliminary responses for the prepayment report (Items 1–18 on Exhibit B) and any additional information required by the incentive model (Exhibit D) with all the following documentation (some of which may also be submitted as documentation for proof of ability to prepay, below):

—1. A project worksheet showing the occupancy of all units and 30 percent of each tenant's adjusted income.
—2. An analysis of tenant assets obtained by review of tenant certifications.*
—3. Data from a survey of local moving companies with estimates for performing the move for the average family, with a unit of each size to be affected to the various locations to which tenants would be most likely to move.*
—4. A pro-forma budget showing rents after prepayment using the interest rate for the loan likely to be received, expenses set at their historical levels or with justification for any discrepancies, and allowances for any major rehabilitation or deferred maintenance which would be required.*
—5. If applicable, a copy of a Housing Assistance Payment (HAP) contract showing earliest possible "opt-out" date. If tenants at the project have "existing" Section 8 certificates, a copy of HUD's Fair Market Rents as they pertain to the units, or a statement by the local Public Housing Agency (PHA) stating the highest level rents at which tenants in different size units can be subsidized at this project.*
—6. (If applicable) A refinancing commitment from a bank detailing any plans for the project including any proposed renovations and conversions to other uses. If there is no bank commitment, a statement of any such plans which exist.*
—7. A market survey to show comparable, vacant units in the area and their rent structures. (This does not require a professional market study.) Documentation of how determinations of comparability were reached must be included.*

This market survey should also contain the following:

(a) size of community;
(b) number of comparable units;
(c) vacancy and turnover rates;
(d) unmet demand;
(e) building permits;
(f) future plans;
(g) any other factors which would document the market for the number of units contained in the project if converted to conventional housing at the typical market rent.
—8. Official statistics on the percentage of minorities in the market area.

* Not required for prepayment of on-farm labor housing units if housing cannot be separated from farm for security purposes.

—F. Documentation of the ability to prepay with a statement showing how the prepayment will be financed, including one of the following kinds of documentation (some of which may already have been submitted for Item E above):
—1. Evidence of cash or easily convertible assets to pay the entire loan. (Lines of credit or assets which can be used as loan security may not be used.) A statement that this cash and/or assets is not simultaneously being shown as available to prepay any other FmHA loan, nor to meet any other commitment.
—2. Evidence of a commitment from a bank to refinance the project with no contingencies.
—3. Evidence that bank refinancing can be obtained by showing the requirements for such refinancing and proof that these requirements can be met.
—4. An option to sell the housing to a non-FmHA purchaser. This option must contain no provisions for an FmHA loan remaining on the project after sale. Proof of the purchaser's ability to borrow the funds or pay equity from personal resources, as outlined in (1) or (2) above, should be provided.
—5. Evidence that the project is feasible as a conventional project including: a projected budget with conventional bank interest rates and expenses set at historical levels; a market analysis (showing waiting lists, vacancies and availability of other suitable housing) showing the demand for this type of housing in this area at rents that will be required by the above budget.

Exhibit D—Methodology for Determining the Incentive To Be Offered To Keep Rural Rental Housing (RRH) Projects in Program for an Additional 20 Years

Introduction: Borrowers who requested to prepay their RRH loans and demonstrated their ability to do so must be offered an incentive to keep the project within the Farmers Home Administration (FmHA) program. This Exhibit provides a model to be used to derive the maximum incentive which may be offered in varying circumstances. The model allows the incentive to vary directly with actual loss of rental income, the possible loss of income, and loss of the opportunity to make other decisions concerning the housing. The final incentive offer will be limited by the procedural requirements contained in § 1965.213 of this subpart, which describes allowable offers and the structuring of incentives based on the market, the project, and the borrower.

I. *Information needed to make the determination.* Prior to determining the maximum incentive offer, the District Office must ensure the following information needed to complete part I of the worksheet contained in Exhibit D-1, is available and accurate (NOTE: All documentation for determination of this information must be appended to the worksheet.)

A. The following information will be ascertained by the District Office:

1. Amount of initial loan(s);
2. Borrower's original contribution for equity;
3. Present unpaid balance;
4. Note rate rent (FmHA's Market Rent) for subject housing project;
5. Current budget and vacancy rate for subject project;
6. Degree of risk for investing in conventional housing in the community and the Capitalization Rate consistent with that risk. The "cap" rate should be developed in the same manner as for appraisal purposes; and
7. Published maximum rate of return on investment allowed by FmHA for incentives.

B. The following information will have been submitted by the borrower with their prepayment request, in accordance with § 1965.205(b) and Exhibit C of subpart E of part 1965, and analyzed by the District Office to determine its accuracy:

1. An analysis of the market for comparable conventional housing units in the community (Includes size of community, number of similar units, vacancy and turnover rates, unmet demand, building permits, future plans, and other factors which influence the market for this number of units if converted to conventional housing);
2. Rents for conventional housing in the community (must include documentation that the conventional market can support the proposed number of added units at the conventional rent rate, based on the analysis in paragraph IB1 of this Exhibit);
3. Expense incurred by the FmHA project due to federal regulation which would not be incurred if it were a conventional project (e.g., audit costs and additional management fees for recordkeeping and reporting requirements);
4. Conventional cash flow budget (This is the rent needed to make the budget cash flow as conventional housing in the community with conventional financing. Directions for calculating a pro-forma budget in accordance with Exhibit D-1 of this subpart will be followed. However, the current FmHA budget will be utilized with the conventional loan payment substituted for the FmHA payment, costs unique to FmHA projects in accordance with paragraph IB3 of this Exhibit subtracted, and other relevant adjustments made. Depreciation or Reserves for replacement must be allowed for. Anticipated "other project income" and vacancies as a conventional project will be introduced and rent necessary for the project to cash-flow as conventional housing will be calculated.); and
5. Net Operating Income (NOI) for conventional cash flow budget (Directions for calculating a pro-forma budget in accordance with Exhibit D-1 of this subpart will be followed. From anticipated conventional rent arrived at in accordance with paragraph IB2 of this Exhibit, will be subtracted current project costs with justifiable exceptions and anticipated vacancies. Anticipated "Other Income" will be added to this figure.).

II. *Determination of Level of Incentive to Be Offered:* An incentive will be calculated using the worksheet contained in Exhibit D-1 of this subpart. A description of the categories used in calculating the inventives, based on a determination of actual and possible foregone profits and opportunities lost by the borrower by maintaining the housing in the FmHA program for a 20-year period, follow in paragraphs IIA through IIC of this Exhibit. We then provide a procedure for allocating this incentive between an equity loan and increased return on investment in paragraph III of this Exhibit.

A. *Conventional rents in the community are higher than FmHA Note Rate Rents (Category 1).* Projects which fall into this category are experiencing an actual loss in rental income by remaining in the FmHA program. Note rate rents for each unit size should be compared with those in comparable rentals in the conventional market. The sum of the differences in rents is the foregone income each month. The current

value of that figure for a 20-year period with monthly interest accrual is determined by introducing a capitalization rate of an amount which is customary for investments with risks similar to the foregone investment since the lump-sum to be offered would be presumed to be invested in a similarly risky venture; in this case, that of conventional housing in the community. However, in accordance with § 1965.213 (a)(1), the amount of equity loan offered cannot exceed the difference between 90 percent of the appraised value of the project and the current outstanding loan. All or part of the difference may be compensated by also increasing the return on investment up to the maximum allowable in accordance with § 1965.213 (a)(3). Calculations will be made in accordance with Paragraph III of this Exhibit. The equity loan to be made to any borrower who falls into this category will never be less than 80 percent of appraised value minus the unpaid loan balances. Sufficient Rental Assistance must be allocated along with any incentives so that no current or anticipated future tenants experience rent overburden.

Example: 10-Unit Project
FmHA Note Rate Rent: $400
Conventional Rent Rate: $800
Monthly Rent Foregone: $200 x 10 = $2000
Conventional Housing Cap Rate: 10%.
Current value of foregone profits=$207,249. (on Hewlett Packard (hp 12c) calculator—$2000 pmt, 20 gn, 10 gi, PV, CHS)

We can offer the borrower up to $207,249 in current incentives. This amount would be lower if the FmHA Note Rate Rent and Conventional Rents were closer or if a higher risk level (capitalization ratej) exists in the conventional housing market. However, the amount of equity loan offered cannot exceed the difference between 90 percent of the appraised value of the project and the current outstanding loan and should not be less than 80 percent of this number. All or part of the difference may be compensated by offering an additional incentive which increases the return on investment up to the maximum allowable (see example in Paragraph III of this Exhibit).

B. *Conventional Rents in the community are lower than FmHA Note Rate Rents but higher than the Conventional Cash Flow Rent for the Project (Category 2).* Projects which fall into this category are experiencing a greater rental income from the FmHA project than they can from conventional housing, but the borrower can also demonstrate that a conversion to conventional housing would yield a profit. Projected conventional cash flow rents for each unit size in the project should be compared with those in actual rentals in the conventional market. The sum of the differences in rents is the foregone income each month. The current value of that figure for a 20-year period with monthly interest accrual is determined by introducing a capitalization rate of an amount which is customary for investments with risks similar to the foregone investment since the lump-sum to be offered would be presumed to be invested in a similarly risky venture; in this case, that of conventional housing in the particular community. However, the amount of equity loan offered cannot exceed the difference between 80 percent of the appraised value of the project and the current outstanding loan. All or part of the difference may be compensated by also increasing the return on investment up to the maximum allowable in accordance with § 1965.213(a)(3). Calculations will be made in accordance with Paragraph III of this Exhibit. The equity loan to be made to any borrower who falls into this category will never be less than 65 percent of appraised value minus the unpaid loan balances. Sufficient RA must be allocated along with any incentives so that no current or anticipated future tenants experience rent overburden.

Example: 10-Unit Project
FmHA Note Rate Rent: $425
Cash Flow Rent: $300
Conventional Rent Rate: $400.
Monthly Rent Foregone: $100 x 10=$1000
Conventional Housing Cap Rate: 11%.
Current Value of foregone profits=$96,882 (on Hewlett Packard (hp 12c) calculator—$1000 pmt, 20 gn, 11 gi, PV, CHS)

We can offer the borrower up to $96,882 in current incentives. This amount would be lower if the projected Cash Flow Rent and Conventional Rents were closer or if a higher risk level (capitalization rate) exists in the conventional housing market. We assumed a higher risk level and, therefore, a higher capitalization rate in this example than we did in the example in Category 1. However, the amount of equity loan offered cannot exceed the difference between 80 percent of the appraised value of the project and the current outstanding loan and should not be less than 65 percent of this number. All or part of the difference may be compensated by offering an additional incentive which increases the return on investment up to the maximum allowable (see example in Paragraph III of this Exhibit).

C. *Conventional rents in the community are lower than both FmHA Note Rate Rents and Conventional Cash Flow Rents (Category 3).* Projects which fall into this category cannot demonstrate any current financial incentive to convert to conventional housing but can be reimbursed for the long-term loss of opportunity to take advantage of changes in the housing market. The incentive in these cases will be based on the foregone opportunities for alternative uses of the project for a 20-year period. The incentive will take into account the relatively high risk which would accompany conversion to conventional housing in the local market. Projected net operating income for the conventional project is the amount the owner is presumed to be foregoing by lack of opportunity to convert the housing to the conventional market. The current value of that figure for a 20-year period with monthly interest accrual is determined by introducing a capitalization rate of an amount which is customary for investments with risks similar to the foregone investment since the lump-sum to be offered would be presumed to be invested in a similarly risky venture; in this case, that of conventional housing in the community. However, the amount of equity loan offered cannot exceed the difference between 65 percent of the appraised value of the project and the current outstanding loan balance. All or part of the difference may be compensated by also increasing the return on investment up to the maximum allowable in accordance with § 1965.213(a)(3). Calculations will be made in accordance with paragraph III of this Exhibit. Sufficient RA must be allocated along with any incentives so that no current or anticipated future tenants experience rent overburden.

Example: 10-Unit Project
FmHA Note Rate Rent: $425
Cash Flow Rent: $300
Conventional Rent Rate: $250
NOI: $200/month
Conventional Housing Cap Rate: 12%
Current value of Foregone Opportunities: $18,163 (On Hewlett-Packard (hp 12c) calculator—$200 pmt, 20 gn, 12 gi, PV, CHS)

We can offer the borrower up to $18,163 in current incentives and enough RA to protect all current and anticipated future tenants. However, the amount of equity loan offered cannot exceed the difference between 65 percent of the appraised value of the project and the current outstanding loan balance. All or part of the difference may be compensated by offering an additional incentive which increases the return on investment up to the maximum allowable (see example in paragraph III).

III. *Increasing Return on Investment.* In accordance with § 1965.213(a)(3) of this subpart, the incentive can include an increased annual return on investment. This may be in the form of increasing the initial investment on which the return is based and/or increasing the rate of return on the investment. The amount of initial investment may be increased up to the amount of borrower equity in the project after the equity loan (if any) is made. The rate of return on investment may be increased to a maximum level determined periodically by the National Office and distributed to the field. Up to these limits, we will increase one or both of the factors sufficiently to compensate for the difference between the maximum incentive calculated in paragraph II and the amount of the equity loan actually granted. First, the extent of any increase in borrower equity will be determined. Then, an increase in the rate of return on investment will be determined, if applicable, to compensate for any incentive remaining to be granted. Part III of Exhibit D-1 provides space for the calculations to determine how the incentive is to be allocated between any equity loan and increased return on investment. Part IV of Exhibit D-1 provides space to calculate how the increased return on investment is to be allocated between an increased initial investment and increased rate of return on investment.

Example A:
Original Project Cost: $200,000
Original Borrower Equity: $10,000
Current Appraisal: $350,000
90% of appraised value: $315,000
Unpaid Balance: $160,000
Equity Loan: ($315,000−$160,000)=$155,000
Current Borrower Equity: ($350,000−$315,000)=$35,000
Increase in Borrower's Equity ($35,000−$10,000)=$25,000

Published Maximum Return on Investment: 13%

The calculation in paragraph II A allows an incentive of $207,249 to be offered but only a $155,000 loan was made. This leaves $52,249 in present value to be made up by increasing the return on investment. The borrower's initial investment in the project was $10,000 but the investment after the equity loan is $35,000; a $25,000 difference. The degree of assumed risk for the investment will be the same as the one established for the equity loan for the same borrower.

We will use a three-step process:

(1) Calculate the total increased annual return on investment necessary to yield the desired present value to be paid: CHS, $52,249 PV, 20 n, 10 i, PMT. The result is $6,137 annually.

(2) Determine the amount of initial investment to be allowed the borrower. The maximum increase is $25,000. $25,000 × .08 (current return on investment) = $2,000. Since this does not exceed the allowable increase in return on investment, the entire $25,000 would be added to the amount of the initial investment bringing it to $35,000. An additional $6,137 − $2,000 = $4,137 remains to be returned to the borrower annually.

(3) Divide the additional incentive you wish to give the borrower by the amount of borrower contribution to be used ($4137/$35,000) = 12%. However, increasing the rate of return on investment by 12% would yield a 20% rate of return on investment (12% + 8% = 20%). This is greater than the maximum allowable 13%, so both initial equity and rate of return on investment would be set at the maximum level allowed ($35,000 at 13% return on investment).

Example B: Assume the calculation in step (1) left an additional $3,000 to be paid to the borrower annually. The calculation in step (2) would therefore leave $1000 ($3000 − $2000) to be paid annually after the increase in initial investment. The result in Step 3 would be $1000/$35,000 = 3% increase in rate of return on investment. The rate of return on investment may be increased to 11% (the original 8% plus the 3% increase), since it does not exceed the maximum rate of return of 13% established by FmHA.

Example C: Assume the calculation in step (1) left an additional $1000 to be paid to the borrower annually. However, Step (2) would give the borrower $2000 annually if the initial investment was increased by the entire $25,000. To determine how much should be added to the initial investment at 8% interest, divide the amount to be achieved by the interest rate ($1000/.08 = $12,500). The initial investment is therefore increased to $22,500 ($10,000 + $12,500) and the rate of return on investment remains at 8%.

Exhibit D-1—Examples and Worksheets for Developing Prepayment Incentive

Worksheet for Calculating Incentives

Part I

(1) Project:
(2) Location:
(3) Initial Borrower Contribution: _____
(4) Unpaid Balance: _____
(5) Conventional Rent for Comparable Housing:
____ 1BR _____
____ 2BR _____
____ 3BR _____
* Total Rent/Month: _____
(6) Current FmHA Note Rate Rent:
____ 1BR _____
____ 2BR _____
____ 3BR _____
* Total Rent/Month: _____
(7) Project's Conventional Cash Flow Rent:
____ 1BR _____
____ 2BR _____
____ 3BR _____
* Total Rent/Month: _____
(8) * Total Monthly Net Operating Income (NOI) for Conventional Units: ____
(9) Conventional Capitalization (CAP) Rate: ____
(10) Maximum allowable rate of return on investment: ____
(11) Borrower's current rate of return on investment: ____ (Note: This number will always be either 8 or 6).

Directions for Completing Pro-Forma Budget

Part I A

A pro-forma budget in accordance with the directions should be completed and the District Office must evaluate it for accuracy. Current FmHA figures will be used where indicated, unless well-documented justification for any discrepancies are provided.

The information may be compiled as shown below, using Form FmHA 1930-7.

Column 1—FmHA Market Rent Budget
Column 2—Conventional Cash Flow Budget
Column 3—Conventional Market Rents
Column 4—NOI for Conventional Market

Column Headings 1, 2, and 3 would be repeated on Page 1 under the heading Per Month.

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*Use figures derived from pro-forma budget described in Part I A.

	Column (1) FmHA Market Rent Budget	Column (2) Conventional Cash Flow Budget	Column (3) Conventional Market Rents	Column (4) NOI for Conventional Market
1. Unrestricted Cash (Beginning).....	$			
2. TOTAL OPERATION & MAINTENANCE EXPENSE.....		Copy p. 2, line 38		
OTHER DEDUCTIONS.....				
3. Loan Payment (Principal and Interest).....				
4. Transfer to Reserve or Depreciation Allowance				
5. Authorized Capital Improvement...{..Discrepancies between cols.		Col 2 = Col 3		
6. Other Authorized Debt Payments...{.2 & 3 and col. 1 must be				
7. Other (Specify).....{...justified in an attachment				
8. Return to Owner				
$_____ @ _____%.....				
9. TOTAL CASH NEEDED (Add lines 2 thru 8).....	$	TOTAL		
OTHER RECEIPTS				
10. Laundry.....{.Any discrepancy between cols. 2,3,& 4				
11. Interest Income.....{..and column 1 must be justified		Col 2 = Col 3 = Col 4		
12. Other (Specify).....{..in an attachment				
RECEIPTS FROM RENT				
No. & Kind / Per Month (1) Copy from current budget		Calculate Rent	Complete From Market Data	
13. _____ units @				
14. _____ units @				
15. _____ units @				
16. _____ units @				
17. Less Allowance for Vacancy and Contingencies as authorized by FmHA (Cols. 2, 3, & 4 must be supported by market data)		Col 2 = Col 3 = Col 4		
18. TOTAL RECEIPTS FROM RENT (Add lines 13 thru 16 and subtract line 17).....	$	TOTAL		
19. TOTAL RECEIPTS (Add Lines 10 thru 12 & 18).....	$	TOTAL		
20. Unrestricted Cash (Ending) (Line 1 plus line 19 minus line 9)..	$	0	profit or loss	NOI

Current FmHA Market Rent Budget

ANNUAL OPERATIONAL AND MAINTENANCE EXPENSES:	Column (1) FmHA Market Rent Budget	Column (2) Conventional Cash Flow Budget	Column (3) Conventional Market Rents	Column (4) NOI for Conventional Market
1. Caretaker	Current FmHA Market Rent Budget	Copy From Column 1		
2. Supplies				
3. Painting and Decorating (Interior only)				
4. General Maintenance and Repairs				
5. Grounds Maintenance				
6. Services				
7. Furniture and Furnishings Replacement				
8. Miscellaneous Operating Expenses				
9. SUB-TOTAL MAINTENANCE AND OPERATING (Total lines 1 thru 8)	$			
10. Electricity				
11. Water				
12. Sewer				
13. Heating fuel/other				
14. Garbage and Trash Removal				
15. SUB-TOTAL UTILITIES (Total lines 10 thru 14)	$			
16. Manager (Salary_____ Apt. Allowance_____)		Copy from Column 1 unless discrepancies can be justified		
17. Management Fees				
18. Accounting-Auditing				
19. Legal				
20. Other Administrative Expenses				
21. SUB-TOTAL ADMINISTRATIVE (Total lines 16 thru 20)	$	Attach justification to worksheet		
22. Real Estate Taxes				
23. Special Assessments				
24. Other Taxes, Fees and Permits		Col 2 = Col 3 = Col 4		
25. SUB-TOTAL TAXES (Total lines 22 thru 24)	$			
26. Property Insurance		Copy From Column 1		
27. Workman's Compensation Insurance				
28. Bond Premiums				
29. SUB-TOTAL INSURANCE (Total lines 26 thru 28)	$			
30. Interest Expense (Other than FmHA)				
31. Other Expenses				
32.				
33.				
34.				
35.				
36.				
37. SUB-TOTAL OTHER EXPENSES (Total lines 30 thru 36)	$			
38. TOTAL OPERATIONAL AND MAINTENANCE EXPENSES (Total lines 9, 15, 21, 25, 29 and 37)	$	Total Col 2 = Col 3 = Col 4		

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Page 2:

Column 1: Reproduce the current FmHA Market Rate budget.

Columns 2, 3, and 4: All have identical numbers. All figures from column 1 would be carried over with the possible exceptions of Lines 17–25. Lines 17–25 may be adjusted if appropriate to allow for differences in costs between conventional and FmHA projects in the local community. Any discrepancies between these columns and Column 1 should be justified in an attachment. The subtotals and totals would therefore be adjusted accordingly.

Page 1:

Column 1: Reproduced from the current FmHA Market Rent budget.

Columns 2, 3, and 4:

Line 2: Copy from Line 38 on Page 2.

All three columns have identical information on lines 10, 11, 12, and 17. Any discrepancy between the figures on lines 10, 11, and 12 and those in Column 1 should be justified in an attachment. The figures on Line 17 must be supported by market data.

Columns 2 and 3: Both have identical information on lines 3–7.

Line 3: Conventional mortgage payment.

Line 4: Either the FmHA-mandated reserve deposit or the current year's depreciation (per audit).

Lines 5, 6 and 7: Complete, if appropriate. Justification for any discrepancies from Column 1 should be given.

Columns 2 and 3, Line 8 and Column 4, Lines 3–8 are left blank.

Column 2, Lines 13–16: Calculated in the same manner as FmHA rents.

Columns 3 and 4, Lines 13–16: Completed based on market data.

Columns 2, 3, and 4: Totaled on Lines 9, 18, and 19.

Line 20:

Column 2: Equals exactly or near 0.

Column 3: Anticipated profit or loss for conventional housing.

Column 4: NOI.

Part II

1. Is Part I, Item (5) > Item (6)?

1a. Yes. Use Category 1 instructions and Part IIA below.

1b. No. Go to Line 2.

2. Is Part I, Item (5) > Item (7)?

2a. Yes. Use Category 2 instructions and Part IIB below.

2b. No. Use Category 3 instructions and Part IIC below.

Part II A

Category 1

Calculation:

Total Monthly Rents:

Conventional Rent. (a) Enter Item (5).	FmHA Note Rate Rent. (b) Enter Item (6).	Difference (c)

(d) Cap Rate Enter Item (9) _____

To calculate (use *Hewlett-Packard 12c):

Enter #	*Press function*
(c)	pmt
20	gn
(d)	gi
	PV
	CHS ____(e)

(e) is the maximum amount of all incentives to be offered. See Parts III and IV for directions on determining the amount of equity loan and return on investment.

Part II B

Category 2:

Calculation:

Total Monthly Rents:

Conventional Rent (a) Enter Item (5)	*Cash Flow Rent* (b) Enter Item (7)	*Difference* (c)

(d) Cap Rate Enter Item (9) _____

To calculate (use *Hewlett-Packard 12c):

Enter #	*Press function*
(c)	pmt
20	gn
(d)	gi
	PV
	CHS_____(e)

(e) Is the maximum amount of all incentives to be offered. See Parts III and IV for directions on determining the amount of the equity loan and return on investment.

Part II C

Category 3:

Calculation:

(c) NOI: Enter Item (8) _____

(d) Cap Rate for Conventional Project: Enter Item (9) _____

To calculate (use *Hewlett-Packard 12c):

Enter #	*Press function*
(c)	pmt
20	gn
(d)	gi
	PV
	CHS_____(e)

(e) Is the maximum amount of all incentives to be offered. See Parts III and IV for directions on determining the amount of the equity loan and return on investment.

If the borrower accepts the offer, the appraisal is done. This is entered as (f) below.

Part III

1. (f) Appraised Value: _____
2. (h) Unpaid Balance: Enter Part I, Item (4) _____
3. Is (f) > (h)?

3a. No. There is no equity loan. Enter on Line 12 and as (i) on Line 5.

Go to Return to Owner Calculation; Part IV.

3b. Yes. Go to Line 4.

4. Enter maximum % of Appraised Value: _____

(.90 if Category 1

.80 if Category 2

.65 if Category 3)

(g) and multiply it by the appraised value (f)(%) _____.

5. (i) Maximum Equity Loan: Calculate (g)-(h) or enter from line 3(a) _____
6. Is (e) > (i)?

6a. Yes. Equity Loan is (i). Enter on Line 12. Go to Return to Owner Calculation; Part IV.

6b. No. Go to Line 7.

7. Was this a Category 3 calculation?

7a. Yes. Equity Loan is (e). Go to Line 12.

7b. No. Go to Line 8.

8. (j) percent of appraised value: Calculate

$$\frac{(h)+(e)}{(f)}$$

9. Is this a Category 1 or Category 2 calculation?

9a. Category 1. Go to Line 10.

9b. Category 2. Go to Line 11.

10. Is (j) < 80%?

10a. No. Equity Loan is (e), Go to Line 12.

10b. Yes. Equity Loan is .80(f)-(h). Go to Line 12.

11. Is (j) < 65%?

11a. No. Equity Loan is (e). Go to Line 12.

11b. Yes. Equity Loan is .65(f)-(h). Go to Line 12.

12. Equity Loan is _____

There is no increase in return on investment.

Loan agreements remain the same as at present.

Go to Part V, Line 1.

Part IV

Calculations:

1. (k) Current Borrower Equity: Calculate (f) - (h) - (i)_____
2. (l) Maximun additional incentive to be paid: calculate (e) - (i)_____
3. (m) Initial Borrower Contribution: enter Part I, Item (3)_____
4. (n) Maximum Increase in Borrower Equity: calculate (k) - (m)_____
5. (o) Maximum Rate of Return allowed by FmHA: enter Part I, Item (10)_____
6. Cap Rate: enter (d)_____
7. (w) Borrower's current rate of return on investment: enter Part I, Item (11)_____

(p) Maximum annual dollar increase borrower may receive as a return on investment.

To calculate (p):

Enter #	*Press function*
(1)	PV
20	n
(d)	i

PMT_____(p)

9. (q) Maximum additional annual dollar increase borrower may receive through *increased borrower equity:*
   calculate (n) × (w)_____
10. Is (p) > (q)?
   10a. Yes. Borrower Equity to be Entered on loan agreements is (k). Go to Line 13.
   10b. No. Go to Line 11.
11. (u) Allowable Increase in Borrower Equity:
   calculate (p)/(w)_____Go to Line 12.
12. (v) Borrower Equity to be entered on loan agreements
   calculate (m) + (u)_____
   Rate of return remains (w).
   Go to Part V, Line 2.
13. (r) Maximum additional annual dollar increase borrower may receive through increased rate of return on investment:
   calculate (p)–(g)_____
14. (s) Maximum additional rate of return on investment: calculate (r)/(k)_____
15. (t) Maximum rate of return on investment: calculate (s) + (w)_____
16. Is (t) > (o)?
   16a. Yes. Rate of return to be entered on loan agreements is (o). Go to Part V, Line 3.
   16b. No. Rate of return to be entered on loan agreements is (t). Go to Part V, Line 4.

Part V

Calculated Borrower Incentives:

The following are the results of the foregoing calculations and represent the total package of incentives which may be offered to the borrower:

Equity loan	*Borrower equity*	*Return on investment*
1. Enter	No change	No change
2. From	(v)	No change
3. Part III,	(k)	(o)
4. Line 12	(k)	(t)

Record of Factors Derived

You may wish to enter the factors on this sheet as they are derived, to expedite their use in further calculations.

(c) Amount to be capitalized _____
(d) Capitalization rate _____
(e) Maximum value of incentives borrower may be offered _____
(f) Appraised value _____
(%) Maximum percentage of appraised value for all loans _____
(g) Maximum equity loan based on appraised value and category _____
(h) Unpaid Balance _____
(i) Maximum equity loan borrower may be offered _____
(j) Percentage of appraised value of all loans if less than allowable maximum _____
(k) Current borrower equity _____
(l) Maximum present value of increased return on investment borrower may be offered _____
(m) Initial borrower contribution _____
(n) Maximum increase allowed in borrower equity _____
(o) Maximum rate of return on investment allowed by FmHA _____
(p) Maximum additional amount borrower may receive annually through increase in return on investment _____
(q) Maximum additional amount borrower may receive annually through increase in borrower equity _____
(r) Maximum additional amount borrower may receive annually through increase in rate of return on investment _____
(s) Maximum additonal rate of return on investment _____
(t) Maximum rate of return on investment allowed borrower _____
(u) Maximum additional borrower equity _____
(v) Borrower equity for return on investment _____

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I. Project I.D. _____
   Name of Project _____
   Location of Project _____
   Name of Borrower _____
II. Number of Units in Project _____
   Number of RA or Section 8 Units in the Project _____

III. Action		Date/Time
A. _____ Place on list:	Request to prepay	_____
B. _____ Remove from list: (Reason)	Prepayment accepted	_____
	Incentives ignored	_____
	Feasible buyer not found	_____
	Funding not available	_____
	Request withdrawn	_____
	Other (specify)	_____
C._____ Incentives Accepted		_____
(List):	_____	
	_____	
	_____	
D. _____ Ready to Process:	Incentive	_____
	Transfer to Non-Profit	_____

IV. Appraised Value _____

Present Loan Balance	_____
Loan Amounts:	
Equity	_____
O&M Costs	_____
Advances	_____
No. Units Debt Forgiveness RA	_____
No. Units RA	_____
% Return on Investment	_____
Equity Level for Return	_____
Current Interest Subsidy	_____
New Interest Subsidy	_____

V. If loan is being transferred, name to which obligation will be made:
VI. Comments:

FmHA Guide Letter 1965-E-2—Guide Letter to Notify Tenants of Compliance With Title V of the Housing Act of 1949, As Amended; Notice to Tenants

The U.S. Government used to hold the mortgage on this apartment project. The Government Agency that was responsible for the project and controlled the rents was Farmers Home Administration (FmHA). The owners of the project wanted to pay off their loan and in order to do so, agreed to continue to operate the project for the benefit of the people who were already living here. These apartments must continue to be rented to current tenants/current tenants and anyone wishing to move in) who are (very-low-, low-moderate- income) until (expiration date to restrictive-use provision). This agreement will remain in effect even if the project is sold to someone else.

Management practices and rents at the project must be suitable for the tenants who will live here. The income and rent limits for tenants eligible to live at the project are defined by law and may change before this agreement expires. At the time of prepayment, the income limit is (moderate-income limit) and rents cannot exceed 30 percent of your adjusted income or your current rent, whichever is greater. Levels of security deposits and other charges as well as rules and regulations should be comparable to those currently in effect, and cannot be changed to place and undue burden on current tenants. The regulations that the landlord must conform to are contained in 7 CFR part 1965, Subpart E and can be found in FmHA office.

If you think that your landlord is not keeping the agreement with the government, contact the FmHA office listed below or any other FmHA office listed in the telephone directory under U.S. Government/ Department of Agriculture.

FmHA Guide Letter 1965-E-3 Guide Letter to Notify Tenants of Pending Prepayment Notice of Owners Intent to Prepay

To: Tenants of (Name of Project)

Your landlord, the owners of (Name of Project) has asked Farmers Home Administration (FmHA) for permission to repay their entire loan. FmHA cannot give that permission until we decide what effect repayment will have on tenants. We will be looking at possible rent increases and to see if other housing is available in your community. When we look at other housing, we will compare it to yours for rent, size, location and quality.

If FmHA gives your landlord permission to repay the loan, management, leases, and rents at_____ will no longer be supervised by the government.

If we decide that tenants would be hurt by a repayment, FmHA will try to reach an agreement with the owner by offering an incentive to keep our loan or require that the project be sold to someone who will. You would then be able to remain here and not pay more than we feel you can afford. However, we will have to accept the payment if there are other good apartments you can move to, or if the owner will not accept an agreement with us and we cannot find anyone else to buy the project.

At this time it is (fairly likely/unlikely/ uncertain) that the payment will be accepted. If FmHA can accept the payment, we expect the rent you will pay if you stay in your apartment will (change to/remain at) (_____ for a _____ apartment and _____ for a _____ apartment/ an amount based on your income). (If applicable: The government will not pay any part of these rents.) (If applicable: No rent will be increased before (date—180 days/ prepayment/expiration of lease.) Anyone who moves due to rent increases may ask to be put ahead of other people on waiting lists for other FmHA apartments. If the government is now paying part of your rent, it will continue to do so if you move to another FmHA apartment in which you are eligible for the payment as soon as possible after we let you know that the loan will be paid. If the rents go up and you decide to stay in your apartment and pay the higher rent, even if someone else is helping you pay it, the landlord cannot evict you without good cause.

(If applicable) Right now, we think that if payment is accepted, your rent would not change because (use all that apply:

HUD/local Agency will continue to pay part of your rent until at least_____

The owner will agree to keep your rent affordable through _____ and it would be illegal for the owner or anyone who buys the project to break the agreement

Rents in other apartments in this community are similar to your rent, so the owner couldn't get more money for your apartment from someone else

State/local laws say_____

Any other relevant factors

All tenants living at this project and anyone else who is interested have until (30 days) to give us opinions in writing. You or someone else you choose may examine all information FmHA is using to make the decision including the information given to us by the owner.

If the owner appeals any decision made by FmHA, you will be notified on the date and time of the appeal hearing, and will be able to attend this hearing and present evidence to support your opinion. You can also ask someone else to attend the meeeting to present evidence for you.

You will be told of any decision reached. No payment will be taken until you receive another 60-days notice or the landlord agrees to keep the rents the same as they are for 60-days after the notice. This later notice will tell you your rights, protection and choices.

According to the law, tenants and those wishing to move to the project, as well as the Government may seek legal enforcement of the conditions under which this loan is paid. There is no time limit on this enforcement (if applicable: other than date and provision stated above for which rents are controlled.)

If you have any questions, wish to see our information, or wish to give us your opinion, please write or call:

District Director

FmHA Guide Letter 1965-E-4 Guide to Use as a Letter of Priority Entitlement Farmers Home Administration Letter of Priority Entitlement

Date: _____

Subject: Letter of Priority Entitlement (COPE) for
(Name)
Address)

To: Owners of Farmers Home Administration (FmHA) Federally Subsidized Housing:

The above-named tenant is currently living in an FmHA section 515 multifamily housing project for which the owner has received authorization to prepay. Accordingly, the tenant is entitled to priority placement on the writing list of any Section 515 rural rental housing project which has units that (he/she/ they) is/are eligible to occupy. There is no geographic limit on this entitlement. This letter may also serve to give the tenant preference in non-FmHA projects and rental programs served by the Department of Housing and Urban Development (HUD).

The letter must be used within 60 days from the above date to be given priority placement on your waiting lists. Only other tenants who have already entered your waiting list with a letter similar to this one may receive priority over this tenant. They are to remain in this position on your waiting list until they receive a unit or the list is purged in accordance with FmHA-approved policy. After 60 days, they may continue to be placed on waiting lists for units for which they are eligible, but without priority. Please note that this priority places the tenant at the top of all waiting lists in your project, regardless of other priorities and eligibilities for unit-size so long as your project has at least one unit, presently occupied of not, for which the applicant is eligible. The only exception is that (he/she/they) do not get priority for a handicapped unit if a handicapped applicant is on the waiting list. If the applicant occupies a unit for which size or type the applicant is not eligible, the lease must read that the tenant will move to the first appropriate unit available.

If this tenant is receiving Rental Assistance (RA) at the prepaying project, (he/she/they) will continue to receive RA at your project if it is a project operating under Plan II of the section 515 program. If you do not have a unit of unused RA to assign to this tenant, you will be allocated one unit for this purpose.

If the current security deposit has not been released to the tenant by the date of the move, it should be assigned directly to you by the prepaying project.

Tenant Data:

Composition of Family: _____

Family/Elderly/Handicapped _____

Unit-Size Eligibility_____

Last Verified Income _____ as of _____

RA _____

Section 8 Voucher _____

If you have any questions, please contact your local FmHA District Office or the District Office at the address below:

District Director

FmHA Guide Letter 1965-E-5 Guide Letter to Tell Tenants That Prepayment Will be Accepted

To: Tenants of (Name of Project):

This is a follow-up to our letter of _____. We have reviewed the information we had concerning your landlord's request to pay the loan on (Name of Project) and will be accepting the payment on (date). The rent for your apartment will become _____ on (date). Farmers Home Administration (FmHA) will not pay any part of this new rent.

We decided we could take the payment because:

(rents will not increase/there are many empty apartments similar to yours in quality, size, location, and rent in (name of community)/ the owner is legally agreeing to rent the apartments to (type of tenant/ applicant for housing) until _____ and keep the rents low enough until that time/ any other justification being used.)

You may see all the information we used to make this decision. You may also ask the FmHA State Director to review the decision if you think the reason for taking the payment is a mistake.

(If restrictive-use provisions apply): The owner has legally agreed to continue to rent to (very-low/low/ moderate-income tenants/ tenants and those wanting to move here). Rents for these people cannot be higher than what the Government says you can afford until _____ even if the project is sold to someone else. Any tenant (if applicable: or anyone who wants to move to the project), as well as the Government, may seek legal enforcement of this agreement. You will receive a letter after the prepayment is accepted explaining what protection you have.

(If total Section 8 or other subsidy): Part of your rent will continue to be paid by _____ until (end of restrictive-use period).

(For any current eligible tenants whom HUD subsidy or restrictive-use provisions will *not* protect for a minimum of two years): You may apply for a letter called a "Letter of Priority Entitlement (LOPE)." You may use the letter to go to the top of all waiting lists of any project FmHA has the mortgage on, anywhere in the country, if you are eligible to live there. You will have up to the date your rent will go up to apply for this letter, and you can use it to be placed on waiting lists for 60 days after you get it. If FmHA is now paying part of your rent and if you are eligible for this benefit at the project you are moving to, the Government's rent payment for you will continue when you move. This letter may also help you get preference in a Housing and Urban Development apartment. LOPEs will be issued in accordance with all Civil Rights requirements.

(If applicable): Attached are lists of:

(1) Other FmHA projects in this area, their addresses, telephone numbers and the size of their apartments.

(2) Other agencies which have apartments or may be able to help you find another apartment and their telephone numbers.

If you decide to remain in your apartment after rents go up, the landlord cannot evict you without good cause, whether you or someone else is paying the rent.

(Any other relevant information).

If you have any questions or wish to apply for an LOPE, please contact:

District Director
Attachments

Dated: April 18, 1990.

David T. Chen,

Acting Administrator, Farmers Home Administration.

[FR Doc. 90-16634 Filed 7-19-90; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AEA-14]

Proposed Alteration of Control Zone and Transition Area; Erie, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration (FAA) is proposing to alter the Control Zone and 700 foot Transition Area established at the Erie International Airport, Erie, PA due to the revision of air traffic control procedures in the area. The FAA finds that the proposed action would result in the reorganization of controlled airspace to that amount which is actually required to contain aircraft operating under instrument flight rules.

DATES: Comments must be received on or before August 24, 1990.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, System Management Branch, AEA-530, Docket No. 89-AEA-14, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AEA-14". The postcard will be date/ time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering amendments to §§ 71.171 and 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the descriptions of the Control Zone and 700 foot Transition Area established for the Erie International Airport, Erie, PA, due to

the reorganization of air traffic control procedures in the area. Sections 71.171 and 71.181 fo part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6F dated January 2, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones; Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend §§ 71.171 and 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

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

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Erie PA [Revised]

Remove the current description of the Erie, PA, Control zone in its entirety and replace with the following:

"Within a 5-mile radius of the center of Erie International Airport, Erie, PA (lat. 42°04'54" N., long. 80°10'38" W.); extending NE of the 5-mile radius area from within 4.5 miles NW of the Erie VORTAC 054°(T) 060°(M) Radial to 4 miles SE of the Erie ILS localizer NE course then extending SW from a point located along the Erie ILS localizer NE course 10.5 miles NE of lat. 42°07'30" N., long. 80°05'37" W. to the 5-mile radius area."

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Erie, PA [Revised]

Remove the current description of the Erie, PA, Transition Area in its entirety and replace with the following:

"That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the center of Erie International Airport, Erie, PA (lat. 42°04'54" N., long. 80°10'38" W.); extending NE of the 8.5-mile radius area from within 5 miles NW of the Erie VORTAC 054°(T) 060°(M) Radial to 5 miles SE of the Erie ILS localizer NE course then extending SW from a point located along the Erie, ILS localizer NE course 11.5 miles NE of lat. 42°07'30" N., long. 80°05'37" W. to the 8.5-mile radius area."

Issued in Jamaica, New York, on June 21, 1990.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 90-16985 Filed 7-19-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 173, 175, 176, 177, 178, 179, 180, and 181

[Docket No. 85N-0145]

Use of Acrylonitrile Copolymers; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for the submission of comments and data in response to the advance notice of proposed rulemaking (ANPRM) on acrylonitrile copolymers. This notice responds to three comments that requested that the comment period be extended 180 days to allow sufficient time to compile the data FDA requested in the ANPRM.

DATES: Comments by November 7, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Data, including trade secret and commercial trade information, to the Division of Food and Color Additives (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204.

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

SUPPLEMENTARY INFORMATION: In the Federal Register of March 8, 1990 (55 FR 8476), FDA published an ANPRM on acrylonitrile copolymers. The agency requested in the ANPRM information on food-contact uses of acrylonitrile copolymers, on the levels of residual acrylonitrile contained in finished articles fabricated from those copolymers, and on the migration of residual acrylonitrile to food, as well as information necessary to evaluate the economic and environmental impact of the ANPRM. The original comment period under the ANPRM ended May 7, 1990.

The three comments, all from trade associations responding to the ANPRM, stated that more time was needed to compile the information that was requested by the agency. The comments requested a 180-day extension beyond the original due date of May 7, 1990, for the submission of data. FDA agrees with the comments that additional time is needed for the generation and submission of data in response to the ANPRM. Therefore, the agency is reopening the comment period to provide for the submission of comments and data until November 7, 1990.

In addition, FDA is announcing that the extraction methods proposed in the ANPRM did not totally reflect the agency's current chemistry guidelines for extractions. The acrylonitrile monomer extractions should be conducted with the following food-simulating solvents: (1) 8 percent ethanol; and (2) a food oil, such as corn oil. If the food oil presents analytical difficulties, 50-percent ethanol may be substituted. The extractions should be continued for 30 days, as stated in the ANPRM, with periodic sampling after 1, 10, 20, and 30 days. This modification has also been conveyed by the agency in a letter dated March 30, 1990, to a trade group conducting acrylonitrile monomer testing. A copy of the agency's March 30, 1990 letter has been placed in this docket for further reference.

As announced in the ANPRM, comments may be submitted to the Dockets Management Branch (address above). However, data containing trade secret or confidential commercial information should be submitted to the Division of Food and Color Additives (address above), as a letter, as a food additive master file, or as part of a food additive petition.

Dated: July 16, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-17036 Filed 7-19-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IL-660-89]

RIN 1545-AN75

Withholding of Tax on Nonresident Aliens; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to withholding of tax on nonresident aliens.

DATES: The public hearing will be held on Friday, October 26, 1990, beginning 10 a.m. Outlines of oral comments must be received by Friday, October 12, 1990.

ADDRESSES: The public hearing will be held in the Internal Revenue Building Auditorium, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (IL-660-89), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Angela Wilburn of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations appearing in the **Federal Register** for Monday, February 5, 1990, at page 3750 (55 FR 3750).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, October 12, 1990, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale, D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-16944 Filed 7-19-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 651

Environmental Effects of Army Actions

AGENCY: Department of the Army; Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the list of categorical exclusions (CX) in Appendix A, 32 CFR part 651 (Army Regulation 200-2) in order to focus more on the environmental impacts of realignments or reductions rather than on numerical or percentage triggers. Specifically, CX A-14, which deals with realignments and reductions of civilian and military personnel, would be modified to eliminate a numerical or percentage trigger except as prescribed by statute.

DATES: To be given full consideration, comments must be received no later than 30 days from the date of this notice in the **Federal Register.**

ADDRESS: Please send written comments to Timothy P. Julius, Environmental Protection Specialist, Army Environmental Office, Headquarters, Department of the Army, Washington, DC 20310-2600.

FOR FURTHER INFORMATION CONTACT: Timothy P. Julius, at the address above; telephone 202-693-5032.

SUPPLEMENTARY INFORMATION: The Department of Defense is in the process of adjusting to a changing political and military climate. Part of the adjustment process includes proposals to realign and reduce current force structure in response to strategic and budetary factors. Through recent experience, the Army has concluded that the current version of categorical exclusion A-14 should be amended to focus more on potential environmental consequences of proposed realignments or reductions, and not on numerical triggers. The current A-14 uses numerical triggers specified in Army Regulation 5-10, *Reduction and Realignment Actions.* AR 5-10 defines a reportable action as (1) Reductions which will result in involuntary separation of 50 or more permanent civilian employees who are U.S. citizens at any installation or separate activity, or 10 percent of the permanent civilian work force at the installation or separate activity, whichever is less, and (2) realignments which will result in dislocation (i.e., total of transfers out plus eliminations) of 200 or more military or 50 or more civilian jobs (i.e., authorized manpower spaces) at any installation or separate activity, or 10 percent of the authorized military or civilian manpower strength at the installation or separate activity, whichever is less. In place of these thresholds, the proposed modifications require proponents to more critically evaluate the specific environmental impacts of a proposed realignment or reduction. In addition, this proposed amendment requires preparation of a record of environmental consideration which documents that ten screening criteria have been considered and extraordinary circumstances do not exist.

List of Subjects in 32 CFR Part 651

Environmental protection, Environmental impact statements, Natural resources, Ecology.

The Proposal

Accordingly, the Army proposes to amend 32 CFR part 651 as follows:

PART 651—[AMENDED]

1. The authority citation for 32 CFR part 651 continues to read as follows:

Authority: National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* Council on Environmental Quality Regulations, 40 CFR parts 1500-1508, 43 FR 55978-56007, November 29, 1978, as amended at 51 FR 15625, April 25, 1986, and E.O. 12114.

2. Categorical Exclusion A-14 in Appendix A is revised to read: Reductions and realignments of civilian or military personnel that: (1) Fall below the thresholds for reportable actions as prescribed by statute; (2) will not result in the abandonment of facilities or disruption of environmental, surety (e.g.,

chemical, nuclear, or ammunition safeguards), or sanitation services (e.g., shutdown of a water treatment plant); and (3) will not otherwise require an EA or an EIS to implement (e.g., new construction to accommodate realigned personnel or major demolition activities). (REC required).

Dated: July 17, 1990.

Hugh M. McAlear,

Colonel, GS, Assistant for Environment, OASA (I, L&E).

[FR Doc. 90-17038 Filed 7-19-90; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CCGD-8-89-12]

Anchorage Grounds, Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On Thursday, May 3, 1990 the Coast Guard held a public hearing to provide an opportunity to all interested persons to present data, views and comments orally or in writing concerning the proposed rulemaking to establish a deep draft anchorage near the vicinity of Belmont Crossing on the Lower Mississippi River. At the hearing it was announced that the public would have until June 3, 1990 to submit any additional comments. Due to requests from the public for additional time to make comments, the comment period is being extended for 87 additional days.

DATES: Comments must be received on or before August 31, 1990.

ADDRESSES: Comments should be mailed to Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1209 at the above address. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG J.D. Irino, Contact Officer, Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, Tel. (504) 589-4686.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking, discussing this proposal, was published in the **Federal Register** on November 7, 1989 (54 FR 46736). Interested parties were given until December 22, 1989 to submit comments. Because of requests to discuss this matter further, the comment period was extended for 40 additional days until January 31, 1990. There were many requests for a public hearing. Subsequently, one was held on May 3, 1990 to collect additional information concerning this rulemaking. Copies of the transcript from the hearing are available for review at the St. James Parish Library and at the Eighth Coast Guard District. One commentor requested additional time to review the transcript which was not available until June 4, 1990. Because of the request, the comment period is extended until August 31, 1990.

Comments should include the name and address of the person making them, identify this notice (CGD8-89-12) and the specific section of the proposal to which each comment applies, and give the reason for each comment. If an acknowledgment is desired, a stamped self-addressed post card or envelope should be enclosed. The rules as proposed 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.

Dated: July 6, 1990.

J.M. Loy,

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

[FR Doc. 90-16973 Filed 7-19-90; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Screening of Mail Reasonably Suspected of Being Dangerous to Air Transportation or Postal Employees

AGENCY: Postal Service.

ACTION: Invitation to Comment.

SUMMARY: The Postal Service is giving consideration to proposing a revision of its existing procedures for identifying mail reasonably suspected of being dangerous to persons or property. The present rule allows the examination, including opening, of any specific piece of mail reasonably suspected of posing an immediate danger to life or limb or an immediate and substantial danger to property. The possible amendment would allow, in response to threat situations, the examination of more generalized quantities of mail by any means capable of identifying explosives, or other dangerous materials without opening or revealing the contents of correspondence within mail sealed against inspection. The proposed screening procedures would only be initiated when the Chief Postal Inspector determines that there is a credible threat that certain mail which will be tendered to an air carrier may contain a bomb, explosives, or other material that would endanger the aircraft, passengers, or crew. The screening procedures authorized by the amendment would be conducted within the United States, without avoidable delay and be limited to the least quantity of mail necessary responsibly to respond to the threat. However, similar screening procedures might be adopted by the Department of Defense with respect to military mail overseas. We are interested in receiving advice from the air carriers, pilots, the Federal Aviation Administration, Department of Defense, other federal agencies interested in airline safety and the general public.

DATES: Comments must be received on or before August 20, 1990.

ADDRESSES: Written comments should be directed to Manager, Prevention and Countermeasures Branch, Office of Criminal Investigations, Postal Inspection Service, Room 3327, 475 L'Enfant Plaza, SW., Washington, DC 20260-2186. Copies of all written comments will be available at the address for inspection and copying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: James A. Dahl, (202) 268-4283.

SUPPLEMENTARY INFORMATION: The tragic destruction of Pan American flight 103 by a bomb in a small cargo parcel has resulted in efforts by many federal departments and agencies to develop lawful and practical means of precluding similar tragedy in the future. The regulation the Postal Service is considering is not a response to any currently perceived state of emergency involving the mails, but as a sensible precaution to deal with threat situations should they arise. In virtually all known instances where the mails were used to transport a bomb or other explosive device, the intended victim was the addressee, not an air carrier, and the device was designed to activate upon or after opening. There has been only one known instance where a bomb in air mail ignited during a flight, and existing postal procedures make unlikely the placement of a mail bomb on a specific

flight. Nevertheless, where intelligence is acquired which indicates that a bomb may be placed in mail which will be transported by air, the Postal Service intends to take all lawful and practical action possible to frustrate any such effort, thereby protecting lives, property and the mail.

Practical and legal constraints limit our ability to ensure that the mails are free of all dangerous devices and the rule under consideration would enhance our present security procedures. During the postal fiscal year which ended on September 30, 1989, the Postal Service carried 161.6 billion pieces of mail. To examine such quantities of mail, with equipment based upon current technology for detecting explosives, would involve significantly increased costs and delays in mail service.

Since the earliest days of mail service in the United States, mail generally has not been subject to government surveillance. This principle derives from several sources: Constitutional protection accorded by the First Amendment to speech and other forms of expression, and by the Fourth Amendment to persons, papers and effects; federal criminal statutes generally prohibiting opening, detaining, obstructing, or delaying mail (18 U.S.C. 1701–1703, 1708–1709); a federal statute obligating the Postal Service to provide one or more classes of mail service for the transmission of letters sealed against inspection (39 U.S.C. 3623(d)); provisions in postal treaties and conventions regarding international transit mail; federal court decisions such as the Supreme Court's decisions in *Ex parte Jackson*, 96 U.S. 727 (1877) regarding the examination of mail sealed against inspection and *United States* v. *Van Leeuwen*, 397 U.S. 249 (1970) regarding permissible delay of sealed mail to obtain a search warrant; and Postal Service regulations regarding mail security and the classification of mail as sealed against inspection.

As previously noted, the Postal Service is required by law to "* * * maintain one or more classes of mail for the transmission of letters sealed against inspection * * *" (39 U.S.C. 3623(d)). Postal regulations define as "sealed mail" First-Class Mail (which includes Priority Mail up to 70 pounds), Express Mail, Mailgram messages, and International Letter Class mail (which can include parcels weighing up to 2 kilograms or 4.4 pounds). Domestic Mail Manual (DMM), Section 115.231b. The May 15, 1990 Report of the President's Commission on Aviation Security and Terrorism recommends that the Postal Service redefine the category of mail "sealed against inspection" to include only written materials and parcels below the weight of an explosive device that could endanger an aircraft. While the Postal Service and the Postal Rate Commission have authority to change the classes of domestic mail sealed against inspection, it is not clear that by reclassification, they could permit the inspection, without a search warrant or the consent of the sender or addressee, of any piece of mail of a weight sufficient to carry a large enough quantity of explosives and initiating devices to disable or destroy a plane. They, of course, have no authority to infringe upon the protection for personal papers that is established by the Fourth Amendment. The Postal Service is considering this recommendation and would be pleased to have public comment concerning it.

Once mail is designated as "sealed against inspection", it may not be opened and its contents examined, nor may it be detained by the Postal Service, except under the limited circumstances reflected in postal mail security regulations: Part 115 DMM. In the most important respects, including but not limited to opening and delay of mail sealed against inspection, the regulations reflect constitutional and statutory constraints concerning mail which is sealed against inspection, rather than an exercise of administrative discretion by the Postal Service.

The regulations provide, generally, that sealed mail cannot be opened except by a postal employee acting in accordance with the dead mail regulations, or with the consent of the sender or addressee, or by a person acting pursuant to a Federal search warrant, or by a Customs or Agriculture employee acting in accordance with specified regulations respecting only mail of foreign origin, or, in limited circumstances, a Postal Inspector conducting a controlled delivery of mail found upon border examination by the Customs Service to contain illegal drugs.

The regulations also provide, generally, that sealed mail may not be detained by the Postal Service except under the limited circumstances described in DMM 115.31. An exception is made, for example, for detaining mail for a brief period of time to allow a Postal Inspector, acting without avoidable delay, to obtain a Federal search warrant.

By treaty, international transit mail may not be opened, seized, searched or detained. Postal regulations (DMM 115.8) reflect the requirements of Universal Postal Union Constitution and Convention provisions which require all member countries to provide freedom of transit to international letter mail and forward such mail by the fastest routes they use for domestic orgin mail. UPU Constitution Art.1; UPU Convention Art.1.

A relevant exception to the mail examination and detention regulations is provided by DMM 115.4. It provides that mail, sealed or unsealed, may, without a search warrant, be detained, opened and removed from postal custody if it is "reasonably suspected of posing an immediate danger to life or limb or an immediate and substantial danger to property * * *." DMM 115.4 is not, in its present form, broad enough to encompass generalized screening of mail. It was inteded only to authorize emergency examination of a piece of mail specifically suspected of containing an explosive device. See 42 FR 18,754 at 18,755 (April 8, 1977); 43 FR 14,308 (April 5, 1978). The proposed rule would expand DMM 115.4 to authorize screening of mail to be tendered to air carriers under limited conditions.

The Postal Service has authority to provide for the safe and expeditious transportation of mail by air and to issue implementing rules and regulations. The rule under consideration also is predicated upon court decisions holding that search warrants are not constitutionally required in emergency situations where the consequences of the delay involved in obtaining a warrant appear to be intolerable. Moreover, we believe that the kinds of circumstances which would create a sufficiently "credible threat" to warrant screening under the rule also would provide sufficient justification for self-defense should postal employees following the regulations be prosecuted for violation of 18 U.S.C. 1701, 1702, or 1703. See 42 FR 18755 (April 8, 1977), paragraph (d).

Taking these legal constraints into account, the rule would authorize the least intrusive, least dilatory response to credible situations where human life is threatened. It would attempt to balance the need to protect personal safety in threatening situations against the need to protect personal privacy in the use of the mails. As a practical matter, moreover, even if we had authority to open all mail and examine its content and the public were willing to accept the costs, delays, and reduced mail privacy involved in such a generalized examination of mail, it is not clear that we could recruit personnel to perform the task of looking for bombs in this dangerous way.

For security reasons and because explosive detection technology is developing, the rule would not particularize the screening methods which may be used. Instead, it would disallow use of any screening method which is capable of making a maximum intrusion into mail sealed against inspection. Accordingly, any method which would involve opening of sealed mail or would permit the reading of the content of correspondence in sealed mail, without consent or a warrant, is disallowed. Any screening which may be authorized must be limited to the least quantity of mail necessary responsibly to respond to the threat and the screening must be perfromed without avoidable delay of the mail. Any mail not of sufficient weight to pose a threat to an aircraft will not be screened. Ordinarily, this restriction would mean that low weight letter mail would not be screened. International transit mail will not be subjected to screening unless and until the postal treaties are appropriately amended. Sworn reports of all screening methods conducted by, or under supervision of, the Postal Service would be reported to senior postal managers.

The rule under consideration and part 115 of the Domestic Mail Manual which it would amend do not apply directly to military mail overseas. As a result of an agreement between the Postal Service and the Department of Defense, as amended in 1982, the Department of Defense is recognized as having responsibility for the security of military mail overseas. The Department of Defense is free to adopt a rule similar to the rule under consideration by the Postal Service.

In view of the matters discussed above, although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invited comments on the following revision it is considering to part 115 of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111.

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In part 115, existing 115.41 is retained and renumbered as 115.42 and given the heading "Threatening Pieces of Mail.", existing 115.42 is retained and renumbered as 115.43 and given the heading "Reports.", and a new 115.41 is added as follows:

115.41 Screening of Mail Reasonably Suspected of Being Dangerous to Air Transportation or Postal Employees

Whenever there is a credible threat that certain mail which will be tendered to an air carrier may contain a bomb, explosives, or other material that would endanger the aircraft, passengers, or crew, the Chief Postal Inspector may, without a search warrant or the consent of the sender or addressee, authorize the screening of mail by any means which is capable of identifying explosives, or other dangerous contents in the mails, within the limits of this subsection and without opening or revealing the contents of correspondence within mail which is sealed against inspection.

a. Screening authorized by this subsection shall be limited to the least quantity of mail necessary responsibly to respond to the threat.

b. Such screening shall be performed in a manner which does not avoidably delay the screened mail.

c. To the extent that the necessary resources for conducting screening are available to the Postal Service, the screening shall be conducted by postal employees. Where such resources are not available, the Chief Postal Inspector may authorize screening of mail by persons not employed by the Postal Service under such instructions as will require compliance with this section and protect the security of the mail. No information obtained as a result of such screening shall be disclosed except as authorized by 115.

d. Mail of insufficient weight to pose a hazard to air carriage and international transit mail shall not be subjected to such screening.

e. Mail which, after screening conducted pursuant to this subsection, is reasonably suspected of posing an immediate and substantial danger to life or limb, or an immediate and substantial danger to property, may be treated by postal employees as provided in 115.42.

f. Mail sealed against inspection which, as a result of screening, presents doubts, as to whether its content constitutes a hazard to air carriage, which cannot be resolved without opening, shall be reported to the Postal Inspection Service. Such mail shall be disposed of in accordance with instructions promptly furnished by the Inspection Service.

An appropriate amendment to 39 CFR 111.3 will be published if the revision under consideration is proposed and adopted.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 90–16807 Filed 7–19–90; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64, 68

[CC Docket No. 90-313; FCC 90-231]

Operator Service Providers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission initiated this Notice of Proposed Rulemaking (NPRM) to seek comment on potential rules and policies concerning operator service providers (OSPs). Several of the proposed rules would also apply to "call aggregators," entities with whom the OSPs contract to provide service at telephones intended for the use of the aggregators' often transient clientele. The NPRM proposes rules that: (1) Require the provision of information to consumers by OSPs, call aggregators, and telephone owners; (2) prohibit call blocking; (3) require new and existing equipment to have the capability of processing all access methods (10XXX, 950, 800); (4) prohibit call splashing; (5) require all interexchange carriers to establish alternative means of access in addition to 10XXX access code dialing; and (6) require local exchange carriers to provide interexchange carrier access information to consumers upon request and in the "white pages" of telephone directories. The proposed rules are included in an appendix to this summary.

The Commission intends the proposed rules to free "captive" consumers and to help foster a marketplace in which operator service providers compete based on the merits of the services they offer to consumers rather than on the commissions they pay to call aggregators.

DATES: Comments must be filed on or before September 7, 1990, and replies must be filed on or before September 24, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kurt A. Schroeder, Enforcement

Division, Common Carrier Bureau, (202) 632-4887.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in CC Docket No. 90-313 (FCC 90-231), adopted June 14, 1990, and released July 17, 1990.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC the complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. On June 14, 1990, the Commission adopted an NPRM in CC Docket No. 90-313 (released July 17, 1990, FCC 90-231), proposing new rules and policies aimed at resolving persistent problems in the operator services industry. The Commission is taking this action because of the technological and marketplace evolution in the provision of operator services and because of widespread consumer dissatisfaction with many operator service perviders (OSPs). This action is also taken, to the extent indicated, in response to a rulemaking petition filed in April 1989 by the National Association of Regulatory Utility Commissioners ("NARUC").

2. The Commission first proposes a rule that makes OSPs, call aggregators, and telephone owners responsible for providing certain information to callers about presubscribed operator services and the provider of those services. The presubscribed OSP would have to audibly identify itself during all calls involving its services and would have to allow sufficient time after this "branding" for the caller either to terminate the call without charge or to request transfer to another carrier without charge. An OSP would also have to disclose, upon request, its rates or changes and its methods for collection and complaint resolution. Call aggregators would have provided customers with printed documentation identifying the presubscribed OSP and its address, and disclosing how to obtain information on the OSP's rates, as well as instructions on how the caller can contact other carriers.

3. Next, the Commission proposes a rule that would prohibit call blocking by OSPs, call aggregators, and pay telephone owners. The Commission also proposes adopting a definition of call blocking that does not include the blocking of 10XXX-1+ calls, so as to accommodate concerns about fraudulent use of the dialing method. This rule would prohibit the payment of any compensation by OSPs to aggregators at locations where blocking occurs.

4. Consistent with the blocking prohibition, the Commission proposes an amendment to § 68.318 of the rules, 47 CFR 68.318, that would require, beginning eighteen months after the rule's effective date, all equipment used by call aggregators to have or be modified to have the capability of providing access to carriers through all access methods—800, 950, and 10XXX. Software modifications would have to be unalterable by the user. The Commission discusses re-registration of equipment and asks for comment on standards for the granting of waivers of this rule.

5. In addressing the call splashing issue, the Commission tentatively concludes that it should adopt a definition of splashing that places the emphasis on incorrect billing or rating for transferred calls rather than on the transfer itself. The Commission proposes a rule requiring OSPs to eliminate splashing completely and seeks comment on splashing solutions suggested by an industry group.

6. Finally, the Commission proposes three provisions concerning the access codes of interexchange carriers. The first provision would require all interexchange carriers to establish at least one alternative to 10XXX access. Under the second provision, local exchange carriers (LECs) would be required to provide callers with the access codes for specifically requested carriers. The third provision would require each LEC to place, in every edition of any "white pages" telephone it distributes, supplies, or provides, a set of instructions on how to use the 10XXX, 950, and 800 dialing methods, along with a list of these access codes for interexchange carriers and OSPs serving the area covered by the directory. These requirements would take effect ninety days after the new section is adopted.

7. In the NPRM, the Commission seeks comment on whether it should consider prohibiting charges for unanswered or uncompleted calls and on what is the appropriate Federal role in prescribing standards for the handling of emergency calls by OSPs. Rules on these topics are not proposed.

8. The Commission notes that it has jurisdiction over OSPs, as providers of interstate common carrier service, under title II of the Communications Act. The Commission also tentatively concludes that it has jurisdiction over call aggregators under title II.

9. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission has determined that the proposals contained in the NPRM may have some impact on small entities; particularly some call aggregators; waivers of certain requirements, however, have been proposed to lessen such burdens when appropriate. The Commission has also determined that reporting in the form of disclosure to the customers of OSPs and aggregators would be required. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete NPRM.

10. This notice and comment rulemaking proceeding is non-restricted. Section 1.1206(a) of the Commission's Rules, 47 CFR 1.1206(a), contains provisions governing permissible *ex parte* contacts.

Ordering Clauses

11. Accordingly, *It is ordered*, pursuant to sections 1, 4(i), 4(j), 201-205, 218, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201-205, 218, 303(r), that a notice of Proposed rulemaking is issued, proposing the amendment of 47 CFR parts 64 and 68 as indicated above.

12. *It is further ordered*, pursuant to §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, that all interested parties may file comments on the matters discussed in this Notice and the proposed rules contained below by September 7, 1990, and reply comments by September 24, 1990. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants wish each Commissioner to have a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference room (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

13. *It is further ordered*, That the Chief, Common Carrier Bureau, is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

14. *It is further ordered,* That the Secretary shall cause a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a) (1981). The Secretary shall also cause a summary of this Notice to appear in the **Federal Register.**

15. *It is further ordered,* That the petition of the National Association of Regulatory Utility Commissioners, RM-6767, filed April 17, 1989, is granted to the extent indicated herein and is otherwise denied. All related pleadings and comments filed with regard to NARUC's petition are hereby incorporated by reference.

List of Subjects

47 CFR Part 64

Communications common carriers, Telephone.

47 CFR Part 68

Communications common carriers, Communications equipment, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rules

It is proposed that part 64 of title 47 of the Code of Federal Regulations be amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, unless otherwise noted.

2. A new § 64.703 is added to read as follows:

§ 64.703 Customer information.

(a) An operator service provider shall:

(1) Identify itself, audibly, and distinctly, to the customer before the customer incurs any charges;

(2) After the identification, allow sufficient time before the call is connected to permit the customer either to terminate the call at no charge or to advise the operator to transfer the call to the customer's preferred interstate or international common carrier at no charge; and

(3) Disclose immediately, upon request by, and without charge to, the customer,

(ii) The rates or charges for the customer's intended call;

(iii) The methods by which such rates or charges will be collected; and

(iv) The methods by which complaints concerning rates, charges, or collection practices will be resolved.

(b) Each call aggregator shall display plainly on or in close proximity to all telephones available for customer use, or shall provide to customers personally, printed documentation containing:

(1) The name(s), address(es), and toll-free telephone number(s) of the operator service provider(s) to which the telephones are presubscribed;

(2) A statement that the rates of the operator service provider(s) will be quoted upon request; and

(3) A written disclosure that informs customers that they have a right to obtain access to the carrier of their choice if said carrier provides service in that area and that informs them of how to contact that carrier.

(c) Satisfaction of the requirements of subsection (b) shall be the joint responsibility of the operator service provider, the call aggregator, and the owner of the telephone; applicable contracts or tariffs, if any, shall be modified accordingly.

3. A new Section 64.704 is added to read as follows:

§ 64.704 Call blocking prohibited.

(a) Call blocking occurs when an end-user is prevented from accessing the preferred carrier through alternative dialing methods—800, 950, and 10XXX-0+.

(b) Operator service providers shall neither require nor participate in the blocking of any customer's access to the customer's carrier of choice.

(c) Call aggregators shall neither require nor participate in the blocking of any customer's access to the customer's carrier of choice.

(d) Owners of pay telephones shall neither require nor participate in the blocking of any customer's access to the customer's carrier of choice.

(e) Applicable contracts or tariffs shall be modified so as to effectuate the provisions of subsections (b), (c), and (d).

(f) Operator service providers shall not pay compensation of any kind to call aggregators at locations at which any blocking of access to any common carrier occurs.

4. A new Section 64.705 is added to read as follows:

§ 64.705 Restrictions on charges related to the provision of operator services.

Call splashing. Operator service providers shall not charge customers for a distance that is more than the distance, in a straight line, between the calling party's point of origination and point of termination of the telephone call.

5. A new Section 64.706 is added to read as follows:

§ 64.706 Access codes of interexchange carriers.

(a) All interexchange common carriers shall establish within twelve (12) months of the effective date of this section a "10XXX" access code and at least one alternative form of access (e.g., a "950" or an "800" number).

(b) Local exchange carriers shall provide to calling customers, upon request, the access codes for specifically requested carriers operating in that local exchange area.

(c) Each local exchange carrier shall place in every edition of any "white pages" telephone directory it distributes, supplies, or provides on or after [ninety (90) days after the adoption of this section]:

(1) Instructions indicating the ways by which the 10XXX, 950, and 800 dialing methods can be used to reach interexchange carriers and operator service providers; and

(2) A listing of the 10XXX access codes and the 950 and 800 numbers of interexchange carriers and operator service providers that serve any part of the area that is the subject of the directory. This listing shall be placed by the local exchange carrier at no cost to the listed carriers or operator service providers, and the listed carriers and operator service providers shall bear responsibility for supplying the necessary information for this listing.

It is proposed that part 68 of title 47 of the Code of Federal Regulations be amended as follows:

PART 68—[AMENDED]

1. The authority citation for part 68 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, 48 Stat. as amended, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102; 47 U.S.C. 154, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, unless otherwise noted.

2. Section 68.318 is amended by adding paragraph (d) to read as follows:

§ 68.318 Additional limitations.

(d) *Requirement that registered equipment allow access to common carriers.* (1) Any equipment that is manufactured, imported, or installed more than eighteen (18) months after the effective date of this subsection and that is used by any call aggregator shall be capable of providing callers with access to common carriers through the use of all access methods—800, 950, and 10XXX-0+.

(2) All equipment used by call aggregators shall, within eighteen (18) months after the effective date of this subsection, provide callers with access to common carriers through the use of all access methods—800, 950, and 10XXX-0+. Such equipment shall be modified as necessary and re-registered if required by § 68.214. Any software modifications required to achieve compliance with this subsection shall be installed in a manner that cannot readily be altered by the user.

[FR Doc. 90-17034 Filed 7-19-90; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 55, No. 140
Friday, July 20, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Collection Submitted to the Office of Management and Budget for Review

AGENCY: ACTION.

ACTION: Information collection submitted to the Office of Management and Budget for review.

SUMMARY: The following form(s) have been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. chapter 35). This entry is not subject to 44 U.S.C. 3504(h). Copies of the submission(s) may be obtained from the ACTION Clearance Officer.

DATES: OMB and ACTION will consider comments received by August 20, 1990. Send comments to both:

Janet Smith, Clearance Officer, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525, Tel: (202) 634-9245, and

Daniel Chenok, Desk Officer for ACTION, Office of Management and Budget, 3002 New Executive Office Bldg., Washington, DC 20503, Tel: (202) 395-7316.

Title of Form(s): Project Progress Reports (PPRs).

ACTION Forms No(s): A-1433; 1020; 1035; 1432.

Need and Use: Need: to assure that project fulfill legislated purpose and monitor progress. USE: to provide standard performance reports by which progress is measured and determine need for technical assistance.

Type of Request: Project Progress Report.

Respondent's Obligation to Reply: Required to retain benefits.

Descriptions of Respondents: Public agencies and private non-profits, including small, grass-roots, organizations.

Frequency of Collection: A-1433=quarterly; A-1020=semi-annually; A-1432=semi-annually; A-1035=quarterly.

Estimated Number of Annual Responses: 5,800.

Average Burden Hours per Response: 1.5 hours/response.

Estimated Annual Reporting or Disclosure Burden: PPR only = 4.26 hours/project/annually; Recordkeeping only = 16 hour/project/annually; Total burden/project = 20.26 hours/project/annually.

Janet Smith,
Clearance Officer, ACTION.

[FR Doc. 90-17000 Filed 7-19-90; 8:45 am]

BILLING CODE 6050-28-M

Information Collection Submitted to the Office of Management and Budget for Review.

AGENCY: ACTION.

ACTION: Information Collection Submitted to the Office of Management and Budget for review.

SUMMARY: The following form(s) have been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. 3504 (h). Copies of the submission(s) may be obtained from the ACTION Clearance Officer.

DATES: OMB and ACTION will consider comments received by August 20, 1990. Send comments to both:

Janet Smith, Clearance Officer, ACTION, 1100 Vermont Avenue NW., Washington, DC 20525, Tel: (202) 634-9245, and

Daniel Chenok, Desk Officer for ACTION, Office of Management & Budget, 3002 New Executive Office Bldg., Washington, DC 20503, Tel: (202) 395-7316.

Title of Form(s): Project Grant Application—Title I, Part "C"

ACTION Forms No(s): A-424-PDD.

Need and Use: To assure that grantees meet program requirements: The information provided is considered by ACTION with regard to initial or renewal funding.

Type of Request: Project grant application.

Respondent's Obligation to Reply: Required to obtain/retain benefits.

Descriptions of Respondents: Public agencies and private non-profits, including small, grass-roots organizations.

Frequency of Collection: Annually.

Estimated Number of Annual Responses: 850.

Average Burden Hours per Response: For new grantees—38 hours, For renewal grantees—21 hours.

Estimated Annual Reporting or Disclosure Burden: Same as above.

Janet Smith,
Clearance Officer, ACTION.

[FR Doc. 90-17001 Filed 7-19-90; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Cooperative State Research Service

[Docket No. 90-135]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to a Field Test of Genetically Engineered Rhizobium Bacteria

AGENCIES: Animal and Plant Health Inspection Service and Cooperative State Research Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service and the Cooperative State Research Service relative to the voluntary review and issuance of a courtesy permit for a proposed field test of genetically engineered *Rhizobium* bacteria. The Department reviewed a proposal submitted by the Wisconsin Agricultural Experiment Station to conduct a field trial with strains of the bacteria *Rhizobium leguminosarum* biovar *trifolii* and *R. 1.* bv. *viceae* which have been modified by genetic engineering to express genes from an isolate of *Rhizobium leguminosarum* biovar *trifolii.* The research will be carried out at two locations at the University of Wisconsin's Arlington and Hancock Agricultural Research Stations, which are located approximately 20 and 80 miles north of Madison, Wisconsin, respectively. The assessment provides a basis for the conclusion that the field testing of these genetically engineered bacteria will not have a significant

impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service and the Cooperative State Research Service have determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Payne, Senior Staff Microbiologist, Biotechnology Coordination and Technical Assistance, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7602; or Dr. David R. MacKenzie, Director, National Biological Impact Assessment Program, CSRS, USDA, Suite 330—Aerospace Building, 901 D Street SW., Washington, DC 20252-2200. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens, Biotechnology Permits, Biotechnology, Biologics and Environmental Protection, Animal and Plant Health Inspection Service, 6505 Belcrest Road, Room 845, Federal Building, Hyattsville, MD 20782. The environmental assessment should be requested under courtesy permit number 90-164-03.

SUPPLEMENTARY INFORMATION: The Wisconsin Agricultural Experiment Station, University of Wisconsin has requested an assessment from the U.S. Department of Agriculture (USDA) for proposed field research with genetically transformed *Rhizobium leguminosarum* bv. *trifolii* and *R. I.* bv. *viceae* strains that were genetically modified by the incorporation of genes that encode trifolitoxin production and resistance. The source of the introduced genes is another strain of *R. I.* bv. *trifolii*. Trifolitoxin is a bacteriocin, a bacteriostatic peptide with specific activity toward strains of *Rhizobium fredii*, *R. leguminosarum* bv. *phaseoli*, *R. I.* bv. *trifolii*, and *R. I.* bv. *viceae*. No other bacterial species have been found to be inhibited by this bacteriocin. The proposed field sites for the experiments are at the University of Wisconsin—Madison's Arlington and Hancock Agricultural Research Stations located approximately 20 and 80 miles north of Madison, Wisconsin, respectively.

The Cooperative State Research Service (CSRS), U.S. Department of Agriculture (USDA) has reviewed this proposal voluntarily, there being no USDA approval required (in addition to that already received) for this research. Additionally, the Animal and Plant Health Inspection Service (APHIS), USDA intends to issue a courtesy permit for the release into the environment of the modified strains of *Rhizobium leguminosarum* biovar *trifolii* and *R. I.* bv. *viceae*. APHIS has determined that these strains of *Rhizobium* are not regulated articles under regulations issued pursuant to the Federal Plant Pest Act and the Plant Quarantine Act. The issuance of a courtesy permit is a voluntary Agency action under the provisions of 7 CFR 340.3(h).

The Agencies, CSRS and APHIS, completed this review to provide reasonable assurance to the public that adequate protection of human health and the environment have been considered, and that procedures are available to mitigate any unexpected negative consequences resulting from the test. The Agencies determined that their review of this field test could be accomplished by using the environmental assessment process of the National Environmental Policy Act. The environmental assessment and finding of no significant impact serve as a procedural framework to assist the Agencies in describing their reviews of the proposed field test.

The environmental assessment and finding of no significant impact, which are based on data submitted to the U.S. Department of Agriculture by the University of Wisconsin, as well as a review of other relevant literature, provide the public with documentation of the review and analysis of the environmental impacts associated with conducting the field testing. On the basis of those reviews APHIS and CSRS have determined that the field test as proposed does not pose a risk of presenting a significant impact on the quality of the human environment. The facts supporting the finding of no significant impact are summarized below and are contained in the environmental assessment.

1. The donor genes for trifolitoxin production and trifolitoxin resistance are already found in rhizobia in the agricultural soil in Wisconsin. The species of bacteria that are to be introduced in this field trial have been purposefully used to increase yield in agricultural crops and have been used for agricultural research in Wisconsin and many other States for many years without harm to the environment.

2. Any environmental consequence of the introduction of small amounts of these transgenic rhizobia to test plots is expected to be insignificant. This conclusion is based on the results of previous field plot research with both conventional and genetically engineered *Rhizobium* spp., and the scientific literature on the purposeful introductions of *Rhizobium* into agricultural systems that have taken place for nearly 100 years in the United States.

3. The introduced transgenic *Rhizobium* isolates are not expected to spread beyond very short distances (i.e., they will be mostly confined to the root zone of the inoculated plants). This expectation is based on results from other field tests with conventional and genetically engineered *Rhizobium* that have been published in the scientific literature.

4. The biological monitoring proposed by the principal investigator is adequate to detect any unusual or any unexpected spread of the transgenic *Rhizobium* from the test plots and/or any unusual disturbance to the microbial biota of the test plots.

5. The mitigation procedures proposed by the principal investigator are adequate to eliminate the transgenic *Rhizobium* isolates, if indeed such steps become necessary. By modification of the soil pH, treatment with fumigants and/or with antibiotics, the test bacteria can be eliminated from the plots with reasonable assurance.

6. The size of the experiment and the limited area of the experimental site make it feasible to biologically monitor the experimental organism, to supervise the research personnel, and to implement mitigation procedures, if necessary.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-52274, August 31, 1979). Specifically, the environmental assessment has been prepared in response to 40 CFR 1501.3(b) which states, "Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking."

Done in Washington, DC, this 13th day of July, 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 90-16968 Filed 07-19-90; 8:45 am]

BILLING CODE 3410-14-M

Agricultural Research Service

Intent To Grant an Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to JR Scientific, Inc., Woodland, California, on U.S. Patent Application Serial No. 07/373,977, "More Virulent Biotype Isolated from Wild-Type Virus," filed June 30, 1989.

DATE: September 18, 1990.

ADDRESSES: Send comments to: USDA-ARS-Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, Room 401, BARC-W, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: (301) 344-2786, (FTS) 344-2786.

SUPPLEMENTARY INFORMATION: The USDA-ARS intends to grant an exclusive license to JR Scientific, Inc., to practice the invention disclosed in U.S. Patent Application Serial No. 07/373,977, "More Virulent Biotype Isolated from Wild-Type Virus," filed June 30, 1989. Notice of Availability was given in the Federal Register on December 19, 1989.

The patent rights in this invention have been assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as the applicant has submitted a complete, sufficient, and verified application for a license.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospectrive exclusive license may be granted unless, within sixty days from the date of this published Notice, ARS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

W.H. Tallent,

Assistant Administrator.

[FR Doc. 90-17007 Filed 7-19-90; 8:45 am]

BILLING CODE 3410-03-M

Forest Service

Interagency Motor Vehicle Use Plan

AGENCY: Forest Service, USDA and Bureau of Land Management, USDI.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service and Bureau of Land Management will jointly prepare an Environmental Impact Statement on designating routes which will be open to motor vehicle use on Inyo National Forest and Bureau of Land Management, Bishop Resource Area lands within Mono, Madera, Inyo, and Tulare counties, California, and Mineral and Esmeralda counties, Nevada. The agencies invite written comments and suggestions on the scope of the analysis. In addition, the agencies give notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by August 30, 1990.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Dennis Martin, Forest Supervisor, Inyo National Forest, 873 North Main Street, Bishop, California 93514.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and Environmental Impact Statement to Ernie DeGraff, Assistant Recreation Officer, Inyo National Forest, Bishop, California, phone 619-873-5841.

SUPPLEMENTARY INFORMATION: The Inyo National Forest Land and Resource Management Plan was approved in August 1988. The Plan committed the Forest to revising the 1977 Interagency Motor Vehicle Use Plan to bring it in line with approved direction in the Forest's Land Management Plan.

The Department of Agriculture, Forest Service and the Department of Interior, Bureau of Land Management will prepare a Draft EIS for designation of routes to be open for motor vehicle use on agency lands.

This proposal has received thorough public review and comment through a series of public scoping meetings, news releases in local papers and on local radio stations within the affected area, and through mailings to agencies and individuals interested in motor vehicle use management on agency lands.

A range of alternatives designating routes to be open to motor vehicle use will be considered. One of these will be no change from the existing use as identified in the recently completed vehicle route inventory. Other alternatives will consider a range of designated routes that respond to the issues and concerns raised by management and public workgroups and identified in the public scoping process.

The Bureau of Land Management, Bishop Resource Area, will participate in the environmental analysis to designate routes open to motor vehicle use on public lands they administer.

Dennis Martin, Forest Supervisor, Inyo National Forest, and Ed Hastey, State Director, Bureau of Land Management, are the responsible officials.

The Draft EIS is expected to be filed with the Environmental Protection Agency and to be available for public review by July 1, 1991. At that time the Environmental Protection Agency will publish a notice of availability of the document in the **Federal Register**. Notice of public meetings to be held will be included in the notice of availability.

The comment period on the Draft EIS will be 45 days from the date of the notice of availability in the **Federal Register**. It is very important that those interested in the management of motor vehicle use participate at that time. To be most helpful, comments should be as specific as possible and may address the adequacy of the Draft EIS or the merits of the alternatives discussed. (See The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.)

In addition, Federal court decisions have established that reviewers of Draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. NRDC, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the Final EIS *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the agencies at a time when

they can meaningfully consider them and respond to them in the Final EIS.

After the comment period ends on the Draft EIS, the comments will be analyzed and considered by the Forest Service and Bureau of Land Management in preparing the Final EIS, which is scheduled to be completed in March 1992. In the final EIS the agencies are required to respond to the comments received (40 CFR 1503.4). The responsible officials will consider the comments, responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible officials will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.3 (Forest Service) and 43 CFR 1610.5-2 (Bureau of Land Management).

Dated: July 10, 1990.

Dennis W. Martin,

Forest Supervisor.

[FR Doc. 90-17004 Filed 7-19-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants; Recovery Plans

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

ACTION: Notice of availability and request for comments.

SUMMARY: The Draft Humpback Whale National Recovery Plan developed by the U.S. Humpback Whale Recovery Team for the humpback whale (*Megantera novaeangliae*) in United States waters was distributed for comment on October 16, 1989 (54 FR 42319) for review and comment by interested parties prior to final approval and adoption by NMFS. At the time of distribution, the plan did not include an implementation schedule specifying priority research, lead/cooperating agencies, estimated costs and the time period for each recommended action.

DATES: Comments on the draft implementation schedule must be received on or before August 20, 1990.

ADDRESSES: Comments should be addressed to Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910. Copies of the implementation schedule are available upon request from Gloria Thompson, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Room 8303, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Gloria Thompson at 301/427-2332.

SUPPLEMENTARY INFORMATION: The 1988 amendments to the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.) require "* * * estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal." The recovery team has prepared these estimates and NMFS is requesting reviewers to provide comments on them.

Dated: July 16, 1990.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 90-16981 Filed 7-19-90; 8:45 am]

BILLING CODE 3510-22-M

Development of a Proposal to Govern the Taking of Marine Mammals Incidental to Commercial Fishing Operations

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

ACTION: Notice of extension of comment period.

SUMMARY: On May 10, 1990, (55 FR 19642) NMFS published a notice of intent to prepare an EIS and hold a scoping meeting in Silver Spring, Maryland on May 31, 1990, regarding the development of a proposal to govern the incidental take of marine mammals in commercial fisheries operations. A second notice was published on May 31, 1990, (55 FR 22056) regarding additional scoping meetings in other areas of the country. This notice extends the comment period until August 6, 1990.

DATES: Comments and suggestions regarding the development of the proposal to govern the taking of marine mammals incidental to commercial fishing operations should be submitted so that they arrive at the Office of Protected Resources no later than August 6, 1990

ADDRESSES: Written comments should be sent to Dr. Nancy Foster, Director, Office of Protected Resources, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Scoping materials can be obtained from the following: Northeast Region, Mr. Douglas Beach (508-281-9254); Southeast Region, Mr. Charles Oravetz (813-893-3366); Southwest Region, Mr. James Lecky (213-514-6664) or Mr. Eugene Nitta (808-955-8831); Northwest Region, Mr. Joe Scordino (206-526-6140); Alaska Region, Mr. John Sease (907-586-7235).

SUPPLEMENTARY INFORMATION: The Interim Exemption for Commercial Fisheries implemented by the 1988 amendments to the Marine Mammal Protection Act governs the taking of marine mammals during commercial fishing operations until October 1, 1993. The 1988 amendments require the Secretary of Commerce (Secretary) to publish in the **Federal Register** by February 1, 1991, for public comment, the suggested regime that the Secretary believes should govern the incidental takings of marine mammals after October 1, 1993. In developing this regime, the Secretary is required to consult with the Marine Mammal Commission, Regional Fishery Management Councils, and other interested governmental and non-governmental organizations. The amendments also require the Secretary to make recommendations to Congress pertaining to the incidental taking of marine mammals by January 1, 1992. These recommendations will include: (a) The suggested regime as modified after comments and consultations; (b) a proposed schedule for implementing the regime; and (c) such recommendations for additional legislation considered necessary or desirable to implement the suggested regime.

In conjunction with the development of a proposed regime, NMFS is preparing a Draft Environmental Impact Statement (DEIS). This DEIS will present alternative regimes and discuss the environmental impacts of each alternative.

The public scoping meetings were held to ensure full opportunity for interested members of the public and government agencies to advise NMFS on the issues, alternatives and impacts that should be addressed in the DEIS. All comments and suggestions presented at the scoping meetings should be provided in writing no later than August 6, 1990.

Dated: July 16, 1990.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 90-16982 Filed 7-19-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 20, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 25 and June 1, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 21642 and 22386) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1990:

Commodities

Strap, Webbing, 2540-00-586-7579, 2590-00-958-6917.
Disinfectant-Detergent, General Purpose, 6840-00-935-9813.

Services

Commissary Shelf Stocking and Custodial, Oakland Army Base, California.
Commissary Shelf Stocking and Custodial, Fort Gordon, Georgia.
Janitorial/Custodial, Peter W. Rodino, Jr., Federal Building, 970 Broad Street, Newark, New Jersey.
Janitorial/Custodial, U.S. Army Reserve Center, 4300 S. Treadway, Abilene, Texas.
Janitorial/Grounds Maintenance, FAA Air Traffic Control Towers at the following locations:
JFK International Airport, Jamaica, New York.
LaGuardia Airport, Flushing New York.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 90-17058 Filed 7-19-90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions and Deletions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed additions and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1990 commodities and a military resale commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 20, 1990.

ADDRESSES: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities, military resale commodity and services listed below from workshops for the blind or other severely handicapped. It is proposed to add the following commodities, military resale commodity and services to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Commodities

Holder, Toilet Paper, 4510-00-364-3035.
Poncho, Wet Weather, 8405-00-290-0550.

Military Resale Item No. and Name

No. 935 Ensembles, Christmas, Potholder and Towel.

Services

Commissary Shelf Stocking, Naval Training Station, Orlando, Florida.
Commissary Shelf Stocking and Custodial, Rock Island Arsenal, Rock Island, Illinois.
Commissary Shelf Stocking and Custodial, Fort Eustis, Virginia.
Commissary Shelf Stocking and Custodial, Fort Story, Virginia.
Commissary Shelf Stocking, Custodial and Warehousing, Bolling Air Force Base, DC.
Commissary Shelf Stocking, Custodial and Warehousing, Andrews Air Force Base, Maryland.
Food Service, Fort McPherson, Georgia.
Food Service, Fleet Combat Training Center, Dam Neck, Virginia Beach, Virginia.
Food Service, U.S. Navy Cargo Handling and Port Group, Williamsburg, Virginia.
Janitorial/Custodial, Federal Center, 620 Center Avenue, Alameda, California.
Janitorial/Custodial, Internal Revenue Service, 6600 Bay Colony, Norcross, Georgia.
Janitorial/Custodial, Social Security Administration Building, 6117 Penn Circle North, Pittsburgh, Pennsylvania.
Janitorial/Custodial, Naval Air Station, Willow Grove, Pennsylvania.
Janitorial/Custodial, Naval Station, Staten Island, New York.
Janitorial/Custodial, Tennessee Air National Guard, Nashville Metro Airport, Nashville, Tennessee.
Janitorial/Custodial at the following Provo, Utah locations:
Federal Building, 88 West 100 North.
Social Security Building, 175 East 100 North.
Janitorial/Grounds Maintenance, USCG Loran Station, Malone, Florida.

Deletions

It is proposed to delete the following commodity and services from Procurement List 1990, which was published November 3, 1989 (54 FR 46540):

Commodity

Strap Set, Webbing, 4935-00-776-2724. (Requirements for U.S. Army Missile Command, Redstone Arsenal, Alabama only).

Services

Janitorial/Custodial, U.S. Army Service Center, New Castle, Delaware.
Janitorial/Custodial, Federal Building, 275 Peachtree Street, Atlanta, Georgia.
Janitorial/Custodial, GSA, Fleet Management Center, Chamblee, Georgia.
Janitorial/Custodial, U.S. Army Reserve Center at the following locations:
John Williams Street, Attleboro, Massachusetts.
675 American Legion Highway, Roslindale, Massachusetts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-17059 Filed 7-19-90; 8:45 am]

BILLING CODE 6820-33-M

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: Communications and Enlistment Decisions/Youth Attitude Tracking Study III (CEDS/YATS III), no form required, OMB Control Number 0704-0069.

Type of Request: Revision of a currently approved collection.

Average Burden Hours/Minutes Per Response: 30 minutes.

Frequency of Response: One to three.

Number of Respondents: 11,100.

Annual Burden Hours: 6,375.

Annual Responses: 17,000.

Needs and Uses: This survey collects data on the knowledge of and attitudes toward military service of Americans 16-24 years of age. It provides annual cross-sectional data on propensity to serve and on other key issues for trend analyses. Brief follow-up interviews provide additional measures of change, using a mix of previously interviewed individuals and first time respondents. Data are used by DOD components to develop recruiting strategies, incentive programs, advertising strategies, and Congressional testimony, to allocate resources and to conduct special studies.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management of Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis High Way, Suite 1204, Arlington, Virginia 22202-4302.

Dated: July 16, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-16952 Filed 7-19-90; 8:45 am]

BILLING CODE 3810-01-M

Defense Mapping Agency

Membership; Defense Mapping Agency Performance Review Board

AGENCY: Defense Mapping Agency (DMA) Department of Defense (DoD).

ACTION: Notice of membership of the defense mapping agency Performance Review Board (DMA PRB).

SUMMARY: This notice announces the appointment of the members of the DMA PRB. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Board provides fair and impartial performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DMA.

EFFECTIVE DATE: August 20, 1990.

FOR FURTHER INFORMATION CONTACT: Ronald G. Nagy, Defense Mapping Agency, Civilian Personnel Division, 8613 Lee Highway, Fairfax, VA 22031-2137, telephone (703) 285-9153.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following is a standing register of executives appointed to the DMA PRB; specific PRB panels will be constituted from this standing register. Executives listed will serve a one-year renewable term, effective 20 August 1990.

ANCELL, A. Clay, Deputy Director for Programs, Production and Operations, DMA Aerospace Center
BARROWMAN, Douglas R., Assistant Deputy Director for Plans and Requirements, Headquarters, DMA
BERG, Richard A., Chief, Scientific Data Department, DMA Hydrographic/Topographic Center
BROWN, William J., Deputy Director for Programs, Production and Operations, DMA Hydrographic/Topographic Center
COGHLAN, Thomas K., Chief, Digital Products Department, DMA Hydrographic/Topographic Center
DAUGHERTY, Kenneth L, Director, DMA Systems Center
DIERDORFF, Curtis L., Director of Personnel, Headquarters, DMA
GILLIAM, Penman R., Deputy Director, Management and Technology, Headquarters, DMA
GUSTIN, Russell T., Chief, Digital Products Department, DMA Reston Center
HALL, Charles D., Deputy Director for Research and Engineering, Headquarters, DMA
HALL, Robert H., Deputy Director for Programs, Production and Operations, DMA Reston Center
HENNIG, Thomas A., Assistant Deputy Director for Research and Engineering, Headquarters, DMA
HOGAN, William N., Deputy Director for Programs, Production and Operations, Headquarters, DMA
JACKSON, Mikel F., Assistant Deputy Director for Production and Distribution, Headquarters, DMA
KNOPFEL, Lawrence, Technical Director/Deputy Director, DMA Combat Support Center
KRYGIEL, Annette J., Deputy Director for Modernization Development, DMA Systems Center
LABOVITZ, Mordecai Z., Director of Acquisition, Headquarters, DMA
MENDEZ, John M., Deputy Director for Transition Management, Headquarters, DMA
MUNCY, Larry N., Chief, Scientific Data Department, DMA Aerospace Center
PEELER, Paul L., Jr., Technical Director, DMA Reston Center
PHILLIPS, Earl W., Assistant Deputy Director for Programming, Headquarters, DMA
PRATT, Joseph, Brigadier General, USA, Deputy Director for Plans and Requirements, Headquarters, DMA
ROBINSON, Bill E., Director, DMA Telecommunications Services Center
SKIDMORE, James R., Technical Director, DMA Aerospace Center
SMITH, Kathleen M., Chief, Digital Products Department, DMA Aerospace Center
SMITH, Lon M., Technical Director, DMA Hydrographic/Topographic Center
SMITH, Robert N., Chief, Data Services Department, DMA Reston Center
SMITH, William D., Chief, Program/Budget Division (Deputy Comptroller), Headquarters, DMA
VAUGHN, John R., Comptroller, Headquarters, DMA
WARD, Curtis B., Deputy Director for Program Integration and Operation, DMA Systems Center

Dated: July 16, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-16953 Filed 7-19-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 20, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 732-2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: July 16, 1990.

George P. Sotos,

Acting Director, for Office of Information Resources Management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New
Title: Case Study Interview Protocols for a Descriptive Analysis of Bilingual Instructional Service Capacity Building among Title VII Grantees
Frequency: One time
Affected Public: State or local government
Reporting Burden:
Responses: 330
Burden Hours: 285
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The purpose of this study is to describe approaches to capacity building. The Department will use this information to report on characteristics of successful programs.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New
Title: Survey Instruments for a Descriptive Analysis of Bilingual Instructional Service Capacity Building among Title VII Grantees
Frequency: One time
Affected Public: State or local government
Reporting Burden:
Responses: 2252
Burden Hours: 928
Recordkeeping Burden :
Recordkeepers: 0
Burden Hours: 0
Abstract: This study will provide a summary view of capacity building impact of Title VII grants. The Department will use this information to determine criteria for successful capacity building and for program management.

Office of Postsecondary Education

Type of Review: Extension
Title: Application for Grants Under the Endowment Challenge Grant Program
Frequency: Annually
Affected Public: Non-profit Institutions
Reporting Burden:
Responses: 500
Burden Hours: 1000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by institutions of higher education to apply for grants under the Endowment Challenge Grant Program. The Department uses this information to make grant awards.

Office of Elementary and Secondary Education

Type of Review: Revision
Title: State Annual Performance Report (Dwight D. Eisenhower Mathematics and Science Act)
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 104
Burden Hours: 832
Recordkeeping Burden:
Recordkeepers:
Burden Hours: 0
Abstract: State agencies for higher education and State educational agencies that have participated in programs under the Dwight D. Eisenhower Mathematics and Science Education Act are required to submit this report. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

[FR Doc. 90-16977 Filed 7-19-90; 8:45 am]

BILLING CODE 4000-01-M

Indian Nations at Risk Task Force: Invitation for Submission of Papers on Indian Education Issues

AGENCY: Indian Nations At Risk Task Force, Education.

ACTION: Invitation for submission of papers on Indian education issues.

SUMMARY: The U.S. Department of Education is issuing a call for papers related to the work of the Indian Nations At Risk Task Force. On March 8, 1990, Secretary Cavazos established the task force to advise and make recommendations to the Secretary on the condition of education of American Indians/Alaska Natives in the United States. In order to assist the Indian Nations At Risk Task Force in portraying the broadest possible perspectives of Natives on education issues, individuals are asked to submit papers or written testimony related to the topics listed below. These presentations should consider the diversity of American Indian/Alaska Native cultures and conditions in describing problems and solutions.

Individuals are also asked to identify exemplary educational programs as well as efforts that link schools with other providers of services.

DATES: Please submit papers or written testimony by September 1, 1990.

ADDRESSES: Alan Ginsburg, Executive Director, The Indian Nations At Risk Task Force, room 3127, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–4244

SUPPLEMENTARY INFORMATION:

LIST OF POSSIBLE TOPICS

I. Overview of the Challenges: Past Responses and Current Issues

— *Historical and contemporary issues that make educational reform imperative.* Review major reports on American Indian/Alaska Native education.

— *Government programs, resources, and regulations that affect American Indians/Alaska Natives.* This would include both federal and non-federal programs and regulations affecting American Indians/Alaska Natives.

— *Demographics of American Indians/Alaska Natives.* Describe the educational, social, economic and health issues facing Native children, adolescents and adults. From this description would follow a discussion of the need for integrated approaches to intervention and prevention strategies to address social and educational problems.

— *American Indian/Alaska Native education goals and their relevance to the National education goals.* Identify the commonly adopted education goals of American Indians/Alaska Natives. Assess their relationship to each of the six National Education Goals. Assess the current performance of Native children with respect to accomplishing all of these goals. Assess special significance of achieving high levels of literacy in the Native populations.

II. Role of Education in Affirming American Indian/Alaska Native Cultures and Languages and Improving Opportunities for Native Students

—*Issues in developing and promoting a culturally relevant learning environment and pedagogy that are congruent with modern dynamic tribal cultures.*

—*Curricular reform to make cultural retention a pervasive influence in the education of American Indians/Alaska Natives and to encourage multicultural diversity in the schools.*

—*Issues in recruiting, preparing, retaining, and developing high quality school administrators, teachers and ancillary personnel of Native students.* The need for administrators and teachers who can serve as positive role models, possess expertise in their subject matter, and educate by recognizing and expanding upon different learning styles and experiences of Native children.

III. Meeting American Indian/Alaska Native Education Goals

What is currently known about successful programs, strategies and means for reaching American Indian/Alaska Native and National education goals? What do public, BIA, and tribally controlled schools need to do to help American Indians/Alaska Natives succeed? Also, how can we integrate and coordinate services and programs sponsored by various federal, state, and tribal educational, social and health agencies for Native children and their families?

—*Goal 1: Readiness for School*

• *Early childhood education:* Discuss innovative approaches to preschool education that combine learning care with parenting education; discuss the need for early childhood education programs to support and reflect the local cultural and linguistic values of the families to the extent desired by the communities served.

• *Family literacy programs:* Discuss the potential for combining adult basic skills instruction with information to aid parents in helping their children with schoolwork.

• *Day care:* Discuss the need for educationally sound and culturally and linguistically congruent day care services for Native communities for pre-school and school-aged children due to employment or absence of adult family members.

Goal 2: Reading

• *Development of reading and English language skills:* Identify exemplary reading and language skills programs that result in high levels of English language reading achievement for Native students.

Goal 3: Graduating High School Students with Competencies Needed for their Futures

• *Systemic reform strategies:* Identify school system and environmental factors that contribute to student engagement and commitment to education and reduce the potential for Native students dropping out.

• *Retrieval and re-entry strategies:* Examine strategies and programs to meet the needs of individuals who have left the conventional educational system and need additional and alternative services to continue their educational development.

• *Strategies for developing and expanding career and postsecondary education options:* Examine strategies that broaden students' horizons and increase their understanding of the relationship of academic skills, postsecondary opportunities, and employment options. Examine the links among education, social, and economic development of Indian Nations.

Goal 4: Student Academic and Social Development

• *Quality of instruction:* Examine the quality of instruction in federal, tribally controlled and public schools with high concentrations of Native students. Examine the availability of teachers who possess subject area expertise and the knowledge of the culture and language of American Indians/Alaska Natives. Also examine effective administrator and teacher training and staff development programs designed to prepare school personnel for effective and productive service to Native students. Examine strategies that equip students with up-to-date technology. Examine effective methods for school personnel to communicate to Native students their expectations for high academic achievement and success.

• *Curriculum development:* Examine curricula aimed at developing and expanding individual learning styles of Native children, and incorporating traditional cultural values into instruction. Also examine the issues of availability and location of materials and resources needed for the development of culturally congruent curriculum. Examine strategies to enhance the development of positive self-esteem through exposure to culturally congruent curriculum and instructional methods and rigorous academic coursework.

• *Student performance:* Assess the performance of Native students on standardized tests, particularly tests for placement, promotion and college entrance, and evaluate the impact of limited English language proficiency on test scores. Examine the bias introduced by test items irrelevant to life experiences, history, philosophy and perspectives of Native students. Examine the misdiagnosis and assessment of Native students based on tests results, particularly assessments resulting in inappropriate placement in special education programs. Examine the impact of using strategies for accurately assessing the full potential of Native students to ensure their

appropriate access and placement in gifted and talented programs.

• *Development and maintenance of Native languages:* Examine programs in urban and rural settings that encourage Native students to develop and retain Native language at the same time that they acquire English.

• *Preparation for postsecondary education:* Discuss strategies for expanding the access of Native students to all forms of postsecondary education and improving their degree completion rates. Consider the effect of prior experience in tribal colleges and special postsecondary institutions and programs serving Native students on later success in four-year institutions. Consider the availability and effectiveness of special services such as the Federal Upward Bound Program and similar State services, such as Minnesota's Indian Postsecondary Preparatory Program.

• *Student leadership development:* Examine supplemental programs that encourage leadership through community service opportunities to contribute to the school and community life.

Goal 5: Science and Mathematics

• *Opportunities to learn:* Examine the extent to which Native children receive instruction in math and science that leads to higher levels of learning and advanced coursework. Examine the extent to which this coursework integrates ecology, regional environment, and cultural aspects that build upon the knowledge and experiences of students as appropriate. Discuss opportunities to learn from experts in the field through mentoring/tutoring, business cooperatives and other experiential programs.

Goal 6: Adult Literacy and Lifelong Learning

• *Adult education programs:* Discuss effective approaches in adult basic skills, GED, and vocational/career training programs. Discuss extent to which adults in need of adult education programs have access and participate in the programs. Examine programs which use materials relevant to the Native adult learner.

• *Community schools for life-long learning:* Examine the role that community schools and tribal colleges can play as centers of learning for the entire community. Examine the role of adult programs in developing life coping and survival skills for adults.

Goal 7: Safe, Disciplined and Drug-free Schools

• *Drug and alcohol prevention:* Discuss programs that focus on comprehensive prevention strategies, involving parents and community organizations in the effort to reduce drug and alcohol abuse and other self-destructive behaviors.

• *Health and wellness:* Discuss programs that promote the development and maintenance of healthy life styles and incorporate education on health promotion and disease prevention. Examine strategies to help Native students deal effectively with community and family related social problems.

• *Facilities:* Examine physical factors of elementary, secondary and postsecondary schools that are necessary for a safe learning environment and conducive to learning and the extent of overcrowding and inadequate facilities. Discuss the potential impact of lack of funding for repairs and new school construction on accreditation and operation of effective schools.

IV. The Role of Postsecondary Education

What do we know about the success of American Indians/Alaska Natives in enrolling in and completing postsecondary education? What barriers to postsecondary education exist for American Indians/Alaska Natives? What do public, private and tribal institutions do to help American Indians/Alaska Natives succeed? How can postsecondary education help to develop American Indian/Alaska Native administrators, teachers, and ancillary school personnel? What would be the results of tracking systems that monitor the experiences of Native students in educational institutions from junior high through postsecondary levels?

—*Access and retention of American Indians/Alaska Natives:* Examine programs and services offered at public, private, and tribal colleges. Examine curricula, teaching methods and support services, including those designed to help maintain traditional American Indian/Alaska Native values. Examine the need for improved and additional facilities for tribally controlled colleges.

—*Training for employment:* Review postsecondary training for American Indians/Alaska Natives at community colleges and vocational/technical schools focusing on the provision of high quality basic education and vocational instruction relevant to the economic development needs of the communities in which American Indians/Alaska Natives live. Examine exemplary models and strategies to incorporate current technology and methods in instruction.

—*Financial aid:* Examine the extent of financial aid needs and resources available for undergraduate and graduate education for American Indians/Alaska Natives with a particular focus of the roles of federal, state, tribal and private resources. Examine the types of aid and the consequences of student loans on students' continued enrollment in postsecondary education. Consider eligibility criteria and coordination among funding agencies.

—*Role of postsecondary institutions in the community:* Review the exemplary contributions and functions of postsecondary institutions to Native communities and Indian Nations particularly as they relate to opportunities for continuing education, the preservation of culturally and historically valuable materials, leadership and role model development, and economic development. Examine the contributions and functions of research services, expert community assistance, economic development, and demonstrated opportunities for public service. Consider the partnership role between institutions and tribal governments in providing a forum for expression and discussion of new ideas and policy initiatives that help communities become self-sufficient.

V. Parents and Community Involvement

What do we know about the level of involvement of American Indian/Alaska Native parents in their children's education? How do schools encourage parent and community involvement? What are successful strategies and means for increasing parent and community involvement?

—*Parents:* Discuss the importance of parental involvement and community resources in a child's education and how schools and tribal councils can create partnerships with parents to encourage positive and meaningful levels of involvement. Also discuss parents' responsibility to be involved in their children's education and how they can serve as a catalyst for improving their children's school. Consider the need and impact of providing parenting training services in Native communities.

—*Community resources:* Discuss culturally, linguistically, and educationally sound day care services for pre-school and after-school care of children as a means to support parents' efforts to foster their

children's development. Discuss use of Elders to assist the school and community in maintaining culture and native languages in the community as well as other ancillary functions such as supporting school discipline polices with appropriate compensation and respect for their contribution to the overall education of Native students.

—*Tribal councils and school boards:* Examine the governmental role of tribal councils and tribal school boards in the decision-making process of local, BIA, and tribally controlled schools. Discuss strategies used in communities that support and coordinate efforts of tribal councils, boards, school programs, and parents in developing and implementing school policies. (i.e., Rocky Boy School, Box Elder, MT)

VI. Federal, State and Tribal Operations

—*Encouraging effective schools:* Discuss how governance at all levels can contribute to making schools serving Native students effective centers of learning.

—*Strategies for accountability:* Discuss potential ways to improve the measures available on the access of American Indians/Alaska Natives to quality education and services, the performance of Native students on multiple indicators, and the effectiveness of government programs serving American Indians/Alaska Natives. Discuss ways for making this information available to Native students and their families for decision-making. Review the development and use of state or locally determined educational competencies as related to Native students and outcome and accountability measures for school system performance. Consider financial and nonfiscal mechanisms that hold schools accountable for educational performance and eliminate rewards for low performance.

—*Strategies for improving school financing:* Discuss reforms and development of new funding mechanisms that enable funds to follow Native students as they transfer from school to school and provide adequate funding necessary for quality educational programs, facilities, equipment, and personnel to educate Native students. Review strategies for improving the relationship and coordination of federal, state, and tribal efforts and responsibilities to adequately finance the education of Native students. Examine the adequacy of mechanisms for appropriating and allocating funds in state and federal programs for the education of Native students.

—*Strategies for information gathering:* Discuss possible strategies for improving the scope and quality of information on Native students. Possible options would be to expand the scope of existing surveys on Native children and launch new studies on the quality of education for Native students.

—*Strategies for change:* Discuss possible improvement mechanisms including changes to the distribution of funds, waivers of rules, mechanisms for accountability, performance measures, performance incentives, and choice.

—*Services integration:* Consider opportunities to integrate and coordinate services for Native children and their families including programs sponsored by education, community, health and tribal services.

FOR FURTHER INFORMATION CONTACT: Alan Ginsburg, Executive Director, Indian Nations At Risk Task Force, Room 3127, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202-4244, Telephone: (202) 401-3132.

Dated: July 16, 1990.

George Pieler,

Acting Deputy Under Secretary for Planning, Budget and Evaluation.

[FR Doc. 90-16983 Filed 7-19-90; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board Committees; Meetings

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of partially closed meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Assessment Governing Board and its Executive Committee. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

DATES: August 2, 3, and 4, 1990.

TIME: Thursday, August 2, 1990, Technical Methodology and Analysis, Reporting, and Dissemination Sub-Committees—4 p.m.-6 p.m. (open); Executive Committee—7 p.m.-7:55 p.m. (open), 8 p.m. until completion of business (closed). Friday, August 3, 1990, full Board—9 a.m.-11:55 a.m. (open); 12 p.m.-1:25 p.m. (closed); 1:30 p.m. until completion of business, approximately 5:30 p.m. (open). Saturday, August 4, 1990, 8:30 a.m. until adjournment, approximately 1 p.m. (open).

LOCATION: Ritz Carlton Hotel, 2100 Massachusetts Avenue, NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, U.S. Department of Education, 1100 L Street, NW., suite 7322, Washington, DC 20005-4013.

TELEPHONE: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board (NAGB) is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297); (20 U.S.C. 1221e-1).

The Board is established to advise the Commissioner for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The National Assessment Governing Board and its committees will meet at the Ritz Carlton Hotel, Washington, DC, August 2, 3, and 4, 1990. On August 2 the Technical Methodology and Analysis Reporting and Dissemination Sub-committees (TM/ARD) of the Board will meet in open session at 4 p.m. until 6 p.m. These committees will be considering the plans for setting achievement levels. The TM/ARD Committees will also discuss scaling issues, reporting Asian data, and developing a new Board policy on reporting and dissemination. At 7 p.m. until 7:55 p.m., the Executive Committee of the Board will meet in open session. Agenda items for the meeting include discussion of (1) $20 million Summit Follow-up, and (2) NAGB's involvement in the development of the 1994 NAEP Request for Proposals. Beginning at 8 p.m. until the completion of business, the meeting will be closed to the public under the authority of 10(d) of the

Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. appendix 2) and under exemptions (2) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act (Pub. L. 94–409, 5 U.S.C. 552b). Discussions during the closed portion will concern nominations for Board membership. This discussion will pertain to the qualifications of the nominees to serve in the respective capacities. Committee discussions are likely to disclose (1) matters that relate solely to the internal personnel rules and practices of an agency; and (2) information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

On August 3, 1990, the full Board will convene, beginning at 9 a.m. and ending at 5 p.m. From 12 p.m. to 1:25 p.m., the Board will meet in closed session under the authority of 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. appendix 2) and under exemption 9(B) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). During the closed portion the Board will review the draft of the "1988 NAEP Composite Report." The report is still undergoing technical review and analysis, and there is a significant possibility that the data may be incorrect or incomplete. Disclosure of possibly incorrect or incomplete data could cause third parties, whose performance could be misinterpreted to take premature actions against the agency with respect to the report. Premature disclosure of the draft report and contents would significantly frustrate implementation of the proposed agency action to release the report.

The proposed agenda for the open session includes meetings of the sub-committees, and briefings on the NAEP contract and on the national goals. The Reading and Writing Committees will be briefed on the development work for the 1992 assessments in their respective subject areas. The Committees will then meet jointly for a presentation on state-level innovations in reading and writing. The August 4, 1990, session of the Board meeting will begin in open session at 8:30 a.m. and conclude approximately 1 p.m.

A summary of the activities at the closed session and related matters, which are informative to the public consistent with the policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, 1100 L Street, NW., suite 7322, Washington, DC, from 8:30 a.m. to 5 p.m.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90–17066 Filed 7–19–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance; Intent To Award Grant to Volunteers in Technical Assistance

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i)(A), it is making a financial assistance award under Grant Number DE–FG01–90CE33017 to Volunteers In Technical Assistance (VITA) to assist in the "International Evaluation of the PACSAT Communication Experiment—Phase II of Low Orbiting Satellite for International Exchange System."

SCOPE: This grant will aid in providing funding in the amount of $497,377 for an evaluation program of the PACSAT satellite that will serve as the basis for subsequently implementing two permanent satellites.

VITA has developed and launched a small and simple satellite as a Get-Away-Special (GAS) payload in low earth orbit. This allows a much cheaper and simpler satellite than those required for transfer to a high altitude orbit; the propulsion system is much smaller and cheaper (VITA has conceived an unusual concept for the modest propulsion required to stabilize into a proper orbit after ejection)—and altitude control, pointing accuracy, and communications power are all much simpler. Of even more significance is that the system uses bursts of digital information. The PACSAT satellite requires far less communications power than voice, much less video, as is used on the major communications satellites. This system was necessitated by the need for VITA personnel to communicate rapidly to receive technical advice or to order parts or equipment when assisting the citizens of remote areas of the world. Other communications methods were either non-available, unreliable, or too costly. It is expected that the proposed grant will result in the information necessary for refinement of hardware and software after which two permanent satellites will be deployed to achieve a world wide, low-cost communications network that will permit VITA to operate much more effectively.

ELIGIBILITY: Eligibility for this award is being limited to VITA in order to provide for satisfactory completion of the project pursuant to 10 CFR 600.7(b)(2)(i)(A). VITA, a nonprofit organization, has a worldwide network in providing volunteers to assist various countries in developing and implementing new technologies. VITA designed and launched a simple, low cost, satellite for communications based on a unique approach, which allows communications through VITA test sites and other locations in remote areas of the world using simple and inexpensive equipment. The selected grant application is to conduct a DOE funded operation and evaluation program that will serve as the basis for subsequently implementing two permanent satellites. It has been determined that this project has high technical merit representing an innovative technology that has a strong possibility of adding to the national energy resources.

The term of this grant shall be for 18 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemarie Marshall, PR–542, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90–16931 Filed 7–18–90; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award, Intent to Award a Grant to Brelsford Engineering, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1), under Grant Number DE–FG01–90CE15457, to Brelsford Engineering, Inc., for development of an acid hydrolysis process and reactor with a total development cost of $69,800 to be provided by DOE.

PROJECT SCOPE: The grant will provide funding for Brelsford Engineering, Inc. to develop, construct, test and evaluate an acid hydrolysis process and reactor for the conversion of woody and logging wastes into fermentable sugars. These

sugars can then be used to produce yeasts or ethanol to be used as a substitute for crude oil. A number of companies in the fields of ethanol production and logging have expressed an interest and are willing to be initial recipients and testers of this reactor. There are several firms willing to produce the reactor and others interested in the yeast bioproducts of the hydrolysis process.

The purpose of the project is to develop a two-stage plug-flow reactor from the available one stage system designed by Brelsford Engineering. This two-stage system will allow for more efficient and cost effective hydrolysis of soft-wood sawdust. This innovative system relieves the private sector from reliance on hard-wood and assists the private sector in the commercialization of alcohol fuels from biomass (soft-wood products.)

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to Brelsford Engineering, Inc., for the uniqueness of the design (patent pending) and the high level of technical merit shown by Mr. Brelsford in the redesign of the current system. A registered professional engineer in the states of Montana and Colorado, Mr. Brelsford has extensive education and experience in chemical and bio-engineering. The reactor and the process will be made available for sale to the private sector after testing. This unique, creative and innovative design will provide business with cost effective ways to reduce the nations consumption of fossil fuels.

The term of the grant shall be twelve months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Jackie Kniskern, PR-541, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2830.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90-17028 Filed 7-19-90; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award, Intent to Award a Grant to Research Consulting Associates, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under Grant Number DE-FGO1-90CE15429 to the Research Consulting Associates, Inc., for the "TWISTER Galloping Indicator and Galloping Preventor" devices which will have a total estimated cost of $147,950 to be provided by DOE.

SCOPE: The grant will provide funding for the Research Consulting Associates, Inc. to produce transmission line protective technologies and field test them for a three year period using the facilities of the Public Service of Indiana. The grant funds will be used to produce 300 Indicators and 300 Preventors which will be installed by the Public Service of Indiana at their own expense. The electric company will assess the performance of the technology for three years, periodically reporting to the inventor.

The purpose of the project is to produce advanced production prototypes of the Galloping Indicator and Preventor, install them on transmission lines for a three year test period. A market for the technology appears assured by virture of the arrangement with the Public Service of Indiania, a large utility company, for demonstrating the devices under actual field conditions.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to the research Consulting Associates, Inc., a private corporation with high qualifications in this specialized field of technology. The inventor and principal investigator for Research Consulting Associates, Inc., Albert S. Richardson, holds the patent on the "Twister" Galloping Indicator device and the Galloping Preventor device. The Public Service of Indiana, which is a large utility company, offered its facilities, engineering skills and the services of its transmission engineers at no cost to the Grantee or DOE.

It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the Nation's energy consumption.

The term of the grant shall be forty-eight months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Lisa Tillman, PR-541, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe, Director,

Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90-17029 Filed 7-19-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ST90-359-000]

Transok, Inc.; Scheduling Informal Settlement Conference

July 13, 1990.

Take notice that an informal settlement conference in the above-captioned proceeding will be held on Wednesday, August 1, 1990 at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426.

Attendance will be limited to the parties and staff. For additional information, please contact Mary Doyle at (202) 208-0927.

Lois D. Cashell,

Secretary.

[FR Doc. 90-16958 Filed 7-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES90-39-000, et al.]

Citizens Utilities Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Citizens Utilities Co.

[Docket No. ES90-39-000]

July 11, 1990.

Take notice that on July 6, 1990, Citizens Utilities Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act relating to the issuance of Common Stock Series B of the Applicant in connection with the merger of Louisiana General Services, Inc. (LGS) into Applicant, the assumption of outstanding indebtedness of LGS and certain of its subsidiaries, and the issuance of Common Stock Series B of Applicant upon exercise of employee stock options of LGS assumed by Applicant. The application also seeks exemption from the Competitive bidding requirements of part 34 of the Commission's regulations.

Comment date: August 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. The Union Light, Heat and Power Co.

[Docket No. ES90-38-000]

July 11, 1990.

Take notice that on July 5, 1990, The Union Light, Heat and Power Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authorization to issue $35 million of unsecured promissory notes to commercial banks, and to a commercial paper dealer on or before December 31, 1992.

Comment date: August 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

[Docket No. ER90-486-000]

July 12, 1990.

Take notice that on July 6, 1990, Montana-Dakota Utilities Co. (Montana-Dakota), a Division of MDU Resources Group, Inc., tendered for filing a Firm Power Transaction Agreement between Montana-Dakota and Minnesota Power & Light Company (Minnesota Power). Under this agreement, Montana-Dakota will sell up to 50 megawats (MW) of firm power service, as available, pursuant to and in accordance with Service Schedule J of the MidContinent Area Power Pool (MAPP) Agreement. This Agreement provides for energy sales during the periods of November 1, 1990 through April 30, 1991, November 1, 1991 through April 30, 1992, and November 1, 1992 through April 30, 1993. The filing was provided to Minnesota Power as well as the Minnesota Public Utility Commission and North Dakota Public Service Commission.

Comment date: July 27, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Power and Light Co.

[Docket No. ER90-484-000]

July 12, 1990.

Take notice that on July 5, 1990, Wisconsin Power and Light Company (WPL) tendered for filing a Wholesale Power Agreement dated June 22, 1990, between the Village of Black Earth and WPL. WPL states that this new Wholesale Power Agreement revises the previous agreement between the two parties which was dated March 11, 1977, and designated Rate Schedule No. 116 by the Commission.

The purpose of this new agreement is to revise the terms of service. Terms of service for this customer will be on a similar basis to the terms of service for other W-3 wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the Village of Black Earth and the Wisconsin Public Service Commission.

Comment date: July 27, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. National Electric Associates Limited Partnership

[Docket No. ER90-168-001]

July 12, 1990.

Take notice that on June 29, 1990, National Electric Associates Limited Partnership (NEA) filed certain information as required by Ordering Paragraph (L) of the Commission's March 20, 1990 order in this proceeding. 50 FERC ¶ 61,378 (1990). Copies of NEA's information filing are on file with the Commission and are available for public inspection.

6. West Texas Utilities Co.

[Docket No. ER90-482-000]

July 12, 1990.

Take notice that West Texas Utilities Company ("WTU"), on July 3, 1990, tendered for filing: (1) A Transmission Service Agreement ("Agreement") dated April 25, 1990 between WTU and Brazos Electric Power Cooperative of Texas, Inc. ("Brazos") and (2) a revised Master ERCOT Transmission Facility Charge Rate Schedule.

Under the terms of the Agreement, WTU will transmit capacity and energy purchased by Brazos from the Lower Colorado River Authority during the period January 1, 1990 through December 31, 1994. WTU will provide service pursuant to the rates, terms and conditions of WTU's previously filed ERCOT Transmission Tariff as that tariff may be amended from time to time.

WTU requests waiver of the notice requirement in order that the Agreement become effective January 1, 1990, the date specified in the Agreement for the commencement of service.

The revised Master ERCOT Transmission Facility Charge Rate Schedule provides for a decrease in the facilities charge levied by WTU under the terms of (a) Central Power and Light Company/WTU's Interpool Transmission Service Tariff, (b) WTU's ERCOT Transmission service Tariff and (c) WTU's ERCOT Transmission Service Tariff for Large Utility Customers. WTU proposes an effective date of December 21, 1987 for the Master ERCOT Transmission Facility Charge Rate Schedule.

Copies of the filing were served upon Brazos and the Public Utility Commission of Texas.

Comment date: July 27, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Central Power and Light Co.

[Docket No. ER90-481-000]

July 12, 1990.

Take notice that Central Power and Light Company ("CPL"), on July 3, 1990, tendered for filing a Transmission Service Agreement ("Agreement") dated April 26, 1990 between CPL and Brazos Electric Power Cooperative of Texas, Inc. ("Brazos").

Under the terms of the Agreement, CPL will transmit capacity and energy purchased by Brazos from the Lower Colorado River Authority during the period January 1, 1990 through December 31, 1994. CPL will provide service pursuant to the rates, terms and conditions of CPL's previously filed ERCOT Transmission Tariff as that tariff may be amended from time to time.

CPL requests waiver of the notice requirement in order that the Agreement may become effective as of January 1, 1990, the date specified in the Agreement for the commencement of service.

Copies of the filing were served upon Brazos and the Public Utility Commission of Texas.

Comment date: July 27, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. The Kansas Power and Light Co.

[Docket No. ER90-478-000]

July 12, 1990.

Take notice that on July 2, 1990, the Kansas Power and Light Company (KPL) tendered for filing revised Exhibits 4A to Transmission Agreements with Kansas Gas and Electric Company, Centel Corporation-Western Power and Missouri Public Service Company. KPL states that these revised exhibits reflect updated loss amounts associated with the transmission services rendered to each party under various load conditions for the Fall 1990, season.

Comment date: July 27, 1990, in accordance with Standard Paragraph E end of this notice.

9. New York State Electric & Gas Corp.

[Docket No. ER90-487-000]

July 12, 1990.

Take notice that New York State Electric & Gas Corporation (NYSEG), on July 6, 1990, tendered for filing Supplement No. 5 to its Agreement with Consolidated Edison Company of New York, Inc. (Con Edison), designated Rate Schedule FERC No. 87. The proposed changes would increase revenues by $6,117 based on the twelve month period ending March 31, 1991.

This rate filing, Supplement No. 5, is made pursuant to sections 1 (e) and (f) and 2 (e), (f) and (g) of Article III of the August 23, 1983 Facilities Agreement—Rate Schedule FERC No. 87. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve months ended December 31, 1989. In addition, Con Edison's pro rata share of the total annual carrying charges associated with the firm supply system is calculated based on the rate of Con Edison's one hour demand at Mohansic plus estimated NYSEG and Con Edison one hour peak input at Wood Street. The levelized annual carrying charges included in the calculation reflect a 13.80 percent return on equity which was approved by the New York State Public Service Commission's Opinion 88-2 in Case 29541, effective January 1, 1988.

NYSEG requests an effective date of April 1, 1990, and therefore, requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Consolidated Edison Company of New York and on the Public Service Commission of the State of New York.

Comment date: July 27, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. Maine Electric Power Co.

[Docket No. EC90-15-000]

July 12, 1990.

Take notice that on July 5, 1990, Maine Electric Power Company ("MEPCO") filed an Application Pursuant to section 203 of the Federal Power Act for Approval to Transfer Static Var Compensator.

As set forth in the Application, MEPCO will transfer to Chester SVC Partnership ("Partnership"), a Maine general partnership, a static var compensator (the "Chester SVC") located on MEPCO's 345 kV transmission line in Chester, Maine. In addition, MEPCO will lease to Partnership the Chester SVC site and will be granted an option to purchase with respect to the Chester SVC facility. The Chester SVC is a transmission system reinforcement associated with the New England-Quebec Phase Ii interconnection expansion currently under construction. The proposed transactions will effect a reorganization of the ownership and operating arrangements for the Chester SVC.

MEPCO requests that the Commission approve the proposed transactions by September 1, 1990 to permit financing of the Chester SVC prior to the commencement of commercial operation by the New England-Quebec Phase II interconnection expansion.

Comment date: July 31, 1990, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Co.

[Docket No. ER90-374-000]

July 12, 1990.

Take notice that on June 29, 1990, Northeast Utilities Service Company ("NUSCO") as agent for the Connecticut Light and Power Company and Western Massachusetts Electric Company (collectively referred to as the "NU Companies") tendered for filing revisions to two Transmission Service Agreements between the NU Companies and Green Mountain Power Corp. ("GMP"), dated January 1, 1989.

NUSCO states that these Agreements provide for the transmission of GMP's purchases of electric system capacity and associated energy. NUSCO further states that the revisions reflect solely a changed termination date and point of receipt requested by GMP.

NUSCO requests that the Commission waive its filing requirements to the extent necessary to permit the rate schedules to become effective as of January 1, 1989.

NUSCO states that copies of the revisions have been mailed to GMP.

NUSCO further states that the filing is in accordance with section 35 of the Commission's Regulations.

Comment date: July 27, 1990, in accordance with Standard Paragraph E at the end of this notice.

12. Philadelphia Electric Co.

[Docket No. ER90-167-000]

July 12, 1990.

Take notice that on July 2, 1990, Philadelphia Electric Company (PE) tendered for filing an amendment to the Agreement between PE and Baltimore Gas and Electric Company (BG&E) dated January 5, 1990. This amendment revises the upper bounds on the charge for system-based energy transactions as requested by the Commission's staff.

PE states that a copy of this amended filing has been sent to BG&E and will be furnished to the Pennsylvania Public Utility Commission and the Maryland Public Service Commission.

Comment date: July 27, 1990, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Electric and Gas Co.

[Docket No. ER90-393-000]

July 12, 1990.

Take notice that on July 10, 1990, Public Service Electric and Gas Company (PS) submitted for filing additional information regarding the basis for determination of overheads for direct labor, engineering and supervision, and administrative and general categories for the Hope Creek-Keeney River Crossing.

Comment date: July 27, 1990, in accordance with Standard Paragraph E at the end of this notice.

14. San Diego Gas & Electric Co.

[Docket No. ER90-398-000]

July 12, 1990.

Take notice that San Diego Gas & Electric Company on July 10, 1990, tendered for filing proposed changes in its FERC Tariff 57, the Power Purchase and Sale Agreement between San Diego Gas & Electric Company and Escondido Mutual Water Company.

The amendment adds appendices to the proposed tariff. The appendices are SDG&E's rules for electric service No. 2, 14 and 16 which are incorporated by reference in the proposed tariff. SDG&E proposes to make the change effective on the same date as the proposed tariff which is July 1, 1990.

Copies of the filing were served upon SDG&E's sole jurisdictional customer, Escondido, and the California Public Utilities Commission.

Comment date: July 27, 1990, in accordance with Standard Paragraph E end of this notice.

15. Iowa Electric Light and Power Co.

[Docket No. ES90-41-000]

July 13, 1990.

Take notice that on July 9, 1990, Iowa Electric Light and Power Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authority to issue and sell through a negotiated offering $60 million principal amount of First Mortgage Bonds.

Comment date: July 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Co. of New York, Inc.

[Docket No. ER90-494-000]

July 13, 1990.

Take notice that on July 9, 1990, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing two agreements providing for the delivery of power and energy. One agreement, dated June 19, 1990 provides for the delivery by Co Edison of non-preference hydroelectric energy purchased by the New York City Public Utility Service ("NYCPUS") from the Power Authority of the State of New York. The other agreement, dated June 25, 1990 provides for the delivery by Con Edison of non-preference hydroelectric energy purchased by the County of Westchester Public Utility Service Agency ("COWPUSA") and sold by COWPUSA to consumers in the County of Westchester in New York State.

Under the agreements Con Edison will deliver approximately 183 million kilowatthours of non-preference energy annually, based on 1990 estimates.

Con Edison is requesting permission to put these agreements into effect as of July 1, 1990, the date that PASNY was scheduled to make energy available to NYCPUS and COWPUSA.

A copy of this filing has been served upon NYCPUS and COWPUSA.

Comment date: July 30, 1990, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Edison Co.

[Docket No. ES90-37-000]

July 13, 1990.

Take notice that on July 9, 1990, Commonwealth Edison Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authority to issue $1,400,000,000 of short-term promissory notes on or before December 31, 1992 with a final maturity date no later than December 31, 1993.

Comment date: August 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power & Light Co.

[Docket No. ER90-496-000]

July 13, 1990.

Take notice that Florida Power & Light Company (FPL), on July 10, 1990, tendered for filing a Short Term Agreement To Provide Capacity and Scheduled Incremental Energy By Florida Power & Light Company To Tampa Electric Company (Short Term Agreement) and Cost Support Schedules C, D, E, F and G (together with Cost Support Schedule F Supplements) which support the rates for sales under this Short Term Agreement.

The new rate schedule provides for the sale of capacity and energy from FPL to Tampa Electric Company for a specified term commencing on July 7, 1990 and ending the earlier of: October 30, 1990 or until the return of Tampa Electric's Big Bend Station Unit 1. FPL respectfully requests that the proposed Short Term Agreement and Cost Support Schedules C, D, E, F and G (together with Cost Support Schedule F Supplements) be made effective on July 7, 1990. A copy of this filing was served upon Tampa Electric Company and the Florida Public Service Commission.

Comment date: July 30, 1990, in accordance with Standard Paragraph E at the end of this notice.

19. Carolina Power & Light Co.

[Docket No. ER90-495-000]

July 13, 1990.

Take notice that on July 9, 1990, Carolina Power & Light Company ("CP&L") tendered for filing a letter agreement between CP&L and the City of Fayetteville ("Fayetteville"). The agreement is intended to be attached to the Amendment to the Service Agreement between CP&L and Fayetteville, which has been designated as Supplement 35 to Rate Schedule FPC No. 12. Under the letter agreement, CP&L will provide Fayetteville with an interim power exchange service between certain CP&L/Fayetteville points of delivery.

CP&L requests that waiver of § 35.3 of the Commission's Regulations be granted and that the letter agreement be made effective as of May 1, 1990. CP&L states that copies of the filing were served on Fayetteville and on the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 30, 1990, in accordance with Standard Paragraph E at the end of this notice.

20. Central Power and Light Co.

[Docket No. ER90-493-000]

July 13, 1990.

Take notice that Central Power and Light Company ("CPL"), on July 9, 1990, tendered for filing: (1) A proposed Capacity Sale Agreement dated January 29, 1990 between CPL and Tex-La Electric Cooperative of Texas, Inc. ("Tex-La"); and (2) the First Amendment, dated April 12, 1990, to the Capacity Sale Agreement.

The Capacity Sale Agreement, as amended, provides that CPL shall make available to Tex-La 46 MW of capacity and associated energy through December 31, 1994. Of the total, 40 MW of the capacity will be delivered to Tex-La, and 6 MW will be used to meet the installed reserve requirements of the Electric Reliability Council of Texas ("ERCOT").

CPL requests a waiver of the notice requirement so as to permit an effective date of April 15, 1990, the date service to Tex-La commenced.

Copies of the filing were served upon Tex-La and the Public Utility Commission of Texas.

Comment date: July 30, 1990, in accordance with Standard Paragraph E at the end of this notice.

21. Iowa Southern Utilities Co.

[Docket No. ER90-489-000]

July 13, 1990.

Take notice that Iowa Southern Utilities Company On July 7, 1990, tendered for filing as an initial rate schedule an Operation, Maintenance and Dispatching Agreement whereby Iowa Southern will provide wheeling and dispatching services to Terra Comfort Corporation (TC). Iowa Southern proposes an effective date of January 1, 1990, and requests waiver of the Commission's notice requirement.

A copy of the filing was served upon the Iowa State Utilities Board and TC.

Comment date: July 30, 1990, in accordance with Standard Paragraph E at the end of this notice.

22. Philadelphia Electric Co.

[Docket No. ER90-492-000]

July 13, 1990.

Take notice that on July 9, 1990, Philadelphia Electric Company (PE) with the concurrence of Atlantic City Electric Company (AE) tendered for filing as an initial rate under section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between PE and AE dated June 29, 1990.

PE states that the Agreement sets forth the terms and conditions for the sale by PE to AE of import capability which PE expects to have available for sale from time to time and the purchase of which will be economically advantageous to AE. The rates for PE services are negotiated but will not exceed $5.50 per MWH. In order to optimize the economic advantages to both PE and AE, PE requests that the Commission waive its customary notice

period and allow this Agreement to become effective on July 9, 1990.

PE states that a copy of this filing has been sent to AE and will be furnished to the Pennsylvania Public Utility Commission and the New Jersey Board of Public Utilities.

Comment date: July 30, 1990, in accordance with Standard Paragraph E at the end of this notice.

23. Terra Comfort Corp.

[Docket No. ER90-486-000]

July 13, 1990.

Take notice that Terra Comfort Corporation (TC) on July 9, 1990, tendered for filing as an initial rate schedule an Operation, Maintenance and Dispatching Agreement wherein TC will provide black start services, emergency voltage and transmission support and emergency energy to Iowa Southern Utilities Company (Iowa Southern). TC proposes an effective date of January 1, 1990, and requests waiver of the Commission's notice requirement.

Copies of the filing were served upon Iowa Southern and upon the Iowa State Utilities Board.

Comment date: July 30, 1990, 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 Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-16947 Filed 7-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-1688-000 et al.]

Colorado Interstate Gas Co. et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Co.

[Docket Nos. CP90-1688-000,[1] CP90-1689-000

July 11, 1990.

Take notice that on July 6, 1990, Colorado Interstate Gas Company (Applicant) filed in the above referenced dockets, prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket Number (Date Filed)	Applicant	Shipper name	Peak day [1] avg, annual	Points of— Receipt	Points of— Delivery	Start up date, rate schedule	Related [2] Dockets
CP90-1688-000 (7-6-90)	Colorado Interstate Gas Co., P.O. Box 1087, Colorado Springs, Colorado 80944.	Questar Energy Co.....	35 10 3,650	WY, OK, KS, CO	CO	6-8-90 TI-1	CP86-589-000 ST90-3511-000
CP90-1689-000 (7-6-90)	Colorado Interstate Gas Co., P.O. Box 1087, Colorado Springs, Colorado 80944.	Coastal Gas Marketing Co.	20 20 7,300	CO, OK, WY, TX, KS	KS	6-1-90 TI-1	CP86-589-000 ST90-3510-000

[1] Quantities are shown in MMcf unless otherwise indicated.

[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

2. Jubilee Pipeline Co., Texas Eastern Transmission Corp., Mobile Bay Pipeline Projects, Texas Eastern Transmission Corp.

[Docket No. CP88-646-001, CP88-474-001, CP88-570-000, CP89-512-000

July 11, 1990.

Take notice that on July 3, 1990,[2] Jubilee Pipeline Company (Jubilee), P.O. Box 1188, Houston, Texas 77251-1188, filed an application in Docket No. CP88-646-001 to amend its June 17, 1988, filing in Docket No. CP88-646-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the filing which is on file with the Commission and open to public inspection.

As part of a settlement (submitted pursuant to Rule 602 of the Commission's Rules of Practice and Procedure) filed in the four applications listed above Jubilee would alter the facilities it originally proposed to construct and operate in Docket No. CP88-646-000, where Jubilee proposed to construct and operate 81.6 miles of varying diameter pipeline, to include two additional gas supply laterals: 9.5 miles of 8-inch pipeline from Mobile Block 960 to Pensacolas Block 881 and 4 miles of 10-inch pipeline from Mobile Block 866 to Mobile Block 821, all offshore Alabama.

Comment date: August 1, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corp., Jubilee Pipeline Co., Mobile Bay Pipeline Projects, Texas Eastern Transmission Corp.

[Docket No. CP88-474-001, CP88-646-001, CP88-570-000, CP89-512-000

July 11, 1990.

Take notice that on July 3, 1990,[3] Texas Eastern Transmission Corporation (Tetco), P.O. Box 2521, Houston, Texas 77252, filed an application in Docket No. CP88-474-001 to amend its June 17, 1988, filing in Docket No. CP88-474-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the filing which is on file with the Commission and open to public inspection.

As part of a settlement (submitted pursuant to Rule 602 of the Commission's Rules of Practice and Procedure) filed in the four applications listed above Tetco would be required to alter the facilities it originally proposed to construct and operate in Docket No. CP88-474-000, where Tetco proposed to construct and operate 13 miles of 24-inch and 0.3 mile of 16-inch pipeline from Tetco's existing pipeline in Main Pass Block 165, offshore Mississippi, to a production platform in Viosca Knoll Block 203, offshore Alabama. Tetco herein proposes to downsize both of the originally proposed segments to a 12-inch diameter each.

Comment date: August 1, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. U-T Offshore System

[Docket No. CP90-1701-000]

July 11, 1990.

Take notice that on July 9, 1990, U-T Offshore System (U-TOS), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90-1701-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide firm transportation service for Hadson Gas Systems, Inc. (Hadson), a marketer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RM88-14-001 and RM88-15-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

U-TOS states that pursuant to a Transportation Agreement dated November 17, 1989, under its Rate Schedule FT, it proposes to transport up to 40,497 Mcf of natural gas on a firm basis for Hadson. U-TOS further states that it would transport the natural gas from the receipt point in West Cameron Block 167, offshore Louisiana and the delivery point located at the Johnson's Bayou Plant, Cameron Parish, Louisiana. U-TOS indicates that it would transport 40,497 Mcf on an average day and 14, 781,405 Mcf annually.

U-TOS states that service under § 284.223(a) of the Commission's Regulations (18 CFR 223(a)) commenced on May 1, 1990, as reported in Docket No. ST90-3654-000.

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Commonwealth Gas Co.

[Docket No. CP90-1658-000]

July 12, 1990.

Take notice that on July 2, 1990, Commonwealth Gas Company (Commonwealth), 157 Cordaville Road, Southborough, Massachusetts 01772, filed in Docket No. CP90-1658-000 an application pursuant to § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Commonwealth agrees to comply with the conditions set forth in § 284.224(e) and understands that any transaction authorized under a blanket certificate shall be subject to the same rates and charges, terms, conditions and reporting requirements that would apply if the transactions were authorized for an intrastate pipeline by subparts C, D and E of part 284 of the Commission's Regulations.

Comment date: August 2, 1990, in accordance with Standard Paragraph F at the end of the notice.

6. United Gas Pipe Line Co.

[Docket No. CP90-1702-000, Docket No. CP90-1703-000, Docket No. CP90-1704-000, Docket No. CP90-1705-000, Docket No. CP90-1706-000, Docket No. CP90-1707-000, Docket No. CP90-1708-000]

July 12, 1990.

Take notice that on July 9, 1990, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed in Docket Nos. CP90-1702-000, CP90-1703-000, CP90-1704-000, CP90-1705-000, CP90-1706-000, CP90-1707-000, and CP90-1708-000 requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the relative rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the

[2] The notice of amendment was tendered for filing on June 28, 1990; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until July 3, 1990. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[3] The notice of amendment was tendered for filing on June 28, 1990; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until July 3, 1990. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[4] These prior notice requests are not consolidated.

Commission's Regulations, has been provided by United and is summarized in the attached appendix. It is explained that the gas would be received by United at designated points on its systems and would be delivered for the shippers' accounts at designated points of interconnection.

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket number	Shipper	Volumes—MMBtu peak, average, annual	Related docket [a]	Commencement date	Rate schedule
CP90-1702-000	Laser Marketing Company	618,000 618,000 225,570,000	ST90-3553	5/18/90	ITS.
CP90-1703-000	Graham Energy Marketing Corp.	123,600 123,600 45,114,000	ST90-3549	6/6/90	ITS.
CP90-1704-000	LL&E Gas Marketing, Inc	20,600 20,600 7,519,000	ST90-3544	5/10/90	ITS.
CP90-1705-000	Enermark Gas Gathering Corp.	103,000 103,000 37,595,000	ST90-3554	6/5/90	ITS.
CP90-1706-000	Fina Oil and Chemical Co	41,200 41,200 15,038,000	ST90-3608	5/21/90	FTS.
CP90-1707-000	Enron Gas Marketing, Inc	515,000 515,000 187,975,000	ST90-3543	5/29/90	ITS.
CP90-1708-000	Louis Dreyfus Energy Corp	103,000 103,000 37,595,000	ST90-3551	5/30/90	ITS.

[a] United reported the 120-day transportation service in the referenced ST dockets.

7. Ocean State Power

[Docket No. CI90-141-000]

July 12, 1990.

Take notice that on July 3, 1990, Ocean State Power (Ocean State), c/o J. Makowski Associates, Inc., One Bowdoin Square, Boston, Massachusetts 02114, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing the sale for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction including gas imported from Canada, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: July 31, 1990, in accordance with Standard Paragraph J at the end of this notice.

8. Tennessee Gas Pipeline Co., Texas Eastern Transmission Corp.

[Docket Nos. CP90-1699-000, CP90-1700-000]

July 12, 1990.

Take notice that on July 9, 1990, the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP90-1710-000]

July 12, 1990.

Take notice that on July 10, 1990, Northern Natural Gas Company, Division of Enron Corp. (Applicant) filed in the above referenced docket, a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of a shipper under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice request which is on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to the transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket number and initiation date of the 120-day transaction under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for the shipper under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket Number (Date Filed)	Applicant	Shipper name	Peak day [1] average, annual	Points of		Start up date rate schedule	Relateddockets [2]
				Receipt	Delivery		
CP90-1710-000 (7-10-90)	Northern Natural Gas Company, P.O. Box 1188, Houston, Texas 77251-118.	Phillips 66 Natural Gas Co.	1,500 1,125 547,500	TX, NM	NM	5-1-90, IT-1	CP86-435-000. ST90-3053-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

10 Delta Pipeline Co.

[Docket No. CP89-1223-000]

July 12, 1990.

On April 17, 1989, Delta Pipeline Company (Delta) filed an application in the above-captioned docket pursuant to the optional certificate procedures § 157.103 of the Regulations) under section 7(c) of the Natural Gas Act, for optional certificate of public convenience and necessity authorizing construction and operation of a new pipeline system to be located in the Arkoma Basin of Oklahoma and Arkansas. In the application, Delta also requested blanket certificates of public convenience and necessity pursuant to subpart G of part 284 of the Regulations and subpart F of part 157 of the Regulations. On July 3, 1990, the Commission issued a preliminary determination on non-evironmental issues in Docket No. CP89-1223-000. Therein, the Commission concluded that subject to the results of a final environmental analysis, the project and associated blanket certificate requests were in the public convenience and necessity.

By letter dated July 7, 1990, Delta has requested a technical conference in order to assure full comprehension of the Commission's order and, more specifically, to address a number of questions relating to the mechanics of the cost of service and rate design elements in the order.

Take notice that an informal technical conference will be held at the offices of the Commission, commencing at 11 a.m. on Wednesday, July 18, 1990. The conference is convened for the expressed purpose of clarifying a limited number of elements contained in the Commission's preliminary determination and discussions will, accordingly, be confined to rate, cost of service, and related matters. The conference will not address the merits of any aspect of either Delta's certificate application or the Commission's preliminary determination.

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 be 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 on the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. 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, .214). 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 be proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-16948 Filed 7-19-90; 8:45 am]

BILLING CODE 6717-01-M

[RP90-143-000]

Proposed Changes in Rates and Charges; CNG Transmission Corp.

July 13, 1990.

Take notice that CNG Transmission Corporation ("CNG") pursuant to section 4 of the Natural Gas Act and § 154.63 of the Commission's Regulations, filed on July 11, 1990, proposed changes to its FERC Gas Tariff, First Revised Volume No. 1 to become effective on August 1, 1990.

The proposed rate changes would increase CNG's revenues by $119.7 million based on a test period cost of service for the twelve months ended March 31, 1990, as adjusted for known

and measurable changes through December 31, 1990.

CNG states that increased rates are necessary primarily to recover increased operation and maintenance expenses including increased costs of transportation of gas by others, and increases in plant in service. The filed rate of return is based on a capitalization of 35.2 percent debt and 64.8 percent equity with an equity return of 14.5 percent.

As part of the filing, CNG also seeks to pass through the cost of transportation under converted gas purchase agreements and standby commodity costs as part of its regular PGA filings.

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.24 and 385.211). All motions or protests should be filed on or before July 20, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-16950 Filed 7-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-8-4-000]

Proposed Changes in Rates; Granite State Gas Transmission, Inc.

July 13, 1990.

Take notice that on July 11, 1990, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing the revised tariff sheets listed below in its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2:

FIRST REVISED VOLUME NO. 1

Revised tariff sheets	Proposed effective dates
Substitute Thirtieth, Revised Sheet No. 7.	November 1, 1989.
Eleventh Revised Sheet No. 7-A.	November 1, 1989.

FIRST REVISED VOLUME NO. 1—Continued

Revised tariff sheets	Proposed effective dates
Third Substitute Twenty-First, Revised Sheet No. 8.	November 1, 1989.
Substitute Thirty-First Revised Sheet No. 7.	December 1, 1989.
Substitute Revised Thirty-First, Revised Sheet No. 7.	December 11, 1989.
Second Substitute Thirty-Second, Revised Sheet No. 7.	January 1, 1990.
Third Substitute Twenty-Second, Revised Sheet No. 8.	January 1, 1990.
Third Substitute Thirty-Second, Revised Sheet No. 7.	January 17, 1990.
Substitute Thirty-Third Revised Sheet No. 7.	February 8, 1990.
Substitute Thirty-Fourth, Revised Sheet No. 7.	March 1, 1990.
Substitute Revised Thirty-Fourth, Revised Sheet No. 7.	March 21, 1990.
Second Substitute Thirty-Fifth, Revised Sheet No. 7.	April 1, 1990.
Substitute Twenty-Third Revised Sheet No. 8.	May 1, 1990.
Second Substitute Thirty-Sixth, Revised Sheet No. 7.	July 1, 1990.

ORIGINAL VOLUME NO. 2

Revised tariff sheets	Proposed effective date
Eleventh Revised Sheet No. 17.	November 1, 1989.
Thirteenth Revised Sheet No. 27.	November 1, 1989.
Third Revised Sheet No. 38.	November 1, 1989.

According to Granite State, it has arranged for transportation service to be rendered by Tennessee Gas Pipeline Company (Tennessee) to transport and deliver gas purchased from Boundary Gas, Inc. for system supply and for storage-related transportation services rendered to its jurisdictional customers, Bay State Gas Company and Northern Utilities, Inc. Granite State further states that it is authorized in various Commission certificates to track in its rates the changes made by Tennessee in the rates for the transportation services. According to Granite State, Tennessee submitted a compliance filing on June 11, 1990 as a result of a settlement in Docket No. RP88-228, which, *inter alia*, made changes in the rates for the transportation services rendered to Granite State and the instant filing tracks the changes in Tennessee's rates.

According to Granite State, copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

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 sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 20, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-16949 Filed 7-19-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. CAC-005]

Energy Conservation Program for Consumer Products; Decision and order Granting Waiver from Test Procedures for Central Air Conditioners from Carrier Corporation; Correction

AGENCY: Department of Energy, Office of Conservation and Renewable Energy.

ACTION: Decision and Order; correction.

SUMMARY: On April 11, 1990 (55 FR 13607), the Department of Energy (DOE) published a Notice of Decision and Order (Case No. CAC-005) granting Carrier Corporation a waiver for its HydroTech 2000 model series heat pumps with integrated domestic water heating from existing DOE Test Procedures for determining the model's Annual Operating Cost. Table 3 in Attachment A to the Decision and Order was not published in the April 11, 1990, Decision and Order. This document corrects that omission.

Issued in Washington, DC, July 11, 1990.

J. Michael Davis,

Assistant Secretary, Renewable Energy.

TABLE 3. LENGTH OF OPERATING SEASONS BASED ON ESTABLISHED COOLING LOAD HOURS AND HEATING LOAD HOURS FOR DIFFERENT CLIMATIC REGIONS

Climatic region	Cooling load hours [1] CLH	Heating load hours [1] HLH	Cooling season hours (hr)	Heating season hours (hr)	Water heating only season hours (hr)
I	2400	750	6718	1826	216
II	1800	1250	5038	3148	574
III	1200	1750	3359	4453	948
IV	800	2250	2239	5643	878
Rating Values	1000	2080	2799	5216	745
V	400	2750	1120	6956	684
VI	200	2750	560	6258	1942

[1] Refer to § 6.3 of Appendix M

[FR Doc. 90-16934 Filed 7-19-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90-19-NG]

Coastal Gas Marketing Co.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import and to export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Coastal Gas Marketing Company (CGM) blanket authorization to import up to 600 Bcf and to export up to 150 Bcf of natural gas, including liquefied natural gas, over a two-year period beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 12, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-17030 Filed 7-19-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-38-NG]

Phibro Energy, Inc.; Application To Amend and Extend Blanket Authorization To Import and Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application to amend and extend blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on May 8, 1990, of an application filed by Phibro Energy, Inc. (Phibro) for blanket authorization to import up to 200 Bcf of gas, including liquefied natural gas (LNG), from Mexico, Canada, and other countries, and to export up to 200 Bcf of gas, including LNG, to Mexico, Canada, and other countries, over a two-year term beginning on the date of first import or export. Phibro expects to utilize existing pipeline facilities for transportation of the volumes to be imported and exported, and states it will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., August 20, 1990.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Perry Bolger, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1789. Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Phibro is a Delaware corporation with its principal place of business in Greenwich, Connecticut. Phibro's existing two-year blanket import authorization was granted in DOE/ERA Opinion and Order No. 136, issued July 14, 1986. To date, Phibro has not imported any natural gas.

Phibro seeks to amend its existing import authorization to request the flexibility to enter into agreements for the importation and exportation of natural gas and LNG with Mexico and Canada as well as other similarly situated countries. Phibro would import and export natural gas and LNG both for its own account as well as for the accounts of others. Phibro asserts that the specific terms of each import and export arrangement would be negotiated on an individual basis at market responsive prices. Because it has not entered into these agreements, Phibro does not know at this time the identity of the purchasers, suppliers and transporters which will participate in these proposed transactions.

In support of its application, Phibro asserts that the proposed imports will make competitively priced gas available to U.S. markets while the short-term nature of the transactions will minimize the potential for undue dependence on foreign sources of energy. With regard to the proposed exports, Phibro states that the exported volumes would be incremental to current domestic demand and that the sale of the gas would benefit domestic producers by reducing excess domestic supply during off-peak periods and generating tax and other revenue. In addition, Phibro argues the export will reduce the U.S. trade deficit.

Phibro requests expedited treatment of its application. A decision on Phibro's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

The decision on the application with respect to the import authority requested by Phibro will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing requests for natural gas export authority, domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement would be competitive, would provide new markets for the domestic gas to be exported and therefore is in the public interest. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that the approval of this application may permit the import or export of natural gas or LNG at any international border point where existing transmission or processing facilities are located.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable; and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Phibro's application is available for inspection and copying in the Office of Fuels Programs Docket Room 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 13, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-17031 Filed 7-19-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3811-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected costs and burdens; where appropriate, they include the actual data collection instruments.

DATE: Comments must be submitted on or before August 20, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS for Equipment Leaks of VOC in Petroleum Refineries (Subpart GGG)—Information Requirements (ICR #0983.03; OMB #2060-0067). This is a renewal of a previously approved collection.

Abstract: Owners or operators of petroleum refineries must notify EPA of construction, modifications, startups, shutdowns, malfunctions, and date and results of initial performance test. Owners or operators must also keep records and report specific data relating to the monitoring of volatile organic compound (VOC) emissions. They must also keep records of, and report, all equipment leaks and other potential emission sources. The delegated states or EPA use these data to determine compliance with the standards, to target inspections, and to provide evidence for enforcement actions.

Burden Statement: The annual public burden for this collection of information is estimated to average 13 hours per response for reporting, and 91 hours per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Owners and operators of petroleum refineries.

Estimated Number of Respondents: 23.

Number of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 2,695 hours

Frequency of Collection: Semiannually.

Title: NSPS for Glass Manufacturing Plants (Subpart CC) - (ICR #1131.03; OMB #2060-0054). This is a renewal of a previously approved collection.

Abstract: Owners and operators of glass manufacturing facilities must notify EPA of construction, modifications, startups, shutdowns, malfunctions, and date and results of initial performance test. They must record and maintain all data and calculations from all tests, and they must notify EPA of routine maintenance of their continuous emission monitoring systems (CEMS). Owners and operators must notify EPA when they change a facility's glass melting furnace to or from a modified process. Owners or operators of facilities with modified processes must submit semiannual reports of periods of excess emissions (opacity). The delegated states or EPA use these data to determine compliance with the standards, to target inspections, and to provide evidence for enforcement actions.

Burden Statement: The annual public burden for this collection of information is estimated to average 18 hours per response for reporting and 53 hours per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Owners and operators of glass manufacturing plants.

Estimated Numbers of Respondents: 17.

Numbers of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondent: 1,680 hours.

Frequency of Collection: Semiannually.

Title: NSPS for Kraft Pulp Mills (Subpart BB)—(ICR #1055.03; OMB #2060-0021). This is a renewal of a previously approved collection.

Abstract: Owners or operators of Kraft Pulp Mills must notify EPA or construction, modifications, startups, shutdowns, malfunctions, and date and results of initial performance test. They must install, calibrate, and maintain continuous monitoring system to record opacity, total reduced sulfur (TRS) emissions, temperature, and (for scrubbers) pressure. Owners or operators must record and maintain data of all test results, data from the continuous monitoring system, and data of all test results, data from the continuous monitoring system, and data on any startup, shutdown, and malfunction in the operation of the affected facility. They must also calculate TRS emissions daily and report excess emissions semiannually. The delegated states of EPA use these data to determine compliance with the standards, to target inspections, and to provide evidence for enforcement actions.

Burden Statement: The annual public burden for this collection of information is estimated to average 23 hours per response for reporting and 175 hours per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Owners and operators of Kraft Pulp Mills.

Estimated Number of Respondents: 62.

Number of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 13,754 hours.

Frequency of Collection: Semiannually.

Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burdens, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Steet, SW., Washington, DC 20460 and Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: July 13, 1990.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 90-17024 Filed 7-19-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3811-6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073.

Availability of Environmental Impact Statements Filed July 09, 1990 Through July 13, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900251, FINAL EIS, AFS, CA, Tahoe National Forest, Land and Resource Management Plan, Implementation, Nevada, Placer, Plumas, Sierra, and Yuba Counties, CA, Due: August 20, 1990, Contact: Terry Randolph (916) 265-4531.

EIS No. 900252, FINAL EIS, COE, NJ, Sandy Hook to Barnegat Inlet Beach Erosion Control Project, Section I—Sea Bright to Ocean Township, Implementation, Northern End of New Jersey's Atlantic Coast, Monmouth County, NJ, Due: August 20, 1990, Contact: Robert Will (212) 264-4662.

EIS No. 900254, FINAL EIS, COE, OH, Toledo Harbor Confined Disposal Facility and Maintenance Dredging, Construction, Implementation, Lake Erie, Lucas County, OH, Due: August 20, 1990, Contact: William Butler (716) 879-4175.

EIS No. 900255, FINAL EIS, FRC, ID, Twin Falls (FERC No. 18), Milner (FERC No. 2899), Auger Falls (FERC No. 4797) and Star Falls (FERC No. 5797) Hydroelectric Projects on the Mainstream of the Snake River, Construction, Operation, and Maintenance Licenses, Upper Snake River Basin, Twin Falls and Jerome Counties, ID, Due: August 20, 1990, Contact: Frank Karwoski (202) 357-0782.

EIS No. 900256, FINAL EIS, BOP, PA, Allenwood Federal Correctional Complex, Construction and Operation, Gregg Township, Lycoming and Union Counties, PA, Due: August 20, 1990, Contact: William J. Patrick (202) 514-6471.

EIS No. 900257, DRAFT EIS, MMS, AK, 1991 Chukchi Sea Outer Continental Shelf (OCS) Oil and Gas Sale 126, Leasing, AK, Due: September 04, 1990, Contact: Richard H. Miller (703) 787-1674.

Amended Notices

EIS No. 900103, DRAFT EIS, EPA, TX, Monticello-Leesburg Surface Lignite Mine Expansion, Construction and Operation, NPDES Permit and COE's Section 404 Permit, Camp County, TX, Due: January 1, 1991, Contact: Norm Thomas (214) 655-6444.

Published FR 3-30-90—Review period extended.

EIS No. 900234, DRAFT EIS, USN, CA, Naval Weapons Station Concord, Main Gate Intersection Improvement across Port Chicago Highway, Implementation and 404 Permit, Contra Costa County, CA, Due: September 4, 1990, Contact: Louis Rivero (415) 877-7667.

Published FR 7-6-90—Refiled due to noncompliance of distribution. The 45 day NEPA wait period is calculated from 7-20-90.

Dated: July 17, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-17032 Filed 7-19-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3811-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 2, 1990 through July 6, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D-FHW-L40174-OR, Rating EC2, Sunnyside Road/I-205 Interchange Expansion and Sunnybrook Road Extension, Sunnybrook Road to 108th Avenue or Valley View Terrace, Funding and COE Section 404 Permit, Clackamas County, OR.

Summary

EPA has environmental concerns based on potential adverse effects on the water quality and riparian vegetation and habitat of Mt. Scott Creek. Additional information and clarification is needed on wetland and water quality mitigation measures.

ERP No. D-SFW-K64015-CA, Rating LO, Seal Beach National Wildlife Refuge and Seal Beach Naval Weapons Station Endangered Species Management and Protection Plan, Development and Implementation, Orange County, CA.

Summary

EPA expressed a lack of objections with the proposed project.

Final EISs

ERP No. F-FHW-F40167-MI, MI-53 Improvements, 27 Mile Road to Bowers Road, Funding, Macomb and Lapeer Counties, MI.

Summary

EPA believes that its previous concerns have been satisfactorily addressed in the final EIS.

ERP No. F-UAF-B11009-NH, Pease Air Force Base (AFB) Closure, 509th Air Refueling Squadron, Deactivation of 13 KC-135A Tanker Aircraft and FB-111 Fighter/Bomber Aircraft, Implementation, NH.

Summary

EPA commented that many of its concerns regarding scope of analysis, direct and indirect impacts, and alternative means of closure remained unaddressed in the final EIS. EPA also reiterated its concern about the Air Force's approach to the NEPA analysis, which defers discussion of many environmental issues to a later environmental review or Superfund remediation process.

ERP No. F1-BLM-J70014-CO, Uncompahgre Basin Resource Area, Wilderness Recommendations, Designation or Nondesignation, Gunnison Gorge, Camel Back and Adobe Badlands Wilderness Study Areas, Montrose and Delta Counties, CO.

Summary

Review of the final EIS has been completed and the project found to be satisfactory.

Dated: July 17, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-17033 filed 7-19-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3811-4]

Underground Injection Control Program, Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; E.I. du Pont de Nemours & Company, Inc., Beaumont, TX

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to E.I. du Pont de Nemours & Company, Incorporated, for the Class I injection wells located at Beaumont, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by E.I. du Pont de Nemours & Company, Incorporated, of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection well at the Beaumont, Texas facility specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued May 10, 1990. A public hearing was held on June 14, 1990, and a public comment period ended on June 25, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of July 10, 1990.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Chief Water Supply Branch, EPA—Region 6, telephone (214) 655-7150, (FTS) 255-7150.

Myron O. Knudson,

Director, Water Management Division (6W).

[FR Doc. 90-17026 Filed 7-19-90; 8:45 am]

BILLING CODE 6560-50-M

Science Advisory Board

[FRL-3811-3]

Metals Subcommittee of the Environmental Health Committee; Open Meeting—Amendment (Change of Meeting Dates) From July 23-24 to August 6-7, 1990

Under Public Law 92-463, notice is hereby given that a meeting of the Metals Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on August 6-7, 1990 at the Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD 20814. The hotel telephone number is (301) 652-2000.

The meeting will start at 9 a.m. on August 6, and will adjourn no later than 5 p.m. August 7 and is open to the public. The main purpose of this meeting is to review a draft document developed by the Agency's Office of Research and Development on the health effects of nickel in drinking water, and to discuss the essentiality of certain mineral constituents in drinking water.

Copies of background materials may be obtained from Dr. Edward Ohanian, Office of Drinking Water (WH 550D), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. He may be reached at (202) 382-7571.

An Agenda for the meeting is available from Mary Winston, Staff Secretary, Science Advisory Board

(A101F), U.S. Environmental Protection Agency, Washington DC 20460 (202-382-2552). Members of the public desiring additional information should contact Mr. Samuel Rondberg, Executive Secretary, Environmental Health Committee, by telephone at the number noted above or by mail to the Science Advisory Board (A101F), 401 M Street SW., Washington DC 20460 no later than c.o.b. July 26, 1990. Anyone wishing to make a presentation at the meeting should forward a written statement to Mr. Rondberg by the date noted above. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: July 12, 1990.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 90-17025 Filed 7-19-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

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 part 510.

License Number: 3016.
Name: Carnell Corporation.
Address: 8233 NW. 66th St., Miami, FL 33166.
Date Revoked: December 16, 1989.
Reason: Failed to maintain a valid surety bond.

License Number: 3228.
Name: Brandywine International, Inc.
Address: 3422 Old Capitol Trail, Wilmington, DE 19808.
Date Revoked: April 20, 1990.
Reason: Failed to maintain a valid surety bond.

License Number: 2159R.
Name: Miami Valley Transportation Consultants, Inc.
Address: 1300 E. Third St., Dayton, OH 45403.
Date Revoked: April 20, 1990.
Reason: Failed to maintain a valid surety bond.

License Number: 1562.
Name: All Ports Household Forwarders, Inc.
Address: 25-56 31st St., Long Island City, NY 11102.
Date Revoked: April 22, 1990.
Reason: Failed to maintain a valid surety bond.

License Number: 2830.
Name: H.D.C.M., Inc.
Address: 11400 West Flagler St., Suite 206, Miami, FL 33174.
Date Revoked: May 9, 1990.
Reason: Surrendered license voluntarily.

License Number: 766.
Name: Hasman & Baxt, Inc.
Address: 426 Northfield Ave., Raritan Center, Edison, NJ 08837.
Date Revoked: June 11, 1990.
Reason: Surrendered license voluntarily.

License Number: 2884R.
Name: J. Santiamo Shipping, Inc.
Address: 132 Nassau Street, New York, NY 10038.
Date Revoked: June 15, 1990.
Reason: Surrendered license voluntarily.

License Number: 740.
Name: Alliance Shipping Co., Inc.
Address: 53 Park Place, New York, NY 10007.
Date Revoked: June 22, 1990.
Reason: Failed to maintain a valid surety bond.

License Number: 1202.
Name: G. Amador Corporation.
Address: 121 W. Hazel St., Inglewood, CA 90302.
Date Revoked: June 28, 1990.
Reason: Failed to maintain a valid surety bond.

License Number: 3018.
Name: Cherokee Shipping International, Inc.
Address: P.O. Box 13537, Torrance, CA 90503.
Date Revoked: July 3, 1990.
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Acting Director, Bureau of Domestic Regulation.

[FR Doc. 90-16946 Filed 7-19-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Interstate Bancorp, Los Angeles, CA; Application to Provide Asset Management, Loan Portfolio Management, Asset Valuation and Cash Flow Modeling, and Marketing of Loans and Foreclosed Property

First Interstate Bancorp, Los Angeles, California ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and section 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to engage *de novo* through a subsidiary in providing asset management, loan portfolio management, asset valuation and cash flow modeling, and marketing of loans and foreclosed property, for the accounts of third-party clients and for affiliates of Applicant on a nationwide basis. A significant portion of the portfolio that will be managed by Applicant may consist of substandard assets acquired from insolvent financial institutions by the Federal Deposit Insurance Corporation and the Resolution Trust Corporation. The Board has approved a similar proposal to provide certain management and consulting services to failed savings and loan associations under the Federal Home Loan Bank Board's management consignment program. *First Florida Banks, Inc.*, 74 Federal Reserve Bulletin 771 (1988).

Applicant defines asset management to include analysis of appraisals and of the capacity of local markets to absorb assests of the types under management and other market conditions; review and implementation of leasing programs related to managed assets; providing advice regarding alternatives for a managed asset's best use; preparation of managed asset budgets; and formulation and implementation of business and marketing plans for managed assets. Applicant will not participate as an equity investor or lender with respect to the assets under management.

Applicant defines loan portfolio management to include rendering advice to depository institutions regarding loan quality grading categories and establishment of specific reserves for individual loans, and adequate total reserves for loan portfolios; formulation and implementation of business plans related to managed loan including loan restructuring proposals and loan collection efforts; supervision of the foreclosure process, when applicable; management of bankruptcy and other proceedings involving managed assets; and administration of participated loans.

Applicant defines asset valuation and cash flow modeling to include cash flow valuation for possible asset acquisition or disposition by third-party clients; analysis of the impact of a loan/property portfolio on a company's portfolio; analysis of an institution's loan/OREO loss reserve adequacy; and estimation of the overall "cost to carry" on a cash-flow basis for both performing and non-performing assets.

Applicant also proposes to engage through a subsidiary in providing data processing services, arranging third-party equity financing, and providing tax planning advice. Data processing, equity financing, and tax planning are permissible activities for bank holding companies under Regulation Y. 12 CFR 225.25(b) (7), (14), and (21).

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity that the Board has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized forum. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1237 (DC Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices."

As proposed by Applicant, the combination of activities for which approval is requested has not previously been approved by the Board. Applicant maintains that the asset management activities described above include traditional asset management activities of the type conducted by a bank's trust department, management loan department, or special assets department, and as such are permissible for bank holding companies pursuant to § 225.25(b)(3) of Regulation Y (12 CFR 225.25(b)(3)). Applicant also maintains that such activities are similar to loan servicing activities, encompass providing investment and financial advice, and include providing management consulting advice, all of which are permissible pursuant to Regulation Y. 12 CFR 225.25(b) (1), (4), and (11). The Board also has by order previously approved asset management activities similar to those proposed by Applicant. First Florida Banks, Inc., 74 Federal Reserve Bulletin 771 (1988).

Applicant contends that the loan portfolio management activities describe above include traditional depository management consulting advice and traditional asset management activities of the type conducted by a bank's trust department or special assets department, and as such are permissible for bank holding companies pursuant to § 225.25(b)(3). Additionally, Applicant states that the loan portfolio management activities are permissible because a significant portion of these activities would include collection agency functions which are permissible for bank holding companies pursuant to § 225.25(b)(23).

Applicant believes that the asset valuation and cash flow modeling activities described above fit within real estate and personal property appraisal services, and such services are permissible for bank holding companies pursuant to § 225.25(b)(13).

Finally, Applicant maintains that the marketing of loans and foreclosed property activities described above include traditional asset management activities of the type conducted by a bank's trust deparment or special assets department, and are thus permissible for a bank holding company pursuant to § 225.25(b)(3).

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than August 13, 1990. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by 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, summarizing the evidence that would be presented at a hearing, and indicating how that party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, July 16, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-16995 Filed 7-19-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Application for Waiver of the Two-Year Foreign Residence Requirement of the Exchange Visitor Program—0990-0001—Revised—The application is used by institutions (educational, hospital) to request a favorable recommendation from the Department to the U.S. Information Agency for waiver of the two-year foreign residence requirement of the Exchange Visitor Program. Recommendations are made on behalf of foreign visitors working in areas of interest to HHS.Respondents: Business or other for-profit, non-profit institutions; Number of Annual Responses: 200; Frequency of Response: one time; Average Burden per Response: 6 hours; Total Burden: 1200 hours.

2. Research Study to Test Procedures to Screen for Board and Care Homes Using 1988 Census Dress Rehearsal—New—This study will test a methodology for identifying facilities, licensed and unlicensed, that provide community-based nonmedical care to mentally or physically disabled individuals who cannot live independently. The study will use addresses in central Missouri that participated in the 1988 Census Dress Rehearsal. Respondents: Individuals or households, small businesses; Number of Responses: 1760; Frequency of Response: one time; Average Burden per Response: 8 minutes; Total Burden: 235 hours.

OMB Desk Officer: Allison Herron.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619-0511. Written

comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: July 10, 1990.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 90-16951 Filed 7-19-90; 8:45 am]

BILLING CODE 4150-04-M

Family Support Administration

Forms Submitted to Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the Federal Register submission for FSA.

(For a copy of a package, call the FSA, Report Clearance Officer 202-252-5604.)

Integrated Review Schedule—FSA-4357-0970-0035

State agencies are required to perform quality control reviews for each of the three Federal assistance programs: AFDC, FS, and Medicaid. The Integrated Review Schedule is jointly designed and used by FSA, FNS, and HCFA. The review schedule serves as the comprehensive data entry form for all quality control reviews in the AFDC, FS and Medicaid programs. Respondents: State or local government; Number of Respondents: 63,000; Frequency of Response: 1; Average Burden per Response: 1 hour; Estimated Annual Burden: 63,000 hours.

OMB Desk Clearance Officer: Shannah Koss McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officers designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street NW., Washington, DC 20503.

Dated: July 5, 1990.

Naomi B. Marr,

Associate Administrator, Office of Management & Information Systems.

[FR Doc. 90-16715 Filed 7-19-90; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 81N-0257]

Studies of Adverse Effects of Marketed Drugs; Availability of Cooperative Agreements; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research, is announcing the anticipated availability of approximately $1,500,000 yearly beginning in Fiscal Year 1991 to fund cooperative agreements for studying reported adverse effects of marketed drugs. FDA expects to make four to six awards in the $100,000 to $300,000 range. Funds are not currently available. The government's obligation is contingent upon the availability of appropriated funds from which the cooperative agreements will be funded. The purpose of these agreements is to: (1) Support pharmacoepidemiological research using existing data bases, (2) provide a mechanism for collaborative research designed to test hypotheses, particularly those arising from adverse reactions reported to FDA, and (3) enable rapid access and response to multiple data sources when necessary. FDA would prefer to fund a variety of data bases representing, without duplication, different patient populations and/or types of patient care settings. The data bases maintained through these agreements must be able to support studies of multiple drugs/multiple outcomes, to identify adverse events that occur infrequently and to provide a substantive response within a few months. The adverse events of most concern are those not currently found in a drug's official labeling and are serious or life-threatening. General areas of particular interest are teratology, drug effects in the elderly, and the use of drugs in Acquired Immunodeficiency Syndrome (AIDS) and AIDS-related complex (ARC) patients.

DATES: Applications must be received by 4:30 p.m. on August 31, 1990. The earliest possible date for award is February 1, 1991.

ADDRESSES: Application kits are available from, and completed applications should be mailed to, Maura Stephanos, Grants and Assistance Agreements Section (HFA-522), Food and Drug Administration, Park Bldg., rm. 3-20, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170. Applications delivered via commercial courier should be addressed to Park Bldg., rm. 3-20, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: For further information regarding the content of the applications solicited under this announcement: Dianne L. Kennedy, Center for Drug Evaluation and Research (HFD-733), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2306.

For further information regarding the business or financial aspects of this announcement: Maura Stephanos (address above).

SUPPLEMENTARY INFORMATION: FDA's authority to fund research projects is under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance No. 13.103. Applications submitted under this program are exempted from regulation 45 CFR part 46—Protection of Human Subjects.

I. Background

New drugs are required to undergo extensive testing before marketing. With the submission of adequate data on a drug's safety and effectiveness, FDA approves a new drug application (NDA) which permits a manufacturer to market its drug product in the United States. Although the information provided before marketing is sufficient for approval, it is not adequate to anticipate all effects of a drug once it comes into general use.

This request for applications (RFA) is intended to encourage research projects in the area of drug-induced illness and to provide a mechanism for collaborative research designed to test hypotheses based on signals of possible problems, particularly those originating from reports of adverse reactions received by FDA.

II. Research Goals and Objectives

The goal for these cooperative agreements is to provide immediate access to existing data sources capable of providing information about the association of adverse effects and marketed drugs, and analyses of that information, within a few months. The specific objectives are to assess suspected associations between specific drug exposures and specific diagnoses and to investigate and quantitate the occurrence of previously known or suspected drug-associated risk.

All analyses would take into account alternative explanations for findings (e.g., nondrug etiology and confounding factors). The analyses may include: (1) Estimation of adverse reaction rates or

relative risks for specific drugs, (2) estimations of the contribution of various risk factors to adverse reaction rates (e.g., age, sex, dose, coexisting disease, concomitant medication, ect.), and (3) determination of individual drug profiles for adverse reactions within classes of drugs (e.g., nonsteroidal antiinflammatory drugs).

In addition, there is interest in data bases and methods of analysis capable of innovatively applying the objectives stated above to specific defined populations including but not limited to pregnant women, the elderly, and AIDS and ARC patients.

Drug exposure information available through the data sources could relate to various populations and could include either hospital and/or outpatient exposure and the events of interest could be either acute or chronic effects.

For both case-control and cohort studies, the size of the study in relation to its ability to detect specific risks is critical and dependent upon such limits as population size and composition, extent of exposure to study drugs, and rate of occurrence of the event in the population. For a data base to be useful it must be capable of identifying adverse drug reactions that occur infrequently.

Submitted applications must include an indepth description of the data base and provide descriptive and quantitative information on diagnoses and drug exposures in the population covered by the data base. The quality and validity of the data should be described in detail.

In order to assess the applicant's ability to meet these goals and objectives, each application must include several proposals for specific studies, even though if an award is made, the actual drugs/events to be studied could change through negotiation and the terms of the collaborative agreement.

III. Reporting Requirements

Program Progress Reports will be required quarterly. These reports will be due within 30 days after the last day of each quarter based on the budget period of the cooperative agreement. Financial Status Reports will be required annually. These reports will be due 90 days after the end of the budget period. A Final Program Progress Report and a Financial Status Report will be due 90 days after expiration of the project period of the cooperative agreement.

Up to two representatives from each cooperative agreement will be required, if requested by the project officer, to travel to FDA up to twice a year. It is anticipated that each such meeting, which will include but not be limited to presentations on study findings and meetings with appropriate FDA staff, will take no more than 2 days.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreements. These awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service (PHS), including the provisions of 42 CFR part 52, 45 CFR parts 74 and 92, and the PHS grants policy statement.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit organization (including State and local units of government) and to any for-profit organization (excluding fees or profit).

C. Length of Support

The length of support will depend upon the nature of the study and may extend beyond 1 year but may not exceed 3 years. For studies where the expected date of completion is more than 1 year, noncompetitive continuation of support, beyond the first year, will be based upon review of performance during the preceding year and the availability of Federal fiscal year appropriations.

D. Funding Plan

The number of cooperative agreements funded will depend on the quality of the applications received and the availability of funds.

V. Delineation of Substantive Involvement

Substantive involvement by the awarding agency is inherent in cooperative agreement awards. Accordingly, FDA will have substantial involvement in the program activities of all the projects funded under this RFA. Involvement may be modified to fit the unique characteristics of each application. Substantive involvement includes, but is not limited to, the following:

1. FDA will appoint a project officer or coproject officers who will actively monitor the FDA-supported program under each award.

2. FDA will establish a project advisory group that will oversee and coordinate the activities of all FDA-supported cooperative agreements awarded pursuant to this RFA. This group will provide guidance and direction on the drugs and events to be investigated. The drug exposures and medical events to be studied will be jointly agreed upon by the investigator and FDA.

3. In some cases, FDA scientists will collaborate with awardees in determining the methodological approaches to be used. Collaboration will also include data analysis, interpretation of findings, review of manuscripts, and where appropriate, coauthorship of publications.

VI. Review Procedures and Criteria

A. Review Procedure

Applications must be responsive to the RFA. Those applications judged not to be responsive will not be considered for funding under this RFA and will be returned to the applicant.

Applications will undergo dual peer review. An external review panel of experts in the field of drug epidemiology will review and evaluate each application based on its scientific merit. A second level review will be conducted by the National Advisory Environmental Health Science Council.

B. Review Criteria

Applications will be reviewed according to the following criteria:

1. *Size and nature of the data base and available software (35 percent).* The size and appropriateness of the study populations to conduct either case-control or cohort studies with the ability to detect adverse reactions that occur infrequently in the context of the population in general and the target populations specifically. Additional points will be given to data bases capable of addressing issues in the specific target populations of interest (e.g., pregnant women, the elderly, and AIDS and ARC patients).

The evaluation will be facilitated by the provision of a tabulation of the top 50 diagnoses and drug exposures in the study population with definition of these tabulations and groupings (e.g., terminology classification such as ICD-9-CM). Data base description should include the time period covered, the time lag between data inclusion and calendar date and the type of information available (e.g., inpatient drugs and diagnoses, outpatient drugs and diagnoses, procedures, etc.), quality control procedures used, the extent and sophistication of the available software, and the estimated time to respond to ad hoc requests for information. Documentation of data validation and data accuracy (e.g., completeness of automated data and training of data collectors) should be included.

2. *Scientific merit and technical capability (35 percent).* Quality of the

proposed studies including the planned methods of approach and analyses; a clear understanding of pharmacoepidemiology; the explicit recognition and description of criteria for selection of drugs and the events proposed for study and the quality of the rationale used; demonstrated ability to initiate, conduct, and publish quality epidemiology studies; capability to respond promptly to requests for data and studies.

3. *Personnel (20 percent).* The research experiences, training, and competence of the principal investigator and the support staff and the resources available to them. Additional points will be given to investigators with knowledge and previous experience in postmarketing surveillance and drug epidemiology.

4. *Budget (10 percent).* Reasonableness of the proposed budget. Additional points will be given to methodology which is cost effective (e.g., well-structured medical records and/or record linkage), if otherwise scientifically acceptable.

VII. Method of Application

A. Format for Application

An application must be submitted on Form PHS-398, Application for Public Health Service Grant. The face page of the application must reflect the RFA number, RFA-FDA-CDER-91-1. To ensure confidentiality of individual salary information, applicants may choose to include the information on the original application only. In that case, all copies of the application should reflect only a total amount for salaries and fringe benefits. No action will be taken by the funding agency to delete confidential information. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

The collection of information requested on Form PHS-398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB), and were approved and assigned OMB control number 0925-0001.

B. Legend

Unless disclosure is required by the Freedom of Information Act, as amended (5 U.S.C. 552), as determined by the freedom of information officials of the Department of Health and Human Services, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

C. Application Submission

The original and six copies of the completed application should be sent or delivered to Maura Stephanos (address above). Prospective applicants should label the outside of the mailing package and the top of the application face page with "Response to RFA-FDA-CDER-91-1."

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established closing date.

Applications will be considered received on time if sent on or before the closing date as evidence by a legible U.S. Postal Service dated postmark or a legible dated receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for funding and will be returned to the applicant.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on the method, applicants should check with their local post office.

Dated: May 24, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-16938 Filed 7-19-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Drug Abuse Advisory Committee

Date, time, and place. August 6 and 7, 1990, 9 a.m., Conference Rm. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, August 6, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 12 m. to 5 p.m.; closed presentation of data, August 7, 1990, 9 a.m. to 5 p.m.; S. Lei Johnson, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 23, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general procedures for handling individual investigational new drug applications (IND's) and their amendments, and the acquisition of data on the abuse and epidemiology of dextromethorphan in order to assess the nature of public health problems reported to FDA and other government agencies.

Closed presentation of data. The committee will hear trade secret and/or confidential commercial information relevant to pending IND's. This portion of the meeting will be closed to permit discussion of this informaiton (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. August 20 and 21, 1990, 8:30 a.m., Rm. 503-529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, August 20, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4:30 p.m.; open public hearing, August 21, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 4:30 p.m.; Wolf Sapirstein, Center for Devices and

Radiological Health (HFZ-450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1205.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 6, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss issues related to proposed regulation of heart valve allografts and proposals for a draft guidance document. The committee will also discuss a premarket approval application (PMA) for an implantable cardioverter defibrillator.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding the PMA listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. August 20 and 21, 1990, 8:30 a.m., Bldg. 31, Conference Rm. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, August 20, 1990, 8:30 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 5 p.m.; open committee discussion, August 21, 1990, 8:30 a.m. to 10:30 a.m.; closed committee deliberations, 10:30 a.m. to 3:30 p.m.; Jack Gertzog, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 6, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On August 20, 1990, the committee will discuss the use of Haemophilus Influenzae Type B Conjugate vaccine in infants. The agenda for August 21, 1990, has not been developed. If an amendment to this notice is not published in the Federal Register, further information may be obtained from the contact person after July 26, 1990.

Closed committee deliberations. Based on which issues are placed on the agenda for August 21, 1990, it may be necessary to close the meeting for 4 hours to discuss trade secret or confidential commercial information relevant to IND's and pending product license applications. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever long period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meeting of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this *Federal Register* notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed

where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 16, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-17037 Filed 7-15-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90E-0124]

Determination of Regulatory Review Period for Purposes of Patent Extension; Diflucan®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Diflucan® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard Klein, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Diflucan®. Diflucan® (fluconazole) is indicated in cryptococcal meningitis and systemic candidiasis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Diflucan® (U.S. Patent No. 4,404,216) from Pfizer, Inc., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated April 11, 1990, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, fluconazole, represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Diflucan® is 1,921 days. Of this time, 1,587 days occurred during the testing phase of the regulatory review period, while 334 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* October 28, 1984. FDA has verified the applicant's claims that the investigational new drug (IND) application for the drug became effective on October 28, 1984.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* March 2, 1989. FDA has verified the applicant's claim that the new drug application (NDA) for Diflucan® (NDA 19-949) was initially submitted on March 2, 1989.

3. *The date the application was approved:* January 29, 1990. FDA has verified the applicant's claim that NDA 19-949 was approved on January 29, 1990.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,126 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may,

on or before September 18, 1990, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 11, 1990, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of the document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 13, 1990

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 90–16939 Filed 7–19–90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[IOA-026-N]

Medicare and Medicaid Programs; Meeting of the Advisory Council on Social Security

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

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Advisory Council on Social Security.

DATES: The meeting will be open to the public on July 26, 1990 from 9 a.m. to 8:30 p.m.; and, on July 27, 1990, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in Room B318, Rayburn House Office Building, Independence Avenue, SW., Washington, DC 20515.

FOR FURTHER INFORMATION, CONTACT: Olga Nelson, Administrative Officer, Advisory Council on Social Security Room 638–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW. Washington, DC 20201, (202) 245–0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act, the Secretary of Health and Human Services appoints an Advisory Council on Social Security every four years. The Advisory Council examines issues affecting the Social Security retirement, disability and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Social Security Act.

In addition, Secretary Sullivan has asked the Advisory Council specifically to address the following:

—The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;

—Major Old-Age, Survivors, and disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds; and

—Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Phillip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignagni, James R. Jones, Paul O'Neill, A.L. "Pete" Singleton, John J. Sweeney, and Don C. Wegmiller; and the Chair, Deborah Steelman. The council is to report to the Secretary and Congress by January 1, 1991.

II. Agenda

The Council will discuss the interim report on the Social Security Program and its relationship to the Federal budget; and issues and options related to health care financing reforms.

The agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.773 Medicare—Hospital Insurance; 13.774 Medicare—Supplementary Medical Insurance; 13.802, Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivor's Insurance.)

Dated: July 13, 1990.

Ann D. LaBelle,

Executive Director, Advisory Council on Social Security.

[FR Doc. 90–17020 Filed 7–19–90; 8:45 am]

BILLING CODE 4120-01-M

Indian Health Service

Adolescent Health Centers for American Indians/Alaska Natives

AGENCY: Indian Health Services, HHS.

ACTION: Notice of Competitive Grant Applications for Adolescent Health Centers for American Indians/Alaska Natives.

SUMMARY: The Indian Health Service (IHS) announces that competitive grant applications are now being accepted for the establishment of adolescent health centers for American Indians/Alaska Natives. These grants are established under the authority of section 103(b)(1), Indian Self-Determination Act, Public Law 93–638, as amended by Public Law 100–472, 25 U.S.C. 450h(b)(1). There will be only one funding cycle during fiscal year 1990. This program is described at 13.228 in the Catalog of Federal Domestic Assistance. These grants will be awarded in accordance with Departmental regulations governing Public Law 93–638 grants at 42 CFR 36.101 et. seq. and applicable OMB Circulars. Executive Order 12372 requiring intergovernmental review is not applicable to this program.

DATES: An original and two (2) copies of the completed grant application must be submitted, with all required documentation, to the Grants Management Branch, Division of Acquisition and Grants Operations, Maxima Building, suite 603, 2101 East Jefferson, Rockville, Maryland 20852, by c.o.b. August 24, 1990.

Applications shall be considered as meeting the deadline if they are either: (1) received on or before the deadline with hand carried applications received by c.o.b. 5 p.m.; or (2) postmarked on or before the deadline date and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Applications received after the announced closing date will be returned to the applicant and will not be considered for funding.

Additional Dates:

A. Application Receipt Date: August 24, 1990

B. Application Review: September 10, 1990

C. Applicants Notified of Results (approved, approved unfunded, or disapproved): September 18, 1990

D. Anticipated Start Date: September 28, 1990

FOR FURTHER INFORMATION CONTACT: For program information, contact Dr. Jerry Lyle, Maternal-Child Health Section, Indian Health Service, room 6A-38, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1948. For grants information, contact Mrs. Kay Carpentier, Grants Management Officer, Grants Management Branch, Indian Health Service, Maxima Building, suite 603, 2101 East Jefferson, Rockville, Maryland 20852, (301) 443-5204. (The telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This announcement provides information on the general purpose, eligibility, programmatic objectives, program evaluation, required affiliation, funding availability and application procedure for fiscal year 1990.

General Program Purposes: To establish adolescent health center demonstration projects that will be local and discreet in nature and that assist the IHS to ascertain the most effective and efficient means of providing health promotion and disease prevention services to adolescents.

Eligible Applicants: Any federally recognized Indian tribe or Indian tribal organization is eligible to apply for a grant.

Program Objectives: Applicants must address all three specific objectives stated below as they relate to health problems of Indian adolescents (approximate age range of 12 through 19 years) through the provision of school related and community based demonstration projects.

1. To provide Indian adolescents with outreach programs of preventive education and counselling related to (a) accident prevention; (b) sexually transmitted diseases; (c) acquired immune deficiency syndrome (AIDS); (d) suicide; (e) violence; (f) substance use including tobacco, alcohol, other chemicals, and drugs; and (g) fetal alcohol syndrome.

2. To provide Indian adolescents with outreach programs of health promotion education and counselling in (a) teanage pregnancy; (b) mental health; (c) nutrition; (d) physical fitness; (e) health behaviors and the promotion of wellness; (f) recreational therapy activities that enhance self-esteem, self-sufficiency and team building and teach constructive use of leisure time; and (g) preparation for adult role responsibilities, including parenting responsibilities.

3. To ensure that Indian adolescents have access to age group and culture appropriate health care, particularly in the areas of special concern in adolescence including pregnancy, infant care, infectious disease, mental health, and tobacco, alcohol, and substance abuse.

Factors for Consideration in Preparing the Application

1. Projects should be school or community related; however, out-of-school adolescents should also be targeted for participation in the program.

2. Projects should demonstrate coordination with other agencies and organizations within and without the community who serve the trageted population.

3. Adolescents, parents, and the community should be involved in identifying needs, designing and carrying out programs.

4. Indian cultural aspects should be considered in program design.

5. Projects should be located at sites where there are concentrations of Indian adolescents and demonstrated need for adolescent prevention and health care services. The program should identify populations at highest risk for adolescent health concerns and demonstrate that interventon is targeted to risk reduction.

Fund Availability

Approximately $800,000 is available for fiscal year 1990 with a like amount anticipated to be available in fiscal year 1991. It is anticipated that grant awards will average approximately $70,000 per year with up to 11 adolescent health center demonstration projects funded.

Period of Suppport

Projects will be awarded for a term of up to three years, with funding levels for succeeding years based on the fiscal year 1990 level, the availability of appropriations in future years, the continuing need for the projects, and satisfactory performance. The anticipated start date for approved projects will be September 28, 1990.

Application Process

An *IHS Grant Application Kit,* including required form PHS 5161-1 (rev. 3/89), may be obtained from the Grants Management Branch, Division of Acquisition and Grants Operations, Maxima Building, Suite 603, 2101 East Jefferson, Rockville, Maryland 20852. Telephone: (301) 443-5204. Information is being collected under OMB Clearance No. 0917-0005.

A. Narrative

The narrative section of the application must include the following: (1) need for assistance, (2) program objectives and expected results, and (3) work plan. The work plan section should be project specific. These instructions for the preparation of the narrative are to be used in lieu of the instructions on pages 15-16 of the PHS-5161-1. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully.

1. Need for assistance

(a) Describe and define the target population at the project location. Identify family and community involvement in the design and conduct of the project.

(b) Describe the existing resources and services available within and without the community related to the specific services the applicant is proposing to provide.

(c) Describe in detail the needs of the target population and what efforts have been made in the past to meet these needs, if any.

(d) Cite documentation supporting needs (any studies or testimonies).

2. Program Objectives and Expected Results

(a) State concisely the objectives of the project.

(b) Describe briefly what the project intends to accomplish. State time frames and quantify.

(c) Identify the result, benefit, or outcome expected.

3. Work Plan

(a) Describe the proposed program to be offered and outline a plan of action including the date that the project will begin to accept patients.

(b) Describe the proposed program operations, including any unique features such as Indian cultural aspects, extraordinary social and community involvements, or actions directed at acceptance of the program among the targeted population.

(c) Describe existing resources available within and without the community that provide related services and the nature and amount of their cooperation/collaboration/assistance. Describe how this program will interface with these available resources.

(d) Describe methods for evaluating program activities, effectiveness of interventions, success in achieving objectives, the impact of interventions, acceptance among the targeted population, and workload

accomplishments. Identify who will perform the evaluation and when.

(e) Describe the system to be used for information collection which will support the program evaluation to determine the impact of the project. The reporting system should include, but is not limited to, the number of referrals to the program, number and types of patients served, number of referrals for further treatment to other facilities, costs associated with the program, and services provided.

(f) Indicate the project's willingness to share its program experience with IHS Areas and other tribal organizations.

B. Key Personnel and Management Control

1. Provide biographical sketch and position description for the program director and other key personnel as described on page 17 of PHS 5161-1.

2. Provide an organizational chart and indicate how the project will operate within the organization.

C. Budget

1. Clearly itemize estimated costs by line item on form PHS-5161-1 (effective date 3/89) and provide specific justification. Any special start up costs should be indicated. Grant funding may not be used to supplant existing public and private resources. Describe the type and cost of facilities and equipment to be used, transportation, numbers and credentials of staff, and numbers of patients to be served. Any equipment requirements, either general purpose or specialized, should be identified.

2. Budget must include estimated costs for the entire proposed project period from one to three years.

D. Required Affiliation

1. Tribal Resolution

A resolution of the Indian tribe to be served by the project must accompany the application submission. Applications which propose services which will benefit more than one Indian tribe must include resolutions from all tribes to be served. Applications by tribal organizations will not require tribal resolution(s) if the tribal resolution(s) under which they operate would encompass the application for the grant. A statement of such must accompany the application.

2. Letters of Support

Applicants must submit letter(s) of support as appropriate from: (1) the local schools and school boards where Indian adolescents are in attendance, including Bureau of Indian Affairs schools and regional offices where applicable; (2) any pertinent nonprofit community organizations dealing with the target population; (3) local health departments and/or health care facilities; including tribal or IHS service units where applicable; (4) the IHS Area Director; and (5) any college or university health sciences programs that are to be involved in the project. Any organizations that will be affiliated should be included in the planning and coordination of the project.

E. Assurances

The application shall contain assurances to the Secretary that the applicant will comply with program regulations, 42 CFR part 36, subpart H.

Objective Review Process

Applications that meet eligibility requirements, are complete, and conform to this program announcement will be reviewed by a centralized Objective Review Committee (ORC) conducted at the IHS Headquarters and in accordance with IHS objective review procedures. The objective review process is a nationwide competition for limited funding. The ORC will be comprised of IHS or Tribal staff (50-60%) and other non-IHS individuals (50-40%) with appropriate expertise. The ORC will review each application against established criteria. Based upon the evaluation criteria, the reviewers will assign a numerical score to each application, which will be used in making the final funding decision.

Criteria for Evaluation

Applications will be evaluated against the following criteria:

1. Need—The demonstration of identified adolescent health problems and risks in the target population. Extent of community involvement and commitment. The demonstrated potential for continuity of the project in the community following expiration of grant funding.

2. Approach: (1) the soundness and effectiveness of the proposed project in providing health promotion and disease prevention services to Indian adolescents, with special emphasis on the objectives and methodology portion of the application, and (2) the demonstration of evaluation methods incorporated into the design of the project. Evidence of current or potential cooperation between the applicant and affiliated organizations. Evidence may be in the form of letters or official documents.

3. Adequacy of Management Controls—The capability of the applicant to successfully conduct the project including both technical and business aspects. The soundness of the applicant's budget in relation to the project work plan and for assuring effective utilization of grant funds. Adequacy of facilities and equipment available within the organization or proposed for purchase under the project.

4. Key Personnel—Qualifications and adequacy of the staff.

Results of the Review: The results of the Objective Review Committee are forwarded to the Associate Director, Office of Tribal Activities, for final review and approval. Applicants are notified of their approval, approval without funds, or disapproval, on September 18, 1990. A Notice of Grant Award will be issued approximately ten (10) days prior to the start date of September 28, 1990. Unsuccessful applicants are notified in writing of disapproval not later than September 18, 1990. A brief explanation of the reasons the application was not approved is provided along with the name of an IHS official to contact if more information is desired.

Reporting

A. Progress Report

Program progress reports will be submitted quarterly with a final report for each budget period to be included in the continuation application. A final progress will be due for the final budget period 90 days after the end of the project period.

B. Financial Status Report

A final financial status report will be due 90 days after the end of each budget period. Standard Form 269 or 269A, as appropriate, will be used for financial reporting.

Grant Administration Requirements

Grants are administered in accordance with the following documents:

1. 45 CFR part 92, Department of Health and Human Services, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 45 CFR part 74, Administration of Grants to Non-profit recipients,

2. Public Health Service Grants Administration Manual,

3. Public Health Service Grants Policy Statements, and

4. Appropriate Cost Principles: OMB Circular A-87, State and Local Governments, or OMB Circular A-122, Nonprofit Organizations.

Dated: June 5, 1990.

Robert Singyke,

Acting Director.

[FR Doc. 90-17035 Filed 7-19-90; 8:45 am]

BILLING CODE 4160-16-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, July 13, 1990.

[Call PHS Reports Clearance Officer on 202-245-2100 for copies of package]

1. HIV Testing Performance Evaluation—NEW—The CDC needs information describing the testing practices and characteristics of laboratories that are performing or plan to perform testing for the Human Immunodeficiency Virus (HIV) that causes AIDS. The information will be used to improve the quality of HIV testing. Respondents will include hospitals, health departments, blood banks, and private laboratories. *Respondents: Business or other for-profit; Number of Respondents:* 1603; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 1 hour; *Estimated Annual Burden:* 1603 hours.

2. Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Programs—Forms—0915-0044—This clearance will allow the Department to collect from health professions schools aggregate data on the race/ethnic characteristics of students assisted through the HPSL and NSL programs. It is anticipated that the addition of this question will add no burden for schools completing the *Annual Operating Report.* The information will be used to evaluate the distribution of assistance under these programs. Respondents: Non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Schools:			
Application	1,300	.5	1
Annual operating report	2,000	5.0	1
Borrowers:			
Deferment form	10,375	.16	1
HPSL cancellation	10	.08	1
NSL cancellation	1,100	.33	1
Estimated Annual Burden		12,747	

3. Petition for Administrative Reconsideration of Action (21 CFR 10.33)—0910-0192—The regulation prescribes the format, with instructions, for petitioning the Food and Drug Administration to reconsider a final Agency decision based on the administrative record. *Respondent: State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations; Number of Respondents:* 10; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 5 hours; *Estimated Annual Burden:* 50 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendation for the proposed information collection should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address:

Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC 20503.

Dated: July 16, 1990.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 90-17021 Filed 7-19-90; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2606-N-81]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: July 20, 1990.

ADDRESS: For further information, contact James Forsberg, Department of Housing and Urban Development, Room 7228, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6300; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: July 13, 1990.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Office of Policy Development and Research

[Docket No. N-90-3119; FR2852-N-02]

Commission on Regulatory Barriers to Affordable Housing; Meeting

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Amended notice of public hearing and open meeting.

SUMMARY: The Commission was established on March 14, 1990, in accordance with the provisions of the Commission's charter and the Federal Advisory Committee Act (FACA). The Commission was created to advise the Secretary on the nature and impact upon costs of Federal, State, and local regulations governing the construction and rehabilitation of housing and to present its findings as well as advisory recommendations as to possible remedial Federal, State, and local actions that can be taken to eliminate excessive, duplicative or unnecessary regulations that increase the cost of housing.

A combined public hearing and meeting for August 1, 1990 was announced in the July 13, 1990 Federal Register, page 28833 (Docket No. N-90-

3119; FR2852-N-01). Due to the need to hear from a broad range of witnesses as well as to effectively conduct the Commission meeting, the public hearing will now begin on July 31st at 1:30 pm. The August 1, 1990 hearing will continue as originally announced.

TIME AND PLACE: A combined public hearing and open Commission meeting will be held in Chicago, Illinois on Tuesday and Wednesday, July 31st-August 1, 1990. The first day of hearings (July 31st) will run from 1:30 p.m. to approximately 5 p.m. The second day of hearings (August 1st) will run from 9 a.m. to approximately 3:30 p.m. At the conclusion of the hearing the Commission will continue to meet until approximately 5:30 p.m. The hearing and meeting will take place at the Westin Hotel, 909 North Michigan Avenue, Chicago, Illinois, 60611.

AGENDA: The Commission desires to hear a range of testimony and views on the nature of regulatory barriers to affordable housing and on possible legislative, administrative, judicial and other approaches that have been or can be taken to address the problem. The Commission is interested in issues and possible solutions and, for this hearing, is particularly interested in issues and solutions that are most relevant to the Mid-West area. At the open meeting to be held at the conclusion of the hearing, the Commission will discuss the nature of the testimony to date and issues that have been identified requiring additional research and exploration.

PUBLIC PARTICIPATION: The hearing will consist of testimony from invited witnesses as well as testimony from the general public. One hour has been set aside on August 1, 1990, after scheduled testimony and questions, for testimony from other interested parties. Members of the general public wishing to testify will be asked to register on a first come, first served basis. Those who do not have the opportunity to testify can, at the hearing or subsequently, submit written remarks for the record.

FOR FURTHER INFORMATION CONTACT: David Engel, Office of Policy Development and Research, room 8140, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708-4370. (This is not a toll-free number.)

Dated: July 17, 1990.

John C. Weicher,

Assistant Secretary for Policy Development and Research, United States Department of Housing and Urban Development.

[FR Doc. 90-17073 Filed 7-19-90; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Closure of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Shooting closure order.

SUMMARY: Pursuant to 43 CFR 8364.1(a), any public lands under the administration of the Boise District, Bureau of Land Management, may be closed to the discharge of all firearms when the Authorized Officer determines that a closure is necessary for the protection and safety of human life and/or property. Closures shall become effective following site specific determinations by the Authorized Officer, and upon subsequent posting of the perimeter of the subject lands.

The purpose of this closure order is to protect humans, livestock, and property from injury or damage caused by stray bullets from firearms being discharged on public land, where terrain or vegetation conceals inhabited dwellings, active construction, commercial operations, or recreational events that are occurring on or adjacent to public land.

This order shall remain in effect until revoked or rescinded. Excepted from this order are employees of federal, state, and local government agencies while on official business of the agency, and any agent, contractor, or cooperator while in the performance of an official duty of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Lee Kliman, Ranger, BLM Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, or call (208) 334-1582.

SUPPLEMENTARY INFORMATION: Any person failing to comply with this order shall be subject to prosecution under penalty of law as provided in 43 CFR 8360.0-7 and Idaho State law. Noncompliance is considered a misdemeanor, punishable by a fine not to exceed $1000, and/or imprisonment for a term not to exceed 12 months.

Dated: June 25, 1990.

Margaret Wyatt,

Acting District Manager.

[FR Doc. 90-17018 Filed 7-19-90; 8:45 am]

BILLING CODE 4310-GG-M

[UT-020-00-4320-08]

Intent To Amend the Randolph Management Framework Plan; Rich County, UT

AGENCY: Bureau of Land Management (BLM), Utah, Interior.

ACTION: Notice of intent to amend the Randolph management framework plan, Rich County, Utah.

SUMMARY: The BLM Salt Lake District proposes to amend the 1980 Randolph Management Framework Plan (MFP) to delete decisions on grazing management of the East Woodruff Allotment in the eastern portion of the Bear River Resource Area.

SUPPLEMENTARY INFORMATION: The purpose of the amendment would be to eliminate the East Woodruff Grazing Allotment from permanent livestock grazing. The Utah Division of Wildlife Resources has obtained the grazing privileges on the East Woodruff Grazing Allotment and has requested that the grazing privileges be retired in order that they can manage the area for wildlife purposes Grazing could be allowed under temporary, nonrenewable licenses only. The proposed plan amendment would amend Range Management Decisions 1.1, 1.2, and 2.2. The existing plan specifies grazing management practices for the East Woodruff Allotment. All remaining lands will be managed as presently identified in the MFP

An Environmental Assessment (EA) is being prepared by the BLM which will be used as the National Environment Protection Act compliance document for this planning amendment.

For 30 days from the date of publication of this notice, the BLM will accept comments on this proposal.

Existing planning documents and information are available at the Bear River Resource Area Office, 2370 South 2300 West, Salt Lake City, Utah 84119, telephone (801) 977-4300.

FOR FURTHER INFORMATION CONTACT: Leon E. Berggren, Bear River Resource Area Manager.

Dated: July 16, 1990.

James M. Parker,

State Director.

[FR Doc. 90-17008 Filed 7-19-90; 8:45 am]

BILLING CODE 4310-00-M

Burley District

[ID-020-00-4320-12]

Meeting and Agenda for Burley District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting and agenda for Burley District Grazing Advisory Board.

SUMMARY: Notice is hereby given that the Burley District Grazing Advisory Board will meet on August 29, 1990.

The meeting will convene at 9:30 a.m. on August 29, 1990 in the conference room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items for the meeting will include: (1) Election of Board officers; (2) Status of Broom Snakeweed control project; (3) Secretary/Treasurer's report; (4) Impact of current frought; (5) Review proposed range improvements for FY-91; (6) Review new Grazing Advisory Board charter; (7) State land sublease; (8) Berger water system; (9) Nonuse; (10) Allocation of Grazing Advisory Board funds; (11) Information items—(a) Land Use Plan amendment; (b) 1990 Briefing Statements.

The public is invited to attend the meeting. Interested persons may make an oral statement to the Board beginning at 10:30 a.m. or they may file written statements for the Board's consideration. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Anyone wishing to make an oral statement or file a written statement must contact the District Manager by August 28, 1990 for inclusion in the meeting schedule.

Detailed minutes of the Board meeting will be maintained in the District Office, 200 South Oakley Highway, Burley, Idaho, and will be available for public inspection during regular business hours, (7:45 a.m. TO 4:30 p.m., Monday thru Friday) within 30 days following the meeting.

DATES: August 29, 1990.

ADDRESSES: Bureau of Land Management, Burley District Office, 200 South Oakley Highway, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Gerald L. Quinn, District Manager, (208) 678-5514.

Dated: July 11, 1990

Gerald L. Quinn,

District Manager.

[FR Doc. 90-16989 Filed 7-19-90; 8:45 am]

BILLING CODE 4310-GG-M

[NM-010-5410-10-ZGKA/GPO-0113; NM NM 61400]

Filing of Application for Conveyance of Federally-Owned Mineral Interests; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Tano Santa Fe Partners has applied under section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719, 43 CFR part 2720, to purchase the Federal mineral interests consisting of oil and gas in certain land and the coal and other minerals in other land described below:

A certain tract of land lying and being situated within Section 1, T. 17 N., R. 9 E., NMPM, within the City of Santa Fe, Santa Fe County, New Mexico and being more particularly described by metes and bounds as follows:

Beginning at the northwest corner of the tract marked by a USGLO Brass Cap Monument marking the corner common to sections 1 & 2, T. 17 N., R. 9 E., and Sections 35 & 36, T. 18 N., R. 9 E.; thence from said point of beginning,

S. 89°24'07" E, 2668.58 ft. to a USGLO Brass Cap Monument marking the ¼ corner common to section 1, T. 17 N., R. 9 E. and section 36, T. 18 N., R. 9 E., thence,

S. 00°35'37" W, 879.10 ft. to a ½" pipe found, thence,

S. 00°35'01" W, 441.24 ft. to a ½" pipe found, thence,

S. 00°42'08" W, 910.27 ft. to a 1" pipe found, thence,

S. 00°39'27" W, 367.25 ft. to a 1" pipe found, thence,

S. 00°25'41" W, 506.28 ft. to a ½" pipe found, thence,

S. 00°50'41" W, 865.73 ft. to a ½" pipe found, thence,

S. 08°23'03" E, 28.48 ft. to a ½" pipe found, thence,

N. 89°50'54" E, 1680.03 ft. to a point on the westernly right-of-way of U.S. Highway 84-285, thence along said right-of-way,

S. 00°04'34" E, 1004.62 ft. to a point on the North boundary of the Santa Fe Grant, thence, leaving said right-of-way and along said Grant boundary,

N. 89°44'04" W, 144.67 ft. to a ¾" pipe found, thence,

N. 89°41'50" W, 584.65 ft. to a ½" pipe found, thence,

N. 89°42'32" W., 110.42 ft. to a capped rebar found, thence,

N. 89°44'27" W, 433.32 ft. to a ½" pipe found, thence,

N. 89°45'04" W, 50.04 ft. to a capped rebar found, thence,

N. 89°42'32" W, 275.33 ft. to a USGLO Brass Cap marking the 2½ mile corner on the North boundary of the Santa Fe Grant, thence,

N. 89°43'27" W, 252.01 ft. to a capped rebar found, thence,

N. 89°44'52" W, 100.29 ft. to a capped rebar found, thence,

N. 89°51'40" W, 120.12 ft. to a capped ½" rebar set, thence, leaving said Grant boundary

N. 00°19'34" E, 317.08 ft. to a #3 rebar found, thence,

N. 00°19'34" E, 324.78 ft. to a #3 rebar found, thence,

N. 00°49'56" E, 297.85 ft. to a #4 rebar found, thence,

N. 00°03'50" W, 79.26 ft. to a 1" pipe found, thence,

N. 00°00'22" E, 295.54 ft. to a ⅓" pipe found, thence,

N. 89°27'37" W, 190.91 ft. to a ¾" pipe found, thence,

N. 89°38'25" W, 253.64 ft. to a #4 rebar found, thence,

N. 89°05'32" W, 148.74 ft. to a ½" pipe found, thence,

N. 89°28'15" W, 361.34 ft. to a capped rebar found, thence,

N. 00°34'28" E, 228.26 ft. to a capped rebar found, thence,

N. 00°30'44" E, 220.69 ft. to a capped rebar found, thence,

N. 89°42'07" W, 6.08 ft. to a ½" pipe found, thence,

N. 89°42'07" W, 491.36 ft. to a capped rebar found, thence,

N. 01°04'31" W, 155.00 ft. to a #4 rebar found, thence,

N. 01°11'15" W, 150.54 ft. to a spike found, thence,

N. 12°52'52" E, 136.48 ft. to a spike found, thence,

N. 00°57'33" E, 244.10 ft. to a calculated point, thence,

N. 07°34'29" E, 313.89 ft. to a calculated point, thence,

N. 89°50'06" W, 40.39 ft. to a ½" pipe found, thence,

N. 89°52'00" W, 279.39 ft. to a #4 rebar found, thence,

N. 89°49'51" W, 543.51 ft. to a ½" pipe found, thence,

N. 00°05'08" W, 165.03 ft. to a ½" pipe found, thence,

N. 00°05'08" W, 304.36 ft. to a #3 rebar found, thence,

N. 00°05'08" W, 444.22 ft. to a 1½" pipe found, thence,

N. 00°05'08" W, 17.62 ft. to a #3 rebar found, thence,

N. 00°05'08" W, 448.97 ft. to a #5 rebar found, thence,

N. 00°05'08" W, 435.41 ft. to a #5 rebar found, thence,

N. 00°05'08" W, 216.93 ft. to a ½" conduit found, thence,

N. 00°05'08" W, 217.11 ft. to a point and place of beginning,

Containing 241.8649 acres, more or less.

All as shown as a portion of Tract "A" on that certain plat of survey titled "Revised Annexation Plat of Survey for Lands of Tano Santa Fe Partners, within Sec. 1, T. 17 N., R. 9 E., & Sec. 36, T. 18 N., R. 9 E., NMPM, Santa Fe County, New Mexico" dated January 1987, by Richard E. Smith, NMPLS 5837.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

FOR FURTHER INFORMATION CONTACT: District Manager, Albuquerque District

Office, 435 Montano NE, Albuquerque, New Mexico 87107, (505) 761-4605.

SUPPLEMENTARY INFORMATION: The purpose is to allow consolidation of surface and subsurface ownership for the land described above, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interests in the United States interferes with or precludes appropriate non-mineral development of the land and such development would be a more beneficial use of the land that its mineral development.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application, or two years from date of filing of the application, January 16, 1990, whichever occurs first.

Dated: June 20, 1990.

Patricia E. McLean,

Associate District Manager.

[FR Doc. 90-16990 Filed 7-19-90; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

[DES 90-19]

Alaska Region; Availability of the Draft Environmental Impact Statement and Locations and Dates of Public Hearings on the Proposed Chukchi Sea Lease Sale 126

The Minerals Management Service (MMS) has prepared a draft Environmental Impact Statement (EIS) relating to the proposed 1991 Outer Continental Shelf oil and gas lease sale of available unleased blocks in the Chukchi Sea. The proposed Chukchi Sea Sale 126 will offer for lease approximately 23.7 million acres. Single copies of the draft EIS can be obtained from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99503-4302, Attention: Public Information. Copies can also be requested by telephone, (907) 261-4435.

Copies of the draft EIS will also be available for inspection in the following public libraries: Arctic Environmental Information and Data Center, University of Alaska, 707 A Street, Anchorage, Alaska; Army Corps of Engineers Library, U.S. Department of Defense, Anchorage, Alaska; Alaska Resources Library, U.S. Department of the Interior, Anchorage, Alaska; University of Alaska, Anchorage Consortium Library, 3211 Providence Drive, Anchorage, Alaska; Fairbanks North Star Borough Public Library (Noel Wien Library), 1215 Cowles Street, Fairbanks, Alaska; Elmer E. Rasmuson Library, 310 Tanana Drive, Fairbanks, Alaska; Alaska State Library, Juneau, Alaska; Alaska Field Operation Center Library, U.S. Department of Interior, Bureau of Mines, Juneau, Alaska; Juneau Memorial Library, 114—4th Street, Anchorage, Alaska; Kenai Community Library, 163 Main Street Loop, Kenai, Alaska; University of Alaska-Juneau Library, 11120 Glacier Highway, Juneau, Alaska; Kettleson Memorial Library, Sitka, Alaska; Soldotna Public Library, 235 Binkley Street, Soldotna, Alaska; Alakanuk Public Library, Alakanuk, Alaska; North Slope Borough School District Library/Media Center, Barrow, Alaska; Brevig Mission Community Library, Brevig Mission, Alaska; Buckland Public Library, Buckland, Alaska; Davis Menadelook Memorial H.S. Library, Diomede, Alaska; Elim Community Library, Elim, Alaska; Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska; University of Alaska, Fairbanks, Institute of Arctic Biology, 311 Irving Building, Fairbanks, Alaska; Gambell Community Library/Learning Center, Gambell, Alaska; Golovin Community Library, Golovin, Alaska; Kaveolook School Library, Kaktovik, Alaska; Kiana Elementary School Library, Kiana, Alaska; McQueen School Library, Kivalina, Alaska; George Francis Memorial Library, Kotzebue, Alaska; Koyuk City Library, Koyuk, Alaska; Kegoayah Kozga Public Library, Nome, Alaska; Noorvik Elementary/High School Library, Noorvik, Alaska; Tikigaq Library, Point Hope, Alaska; Savoonga Community Library, Savoonga, Alaska; Shaktoolik School Library, Shaktoolik, Alaska; Nellie Weyiouanna Ilisaavik Library, Shishmaref, Alaska; Stebbins Community Library, Stebbins, Alaska; Ticasuk Library, Unalakleet, Alaska; Kingikme Public Library, Wales, Alaska; and Nuiqsut Library, Nuiqsut, Alaska.

In accordance with 30 CFR 256.26, the MMS will hold public hearings to receive comments and suggestions relating to the EIS.

The hearings will be held on the following dates and times indicated:

August 27, 1990

North Slope Borough, Assembly Chambers, Barrow, Alaska, 7:00 p.m.

August 28, 1990

Community Center, Wainwright, Alaska, 7:00 p.m.

August 29, 1990

Community Center, Point Lay, Alaska, 7:00 pm.

August 31, 1990

University Plaza Building, 949 East 36th Avenue, Room 601, Anchorage, Alaska, 1:00 p.m. zs

The hearings will provide the Secretary of the Interior with information from Government agencies and the public which will help in the evaluation of the potential effects, including effects on subsistence uses, of the proposed lease sale.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearings are asked to contact the Regional Director at the above address or George Allen by telephone, (907) 261-4080, by Monday, August 6, 1990.

Time limitation may make it necessary to limit the length of oral presentations to 10 minutes. An oral statement may be supplemented by a more complete written statement which may be submitted to a hearing official at the time of oral presentation or by mail until September 11, 1990. This will allow those unable to testify at a public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments.

Comments concerning the draft EIS will be accepted until September 11, 1990, and should be addressed to the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508-4302.

Ed Cassidy,

Deputy Director, Minerals Management Service.

Dated July 11, 1990.

Approved:

Willie R. Taylor,

Director, Office of Environmental Affairs.

[FR Doc. 90-16766 Filed 7-19-90; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency For International Development

Meetings; Research Advisory Committee

Pursuant to the provisions of the Federal Advisory Committee Act, notice

is hereby given of the A.I.D. Research Advisory Committee meeting on August 9-10, 1990 in Conference room 'C' of the Pan American Health Organization Building, 525 Twenty-Third Street NW., Washington, DC. The Committee will (1) present final reports and recommendations on Peer Review of Research and Global Warming; (2) continue its discussion on Forestry Research and bio-diversity; and (3) begin preliminary consideration of A.I.D.'s Agriculture Strategic Plan.

The meeting will begin at 8:30 a.m. on both days and adjourn at 5 p.m. on August 9 and 12 noon on August 10. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent time available for the meeting permits. Minutes of the meeting will be available upon request. Dr. Curtis R. Jackson, Director, Office of Research and University Relations, Bureau for Science and Technology, is designated as the A.I.D. Representative at the meeting. Persons desiring more specific information should contact Dr. Jackson at (703) 875-4005 or AID/S&T/RUR, room 309, SA-18, Washington, DC 20523-1807.

Dated: July 10, 1990.

Curtis R. Jackson,

A.I.D. Representative, Research Advisory Committee.

[FR Doc. 90-16991 Filed 7-14-90; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Exemption

[Finance Docket No. 31695]

CSX Transportation, Inc.; Merger Exemption, Carolina, Clinchfield and Ohio Railway of South Carolina, et. al.

Carolina, Clinchfield and Ohio Railway of South Carolina (CCSC), Carolina, Clinchfield and Ohio Railway (CCOR), and CSX Transportation, Inc. (CSXT), have filed a notice of exemption to merge CCSC and CCOR into CSXT, on or after June 27, 1990.

CSXT, a Class I rail carrier, conducts operations in 19 states, the District of Columbia, and the Province of Ontario, Canada. CCSC and CCOR are non-operating lessors to CSX Corporation, Inc. (CSX). CSXT, CCSC, and CCOR are wholly owned subsidiaries of CSX.[1] CSX also controls other railroad companies, a barge line, and an ocean container shipping line.

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The proposed transaction is intended to effect operating efficiencies.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201; and Peter J. Shudtz, CSX Corporation, Inc., 901 East Cary Street, P.O. Box C-32222, Richmond, VA 23219.

Decided: July 12, 1990

By the Commission, Joseph H. Dettmar, Acting Director, Office of proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-16902 Filed 7-19-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 93X)]

Missouri Pacific Railroad Co.—Discontinuance of Trackage Rights Exemption—In Labette and Montgomery Counties, KS

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights to discontinue its trackage rights over a 28.56-mile line of South East Kansas Railroad Company (SEX) between milepost 393.44 near Chetopa, and milepost 422.00, near Coffeyville, in Labette and Montgomery Counties, KS. SEX will continue to operate over the line.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 19, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c) (2) [2] must be filed by July 30, 1990. Petitions for reconsideration must be filed by August 9, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Dennis W. Wilson, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE

[1] CSXT became part of the CSX System pursuant to Commission approval in *CSX Corp.—Control—Chessie and Seaboard C.L.I.*, 363 I.C.C. 518 (1980).

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

will issue the EA by July 25, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 10, 1990.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-16901 Filed 7-19-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31699]

Exemption

Pioneer Railroad Co., Inc.; Continuance in Control Exemption; Wabash and Grand River Railway Co., et al.

Pioneer Railroad Company, Inc. (Pioneer), has filed a notice of exemption to continue to control Wabash & Grand River Railway Co. (Wabash) and West Jersey Railroad Co. (West Jersey). Pioneer, a publicly held corporation, has a West Jersey Railroad Division (Division) that is a class III carrier operating in New Jersey. Pioneer owns Wabash, also a class III carrier, operating in Missouri. Pioneer plans a corporate restructuring. It will spin off Division into a subsidiary corporation, West Jersey. Pioneer will cease being, and West Jersey will become, a class III carrier. Pioneer will own all of West Jersey's stock as well as retaining stock ownership of Wabash.[1]

Pioneer indicates that: (1) The properties operated by Wabash and West Jersey will not connect with each other or with any other railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or with any other railroad in their corporate family; and (3) the transaction does not involve a Class I carrier.

Pioneer also indicates that this transaction within its corporate family will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the corporate family.

Therefore, this transaction is exempt from the prior review requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d) (2) and (3).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Carrie L. Bumgarner, Suite 1107, 1700 K Street, NW., Washington, DC 20006.

Decided: July 12, 1990.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-16903 Filed 7-19-90; 8:45 am]

BILLING CODE 7035-01-M

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[1] Pioneer also owns all of the stock of Pioneer Railroad Equipment Company, LTD, which is not regulated by the Commission.

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room 5-3014, Washington, DC 20210.

Modifications to General Wage

Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

District of Columbia, DC90-1 (Jan. 5, 1990). p. 79. p. 86 p. 443. pp. 444-446.

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Arizona, AZ90-2 (Jan. 5, 1990). p. 15. p.16, 19.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238.

When ordering subscription (s), be sure to specify the State (s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 13th Day of July, 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90-16770 Filed 7-19-90; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-24,173]

Besly Products Corp., Greenfield, MA; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated June 8, 1990, local #274 of the United Electrical Workers (UE) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 18, 1990 and published in the Federal Register on June 7, 1990 (55 FR 23309).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that Morse Tool, which the Department certified earlier, produced the same drills as Besly Products and sold them to Besly's customers. The union also claims that Titex, located in the same building as Besly Products, imports and sells drills to Besly's customers.

Investigation findings show that Besly Products and Morse Tool did not share the same major customers. The Department surveyed the major customers of both companies. The Department's survey found that the major customers of Besly did not increase their import purchases of drills while reducing their purchases from Besly in the relevant time periods. Customers of Morse Tool, on the other hand, increased their import purchases while reducing their purchases from Morse Tool during the applicable time periods.

Other findings show that the drills produced by Titex do not compete with those formerly produced at Besly Products in Greenfield. Titex produces specialized drills for a different market segment than that formerly held by Besly at Greenfield.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. The contributed importantly test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of Besly's major customers showed that none of the customers which reduced their purchases from the subject firm reported increasing their import purchases.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this July 13, 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-17015 Filed 7-19-90; 8:45 am]

BILLING CODE 4510-30-M

Orweco, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-24,068, Headquarted in Mechanicsburg, Pennsylvania, TA-W-24,068A, Various Locations in the State of Pennsylvania, TA-W-24,068B, New York, NY.

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 24, 1990 applicable to all workers of Orweco, Inc., in Pennsylvania and New York, New York. The notice was published in the Federal Register on May 3, 1990 (55 FR 18687).

Based on new information from the company, a few additional workers were retained for close down operations beyond the March 24, 1990 termination date. Therefore, the certification is amended by deleting the previous termination date and inserting a new termination date of June 1, 1990. The

amended notice applicable to TA-W-24,068 is hereby issued as follows:

"All workers of Orweco, Inc., Mechanicsburg and various locations in the State of Pennsylvania and New York, New York who became totally or partially separated from employment on or after February 12, 1989 and before June 1, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this July 13, 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-17014 Filed 7-19-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,195]

The Timken Co., Canton, OH; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated June 7, 1990, Local 1123 of the United Steelworkers of America (USW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 25, 1990 and published in the **Federal Register** on June 7, 1990 (55 FR 23309).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that imports of tapered roller bearings contributed importantly to worker separations and sales or production declines at Canton.

Investigation findings show that average employment of production workers increased in 1989 compared to 1988. Other findings show company sales of tapered roller bearings increased in 1989 compared to 1988. Company sales of tapered roller bearings were essentially equivalent in the first quarter of 1989 compared to the first quarter of 1988.

Other findings show a 37 day work-stoppage from September 25, 1989 until November 1, 1989. The work-stoppage caused the company to lose a number of orders. Accordingly, sales and production data for the last quarter of 1989 and the first quarter of 1990 were adversely affected by the work-stoppage. This made it necessary for the company to reduce its labor force. Orders and production have not yet returned to pre-strike levels.

Further, the Canton workers producing tapered roller bearings were recently denied eligibility to apply for adjustment assistance benefits under petition TA-W-23,245 issued on September 29, 1989. That determination was based on increased plant production and company sales during the period under investigation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this July 13, 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-17016 Filed 7-19-90; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-90-94-C]

Grace Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Grace Coal Corporation, P.O. Drawer N, Haysi, Virginia 24256 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 2 Mine (I.D. No. 44-01246) located in Russell County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that canopies be installed on the mine's electric face equipment.

2. Due to the undulation of the roof and floor, petitioner states that the installation of canopies on the mine's electric face equipment would result in a diminution of safety because canopies would dislodge permanent roof support.

3. For this reason, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 20, 1990. Copies of the petition are available for inspection at that address.

Dated: July 12, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-17009 Filed 7-19-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-96-C]

Pontiki Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Pontiki Coal Corporation, Caller No. 801, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Pontiki No. 2 Mine (I.D. No. 15-09571) located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air in the belt entry to ventilate active working places.

(a) In support of this request, petitioner states that an early warning fire detection system would be installed with carbon monoxide (CO) sensors in all belt entries utilized as intake aircourses. The CO system would be capable of giving warning of a fire for four hours should the power fail;

(b) A visual alert signal would be activated when the CO level is 10 parts per million (ppm) above the ambient level and an audible signal would sound at 15 ppm above the ambient level. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The CO monitoring system would initiate the fire alarm signals at an attended surface location where there is two-way communication. This responsible person would notify the working sections and other personnel who may be endangered when the established alarm levels are reached;

(c) The CO monitoring system would be visually examined at least once each shift when the belts are in operation and tested for functional operation weekly to ensure the monitoring system is

functioning properly. The CO sensors would be calibrated monthly with known concentrations of CO and air mixtures; and

(d) If at any time the CO monitoring system has been deenergized for reasons such as routine maintenance or failure of a sensor unit, the belt conveyor may continue to operate provided the affected portion of the belt conveyor entry would be continuously patrolled and monitored for CO by a qualified person using a hand-held CO detecting device.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 20, 1990. Copies of the petition are available for inspection at that address.

Dated: July 12, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-17010 Filed 7-19-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-100-C]

Rickett Branch Mining; Petition for Modification of Application of Mandatory Safety Standard

Rickett Branch Mining, P.O. Box 361, Woodbine, Kentucky 40771 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-16712) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors as outlined in the petition.

3. In support of this request, petitioner states that:

(a) No methane has been detected in the mine;

(b) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(c) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exced 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips; and

(d) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 20, 1990. Copies of the petition are available for inspection at that address.

Dated: July 12, 1990.

Patricia W. Silver,

Director, Office of Standards, Regulations,

Amendment No. and Variances.

[FR Doc. 90-17011 Filed 7-19-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-79-C]

Twentymile Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Twentymile Coal Company, P.O. Box 748, Oak Creek, Colorado 80467 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Foidel Creek Mine (I.D. No. 05-03836) located in Routt County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that except where permissible power connection units are used, all power-connection points outby the last open crosscut be in intake air.

2. As an alternate method, petitioner proposes to operate two non-permissible pumps in boreholes that are drilled into a sump area of the mine.

3. The pumps are located within boreholes continuously under water separating the electrical components of the pumps from the mine atmosphere.

4. In support of this request, petitioner states that—

(a) The pumps cannot start or operate if water is below the low water probe level; and

(b) The pump installation would be equipped with a water level indicator consisting of a green light located at the pump electrical controls on the surface.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition many furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 20, 1990. Copies of the petition are available for inspection at that address.

Dated: July 12, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-18012 Filed 7-19-90; 8:45 am]

BILLING CODE 4510-43-M

Office of Workers' Compensation Programs

Report of Computer Matching Program Between Department of Labor and Department of Health and Human Services, Social Security Administration

Participating Agencies: The participating agencies in this computer matching program are the Department of Labor (DOL) and the Department of Health and Human Services, Social Security Administration (SSA).

Purpose of Match: DOL intends to conduct a computer matching program of DOL and SSA records of Black Lung benefit recipients. The goal of the match is to detect individuals who improperly

receive dual Black Lung benefits from SSA and DOL. When a verified match occurs, the case will be referred to the proper DOL office for development to assure the validity of the match and to make any required benefit adjustments. The SSA data will contain the date of death of SSA beneficiaries. This information will assist in identifying those cases in which a DOL beneficiary has died, but DOL has not been notified of the death. The SSA data also will assist DOL in properly referring inquiries and correspondence regarding SSA-only Black Lung beneficiaries.

Authority for Conducting the Matching Program: Title IV of the Federal Mine Safety and Health Act, 30 U.S.C. 901, *et seq.*

Categories of Records and Individuals Covered: SSA, as the source agency, will provide DOL with its Black Lung Payment System HHS/SSA/OURV (47 FR 45610, October 13, 1982) which will be matched against DOL's Office of Workers' Compensation Programs' Black Lung Benefit Payment records contained in DOL/ESA-30 (55 FR 7131, February 28, 1990). The individuals covered will be DOL and SSA Black Lung beneficiaries.

Inclusive Dates of the Matching Program: The Matching program will begin August 15, 1990, and will continue for 18 months from the beginning date and may be extended for additional 12 month periods thereafter.

Address for Receipt of Public Comment: Lawrence W. Rogers, Director, Office of Workers' Compensation Programs, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523-7503.

Signed at Washington, DC, this 11th day of July 1990.

Lawrence W. Rogers,

Director, Office of Workers' Compensation Programs.

[FR Doc. 90-17013 Filed 7-19-90; 8:45 am]

BILLING CODE 4510-27-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28201; File No. SR-CBOE-90-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Exercise of an Entitlement to Membership

Pursuant to section 29(b)(2) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 27, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is as follows (italics indicate additions):

Rule 3.16 Special Provisions Regarding CBOE Memberships.

(a) and (b) No change.

(c) Board of Trade Exercisers.

For the purpose of continued entitlement to membership on the Exchange in accordance with Section 2.1(b) of the Constitution and paragraph (b) of Article Fifth of the Certificate of Incorporation of the Exchange, the term "member of the Board of Trade of the City of Chicago" (the "Board") is interpreted to mean a single individual or organization in possession of a full Board membership as described below. Such membership shall consist of all the trading rights and privileges afforded to Board memberships as in existence on February 4, 1972 (the date the Exchange's Certificate of Incorporation was adopted) except for such rights and privileges which the Exchange may exclude. Where the member is an organization, one individual must possess all of a full membership's trading rights and privileges on the Board. If any part not excluded by the Exchange (but less than all) of a full membership's trading rights and privileges on the Board is sold, leased, licensed, delegated or in any other fashion transferred, then neither the transferror or the transferee of such rights and privileges shall be deemed to be a "member of the Board" entitled to Exchange membership. If a full membership's trading rights and privileges, as they existed on February 4, 1972, should be split into two or more sets of rights or privileges or be segmented or separated in any other manner, then, in order for an individual or organization to be deemed to be in possession of all the pertinent and regular trading rights and privileges afforded such full membership, such individual or organization must be in possession of, and have pertinent and regular trading rights and privileges with respect to all of the split, segmented or separated parts of such original membership except for those excluded by the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of this interpretation is to assure that the spirit and the letter of the agreement by which the CBOE was created by the Chicago Board of Trade ("CBOT"), and by which the CBOT and the CBOE have conducted their affairs, is maintained.

In Article 5(b) of the CBOE's Certificate of Incorporation, the CBOE recognized the special contributions made by those membership holders of the CBOT during the organizing and developing period of the CBOE. The recognition extended by the CBOE consists of allowing the present holder of each CBOT membership, which existed at the time of the incorporation of the CBOE, the right to apply (exercise) for membership on the CBOE without purchasing a CBOE issued membership. The rule clarification is proposed for the purpose of specifically stating that only full CBOT memberships which possess all the trading rights afforded such memberships, except for such rights and privileges which the Exchange may exclude, will qualify for CBOE membership pursuant to Article 5(b) of the CBOE's Certificate of Incorporation. At the time when the CBOE was incorporated, there existed a limited number of full memberships on the CBOT which were assigned an exercise (membership) privilege on the CBOE.

The Rule clarification also addresses the possibility of a full membership split or the multiple party use of such membership by the CBOT. If a split would occur, enough split (fractional) memberships of a full membership, as of the time of the CBOE's incorporation, would be required to form a full CBOT membership capable of exercise (membership) privileges on the CBOE.

Any multiple party use of one CBOT membership would preclude a CBOE exercise (membership) privilege.

(2) Basis

The CBOE believes the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it provides, among other things, that the rules of the Exchange are to be designed to promote just and equitable principles of trade and are not to be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The CBOE consents to the inclusion of the comments to File No. SR-CBOE-90-11 as part of this filing.[1]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 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 File No. SR-CBOE-90-21 and should be submitted by August 10, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 1 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-16963 Filed 7-19-90; 8:45 am]

BILLING CODE 8010-01-M

[1] File No. SR-CBOE-90-11 was filed with the Commission on May 2, 1990, and subsequently was withdrawn on June 27, 1990. With regard to SR-CBOE-90-11, the Commission received four comment letters and a petition for abrogation. The Commission will consider each of these letters and the petition as comment letters to the present filing.

[Rel. No. 34-28198; File No. SR-MSRB-90-3]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Municipal Securities Rulemaking Board

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 22, 1990, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing proposed amendments to rule G-36 regarding the delivery of advance refunding documents to the Board, proposed amendments to rule G-8 on recordkeeping, and proposed amendments to Form G-36 (hereafter referred to as "the proposed rule change"). The Board requests that the Commission delay the effectiveness of the proposed rule change for a period of 30 days following the date of approval in order to allow dealers time to develop procedures to comply with the new requirements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commisson, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) In 1986, the Board monitored a situation involving issues which are "escrowed to maturity." The situation resulted from an attempt which was made to substitute securities deposited for escrow in an escrowed to maturity issue and to change the effective maturity of the issue with a second advance refunding. This problem created a substantial negative effect on the market value of all escrowed to maturity securities—a problem which was exacerbated when market participants were unable to obtain ready information on the terms in the issuer documents that described the original advance refunding. Although the Board published a notice on the situation, and adopted certain confirmation requirements to clarify which securities should be labeled as "escrowed to maturity," it could not, by rule, change the fact that the market did not have ready access to the information that would allow the securities to be properly described.

In response to a letter from the Board on this topic, in 1988, the SEC noted that, before a security is sold as "escrowed to maturity" or "pre-refunded to a call," the dealer "should have conducted a reasonable investigation to satisfy itself that the documents relating to the prior bond issue and the refunding bond issue, including the official statement and escrow trust agreement, support such characterization."

As a result of these activities, the Board determined that refunding documents should be added to G-36 for inclusion in its public access facility and the planned Municipal Securities Information Library ™ (MSIL) ™ system because of the importance of such information to the purchase and sale of the refunded issue.

In August 1989, the Board requested comment on draft rule G-36 which,

among other things, would have required underwriters to deliver to the Board certain refunding documents. The August 1989 version of rule G-36 defined refunding documents as those documents that "set forth the terms and conditions under which an issue of municipal securities is advance refunded, including the refunding escrow trust agreement, or its equivalent, and the notice of defeasance." The draft rule required the underwriter to deliver such documents within one business day of receipt from the issuer or its agent but no later than eight business days after the date of the final agreement to purchase, offer or sell the municipal securities.

A number of commentators on the draft rule expressed general approval for the delivery of refunding documents. Two commentators, however, were opposed to the definition of refunding documents in the rule. One commentator noted that the definition was vague, unnecessarily broad and placed an unwarranted burden on underwriters, as well as on the future users of the repository, because it could include a number of lengthy documents (*e.g.*, bond ordinances, legal opinions, escrow agreements and arbitrage certificates) that would not be useful but would have to be collected and delivered by underwriters. This commentator stated that the information regarding the escrow and scheduled redemptions of refunded bonds typically is available in the notice of defeasance and notice of call and suggested that the rule require the filing only of these documents for refunded issues. One commentator stated that the refunding documents called for in the rule often were beyond the control of the underwriter to obtain, at least prior to closing, and that refunding documents often are incomplete without reference to the documents of the refunded issue, for example, the refunded issue,s official statement. The commentator noted that these documents would not necessarily be available in the repository. Both commentators also questioned the timing of the delivery requirement, citing the possibility of changes in these documents until the closing of the issue.

Prior to adopting a delivery requirement for refunding documents, the Board decided to solicit further comment on a revised definition of refunding documents and the timing of delivery of these documents. In November 1989, the Board proposed revised draft amendments to rule G-36 which would define refunding documents to include the refunding escrow trust agreement, notice of defeasance, and trust indenture for the refunded issue (or their equivalents). The draft amendments also would require underwriters to send the refunding documents to the Board within one business day of closing of the issue. In its notice, the Board requested comment on whether additional information should be required (*e.g.*, the accountant's report on the adequacy of the escrow accoun t and the official statement for the refunded issue). In addition, the Board asked for comment on whether it should consider requiring trust indentures for all issues, not just refunded issues, to be sent to the Board.

After reviewing comments received on the notice, the Board adopted the proposed rule change. The proposed rule change would require underwriters of refunding issues to send two copies of the refunding escrow trust agreement, or its equivalent, if prepared by or on behalf of the issuer, and, if the escrow agreement is prepared, two copies of completed Form G-36(ARD) to the Board within five business days of the closing of the issue. For issues not subject to SEC Rule 15c2-12, the requirement to send advance refunding documents only applies if an official statement in final form is prepared for the refunding issue. In addition, within 60 days of the effective date of the proposed rule change, underwriters must provide two copies of advance refunding documents and Form G-36(ARD) for refunding issues underwritten since January 1, 1990. This "look-back" provision is identical to that currently included in rule G-36 regarding sending official statements to the Board.

Finally, the proposed rule change revises Form G-36 and provides for two forms—one form (Form G-36(OS)) to be sent with official statements and one (Form G-36(ARD)) to be sent with advance refunding documents. Technical amendments to rule G-8 also have been proposed to correspond with the two new forms.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Act, which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in municipal securities and, in general, to protect investors and the public interest. As noted by the Commission in its release approving rule G-36, Section 15B(b)(2)(C) is a broad grant of authority to the Board and provides ample authority for the Board's collection of OSs. The Commission also stated that it is essential that professionals and investors have access to complete and timely descriptive information about municipal securities and municipal securities issuers. Thus, to the extent it enhances information dissemination of new issue securities, rule G-36 is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Including advance refunding documents in the Board's public access facility, as well as in its planned MSIL system, will significantly increase the scope of information concerning refunded securities made available to the general public and market participants and thus, also is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. In addition, the proposed rule change would allow dealers to comply with the Commission's statement that, prior to the sale of municipal securities as escrowed-to-maturity or prerefunded to a call, a dealer should conduct a reasonable investigation to satisfy itself that the documents relating to the prior bond issue and the refunding bond issue, including the official statement and escrow trust agreement, support such characterization. Finally, the proposed rule change would allow the Board to consider possible rulemaking initiatives to ensure that customers have complete information regarding municipal securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it applies equally to all brokers, dealers and municipal securities dealers. The proposed rule change will permit the Board to gather information which it will then make available to any requestor. While no private information vendors currently are providing ARDs to market participants, the Board believes that the new availability of ARDs will encourage these vendors to sell these documents as well as to create and market value-added services based on these documents.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

As noted above, in August 1989, the Board published for comment draft rule G-36, including a provision to deliver

advance refunding documents to the Board. The Board received 10 comments in response to the draft rule. In November 1989, the Board published for comment revised draft amendments. The Board received five comments on these amendments.

a. Inclusion of Refunding Documents in Rule G–36

While three commentators support the Board's attempt to include refunding documents in the Board's public access facility and its planned MSIL system, two oppose it. One of the opposing commentators notes that, because the refunding issue's official statement typically contains a plan of refunding section, the information on the refunding that is material to investors will be filed with the Board. It also states that there are insufficient problems in disclosure regarding advance refunding issues to impose the additional requirement on the dealer community to send refunding documents to the Board. It recommends that information be sent on a voluntary basis. In addition, it states that the requirement to send certain documents (*i.e.*, the refunded issue's official statement and trust indenture) would be unfair to underwriters that may have no association with or access to the documentation for the refunded issue. One commentator adds that, particularly for competitive refunding issues, the underwriter may not be able to obtain a copy of the original trust indenture. One commentator states that requiring underwriters to send refunding documents to the Board may conflict with the Tower Amendment since it may foreclose issuers from access to the municipal underwriting market for advance refundings unless they provide the specified documents to underwriters for filing with the Board.

One of the opposing commentators notes that the sending of refunding documents will result in the disclosure of what it considers to be "proprietary" information. It adds that many of the new financing techniques found in refundings are described in the escrow agreement or appendices. If such agreements are included in the public access facility or the planned MSIL system, an investment banker could copy a competitor's technique by ordering the document. In addition, it states that, while investors should have access to information necessary to determine the security for the bond, when it will be repaid and, perhaps, the name of the escrow trustee or paying agent, refunding documents contain a great deal of information unrelated to these purposes.

While the commentators are divided on the benefits of including refunding documents in the Board's public access facility and its planned MSIL system, the Board continues to believe that such documents should be included. An advance refunding changes the credit for an outstanding issue of municipal securities. It is important that investors and dealers have information about these refunding plans. As noted above, the Commission has stated that dealers selling escrowed to maturity bonds should conduct a reasonable investigation to satisfy themselves that the official statement and the escrow agreement support such characterization—which materially impacts the price of the securities. While the escrow agreements generally are summarized in the official statement for the refunding issue, bondholders of the refunded issue do not receive this new official statement, which obviously contains a great amount of information on the refunding issue not relevant to the bondholders of the refunded issue. The most convenient way for investors and dealers to receive important information on refunded issues is to include certain specified refunding documents in rule G–36.

The Board does not believe that requiring underwriters to provide the documents would violate the Tower Amendment. The Board has defined advance refunding documents to include only escrow agreements. Such agreements would have to be provided only if they are "prepared by or on behalf of the issuer." This language is identical to that in rule G–32, regarding delivery of official statements. In addition, the Board believes that an escrow agreement, or its equivalent, is prepared for every refunding. It explains material information regarding a refunding and generally is available upon request. The escrow agreement is a "closing" document, which, the Board believes, underwriters have the right to, and, in fact, do receive a copy of at closing or shortly thereafter. Thus, the Board is not placing any disclosure requirements on issuers in violation of the Tower Amendment. Only if an escrow agreement is prepared would underwriters be required to provide it to the Board.

While one commentator is concerned that proprietary information may be disclosed in the escrow agreement, the Board believes that most escrow agreements are standard fare and, if there is any part of the document the underwriter believes is proprietary, the interests of investors in receiving information on the issue's credit outweigh any alleged proprietary financing techniques of the underwriter.

b. Definition of Refunding Documents

(i) *Escrow Agreements and Notices of Defeasance.* One commentator notes that the escrow agreement and notice of defeasance would be useful documents for inclusion in the MSIL system. One states that escrow agreements for refunded issues are lengthy, complex documents of only marginal utility for investors interested in the terms of the refunding. It notes that the material information on the refunding generally will be contained in the refunding issue's official statement and in the notice of defeasance. It adds that the notice of defeasance will probably be filed with the Board voluntarily. One commentator notes that, with appendices, such as the accountant's report, the length of escrow agreements can run from eight or 10 pages to more than 50 pages, resulting in unnecessary and lengthy documents being filed with the MSIL system.

(ii) *Trust Indentures.* Two commentators note the importance of the inclusion of the authorizing bond resolution and/or trust indenture in the MSIL system, since this is the document that represents the contract between the issuer and bondholders. Two commentators state that the trust indenture for the refunded issue, and trust indentures for all issues, probably should not be provided to the Board because underwriters may not have access to these documents and because the documents usually are summarized in official statements.

One commentator states that the original trust indenture contains a great deal of information unrelated to the refunding, most of which no longer applies once the bond is defeased by the refunding. It adds that inclusion of these documents will result in delivery of 20 to 100 pages of additional and unnecessary information. In addition, one commentator notes that trust indentures are subject to being amended over time. Thus, the initially-filed indenture may become outdated and inaccurate and, since it is unlikely that the underwriters will be involved in the amendment, the Board will not be in a position to require the filing of updates.

(iii) *Other Documents.* One commentator states that the official statement for the refunded issue (if not already on file), along with the relevant legal opinion, also should be included in the MSIL system. One commentator states that the official statement for the refunded issue should not be filed because the underwriter may neither

have access to the document nor the ability to verify its accuracy or completeness. It notes that, over time, these official statements will have already been filed with the Board.

In addition, one commentator notes that other closing documents, like arbitrage certificates, should not be included in the refunding documents definition. One notes that the accountant's report usually is not needed by investors. It notes that, if a problem arises, one should be able to locate the information.

(iv) *Discussion.*The Board has decided to define refunding documents to include the escrow agreement but not the notice of defeasance or trust indenture for the refunded issue or any additional information. Most escrow agreements the Board has reviewed are only eight to 10 pages long and include material information regarding the security for the refunded issue which should be available in the Board's public access facility and planned MSIL system.

While most escrow agreements include the notice of defeasance as an attachment, the Board does not recommend a separate filing of this document. It is not clear that a notice of defeasance is required for every issue or, if required, that it is published at or around closing. The Board believes that most notices of defeasance are published within 48 hours of closing; however, it has reviewed certain escrowed agreements which require the trustee to publish the notice only "within a reasonable period of time after the creation of the trust." The Board believes it would not be fair to require underwriters to send the notice to the Board within a certain period of time after closing unless the Board could be confident that the notices are sent at or shortly after closing. The Board also does not recommend a required filing "after receipt from the issuer" because there is no requirement that the issuer provide the notice to the underwriter since the notice, in final form, generally is not a "closing" document.

The Board also decided against the requirement that dealers send trust indentures for the refunded issue to the Board because of their length and the fact that, once an issue is refunded, little of the indenture remains relevant. Even though the Board is not recommending including indentures at this time, the Board may review this situation at some later time to determine if there is a demand for such documents. None of the other suggested additions (*e.g.*, accountant's report, refunded issue's official statement) garnered enough support among the commentators to add any additional requirements.

c. Timing of Delivery of Refunding Documents"

Two commentators state that any requirement for underwriters to deliver documentation under rule G-36 should hinge upon receipt of the document from the issuer. One notes that this is particularly true of refunding documents since they are issuer documents and, unlike official statements from issues subject to SEC Rule 15c2-12, underwriters have no regulatory basis to impose and enforce contractual provisions governing the delivery of refunding documents by issuers. It recommends that the rule be revised to require underwriters to send the required documents within a specified number of days after receipt of the final refunding documents from the issuer. It also notes that, if the Board wishes to retain the requirement for sending after closing, it should extend the time to at least three business days after closing to allow underwriters to obtain the necessary documents.

One commentator notes that the timing of delivery requirement in the draft amendment may be reasonable in most cases but it does not accommodate situations where the underwriter may not have access to the documents at closing because there may be last minute problems in production or dissemination. It states that voluntary filing would eliminate this timing problem; alternatively, the draft amendments could allow several days after closing for filing.

The Board determined to require that underwriters send the escrow agreement to the Board within five business days of closing. Documents for the issuer are finalized at closing, or shortly thereafter. A requirement to send them to the Board within five business days should not be onerous on the underwriting community. Although one commentator recommends that the delivery requirement be keyed to receipt from the issuer, underwriters do receive the document at closing (or at least a marked-up version). Any requirement using some more formalized delivery of the document from the issuer to the underwriter could raise problems similar to those found in enforcement of rule G-32, *i.e.*, if the issuer delays in "formally" providing the document, the underwriter would not receive it on time and would be unable to comply with the rule.

d. Miscellaneous

One commentator suggests that, as an alternative to a Board requirement that refunding documents be provided to the MSIL system, the Board should develop a form, much like Form G-36, which would include important information regarding the refunding which would be of interest to investors. It adds that, if possible, for competitively offered refunding issues, the responsibility to complete the form should be shifted to the financial advisor structuring the issue rather than the underwriter who will merely purchase and market the bonds.

One commentator suggests that if the Board determines to require a filing for advance refunded issues, it be limited to information furnished to the underwriter by the issuer describing the plan of refunding (typically this would be in the official statement already required to be filed and might be in a press release prepared by the issuer or an opinion of counsel delivered with respect to the defeasance) and any notice of defeasance provided by the issuer or the trustee.

The Board determined to require the sending of the complete escrow agreement. The Board's goal is to collect, store and make available the original documents, not summaries. Also, the use of a summary form for refunding information would raise the possibility of incorrect information being provided by the Board to the municipal securities market.

In addition, one commentator notes that the draft amendments require the sending of refunding documents for issues not subject to SEC Rule 15c2-12, even if no official statement is prepared. It states that this imposes a burden on small issues. It suggests that no documents should be required to be sent unless an official statement is prepared and sent. The Board has revised the draft amendments such that underwriters for issues not subject to Rule 15c2-12 will be required to send official statements, refunding documents, and the appropriate form only when an official statement, in final form, is prepared.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will 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 August 10, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 12, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-16960 Filed 7-19-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28199; File No. SR-MSRB-90-4]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Municipal Securities Rulemaking Board

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 22, 1990, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing a proposed facility, namely, the operation of the CONTINUING DISCLOSURE INFORMATION/ELECTRONIC SUBMISSION ("CDI/ES") system, hereinafter referred to as "the proposed rule change." The Board anticipates that the CDI/ES system will function as part of the Board's planned MUNICIPAL SECURITIES INFORMATION LIBRARY ™ system or MSIL ™ system. The Board requests that the Commission approve the proposed rule change by October 1, 1990, at which time the Board believes that the system can be ready for operation. The Board bases this request on its observation of problems relating to investor protection which currently exist because of the unavailability of certain types of disclosure information in the market. The Board believes that the proposed rule change will help to address those problems.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In the course of its rulemaking activities, the Board has observed a critical need for an improved flow of information about municipal securities issues bought and sold in the secondary market. In particular, the Board has observed that market participants, including dealers, often do not have access to official disclosure documents that have been prepared by issuers and trustees with respect to issues of municipal securities in the secondary market ("Continuing Disclosure Information" or "CDI").

Examples of CDI include periodic financial reports prepared by issuers, which reflect on the credit quality of the issuer's outstanding securities. Other types of CDI may be provided by the trustee for an issue. The security for many outstanding issues is structured around revenue from specific sources or specific assets (e.g., a hospital, a retirement center, a housing project). Trustees for these "structured" issues sometimes generate CDI in the form of notices or reports which bear directly upon the financial status of these issues and the likelihood of the issue defaulting or being redeemed early.

In recent years, more issuers are following the suggestions of issuer and analyst groups and providing CDI. In addition, as discussed below, the American Bankers Association ("ABA"), representing bank trustees, has published draft guidelines for bank trustees on CDI. Although the Board recognizes and strongly encourages these positive trends, it notes that there currently is no central source where CDI can be obtained. The Board strongly believes that, for CDI to be meaningful to the market participants, it must be readily accessible and that the Board should take appropriate action, within its authority, to ensure that this occurs.

Description of Problem

Board rules require dealers to explain to a potential customer all material facts about a proposed transaction, to recommend the transaction to the customer only if it is suitable for the customer and to price the transaction correctly. These requirements are for the protection of customers and are similar or identical to the requirements placed on dealers in other securities markets.

In monitoring industry practices pursuant to its rulemaking responsibility, the Board has encountered many situations in which the lack of readily available CDI has caused serious discontinuity in pricing. The Board has become aware of these problems through the direct experience of Board members who are active in the market, through telephone inquiries about Board rules received in the Board's offices, through arbitration summaries and customer complaints received at the Board's offices and through numerous conversations and informal meetings with dealers, analysts, investors, and information providers.

In a typical example of a problem, a trustee's report on the status of an issue may be provided exclusively to the record owners of the issue. This may result in some parties trading the securities with knowledge of the CDI while others do not have access to the information. After the information becomes generally known (which may be weeks or even months after the trustee has provided the information), the market price falls. Similar situations

may occur after an issuer has announced its intent to pre-refund securities, which effectively shortens the anticipated maturity date and may change the correct price for the security.

ABA Activities

In August 1989, the Board wrote the American Bankers Association regarding the Board's market regulation concerns stemming from trustee disclosure practices. In October 1989, representatives of the ABA informed the Board that their organization was engaged in efforts to establish voluntary guidelines for trustee disclosure. The ABA noted the need for a central repository to accept trustee disclosure notices and to provide the notices to the market. In January 1990, the Board published a notice on the system concept for the MSIL system and stated that providing the capability requested by the ABA would be an immediate priority for the Board. In June 1990, the ABA released "Proposed Disclosure Guidelines for Corporate Trustees," for comment ("ABA Draft Guidelines").

The ABA Draft Guidelines are designed to assist trustees in determining the content and timing of various types of disclosures on a voluntary basis. The intent of the Draft Guidelines is to ensure that appropriate disclosure notices are made available to the entire market. The Draft Guidelines state that the establishment of a central repository to receive CDI should be mandated by legislative or regulatory action. The Draft Guidelines also state that the CDI identified in the Draft Guidelines should be provided by trustees, unless otherwise noted, only to such a repository. The Draft Guidelines state that only current information received by trustees on or after the effective date of the repository should be provided.

As evidenced by the ABA efforts, the existence of a central repository, which provides a neutral, fair and timely dissemination mechanism for disclosure information, will encourage production of CDI by issuers and trustees and will facilitate voluntary efforts to address the information problems that continue to exist in the municipal securities market.

Board Activities on the MSIL System

The Board has appointed a Committee to oversee planning of the MSIL system (the "Repository Committee"). In connection with the MSIL system project, the Repository Committee and Board staff have interviewed issuers, analysts, investors, dealers and information vendors on information needs in the market. The Repository Committee held informal discussion groups in Chicago and New York in October 1989 and conducted formal meetings in January and February 1990 in New York, Dallas and Los Angeles to obtain comment on the Board's MSIL proposal. Although these meetings have been directed primarily at the need for official statements and advance refunding documents, the Committee heard a recurrent theme that better access to CDI was desperately needed.

The Board also published a system concept for the MSIL system. Three commentators on the system concept urged the Board to go foward to address access to CDI. The comments are discussed in the Board's filing with the Commission on the MSIL system, File No. SR-MSRB-90-2.

Need for Increased Access to CDI

Based on the experiences noted above, it has become apparent to the Board that better access to CDI is necessary for dealers to determine the material facts about a transaction, to determine if a transaction is suitable for a specific customer and to price the transaction correctly. The Board believes that, in many cases, lack of ready access to CDI is preventing dealers from fully satisfying their obligations to ensure customer protection as required under Board rules.

The Board believes that improved access to CDI is necessary not only so that dealers can comply with the Board's customer protection rules, but also to enhance the integrity and efficiency of the market. The lack of access to CDI not only creates problems in specific transactions, but also creates general inefficiency in the market. Market participants are aware that their transactions may be executed based on incomplete or erroneous information about the securities and this is necessarily taken into account in pricing transactions, thereby eroding the accurate pricing of those securities and the general efficiency of the market.

Finally, the Board believes that the existence of a central repository for CDI, which provides a neutral, fair and timely dissemination mechanism for disclosure information, would not only increase the availability of the CDI currently produced, but also would spur voluntary efforts in the industry to improve the content and timing of CDI. As noted above, a major trustee organization is working on voluntary disclosure efforts based upon assurances that their disclosure notices will receive quick, accurate and fair dissemination to the market by a neutral central repository. In addition, a major issuer organization has recommended that issuers send CDI on a voluntary basis to a central repository. The Board has strongly supported these efforts at voluntary guidelines by trustee and issuer groups and believes that the existence of a central repository for CDI will serve to make these efforts more effective.

Description of CDI/ES System

Based upon the considerations above, the Board has determined that it should establish a central facility to accept voluntary submissions of CDI from issuers and trustees and to provide those documents to any interested party in a manner that will ensure accurate, quick and fair access. Because CDI may have an immediate effect on the market price of securities, the Board believes that it is important that it establish a system which can disseminate information within minutes of its receipt. In addition, it is important for any system operated by the Board to provide total accuracy in reproduction of the information whenever it is disseminated. These requirements have led the Board to conclude that a system for electronic submission and dissemination of the CDI is required. The Board therefore is proposing to establish and operate the CDI/ES system.

Relationship to MSIL System

The Board plans to operate the CDI/ES system as part of the Board's planned MSIL system. The MSIL system also will include the OFFICIAL STATEMENT/ADVANCE REFUNDING DOCUMENT system ("OS/ARD" system). The OS/ARD system will accept and electronically record paper copies of official statements and advance refunding documents. The OS/ARD system will disseminate those documents electronically and on paper, with the purpose of increasing the availability of descriptive information on municipal securities issues. The CDI/ES system will accept only electronic submissions. The Board later may develop plans to accept and paper submissions of certain types of CDI and electronic submissions of official statements and advance refunding documents.

CDI will be offered from the CDI/ES system only in electronic format. The Board intends and expects that private information vendors will be actively engaged in disseminating CDI obtained from the CDI/ES system to individual market participants and end users and will include services which convert CDI to paper form for end users preferring that option.

A number of operational efficiencies will result from the joint operation of the CDI/ES system with the OS/ARD system, most notably the joint use of a central computerized MSIL index, which identifies issues, the documents on file with respect to those issues and the relationships between the issues and the documents on file. However, the CDI/ES system would be able to operate, albeit at reduced effectiveness, with a rudimentary internal indexing system not linked to MSIL.

The following is an explanation of the operation of the CDI/ES system.

Use of System to Make Disclosures

Any use of the CDI/ES system would be completely voluntary on the part of the information provider. The Board believes that issuers and trustees will use the system to ensure that sensitive information about an issue reaches the market in a fair and equitable manner. The Board notes that the ABA Draft Guidelines incorporate electronic submission of information to the Board by trustees for specific types of information that is considered to be of immediate importance to the market. During the initial operations phase, input to the CDI/ES system would be limited to issuers and trustees ("CDI providers"). If parties other than issuers or trustees seek to become CDI providers, the Board at that time will consider the appropriate policies and procedures to determine whether such sources are authorized by the issuer of the securities to provide official documents with respect to an issue.

Prior to accepting CDI from any source, CDI/ES personnel will establish a CDI provider file which includes the name of the organization, the person or persons responsible for the CDI and certain other information, including telephone numbers of the responsible persons. Procedures for CDI/ES personnel will ensure that any person seeking to establish a CDI provider file, in fact, does represent an issuer or trustee of municipal securities issues. The Board will verify the authenticity of a potential CDI provider through at least one external source.

Once the authenticity of the CDI provider is established, a file in the CDI/ES system for that information provider will be created. The CDI provider will be provided with a password and telephone number that allows it to access the input side of the CDI/ES system. The CDI provider then can input information using established input procedures. Use of CDI/ES to input information will, as described below, require the CDI/ES provider to have access to a personnel computer, modem and certain software. CDI/ES personnel will work with the CDI provider to ensure that it can readily use the system.

There would be no charge to issuers or trustees to use the CDI/ES system to make disclosures. As discussed below, the Board will assess fees from persons receiving information from the system.

In its initial operations phase, the CDI/ES system will accept short (one to three pages) textual disclosure documents ("disclosure notices"). The system also is being designed to accept standardized electronic files of information as are generated by commercially available electronic spreadsheet programs ("electronic files"). This capability may be added during the initial operations phase. The technical specifications and certain other format standards for electronic files would have to be established by CDI providers prior to incorporation in the system. This would be necessary to ensure that the system can process the files accurately and to ensure that recipients of the files are able to use them properly. The Board will work with issuers, trustees and their organizations to arrive at formats of electronic files that can be accepted and disseminated by the CDI/ES system. The Board will focus on inclusion of electronic files which meet uniform formats arrived at by issuer and trustee organizations.

After the initial operations phase, the Board may also expand the system to incorporate longer, more complex textual documents, which include charts and tables and images. Analysis and development of this system enhancement will proceed during the initial operations phase.

During the initial operations phase, issuers will be able to use the system to provide short, textual disclosure notices which contain disclosures that may be of immediate interest to the market. An example would be the issuer's intent to pre-refund an issue. During the initial operations phase, issuers also may be able to provide financial reports as electronic files. The ability of the CDI/ES system to process these files will depend, in part, on groups of issuers reaching agreement on use of standardized formats for electronic files.

Trustees would be able to use the system to disseminate disclosure notices that market participants sometimes refer to as "pre-default notices." Trustees currently produce notices of this type which are designed to inform bondholders of certain facts that are within the direct knowledge of the trustee, e.g., that a reserve fund has been invaded by the trustee. The events described in these notices, once known by the market, may significantly affect the price of the issue. By disseminating the notices through the proposed CDI/ES system, trustees will be able to ensure that all market participants have equal access to the same information at the same time. The Board intends to work with the ABA to coordinate standards for the type and format CDI that the CDI/ES system will accept.

The CDI/ES system will incorporate input procedures which "echo back" submissions to CDI providers through pre-established telephone numbers to assure authenticity of the source of the CDI and the accuracy of the transmission as received by the CDI/ES system.

Dissemination of Information

The Board will operate the output side of the CDI/ES system to ensure that the information is available in a fair and non-discriminatory manner to all interested parties who wish to subscribe to the service. This service would be provided via a modem-to-modem telephone link with the subscriber. The Board anticipates that it will require one or possibly two personal computers to support input and output modems. It is anticipated that the time-critical nature of the information will require subscribers to have access to dedicated telephone lines and modems to ensure immediate receipt of information provided by the system. CDI would be sent simultaneously to each subscriber. As with all MSIL services, this service would be available, on equal terms, to any party who requests it.

The Board believes that parties interested in subscribing to the CDI/ES service will include information vendors who wish to resell the CDI through their own distribution networks. The Board also is looking at means to ensure that CDI/ES information is made available on computer network services that serve the general public as well as through information vendors specializing in the municipal securities market.

CDI would be stored by the CDI/ES system for three months. This will accommodate subscribers who may have missed transmission of the data due to technical problems. The Board also intends to index and archive the notices in the MSIL system for the life of the issue.

The CDI/ES system will be available to accept and disseminate CDI on business days on which the Board's offices are open (generally all business days except for federal holidays). The hours of operation will be from 9:30 a.m. Eastern Time until 4:30 p.m. Eastern Time.

Principles for Operation of the CDI/ES System

In August 1989, the Board announced the guiding principles for design and operation of a repository of official statements and advance refunding documents. The Board will operate the CDI/ES system consistent with those guiding principles, as made applicable to electronic CDI documents. The guiding principles for the CDI/ES system accordingly are:

1. The purpose of the CDI/ES system is to collect, electronically store and disseminate CDI for municipal securities issues to improve accessibility of information about municipal securities.

2. The CDI/ES system will be planned and operated in a manner that will provide equal access to documents to any interested person in a non-discriminatory manner, in a manner that will not confer special or unfair economic benefit to any person, and in a cost-effective manner supported by a combination of Board funds and user fees.

3. The Board will encourage and facilitate the development of information dissemination services by private vendors, but the CDI/ES system will be planned and operated in a manner to preserve its flexibility to meet additional information needs, beyond electronic dissemination of CDI, when there is a clear and continuing failure by private sector information sources to provide information that is essential to the integrity and efficiency of the market.

4. The CDI/ES system will be planned and operated in a manner to ensure as much flexibility as possible in adjusting to changes in technology of document storage and dissemination and to changes in disclosure practices in the market.

In addition, the Board's operation of the facility will be subject to several important legal and policy constraints:

1. The Board has no statutory authority to regulate the content of disclosure by municipal securities issuers or trustees or to require these parties to submit information to the system.

2. The CDI/ES system will not alter the substance of the CDI received or summarize the submissions.

3. The CDI/ES system will not store or transmit documents in any way that would be likely to introduce errors into the data.

The background and applicability of the guiding principles for the MSIL project are more fully discussed in the Board's filing on the MSIL system (File No. SR-MSRB-90-2).

System Decision and Facilities Management

The Board believes that the system design for the CDI/ES system is reasonably designed to handle the anticipated flow of documents. As noted above, the CDI/ES system will accept only electronic submissions and will disseminate those submissions in the same electronic format. This will provide the system with great tolerance to any increases in volume, since there will be very little manual processing involved for each submission. Since electronic submissions in the initial operations phase will be disclosure notices or electronic files, the time necessary to receive and transmit a CDI at 1200 BAUD will be measured in seconds, meaning that CDI providers normally should not have to wait long periods to access an input modem. If addititional capability is needed as more CDI providers are added, additional computers and modems can easily be added for input or subscribers.

The Board also believes that the system is reasonably designed to prevent any external or internal physical attacks on the system. The procedures for a caller to establish a CDI provider file ensure that a bank trustee or an issuer (or its designated agent) will be sending the information. The input procedures require passwords for access and ensure that any CDI received by the system actually has come from the location established in the CDI provider file. At this time, the Board has not determined what portion, if any, of the CDI/ES would be operated by an outside facilities manager. If all or a portion of CDI/ES operations are carried out by a facilities manager, the Board anticipates that it would be the same facilities manager selected for the OS/ARD system. Any facilities manager selected for the CDI/ES system would be subject to the same or more stringent contractual standards for reliability, security, back-up capabilities and conflict of interest as are applicable to the facilities manager for the OS/ARD system, and which are described in the Board's filing on that system (File No. SR-MSRB-90-2). For any portions of the CDI/ES system operated directly by Board personnel, similar procedures will be adopted to accomplish these same ends.

Cost and Fees for Use of the System

Because of the electronic submission and dissemination of CDI, the Board believes that the CDI/ES system will be able to operate on a very cost-effective basis. Equipment costs for the system will largely be limited to one or two personal computers and associated peripheral devices, such as modems to receive and transmit CDI. Personnel costs for processing individual CDI submissions will be minimal because of the automated procedures for accepting and disseminating the data. Personnel time will be needed in the creation of CDI provider files, in ensuring that CDI providers are capable of using the system efficiently and in servicing subscribers. These costs should decline as CDI providers become familiar with the system. Total operational costs each year will depend in part on the number of CDI provider files created and the number of subscribers. At this time, the Board contemplates that operational costs will fall within a range of $100,000 per year or less.

Although Board funds will be expended to initiate the project, the Board intends that the operational costs of the CDI/ES system ultimately will be supported entirely from yearly subscription fees paid by persons who receive information from the system. Subscribers also will be assessed for the cost of telephone lines and modems dedicated to their use at the system. The Board anticipates that it will begin with an annual subscription fee of $5,000 and review costs and fees annually, thereafter.

The Board believes that the CDI/ES system is a cost-effective approach to placing CDI within easy access of market participants. The Board believes that Board funds necessary to develop and begin operations of the system are more than outweighed by: (1) The benefits to investors of a central electronic source of CDI; (2) the benefits to information vendors of easily accessible electronic information; and (3) enhanced market integrity and efficiency resulting from improved access to CDI.

The Board does not intend or expect to operate the CDI/ES system to generate net revenues to the Board. During its annual review of fees, the Board will adjust subscription fees in accordance with this principle.

Board's Current Efforts to Plan the CDI/ES System

Because the lack of access to CDI currently is causing specific market regulation problems, the Board believes that it is important to move quickly to establish the CDI/ES system. The Board now is establishing a prototype of the CDI/ES system to demonstrate the technical feasibility of the electronic submission and dissemination aspects of the system and to refine the technical requirements and specifications of the

system. The Board will invite trustees and issuer groups to participate in the prototype. The Board is in the process of forming an outside advisory committee on the CDI/ES system to obtain input during the continuing development and the initial operations phase. The advisory committee will include representatives who can offer perspectives from a variety of viewpoints. The Board plans for the committee to include issuers (both state-wide and local issuers), bank trustees, investor representatives, bond counsel, public finance professionals, sales and trading personnel, bond analysts and information vendors.

The Board anticipates that the CDI/ES system can be ready to begin its initial operations phase by October 1, 1990, if Commission approval is obtained by that time.

The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Act, which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in municipal securities and, in general, to protect investors and the public interest. As noted by the Commission in its release approving rule G-36, Section 15B(b)(2)(C) of the Act is a broad grant of authority to the Board and provides ample authority for the Board's collection of official statements. The Commission also stated that it is essential that professionals and investors have access to complete and timely descriptive information about municipal securities and municipal securities issuers. The Board believes that the same principles apply with even greater force to CDI.

The Board believes that the proposed rule change will make it possible for dealers to comply with customer protections rules adopted by the Board. The Board also believes that the proposed rule change will enhance dissemination of CDI and encourage voluntary efforts by issuer and trustee groups to improve disclosures to the market and, to the extent that this occurs, market integrity and efficiency will be improved. The proposed rule change is thus designed to prevent fraudulent and manipulative acts and practices, to perfect the mechanisms of a free and open market and to protect investors and the public interest.

The Board's guiding principles for the CDI/ES system, listed above, are consistent with the Act because they seek to ensure that the operation of the MSIL system will assist all participants in the market, provide for equal access to all its information and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

As noted above, MSIL system costs will be paid for by a combination of the general revenues of the Board and user fees. The vast majority of the Board's general revenues are provided by underwriter assessment fees, adopted pursuant to section 15B(b)(2)(J) of the Act, which states that the Board may set reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. The Board believes that the use of such revenues for the CDI/ES system expenses is reasonable because the CDI/ES system will benefit the municipal securities market with increased market integrity and efficiency and investor protection. As also noted above, the Board intends that the CDI/ES system ultimately will be self-supporting with respect to its operational costs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the Act. The Board currently is unaware of any information vendor offering CDI documents. Traditionally, it has been difficult for information vendors to collect and disseminate CDI because there is no central collection point for the documents and because of the high costs of locating official documents from thousands of issuers and trustees and the costs of receiving, sorting, storing, and processing these paper documents in a timely fashion. These factors help to explain why the municipal securities market has few of the information products with respect to continuing disclosure that are commonplace in the corporate securities market.

The MSIL system is pro-competitive because it will offer potential and existing information vendors, for the first time, an inexpensive source for official, continuing disclosure documents. The CDI/ES system also will facilitate competition because, as discussed above, it: (1) Will provide equal access to documents to any person; and (2) will not confer special or unfair economic benefit to any person. Most importantly, the Board will encourage information vendors to disseminate information acquired from the CDI/ES system in any format which can be marketed. There will be no restriction or extra charge for redistribution of CDI from the system. By operating on this basis, CDI/ES will dramatically lower the cost of entering this information market and promote the offering of new products.

The Board believes that the demand for CDI in the municipal securities market is strong and that, once a central electronic source of data is available, most major market participants will insist on receiving it on a close to real-time basis. The Board expects that this need will be served by information vendors, primarily through telecommunication links which the vendors have already established with their customers. The electronic format of the information will provide an inexpensive and efficient means for information vendors to re-deliver the information to their customers with little or no delay.

Although the Board will offer subscriptions to CDI/ES to all parties on an equal basis, the Board believes that end users, who already have telecommunication terminals with various information vendors, will seek to have the CDI delivered through those terminals, rather than opting for new, full-time telecommunication links with another party. Information vendors also will be able to provide additional sorting, formatting, and analytical information based on the CDI obtained from the system and this will tend to make private information vendors more attractive alternatives to most end users.

One information vendor commenting on rule G-36 stated that it had been in communication with an issuer group and planned to respond to a request for proposal which the issuer group was to produce, relating to the dissemination of certain CDI. The commentator stated that, if the Board went forward with its plans to disseminate CDI, the Board would be "in direct competition with [the information vendor]."

The Board does not have access to the plans of the issuer group or the plans of the information vendor with respect to future information dissemination systems. Nevertheless, the Board believes it is unlikely that the information vendor would be offering a service equivalent to the CDI/ES system, since the CDI/ES system would be limited to supplying official documents to all interested persons on an equal basis and would have no restrictions on redistribution and resale of the information. The Board believes that the information vendor's plans more likely would involve the dissemination of a proprietary information product.

The Board will not respond to any request for proposal made by an issuer

or trustee group for information services. The Board, however, concedes that individual issuers or issuer groups may prefer to provide CDI to the CDI/ES system, where its distribution can be maximized by being offered in a non-proprietary manner and in a manner that ensures equal access by all interested parties. The Board does not view this as unfair competition, but rather as a choice by the issuer or its agent on whether it wishes to place electronic versions of its disclosure documents into the public domain for redistribution. As noted above, if official documents are made available inexpensively and electronically without restriction on redistribution, there nevertheless will be ample room for private information vendors to re-market the documents or information from the documents in proprietary form. The Board believes that a system offering non-proprietary information is necessary to ensure that the market receives the full benefit of competition among information providers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has not solicited comments on the CDI/ES system. Except for the comment noted in the section above, the Board has not received comments that it can relate directly to the CDI/ES system. To the extent that comments have been received that relate, in general, to the MSIL system, they are addressed in the Board's filing on the OS/ARD system, File No. SR-MSRB-90-2.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will 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 August 10, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 12, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-16962 Filed 7-19-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28202; File No. SR-NYSE-89-17]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Filing of Proposed Rule Change "Stop Orders"

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 12, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rules 79A.30 and 123A.40.

The amendment to Rule 79A.30 will: (1) provide for Floor Governor, rather than Floor Official, approval in the case of one or two point trade following the election of stop orders as described in Rule 123A.40, and (2) provide that, in unusual market conditions, a Floor Governor may determine to change the one or two point parameters.

The amendment to Rule 123A.40 will: (1) permit a specialist to trade for his own account, without being required to guarantee the electing sale price to any stop orders that may be elected, provided the sole Purpose of the specialist's trade is to facilitate the single-price execution of a member's order where the depth of the current market is not sufficient to do so, and (2) require Floor Governor approval when the specialist participates in an electing sale which will result in stop orders being elected at a price that is one point or more away from a last sale of less than $20 or two points or more away from a last sale price of $20 or more.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Rule 79A.30. NYSE Rule 79A.30 currently provides that a Floor Official's approval must be obtained before a trade which is one point or more away from a previous sale of less than $20 or two points or more away from a previous sale of $20 or more may be published on the tape.

The purpose of this proposed rule change is to amend NYSE Rule 79A.30 to: (1) provide for Floor Governor (rather than Floor Official) approval in the case of one or two point trades following the election of stop orders as described in Rule 123A.40 and as discussed below and (2) provide that, in unusual market conditions, a Floor Governor may determine to change the one or two point parameters.

In the Exchange's view, these standard price parameters may not be appropriate in all market situations, particularly for higher-priced stocks. Therefore, the proposed rule change would authorize a Floor Governor, under unusual market conditions, to determine a different price parameter for a particular security for a particular trading day. That Floor Governor, or in

his absence, another Floor Governor, would be authorized to re-confirm the special price parameter for subsequent trading sessions on a day-by-day basis. Once a Floor Governor has established a special price parameter, a Floor Official would have to approve the publication on the Tape of any trade that exceeded such parameter. Any stock-by-stock parameter would have to be reported to the Exchange's Market Surveillance Division by the Floor Governor who established it.

In the case of Floor Governor approval vis-a-vis trades in which the specialist articipates in an electing sale, if a Floor Governor has established a wider parameter for a particular stock, the wider parameter will govern. (See discussion below.)

Rule 123A.40. The purpose of the proposed change to Rule 123A.40 is to: (1) permit a specialist to trade for his own account without being required to guarantee the electing sale price to any stop orders that may be elected, provided the sole purpose for the specialist's trade is to facilitate the single-price execution of a member's order where the depth of the current market is not sufficient to do so, and (2) require Floor Governor approval when the specialist participates in an electing sale which will result in stop orders being elected at a price that is one point or more away from a last sale of less than $20 or two points or more away from a last sale price of $20 or more.

Rule 123A.40 generally prohibits a specialist from trading for his own account if that trade would result in putting into effect, or electing, any "stop" order he may have on his book. A stop order is an order which becomes an executable market or limit order once the price specified on the order is reached in the market.

Rule 123A.40 currently does permit, however, a specialist to be a party to the election of a stop order only if he receives Floor Official approval to enter a bid or offer which betters the market, and he guarantees that any stop orders which may be elected, if a trade occurs at his bid or offer price, will be executed at the same price as the electing sale.

The Exchange is proposing that Rule 123A.40 be amended to permit the specialist to trade for his own account, without being required to guarantee the electing sale price to any stop orders that may be elected, provided the sole purpose for the specialist's trade is to facilitate the single-price execution of orders in the market where the depth of the current bid or offer (which would not be the specialist's bid or offer) is insufficient to do so.

The Exchange believes that the proposed amendment to Rule 123A.40 will benefit investors by facilitating single-price executions of their orders. In the situation contemplated by the proposed amendment, the specialist is not setting the price in the market, but is merely providing a service by filling the balance of an order at a price which has been established by another market participant. In such instance, the Exchange does not believe it would be appropriate to require the specialist to guarantee the electing sale price to stop orders that may be elected, as this price was established independent of any price-setting determination by the specialist, and the stop orders would be elected in any event by the transaction as to which the specialist is simply filling the balance of the order.

Additionally, the Exchange is proposing that Rule 123A.40 be amended to provide that the approval of a Floor Governor (rather than a Floor Official) be obtained when a specialist's proprietary transaction has resulted in stop orders being elected, and the stop orders will be executed at a price one point or more away from a last sale price of less than $20 or two points or more away from a last sale price of $20 or more.

In any case where a Floor Governor has, pursuant to Rule 79A.30 as discussed above, established a different price parameter for a particular stock, such different price parameter shall also be the determining point for Floor Governor approval under Rule 123A.40.

The Exchange believes that it is appropriate to require the prior approval of a more senior regulatory official, namely a Floor Governor, rather than a Floor Official, when a specialist's proprietary transaction has resulted in stop orders being elected under the circumstances described above.

(2) Statutory Basis for the Proposed Rule Change

The basis under the Act for the proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors, and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

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 Comments on the Proposed Rule Changes Received from Members, Participants or Others

The proposed amendment to Rule 79A.30 with respect to establishing a price parameter for a particular stock other than one or two points, and the proposed amendment to Rule 123A.40 to permit a specialist to effect a proprietary transaction to facilitate single-price execution of a member's order without being required to guarantee the electing sale price to any stop order that may thereby be elected, were developed by the Exchange's Market Regulation Review Committee. (See SR-NYSE-89-2). In an Information Memo dated August 24, 1987, the Exchange summarized all the recommendations of the Market Regulation Review Committee, including the proposed rule amendments noted above, and requested its members and member organizations to comment on them. No written comments were received in response to this Information Memo with respect to any rule change being filed herein.

III. Date of Effectiveness of the proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 25049.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5

U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 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 August 10, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 13, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-16961 Filed 7-19-90; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

July 16, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

First of America Bank Corp.
Common Stock, $10 Par Value (File No. 7-6042)

International Recovery Corporation
Common Stock, $0.01 Par Value (File No. 7-6043)

Itel Corporation
Common Stock, $1 Par Value (File No. 7-6044)

MBIA, Inc.
Common Stock, $1 Par Value (File No. 7-6045)

Molecular Biosystems, Inc.
Common Stock, $0.01 Par Value (File No. 7-6046)

Omnicom Group, Inc.
Common Stock, $.50 Par Value (File No. 7-6047)

Nuveen California Municipal Market Opportunity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-6048)

Nuveen New York Municipal Market Opportunity Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-6049)

Nuveen Investment Quality Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-6050)

RJR Nabisco Holdings, Inc.
Warrants Expiring May 22, 1999 (File No. 7-6051)

RTZ Corporation Plc
American Depository Shares (File No. 7-6052)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 6, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-16964 Filed 7-19-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17583; 811-1644]

NEL Equity Fund, Inc.; Application

July 13, 1990.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: NEL Equity Fund, Inc.

Relevant 1940 Act Sections: Order requested under Section 8(f) of the 1940 Act.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed March 26, 1990.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Hearing requests should be received by the SEC by 5:30 p.m. on August 10, 1990, 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 may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 501 Boylston Street, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, (202) 272-7324, or Stephanie M. Monaco, Branch Chief, (202) 272-3022 (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 or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant registered as a diversified, open-end management investment company under the 1940 Act on May 3, 1968.

2. On May 3, 1968, Applicant filed a registration statement under the Securities Act of 1933 to register 2,000,000 shares of common stock, having a maximum aggregate offering price of $32,600,000. Applicant's registration statement became effective on November 27, 1968, and the initial public offering commenced on or about that date.

3. Applicant is a corporation organized and existing under the laws of the Commonwealth of Massachusetts.

4. Applicant sold all of its assets to the New England Equity Income Fund (the "Fund"), a series of The New England Funds, a Massachusetts business trust (the "Trust"), pursuant to an Agreement and Plan of Reorganization dated January 7, 1987 (the "Plan"). Each share of common stock of the Applicant was converted into one share of the Fund. In total, 1,632,251.398 shares of the Fund having a value of $33,948,070 were issued to the Applicant's shareholders pursuant to the Plan previously adopted on December 22, 1986 by the Applicant's shareholders.

5. Immediately preceding the reorganization, the Applicant had 1,632,251.398 shares of common stock outstanding, total net value of $33,948,070 and a per share net asset value of $20.80.

6. Applicant has no outstanding assets except its name and its status as a Massachusetts corporation and a registered investment company. Applicant has no outstanding liabilities.

7. Applicant, to the best of its knowledge, is not a party to any litigation or administative proceeding.

8. Applicant is not engaged, nor does it propose to engage, in any business activity other than those necessary to wind up its affairs. The Board of Directors of the Applicant will take all action necessary to terminate the Applicant's status as a corporation pursuant to the laws of the Commonwealth of Massachusetts.

9. Applicant has no security holders. There are no former security holders of Applicant to whom disbursements in complete liquidation of their interests in Applicant have not been made.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-16955 Filed 7-19-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17585; 811-2386]

NEL Income Fund, Inc.; Application

July 13, 1990.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: NEL Income Fund, Inc.

Relevant 1940 Act Sections: Order requested under section 8(f) of the 1940 Act.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed March 26, 1990.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Hearing requests should be received by the SEC by 5:30 p.m. on August 10, 1990, 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 may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 501 Boylston Street, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, (202) 272-7324, or Stephanie M. Monaco, Branch Chief, (202) 272-3022 (Division of Investment Management, Office of Investment Company Regulations.

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 or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300.

Applicant's Representations

1. Applicant registered as a diversified, open-end management investment company under the 1940 Act on June 26, 1973.

2. On June 26, 1973, Applicant filed a registration statement under the Securities Act of 1933 to register 1,000,000 shares of common stock, having a maximum aggregate offering price of $16,300,000. Applicant's registration statement became effective on November 8, 1973, and the initial public offering commenced on or about that date.

3. Applicant is a corporation organized and existing under the laws of the Commonwealth of Massachusetts.

4. Applicant sold all of its assets to the New England Bond Income Fund (the "Fund"), a series of The New England Funds, a Massachusetts business trust (the "Trust"), pursuant to an Agreement and Plan of Reorganization dated January 7, 1987 (the "Plan"). Each share of common stock of the Applicant was converted into one share of the Fund. In total, 4,633,117.428 shares of the Fund having a value of $54,570,050 were issued to the Applicant's shareholders pursuant to the Plan previously adopted on December 22, 1986 by the Applicant's shareholders.

5. Immediately preceding the reorganization, the Applicant had 4,633,117.428 shares of common stock outstanding, total net value of $54,570,050 and a per share net asset value of $11.78.

6. Applicant has no outstanding assets except its name and its status as a Massachusetts corporation and a registered investment company. Applicant has no outstanding liabilities.

7. Applicant, to the best of its knowledge, is not a party to any litigation or administrative proceeding.

8. Applicant is not engaged, nor does it propose to engage, in any business activity other than those necessary to wind up its affairs. The Board of Directors of the Applicant will take all action necessary to terminate the Applicant's status as a corporation pursuant to the laws of the Commonwealth of Massachusetts.

9. Applicant has no security holders. There are no former security holders of Applicant to whom disbursements in complete liquidation of their interests in Applicant have not been made.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-16956 Filed 7-19-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17586; 811-1961]

NEL Retirement Equity Fund Inc.; Application

July 13, 1990.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: NEL Retirement Equity Fund Inc.

Relevant 1940 Act Sections: Order requested under section 8(f) of the 1940 Act.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed March 26, 1990.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Hearing requests should be received by the SEC by 5:30 p.m. on August 10, 1990, 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 may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 501 Boylston Street, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, (202) 272-7324, or Stephanie M. Monaco, Branch Chief, (202) 272-3022 (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 or by

contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant registered as a diversified, open-end management investment company under the 1940 Act on October 22, 1969.

2. On October 22, 1969, Applicant filed a registration statement under the Securities Act of 1933 to register 2,000,000 shares of common stock, having a maximum aggregate offering price of $27,180,000. Applicant's registration statement became effective on June 5, 1970, and the initial public offering commenced on or about that date.

3. Applicant is a corporation organized and existing under the laws of the Commonwealth of Massachusetts.

4. Applicant sold all of its assets to the New England Retirement Equity Fund (the "Fund"), a series of The New England Funds, a Massachusetts business trust (the "Trust"), pursuant to an Agreement and Plan of Reorganization dated January 7, 1987 (the "Plan"). Each share of common stock of the Applicant was converted into one share of the Fund. In total, 3,983,864.473 shares of the Fund having a value of $91,385,157 were issued to the Applicant's shareholders pursuant to the Plan previously adopted on December 22, 1986 by the Applicant's shareholders.

5. Immediately preceding the reorganization, the Applicant had 3,983,864.473 shares of common stock outstanding, total net value of $91,385,157 and a per share net asset value of $22.94.

6. Applicant has no outstanding assets except its name and its status as a Massachusetts corporation and a registered investment company. Applicant has no outstanding liabilities.

7. Applicant, to the best of its knowledge, is not a party to any litigation or administrative proceeding.

8. Applicant is not engaged, nor does it propose to engage, in any business activity other than those necessary to wind up its affairs. The Board of Directors of the Applicant will take all action necessary to terminate the Applicant's status as a corporation pursuant to the laws of the Commonwealth of Massachusetts.

9. Applicant has no security holders. There are no former security holders of Applicant to whom disbursements in complete liquidation of their interests in Applicant have not been made.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-16957 Filed 7-19-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17584; 811-1645]

July 13, 1990.

NEL Growth Fund, Inc.; Application

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: NEL Growth Fund, Inc.

Relevant 1940 Act Sections: Order requested under section 8(f) of the 1940 Act.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed March 26, 1990.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Hearing requests should be received by the SEC by 5:30 p.m. on August 10, 1990, 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 may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 501 Boylston Street, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, (202) 272-7324, or Stephanie M. Monaco, Branch Chief, (202) 272-3022 (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 or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant registered as a diversified, open-end management investment company under the 1940 Act on May 3, 1968.

2. On May 3, 1968, Applicant filed a registration statement under the Securities Act of 1933 to register 2,000,000 shares of common stock, having a maximum aggregate offering price of $21,740,000. Applicant's registration statement became effective on November 27, 1968, and the initial public offering commenced on or about that date.

3. Applicant is a corporation organized and existing under the laws of the Commonwealth of Massachusetts.

4. Applicant sold all of its assets to the New England Growth Fund (the "Fund"), a series of The New England Funds, a Massachusetts business trust (the "Trust"), pursuant to an Agreement and Plan of Reorgnization dated January 7, 1987 (the "Plan"). Each share of common stock of the Applicant was converted into one share of the Fund. In total, 11,528,726.592 shares of the Fund having a value of 330,926,845 were issued to the Applicant's shareholders pursuant to the Plan previously adopted on December 22, 1986 by the Applicant's shareholders.

5. Immediately preceding the reorganization, the Applicant had 11, 528,726.592 shares of common stock outstanding, total net value of $330,926,845 and a per share net asset value of $28.70.

6. Applicant has no outstanding assets except its name and its status as a Massachusetts corporation and a registered investment company. Applicant has no outstanding liabilities.

7. Applicant, to the best of its knowledge, is not a party to any litigation or administrative proceeding.

8. Applicant is not engaged, nor does it propose to engage, in any business activity other than those necessary to wind up its affairs. The Board of Directors of the Applicant will take all action necessary to terminate the Applicant's status as a corporation pursuant to the laws of the Commonwealth of Massachusetts.

9. Applicant has no security holders. There are no former security holders of Applicant to whom disbursements in complete liquidation of their interests in Applicant have not been made.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-16959 Filed 7-19-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice #1129]

Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study-Group 7 (formally Study Groups 2 & 7) of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting August 2, 1990 at NASA Headquarters, 600 Independence Avenue SW., Washington, DC in room 521J commencing at 10 a.m.

Study Group 7 deals with matters relating primarily to the space research systems and standard frequency and time systems. The purpose of the meeting is to continue U.S. preparations for participation in the newly formed international working party, IWP 2/2, that is concerned with the 1992 World Administrative Radio Conference.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Mr. John Postelle, ARC Professional Services Group, Herndon, Virginia 22070, phone (703) 834-5607.

Dated: July 3, 1990.

Warren G. Richards,

U.S. CCIR National Committee.

[FR Doc. 90-16986 Filed 7-19-90; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice No. 1232]

The U.S., Organization for the International Telegraph & Telephone Consultative Committee (CCITT) Study Group D; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on August 13, 1990 at 10 a.m. in room 1406, Department of State, 2201 C Street NW., Washington, DC.

The purpose of the meeting will be to review and approve contributions for the September meeting of CCITT Study Group VIII, the October meeting of Study Group XVII, as well as the planned November meeting of Study Group VII. A secondary purpose of the meeting on August 13 will be to discuss and set up procedures for creating a registration scheme for ADMD and PRMD names, including any rules necessary to the assignment of O/R addresses and arrangements to promote maximum interoperability of domestic and international MHS systems. Any other issues relevant to U.S. Study Group D, including contributions, or advice to the September meeting of the ad-hoc Resolution 18 committee may also be considered.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC, telephone (202) 647-5220. All attendees must use the C street entrance to the building.

Dated: July 10, 1990.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 90-16988 Filed 7-19-90; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice #1231]

Shipping Coordinating Committee; Subcommittee on Safety of Navigation Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will hold an open meeting at 9:30 a.m. on Thursday, August 9, 1990, in room 6319 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to prepare U.S. positions for the 36th session of the Subcommittee. Items of principal interest on the agenda are:

—Decisions of other International Maritime Organization (IMO) bodies
—Routing of ships
—Electronic chart display systems
—World-wide navigation system
—Guidelines on the use of radar transponders on ships for safety purposes
—Coding scheme for radar beacons and transponders
—Unification of Automatic Radar Plotting Aid (ARPA) symbols
—Optimum methods of ARPA and radar display presentation
—Officer of the navigational watch acting as the sole look out
—Review of World Meteorological Organization (WMO) handbooks on navigation in areas affected by sea ice
—Radar sidelight transponders
—Standardization of digital input panels
—Review of Rule 25 of the 1972 Collision Regulations
—Amendments to Chapter X of the 1977 Torremollinos International Convention
—Work program
—Election of Chairman and Vice Chairman for 1991
—Any other business

Members of the public may attend this meeting up to the seating capacity of the room.

For further information contact Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G-NSR-3), Washington, DC 20593-0001, Tel: (202) 267-0416.

Dated: July 10, 1990.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 90-16987 Filed 7-19-90; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Millon Air, Inc. for a Certificate of Public Convenience and Necessity

AGENCY: Department of Transportation

ACTION: Notice of order to show cause, (Order 90-7-35) Docket 46515.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Millon Air, Inc., fit, willing, and able to provide foreign charter passenger operations under section 401(d)(3) of the Federal Aviation Act.

DATES: Persons wishing to file objections should do so no later than July 31, 1990.

ADDRESSES: Objections and answers to objections should be filed in Docket 46515 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2342.

Dated: July 13, 1990.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 90-16979 Filed 07-19-90; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Acceptance of Noise Exposure Maps for Redding Municipal Airport, Redding, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Redding, California for Redding Municipal Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is July 6, 1990.

FOR FURTHER INFORMATION CONTACT: David Cross, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010-1303. Telephone 415/876-2779.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Redding Municipal Airport are in compliance with applicable requirements of part 150, effective July 6, 1990.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Redding, California. The specific maps under consideration are Figures 7 and 8 in the submission. The FAA has determined that these maps for Redding Municipal Airport are in compliance with applicable requirements. This determination is effective on July 6, 1990. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, room 6E25, 15000 Aviation Boulevard, Hawthorne, California 90261.

Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010-1303.

Mr. Robert M. Christofferson, City Manager, City of Redding, 760 Parkview Avenue, Redding, California 96001-3396.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on July 6, 1990.

Herman C. Bliss,

Manager, Airports Division, AWP-600.

[FR Doc. 90-16984 Filed 7-19-90; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

[Docket No. IRA-52]

Tennessee Public Service Commission Application for Inconsistency Ruling Concerning the State of Tennessee Statute on Nuclear Fuel Transportation; Invitation To Comment; Correction

In the July 5, 1990 Notice, on Page 27,741 in the first column under "**DATES**" make the following changes: the dates "August 15, 1989", and "September 28, 1989" should be "August 15, 1990" and "September 28, 1990."

Judith S. Kaleta,

Acting Chief Counsel.

[FR Doc. 90-16980 Filed 7-19-90; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

UMTA Sections 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1990, Public Law 101-164, signed into law by President George Bush on November 21, 1989, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the Federal Register every 30 days of grants obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964,

as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management Division, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., Room 9301, Washington, DC 20590, (202) 366-2053

SUPPLEMENTARY INFORMATION: The Section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant number	Grant amount	Obligation date
Central Contra Costa Transit Authority, San Francisco, CA	CA-03-0344-00	$187,500	05/29/90
Montgomery County, Maryland, Washington, DC-MD-VA	DC-03-0021-00	$16,500,000	05/15/90
Delaware Transportation Authority, Delaware	DE-03-0007-00	$1,599,999	05/11/90
Iowa Department of Transportation, Iowa	IA-03-0061-00	$710,000	05/15/90
Metropolitan Mass Transit District, Rock Island, IL	IL-03-0147-00	$1,444,500	05/15/90
Pioneer Valley Transit Authority, Springfield, MA	MA-03-0158-00	$439,998	06/05/90
Montachusett Regional Transit Authority, Fitchburg, MA	MA-03-0161-00	$406,248	06/05/90
Maryland Department of Transportation, Baltimore, MD	MD-03-0044-00	$24,999	05/24/90
City of Minneapolis, Minneapolis, MN	MN-03-0041-00	$1,346,094	05/01/90
City of Osage Beach, Osage Beach, MO	MO-03-0030-00	$165,000	06/05/90
Metropolitan Transportation Authority, New York, NY	NY-03-0237-00	$67,837,401	06/04/90
Metropolitan Transportation Authority, New York, NY	NY-03-0260-00	$108,742,800	06/04/90
Northeast Ohio Areawide Coordinating Agency, Cleveland, OH	OH-03-0103-00	$120,000	05/30/90
Tri-County Metropolitan Transportation District, Portland, OR	OR-03-0037-00	$2,499,999	06/06/90
Tidewater Transportation District Commission, Norfolk, VA	VA-03-0043-00	$340,500	05/29/90

SECTION 9 GRANTS

Transit property	Grant number	Grant amount	Obligation date
Hub Area Transit Authority, Yuba City, CA	CA-90-X360-00	$321,450	05/09/90
Missoula Urban Transportation District, Missoula, MT	MT-90-X026-00	$349,576	05/09/90
Western Reserve Transit Authority, Youngstown-Warrent, OH	OH-90-X131-00	$1,900,605	06/08/90
City of Everett Transit, Seattle-Everett, WA	WA-90-X102-00	$472,000	05/09/90

Issued on: July 13, 1990.

Brian W. Clymer,

Administrator.

[FR Doc. 90-16978 Filed 7-19-90; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

[General Counsel Designation No. 173]

Appointment of Members of the Legal Division to the Performance Review Board

Under the authority granted to me as Acting General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 101-5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board:

(1) For the General Counsel Panel—

Jeanne S. Archibald, Deputy General Counsel, who shall serve as Chairperson;

Russell L. Munk, Assistant General Counsel (International Affairs);

Kenneth R. Schmalzbach, Assistant General Counsel (Administrative & General Law)

Robert M. McNamara, Jr., Assistant General Counsel (Enforcement)

Marvin J. Dessler, Chief Counsel, Bureau of Alcohol Tobacco, and Firearms; and

Michael T. Schmitz, Chief Counsel, United States Customs Service.

(2) For the Internal Revenue Service Panel—

Chairperson, Deputy Chief Counsel, IRS;

Deputy General Counsel;

Two Associate Chief Counsel, IRS; and

Two Regional Counsel, IRS.

I hereby delegate to the Chief Counsel of the Internal Revenue Service the authority to make the appointments to the IRS Panel specified in this Designation and to make the publication of the IRS Panel as required by 5 U.S.C. 4314(c)(4).

Dated: July 13, 1990.

Jeanne S. Archibald,

Acting General Counsel.

[FR Doc. 90-16945 Filed 7-19-90; 8:45 am]

BILLING CODE 4810-25-M

Office of Foreign Assets Control

Issuance by Government of the Union of Soviet Socialist Republics of Certificates Verifying Soviet Origin of Nickel-Bearing Materials Manufactured by the Norilsk Mining and Metallurgical Plant and the Nickel Industrial Amalgamation

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: Certificates of origin are now available for importation into the United States from the Union of Soviet Socialist Republics ("USSR") of nickel-bearing materials produced by the Norilsk Mining and Metallurgical Plant, Norilsk, Krasnoyarsk Region, USSR, and the

Nickel Industrial Amalgamation, Monchegorsk, Murmansk Region, USSR.

DATES: The exchange of letters establishing the procedures and arrangements set forth in this notice was completed on June 28, 1990.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Treasury Department, 1500 Pennsylvania Avenue NW., Washington, DC 20220, tel.: 202/535-6020.

SUPPLEMENTARY INFORMATION: These certificates are issued pursuant to an exchange of letters between the Government of the USSR and the Government of the United States. The certificates, which are issued by Raznoimport, taking into consideration instructions of the Ministry of Foreign Economic Relations, attest that the materials with respect to which they are issued contain only nickel of Soviet origin. Each certificate will bear the following statement in the body of the document:

"VVO Raznoimport, taking into consideration instructions of the Ministry of Foreign Economic Relations of the USSR, hereby certifies that the nickel described herein is produced entirely from raw materials of Soviet origin, and that this certificate has been issued in accordance with procedures administered by VVO Raznoimport and agreed upon by the Government of the United States on June 28, 1990."

Nickel-bearing materials produced by the Norilsk Mining and Metallurgical Plant and the Nickel Industrial Amalgamation may be imported under the general license prescribed by § 515.536(c) of regulations found at 31 CFR part 515. United States Customs entry will be permitted with respect to such merchandise if a certificate of origin as described above, issued by Raznoimport, is presented to the U.S. Customs authorities at the point of entry.

Dated: July 3, 1990.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

[FR Doc. 90-17145 Filed 7-16-90; 12:45 pm]

BILLING CODE 4810-25-M

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 agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (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 by August 20, 1990.

Dated: July 12, 1990.

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extension

1. Office of Acquisition and Material Management.
2. VA Acquisition Regulations Part 809.
3. Not applicable.
4. The information gathered in accordance with part 809 is used to qualify or disqualify contractors and/or their products. The information is necessary to insure that the medical centers are receiving quality products and services.
5. On occasion.
6. Businesses or other for profit; Small businesses or organizations.
7. 100 responses.
8. ½ hour.
9. Not applicable.

[FR Doc. 90-16977 Filed 7-19-90; 8:45 am]

BILLING CODE 8320-01-M

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 agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (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 by August 20, 1990.

Dated: July 12, 1990.

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Resources Policies.

Extention

1. Office of Equal Employment Opportunity.
2. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 38 CFR 18.442(e), Transition Plan.
3. Not applicable.
4. The transition plan is a recordkeeping requirement set up to monitor compliance to provide accessibility for the handicapped where grants for Federal financial assistance have been received.
5. Not applicable.
6. State or Local Governments; Businesses or other for profit; Non-profit

institutions; Small businesses or organizations.

7. 116 responses.

8. 7 Minutes Disclosure Burden; 4 Hours Recordkeeping Burden.

9. Not applicable.

[FR Doc. 90-16998 Filed 7-19-90; 8:45 am]

BILLING CODE 8320-01-M

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 agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (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 by August 20, 1990.

Dated: July 13, 1990.

By direction of the Secretary.

Frank E. Lally,

Director, Office of Information Resources Policies.

Extension

1. Office of Acquisition and Material Management.

2. VA Acquisition Regulations Part 836 (VAAR 48 CFR, chapter 8, part 836).

3. VA Form 08-6298, Architect-Engineer Fee Proposal.

4. The information is necessary in order to obtain the proposal and supporting cost or pricing data from the contractor and subcontractor in the negotiation of all architect-engineer contracts for design services when the contract price is estimated to be $50,000 or over.

5. On occasion.

6. Business or other for profit; Small business or organizations.

7. 4,888 responses.

8. 26.8 hours.

9. Not applicable.

[FR Doc. 90-16999 Filed 7-19-90; 8:45 am]

BILLING CODE 8320-01-M

Advisory Commission on the Future Structure of Veterans Health Care; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Commission on the Future Structure of Veterans Health Care will be held on August 15, 1990. The session will be held between 8:30 a.m. to 5 p.m. at the Westin Hotel, Governors Suite, 909 North Michigan Avenue, Chicago, Illinois. The Commission's purpose is to review the missions and programs of the VA's health care facilities to determine whether changes in services, programs, or missions at individual facilities are needed, with a focus on providing care to eligible veterans in the decade 2000-2010. The agenda for the meeting will include presentations by various VA and non-VA individuals to the Commission as well as working sessions to establish processes to govern its study and analysis of VA health care facilities. The meeting will be open to the public up to the seating capacity of the room. Interested persons may file statements with the Commission, or may offer views during the public forum session. Statements, if in written form, may be filed before or within 10 days after the close of the meeting.

To assure an opportunity to present a statement before the Commission, interested persons must notify Mr. Bob Moran, Commission on the future Structure of Veterans Health Care, VA Central Office (OORC), 810 Vermont Ave., NW., Washington, DC 20420, telephone (202) 633-7079 no later than August 8. Persons wanting additional information regarding the meeting may also contact Mr. Moran.

Dated: July 11, 1990.

By Direction of the Secretary:

Laurence M. Christman,

Executive Assistant.

[FR Doc. 90-16937 Filed 7-19-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 140
Friday, July 20, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL 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 the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 3:00 p.m. on Tuesday, July 24, 1990, to consider the following matter:

Memorandum and resolution re: Final amendment to the Corporation's rules and regulations in the form of a new Part 323, entitled "Appraisals," which implements Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 by indentifying which transactions require an appraiser, setting forth minimum standards for performing appraisals, and distinguishing those appraisals requiring the services of a state-licensed appraiser.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, deputy Executive Secretary of the Corporation, at (202) 898-3811.

Dated: July 17, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-17109 Filed 7-18-90; 11:28 am]

BILLING CODE 6714-01-M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the National Council on Disability. This notice also describes the functions of the Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (P.L. 94409).

DATES:

August 6, 1990, 8:30 a.m. to 5:00 p.m.
August 7, 1990, 8:30 a.m. to 5:00 p.m.
August 8, 1990, 8:30 a.m. to 5:00 p.m.

LOCATION: Jackson Lake lodge, Moran, Wyoming.

FOR FURTHER INFORMATION CONTACT: National Council on Disability, 800 Independence Avenue, SW., Suite 814, Washington, D.C. 20591, (202) 267-3846, TDD: (202) 267-3232.

The National Council on Disability is an independent federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 95-602 in 1978), the Council was initially an advisory board within the Department of Education. In 1984, however, the Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Pub. L. 98-221).

The Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR). In addition, the Council is mandated to provide guidance to the President's Committee on Employment of People With Disabilities.

The meeting of the Council shall be open to the Public. The proposed agenda includes:

Report from Chairperson and Executive Committee
Update on NIDRR
Update on Prevention
Update on ADA
Committee Meetings/Committee Reports
Communications training
Strategic planning
Special Open Forum/Hearing—Wilderness accessibility for persons with disabilities
Unfinished Business
New Business
Announcements
Adjournment

Records shall be kept of all Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed at Washington, DC on July 16, 1990.

Ethel Briggs,

Executive Director.

[FR Doc. 90-17166 Filed 7-18-90; 3:42 pm]

BILLING CODE 6820-BS-M

RESOLUTION TRUST 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 the Board of Directors of the Resolution Trust Corporation will meet in open session on Tuesday, July 24, 1990, following the Federal Deposit Insurance Corporation open session beginning at 3:00 p.m. to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of Minutes of Previous Meetings

Discussion Agenda

A. *Memorandum re:* Approval of final regulation on appraisals.

[This regulation provides added assurance that real estate appraisals used in connection with federal requirements are performed in accordance with uniform standards by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. Toward this end, the regulation identifies which transactions require an appraisal, sets forth standards for performing appraisals, and distinguishes those appraisals requiring the services of a State certified appraiser from those requiring a State licensed appraiser.]

B. *Memorandum re:* Bulk asset sales program.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416–7282.

Dated: July 17, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90–17114; Filed 7–18–90; 11:28 am]

BILLING CODE 6714-01-M

federal register

Friday,
July 20, 1990

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926
Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket Number H-033-e]

RIN 1218-AB25

Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of proposed rulemaking and notice of hearing.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is conducting supplemental rulemaking on its standards issued June 17, 1986 (51 FR 22612, June 20, 1986) for occupational exposure to asbestos, tremolite, anthophyllite and actinolite in general industry, 29 CFR 1910.1001, and in the construction industry, 29 CFR 1926.58. These standards revised the 1972 asbestos standard, reduced the permissible exposure limit (PEL) from 2.0 to 0.2 fibers per cubic centimeter (f/cc) time-weighted average (TWA) and updated other requirements. On February 2, 1988 the United States Court of Appeals for the District of Columbia Circuit upheld most aspects of the standard but remanded the case to OSHA on several issues, *Building and Construction Trades Department* v. *Brock*, 838 F. 2d 1258, (DC Cir 1988). As a part of its response to this decision, on September 14, 1988, OSHA issued a short term excursion limit (STEL) for asbestos of 1.0 f/cc averaged over a 30 minute sampling period (53 FR 35610).

In June and July 1989, the Building and Construction Trades Department (BCTD) of the AFL-CIO and the AFL-CIO petitioned the Court to order OSHA to resolve all remand issues on the record of the 1986 rulemaking proceeding. The Court, on October 30, 1989, ordered OSHA to take action on three of the remand issues by December 14, 1989, three other issues by January 28, 1990, and the remaining issues by February 27, 1990. OSHA issued its response on the first three remand issues on December 14, 1989 (54 FR 52024, December 20, 1989). These included: Removing the ban on spraying of asbestos containing materials; changing the regulatory text to clarify when construction employers must resume periodic monitoring; and explaining that the clarification of the exemption for "small-scale, short-duration" operations in the construction industry will require OSHA to institute rulemaking.

OSHA published its resolution of three additional issues on February 5, 1990 (55 FR 3724). These included: Expanding its ban on workplace smoking and adding training requirements covering the availability of smoking control programs; explaining how and why OSHA's respiratory requirements will result in risk being reduced below that remaining at the PEL; adding a requirement that employers assure that employees working in or contiguous to regulated areas comprehend required warning signs and labels.

OSHA has determined that four remanded issues cannot be resolved on the existing record and that their resolution will require new rulemaking. These issues which are addressed in this proposal are: The establishment of operation-specific permissible exposure limits; the extension of reporting and information transfer requirements; the expansion of the competent person requirement to all workers engaged in any kind of construction work; and the clarification of the exemption for "small-scale, short duration operations" which was deferred from the Agency's December 20, 1989 response (54 FR 52024).

OSHA is proposing the following regulatory approaches to resolve these issues: Lowering the PEL to 0.1 f/cc for all employees, specifying work practices to reduce exposures in brake and clutch repair and service; requiring additional communication of asbestos hazards among building owners, employers and employees and requiring notification of OSHA prior to removal, demolition, or renovation operations; requiring oversight of all construction operations by a competent person and of small-scale, short duration operations by a specifically trained competent person; and more explicitly defining the small-scale, short duration and other exemptions from the negative-pressure enclosure requirement.

DATES: Comments concerning this notice and notices of intention to appear at the public hearing must be postmarked on or before September 25, 1990. Parties requesting more than 10 minutes for their presentation at the hearing, and parties planning to present documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence not later than September 25, 1990. The hearing will take place in Washington, DC and will begin at 9:30 a.m. on October 23, 1990.

ADDRESSES: Comments should be submitted in quadruplicate to the docket Officer, Docket H-033-e, Occupational Safety and Health Administration, 200 Constitution Avenue NW., room N2625, Washington, DC 20210; telephone (202)-523-7894.

Notices of intention to appear at the hearing, testimony, and documentary evidence should be submitted in quadruplicate to Mr. Tom Hall, Division of Consumer Affairs, Docket H-033-e, Occupational Safety and Health Administration, 200 Constitution Avenue NW., room N3647, Washington, DC 20210; telephone (202)-523-8615.

All written materials received and notices of intention to appear will be available for inspection and copying in the Docket Office, room N2625 at the above address.

The informal public hearing will begin at 9:30 a.m. on October 23, 1990 at the following location: Auditorium, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of Comments to the Docket: OSHA has established Docket H-033 for asbestos rulemaking evidence. Although the final decisions regarding the issues considered in this rulemaking will be based on the entire H-033 docket, OSHA has established a subcategory, H-033-e for purposes of referencing evidence specifically related to this proceeding on certain rulemaking issues remanded for reconsideration. The list of asbestos rulemaking subcategories is as follows:

H-033a	1972 Rulemaking
H-033b	1975 Rulemaking
H-033c	1986 Rulemaking
H-033d	Non-asbestiform minerals issues
H-033e	Court remand issues.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N3649, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Table of Contents

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VII. Authority and Signature
VIII. Proposed Amended Standards

I. Regulatory History

On June 17, 1986, OSHA issued revised standards governing occupational exposure to asbestos,

tremolite, anthophyllite and actinolite for general industry and construction (51 FR 22612 et seq., June 20, 1986). Effective July 21, 1986, the revised standards amended OSHA's previous asbestos standard issued in 1972.

On October 17, 1986, OSHA published a partial stay of the revised standards insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite (51 FR 37002), which were included in the scope of the 1986 standards. The stay has been extended to November 30, 1990 (see 54 FR 30704), to enable OSHA to complete rulemaking on these non-asbestiform minerals. The partial stay continues to apply to the 1986 standards and all amendments thereto, including the amendments proposed in this notice. On February 12, 1990 (55 FR 4938) OSHA published a Notice of Proposed Rulemaking in which OSHA proposed to delete non-asbestiform tremolite, anthophyllite and actinolite from the scope of the asbestos standard and is considering alternative approaches to regulation of these non-asbestiform minerals. OSHA is not considering in this proceeding the issues of economic and/or technical feasibility of these proposed revisions as they would apply to industries using non-asbestiform minerals. Extension of these revisions to non-asbestiform minerals would require determination of these issues in a further proceeding. Therefore OSHA does not intend to apply the proposed revisions to the asbestos standards to the regulation of the non-asbestiform minerals at the end of this proceeding.

In the proposed regulatory text to the asbestos standards, OSHA is treating the referencing of the non-asbestiform minerals in two ways. One, it is excluding them from the text of the provisions reducing the TWA PEL; and from new provisions for which there are not now counterparts, such as requiring notification to OSHA for large-scale construction projects, and mandatory work practices for brake repair in the general industry. Two, it is continuing to reference the non-asbestiform minerals in the regulatory text of provisions which are revised versions of current provisions which include specific mention of non-asbestiform minerals. The reason for the continued reference in the revised provisions is to avoid confusion if OSHA presented both the old and new text, each version applicable to separate minerals. At the conclusion of the separate rulemaking relating to regulation of these non-asbestiform minerals (Docket H-033d), OSHA will make appropriate changes in the entire regulatory text of the revised asbestos standards to reflect the outcome of that proceeding and thus to remove reference of the non-asbestiforms, if appropriate.

Separate comprehensive standards for general industry and construction were issued in 1986 which shared the same permissible exposure limit (PEL) and most ancillary requirements. The standards reduced the 8-hour time weighted average (TWA) PEL tenfold to 0.2 f/cc from the previous 2 f/cc limit. Specific provisions were added in the construction standard to cover unique hazards relating to asbestos abatement and demolition jobs.

Several major participants in the rulemaking proceeding including the AFL-CIO, the Building and Construction Trades Department (BCTD) of the AFL-CIO, and the Asbestos Information Association (AIA), challenged various provisions of the revised standards. On February 2, 1988, the U.S. Court of Appeals for the District of Columbia issued its decision upholding most major challenged provisions, but remanding certain issues to OSHA for reconsideration (*BCTD, AFL-CIO* v. *Brock*, 838 F.2d 1258). The Court held that where rulemaking participants had recommended regulatory provisions which, on the record, appeared to be feasible and to confer more than a *de minimis* benefit in reducing significant risk, OSHA must either adopt them, refute the evidence of feasibility or benefit, or more persuasively explain why OSHA did not adopt the provisions. The Court also ordered OSHA to clarify the regulatory text for two provisions and found one provision, a ban of spraying asbestos-containing products, unsupported by the record. In addition, OSHA's failure to adopt a short-term exposure limit (STEL) was ordered to be reconsidered within 60 days of the Court's mandate. In partial response, OSHA issued a STEL of 1 f/cc measured over a 30-minute sampling period, on September 14, 1988 (53 FR 35610).

On June 10 and July 18, 1989, BCTD and the AFL-CIO petitioned the Court to enforce its remand order by ordering OSHA to resolve all remand issues on the record of the 1986 rulemaking proceeding within 7 to 60 days. The Court, in an October 30, 1989 order, divided the remand issues into three categories as follows. With respect to three issues, the Court ordered OSHA to take action by December 14, 1989. These issues were:

Issue 1. Formally delete the ban on the spraying of asbestos-containing materials;

Issue 2. Clarify that periodic monitoring in the construction industry must be resumed after conditions change; and

Issue 3. Clarify the exemption for "small-scale, short duration operations" from the negative-pressure enclosure requirements of the construction standard to limit the exemption to work operations where it is impractical to construct an enclosure because of the configuration of the work environment.

OSHA issued its response on these issues on December 14, 1989 (54 FR 52024, December 20, 1989). In that document OSHA (1) removed the ban on the spraying of asbestos-containing materials; (2) changed the regulatory text to clarify that construction employers must resume periodic monitoring whenever there has been a change in process, control equipment, personnel or work practices that may result in new or additional asbestos exposure; and (3) explained why OSHA was not amending the regulatory text to clarify the limited exemption for "small-scale, short-duration operations" in the construction industry standard, but instead would institute rulemaking on this issue.

With respect to the second group of issues, the Court ordered OSHA to complete its response on the existing record by January 28, 1990. These issues are:

Issue 4. The possibility of further regulations governing employee smoking controls;

Issue 5. The effectiveness levels of various respirators and OSHA's policy of requiring respirators to protect workers at only PEL level; and

Issue 6. The possibility of bi-lingual warnings and labels for employers with a significant number of non-English-speaking employees.

The Court stated that if OSHA determines that these issues could not be resolved on the existing record, OSHA may explain why and commence new rulemaking instead.

On January 28, 1990, OSHA issued its response on these issues (55 FR 3724, February 5, 1990). In that document, OSHA:

(1) Prohibited workplace smoking in areas where occupational exposure to asbestos takes place; expanded training requirements to include information about available smoking cessation programs; required the distribution of self-help smoking cessation material; required a written opinion by the physician stating that the employee has been advised of the combined dangers of smoking and working with asbestos;

(2) Explained how and why the 1986 respiratory protection standards will reduce employee risk below that remaining solely as a result of the PEL, and that the effectiveness levels of respirators are under review; and

(3) Required employers to ensure that employees working in or near regulated areas understand warning signs, and required training programs to specifically instruct employees as to the content and presence of signs and labels.

Finally, as to the third group of three remaining remand issues, the Court ordered OSHA to resolve these issues after rulemaking. These issues are:

Issue 7. The establishment of operation-specific permissible exposure limits;

Issue 8. The extension of reporting and information transfer requirements; and

Issue 9. The expansion of the competent person requirement to all employers engaged in any kind of construction work.

In addition, the Court granted OSHA's unopposed request to publish the Notice of Proposed Rulemaking on this group of issues on April 13, 1990, to allow sufficient time to consult with the Advisory Committee on Construction Safety and Health (ACCSH). Under the Construction Safety Act (40 USC 333) and regulations in 29 CFR 1911.10 and 29 CFR 1912.3, OSHA was required to consult with that committee in the formulation of regulatory proposals which would apply to employment in construction. OSHA presented the proposed regulatory text and pertinent explanatory materials to the ACCSH and consulted with them on March 14, 1990. The Committee submitted comments and suggestions which are discussed, where appropriate, throughout this narrative. The Committee's draft of a revised regulatory text and other submissions are available as Exhibit 1–126.

The Court, on May 2, 1990 granted OSHA's further motion and extended the time to issue the proposal until July 12, 1990, in order to allow coordination of the proposal with other regulatory agencies, in particular EPA.

II. Pertinent Legal Authority

Authority for issuance of this standard is found primarily in sections 4(b)(2), 6(b), 8(c), and 8(g)(2) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 643(b)(2), 655(b), 657(c), and 657(g)(2) and in the Construction Safety Act, 40 U.S.C. 333. Section 6(b)(5) governs the issuance of occupational safety and health standards dealing with toxic materials or harmful physical agents. Section 3(8) of the Act defines an occupational safety and health standard as:

> * * * a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

The Supreme Court has said that section 3(8) applies to all permanent standards promulgated under the Act and requires the Secretary, before issuing any standard, to determine that it is reasonably necessary and appropriate to remedy a significant risk of material health impairment. *Industrial Union Department* v. *American Petroleum Institute,* 448 U.S. 607 (1980).

The "significant risk" determination constitutes a finding that, absent the change in practices mandated by the standard, the workplaces in question would be "unsafe" in the sense that workers would be threatened with a significant risk of harm. *Id.* at 642. A significant risk finding, however, does not require mathematical precision or anything approaching scientific certainty if the "best available evidence" does not warrant that degree of proof. *Id.* at 655–656; 29 U.S. 655(b)(5). Rather, the Agency may base its finding largely on policy considerations and has considerable leeway with the kinds of assumptions it applies in interpreting the data supporting it, *Id.* 655–656; 29 U.S. 655(b)(5). The Court's opinion indicates that risk assessments, which may involve mathematical estimates with some inherent uncertainties, are a means of demonstrating the existence of significant risk.

OSHA believes that compliance with proposed amendments to reduce the PEL to 0.1 f/cc as a time-weighted average measured over 8 hours would further reduce a significant health risk which exists after imposing a 0.2 f/cc PEL. OSHA's risk assessment showed that lowering the TWA PEL from 2 f/cc to 0.2 f/cc reduces the asbestos cancer mortality risk from lifetime exposure from 64 deaths per 1,000 workers to 7 deaths per 1,000 workers. OSHA estimated that the incidence of asbestosis would be 5 cases per 1,000 workers exposed for a working lifetime under the TWA PEL of 0.2 f/cc. Counterpart risk figures for 20 years of exposure are excess cancer risks of 4.5 per 1,000 workers and an estimated asbestosis incidence of 2 cases per 1,000 workers.

OSHA's risk assessment also showed the persistence of a significant risk at the 0.1 f/cc action level. The excess cancer risk remaining at that level is a lifetime risk of 3.4 per 1,000 workers and a 20 year exposure risk of 2.3 per 1,000 workers. OSHA concludes therefore that continued exposure to asbestos at the TWA permitted level and action level presents residual risks to employees which are still significant.

The DC Circuit Court of Appeals affirmed OSHA's conclusion that the excess risk stemming from average exposures of 0.1 f/cc "could well be found significant." *BCTD* v. *Brock,* 838 F.2nd at 1266.

OSHA also finds, following the analysis suggested by the DC Court of Appeals that " implied real exposures" triggered by a 0.1 f/cc PEL, would still present a significant risk. The Court noted that "there is no legal basis for totally disregarding a gap between real-world average exposures and nominal legal ceilings" in assessing the significance of a risk at that nominal limit (838 F.2nd at 1266).

OSHA found in the preamble to the 1986 standards that a ratio of about 2 to 1 between a PEL and a resulting average exposure level was exaggerated, because there is significant controllable exposure level fluctuation, which such a prediction ignores (51 FR at 22653). In its preamble to the asbestos "ban" regulation, EPA noted that OSHA's own inspection data do not support the assertion that current exposures are significantly below the PEL (54 FR at 29474, July 12, 1989). Thus OSHA concludes that measured exposures for asbestos-exposed workers where employers are attempting compliance with a 0.1 f/cc TWA limit, would most likely on the average be no less than 0.075 f/cc. Using linear proportionality to previously calculated risks, these predictions are a lifetime (45 year) excess risk of about 2.5 per 1,000 workers, and an excess cancer risk for 20 years of more than 1.5 per 1,000 workers. OSHA believes these risks are clearly not insignificant. Further, OSHA does not issue citations unless the PEL, plus an allowance for variability, is exceeded.

After OSHA has determined that a significant risk exists and that such risk can be reduced or eliminated by the proposed standard, it must set the standard "which most adequately assures, to the extent feasible on the basis of the best available evidence, that no employee will suffer material impairment of health * * *", section 6(b)(5) of the Act. The Supreme Court has interpreted this section to mean that OSHA must enact the most protective standard necessary to eliminate a significant risk of material health impairment, subject to the constraints of technological and economic feasibility. *American Textile Manufacturers Institute, Inc.* v. *Donovan,* 452 U.S. 490(1981). The Court held that "cost benefit analysis is not required by the statute because feasibility analysis is." *Id.* at 509.

Authority to issue this standard is also found in section 8(c) of the Act. In general, this section gives the Secretary

authority to require employers to make, keep, and preserve records regarding activities related to the Act. In particular, section 8(c)(3) gives the Secretary authority to require employers to "maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6." Provisions of OSHA standards which require the making and maintenance of records of medical examinations, exposure monitoring, and the like are issued pursuant to section 8(c) of the Act.

The Secretary's authority to issue this proposed standard is further supported by the general rulemaking authority granted in section 8(g)(2) of the Act.

Because the Asbestos Standard is reasonably related to these statutory goals, the Secretary finds that this standard is necessary and appropriate to carry out her responsibilities under the Act.

In addition, section 4(b)(2) of the Act provides for OSHA standards to apply to construction and other workplaces as well as in general industry.

IV. Summary and Explanation of the Proposed Amendments

This document constitutes OSHA's response on the third group of remand issues and on the issue of exemption of "small-scale, short duration operations" from the negative-pressure enclosure and other requirements, deferred from the December 20, 1989 response. In this proposal OSHA is defining the term "small-scale, short term operations" differently, limiting conditions for the exemption to specific situations and limiting the exemption to the negative-pressure enclosure requirement. OSHA is also proposing narrowly-focused exemptions for roofing operations, floor tile removal operations, and where erection of an enclosure is infeasible. OSHA is clarifying the regulatory text such that aside from the specific exemptions just mentioned, all employers engaged in demolition, renovation, and removal operations must establish a negative-pressure enclosure for that operation, regardless of exposure levels at the site. This requirement will also respond to the Court remand issue 7 by requiring operation-specific controls to reduce risk.

On issue 7, the establishment of operation-specific permissible exposure limits, OSHA is proposing to lower the permissible exposure limit for the construction industry and general industry to 0.1 f/cc as an 8-hour time-weighted average. OSHA is adding specific control and work practices applicable to certain operations that will apply regardless of the exposure level, thus further reducing worker exposure. OSHA believes that the 0.1 f/cc PEL is feasible and can be achieved using engineering controls and work practices specified in the proposed standard.

On issue 8, the extension of reporting and information transfer requirements, OSHA is expanding the communication provisions in the standards to require owners of buildings to communicate known information concerning the location of asbestos to occupants of the building when contemplating asbestos-related work. Employers conducting major construction activities which disturb asbestos are also to communicate information regarding asbestos hazards and steps being taken to reduce exposure risks to employees and employers likely to be exposed. OSHA is also proposing a requirement that all employers engaged in non-small-scale, short-term demolition, renovation, and removal operations notify OSHA prior to commencement of work.

On issue 9, OSHA is clarifying that a competent person will be required on sites which are exempted from the negative-pressure enclosure requirement. In addition, the duties of the competent person and the attendant training requirements must be matched to the unique nature of the hazards and protective measures at each site.

A. Proposed Requirement for Establishing a Negative-Pressure Enclosure

The issue of when a negative-pressure enclosure must be established for removal, renovation, and demolition operations was originally remanded to OSHA by the Court of Appeals, for Agency clarification based on the earlier rulemaking record (*BCTD at 1279*). OSHA responded in its December 20, 1989 notice that additional rulemaking was required to evaluate the effectiveness and drawbacks of negative-pressure enclosures, and technological advances in these controls (54 FR at 52067). This rulemaking will also allow OSHA to examine the experience with alternatives, such as glove bags and negative-pressure glove boxes, which were either unavailable or had limited performance data in 1986.

Based on its preliminary review of the 1986 record, relevant policy considerations, and the still limited data concerning the effectiveness of the control systems mentioned above, OSHA is proposing clarifying revisions to paragraph (e)(6) of the construction standard, § 1926.58. They will require employers to establish negative-pressure enclosures before commencing any asbestos removal, demolition, and renovation operation, regardless of the exposure level, unless specifically exempted. OSHA is also proposing to clarify the exemptions from this requirement as follows: Small-scale, short-duration operations which meet newly proposed specification criteria; operations where the erection of negative-pressure enclosures are infeasible; and roofing and floor tile removal jobs. Unlike the 1986 standards, however, OSHA is proposing to separately require that "competent persons" supervise all removal, renovation, and demolition jobs, even if they are exempt from the negative-pressure enclosure requirement.

The basis for the 1986 requirement for negative-pressure enclosures for asbestos removal, demolition, and renovation was conclusive record evidence that asbestos presents a significant risk even at levels well below the permissible exposure limit. Since asbestos disturbed during abatement and renovation activities likely would spread beyond the point where the asbestos is handled to pose a risk to other workers engaged on the worksite, containment and other precautions would be needed if the risk to bystanders is determined to be significant. For typical renovation, removal, and demolition jobs, the amount of asbestos requiring containment is substantial. The application of negative-pressure ensures that asbestos fibers remain inside even if a leak develops in the enclosure shell. In 1986, OSHA believed, based on limited reports of experience using such enclosures for asbestos work, that the full enclosure, which encloses the work and the workers and limits access, would be effective in containing asbestos. In addition, change rooms attached to the full enclosure for removal of contaminated clothing and equipment were expected to further reduce the spread of contamination. The negative-pressure system draws the contaminated air into a filter prior to venting to the outside, which might reduce exposures to employees within the enclosure to some as yet unquantified degree.

For the same reasons as in 1986, this proposal continues the requirement that renovation, removal, and demolition jobs be conducted within a full negative-pressure enclosure. Additionally, the regulatory text makes explicit that a full negative-pressure enclosure must be established regardless of measured asbestos levels. OSHA notes that removal jobs generate highly variable amounts of asbestos, reducing the

predictability of exposure levels from one monitoring event to the next. Moreover, measured asbestos levels cannot be used to determine the need for a full negative-pressure enclosure, because of the time required by the testing laboratory to complete the test and report the results.

As stated above, renovation, removal, and demolition jobs typically involve handling substantial quantities of asbestos. General contamination of the workplace has resulted from failure to confine asbestos using strict regulated area procedures, and asbestos-related diseases have been found in workers of a different trade exposed to asbestos contamination from the activities of asbestos workers. Negative-pressure enclosures, when used properly, limited this exposure. OSHA believes that installing negative-pressure enclosures in asbestos abatement work is now recognized as prudent practice by the asbestos abatement industry, and is generally done by abatement contractors, even where jobs are not covered by OSHA's standard. Is this proposal targeted to those situations where these contractors believe negative-pressure enclosures are appropriate?

Most importantly, as noted above and by the Court, significant risk exists at levels below the PEL. Therefore requiring that the spread of asbestos be contained where it is likely, even if not certain, that the PEL would be exceeded is both appropriate and necessary to reduce still significant risk to bystander employees. Therefore, this specification also partially responds to remand issue 7 which calls for establishing operation-specific PELs. Although a separate PEL is not proposed for removal, demolition, and renovation, the regulated area controls are proposed to apply even when exposures may be less than the newly proposed PEL of 0.1 f/cc. OSHA believes that the nature of all asbestos removal projects, e.g., scraping away asbestos from solid surfaces, results in substantial asbestos fiber release, and regulated area controls found in the asbestos standard and this proposed modification are necessary.

Information submitted to the 1986 rulemaking and the Agency's subsequent enforcement experience, study results, and public comment show that asbestos fiber contamination occurs outside the immediate area of abatement unless means are provided to contain the abatement activity. In 1986, testimony was presented that there was significant secondary contamination of work areas adjacent to asbestos removal operations. (Tr. June 28, 1984 at 341 et seq). However OSHA has not yet been able to estimate the risk to bystander employees. OSHA recognizes that the above information is not necessarily representative of bystander employee exposures and requests comment on: (1) Level of exposure to bystander employees; (2) the number of affected employees; and, (3) frequency of exposure of any given employee.

In an EPA-study described by Breen et al (Exh. 1–23) in 1986, elevated levels of asbestos fibers (up to 16 f/cc by TEM) were detected immediately outside some of the barriers which separated the asbestos removal work area from the remainder of the school.

In a submission to OSHA of the Asbestos Abatement Council-AWCI (Exh. 1–142), monitoring data from a large number of abatement projects were presented. These data consistently indicated that exposures outside the negative-pressure enclosures were much lower than inside, with exposures in the decontamination areas being intermediate. For example, during a removal operation within a sub-basement, the personal samples ranged from 0.03 to 0.07 f/cc; while the area samples within the enclosure were between 0.12 and 0.15 f/cc; the decontamination chamber level was less than 0.01 f/cc; the bag load-out chamber, 0.01 f/cc, and the sample taken at the negative air exhaust was less than 0.01 f/cc.

Much abatement work is undertaken in basement areas of commercial buildings. Large numbers of janitorial workers work in such areas during and after removal activities. Large-scale renovation of commercial buildings exposes many adjacent workers to asbestos contamination including other workers in construction trades, such as electricians, carpenters, drywallers, as well as employees working in adjacent office or commercial space and communication workers (see e.g. docket H–033c, Tr. June 28, 1984 at 346 et seq).

OSHA seeks comment on applying the requirements for negative pressure enclosure for all removal, demolition and renovation jobs which involve asbestos. OSHA also seeks comments on whether any additional controls, such as respirator use, should also be a specification for employees performing these operations.

Since the revised asbestos standards were issued in 1986, OSHA has been contacted informally by various asbestos abatement contractors who have asked the Agency to comment on the patentability of a system to establish required negative-pressure enclosures. OSHA believes that the issue of patentability should be appropriately determined by the U.S. Patent Office, and through other administrative or judicial proceedings where any such claim would be formally reviewed.

The Agency adopted the requirement to erect negative-pressure enclosures in 1986, in part because of the Agency's institutional knowledge that the application of the general principles of negative-pressure would assure that asbestos fibers would tend to remain in an enclosure placed under negative-pressure, if that enclosure were damaged. Neither in the 1986 requirement, nor in this proposal, did or does the Agency intend that the negative-pressure enclosure requirement be met by any specific combination or configuration of barriers, fans, exhaust systems, or entry/egress ways. The illustrations and explanatory text in non-mandatory appendix F are illustrative only. Different devices, systems, and materials and configurations may be used to create enclosures, to establish negative-pressure, and to erect attached decontamination facilities.

OSHA is interested in information, comments and data on whether the costs of erecting required enclosures, or of any other asbestos abatement technology, are affected by the existence of patents and, if so, how such additional costs affect the feasibility of the standards.

1. Other Controls

OSHA is also considering whether alternative control methods should be allowed for renovation, removal and demolition operations in lieu of negative-pressure enclosures. These include:

a. *Glove bags.* OSHA is proposing to require negative-pressure walk-in enclosures unless specific exemption criteria are met because other, more limited, containment systems do not yet appear to be equally effective in protecting removal and bystander employees. OSHA has received inquiries and faced enforcement situations where employers were using glove bags instead of walk-in enclosures for removal operations where negative-pressure enclosures appeared feasible.

Glove bags are sealed compartments with attached inner gloves used for handling certain materials containing asbestos, such as insulated piping and valves with asbestos gaskets. The glove bag also relies on the principle of containment. Tools and wetting agents are enclosed in the bag which is then sealed around the pipe or other fixture. After completion of the task, the bag is

collapsed and properly disposed of. OSHA notes that there are cost advantages to the employer in avoiding erecting a full enclosure where a glove bag can be installed. There are also potential advantages to the employee if the bag is properly designed, installed and used, since unlike the full enclosure which contains both the worker and the asbestos, the glove bag separates the worker from the contamination.

Available data indicates that glove bags in use may not always provide adequate protection. For example, NIOSH Health Hazard Evaluations on glove bags confirm the fact that, if improperly used, an employee can puncture the bag with tools or sharp debris thereby generating high exposures in the employee's breathing zone (Ex. 1-1, 1-2, 1-20, 1-22). While NIOSH has also shown that employees can improve their performance using glove bags over time, the potential for damage to the plastic containment remains high. OSHA shares NIOSH's concern about the poor performance of glove bags in containing asbestos in the hands of poorly trained or infrequent users.

b. *Glove boxes.* A promising refinement of the glove bag is the glove box or rigid glove bag that can be subjected to negative-pressure without collapsing, as is the case with glove bags composed of flexible plastic materials. This type of equipment appears to combine the advantages of removal of the worker from the asbestos and protection from asbestos which may be expelled through a puncture. At this time, however, OSHA is unaware of any published studies of experience with this equipment, including potential exposures during dismantling and disposal of removed asbestos.

Because the current data concerning the performance of glove boxes and bags in controlling asbestos exposure are limited and inconclusive, OSHA believes that the general requirement that full negative-pressure enclosures must be provided to protect workers from asbestos exposure in activities covered by this standard continues to be necessary. As described below, there are limited situations where glove bags must be used in addition to the protection afforded by full enclosures or as a substitute where no feasible alternative exists. Nevertheless, in light of the known limitations of glove bags, these exemptions have been narrowly drawn. OSHA seeks additional comment and data on this preliminary determination including any proven improvements to glove bag/box design and/or construction which might minimize breakage and leakage.

c. *New technologies.* Various manufacturers have informed OSHA of the development of innovative asbestos removal techniques. In particular, one technique utilizes a rectangular frame, placed around a pipe section, which encloses and provides water to be sprayed on four planes completely surrounding the pipework. Claims that worker exposures are dramatically reduced have been made. Information concerning this system, which has been used abroad, has been placed in the record (Exh. 1-138); however, exposure data has not yet been submitted. OSHA is interested in receiving all information and data concerning this and other new techniques for removing asbestos. Data concerning direct and indirect worker exposures and area exposures should also be submitted. Since the Agency now does not have adequate data to evaluate the effectiveness or feasibility of these new techniques, this proposal does not include them. The Agency will consider providing for new technology in the final standard to the extent supported by the record developed in this rulemaking.

2. Proposed Exemptions from the Negative-pressure Enclosure Requirement

In addition to clarifying the negative-pressure enclosure requirement in paragraph (e)(6), OSHA is proposing four sets of circumstances where employers engaged in asbestos demolition, renovation, and removal operations are exempted from that requirement. These proposed exemptions are for: small-scale, short-duration operations, roofing operations, floor tile removal operations, and operations where establishment of full size negative-pressure enclosures is infeasible. These exemptions were included in the original negative-pressure enclosure requirement or in the original definition of small-scale, short-duration operations. The proposal specifies more clearly the conditions an employer must meet to qualify for an exemption. Since the exemptions would be conditioned on compliance with newly required protective measures, such as local containment and work practices, OSHA believes that employees who work on or near exempt operations will be protected from significant asbestos exposure. OSHA also believes that the proposed specific exemption provisions represent a narrowing of the 1986, more general exemptive regulatory language. Therefore fewer removal employees are expected to work without negative pressure enclosures than was the case under the 1986 regulations.

OSHA provided a general discussion of the justification for some exemptions from negative pressure enclosures in its December 20, 1989 **Federal Register** notice. There OSHA explained why it would propose a new definition of the small-scale, short-duration exemption and initiate rulemaking, rather than limiting the exemption to operations where it is impractical to construct a negative-pressure enclosure because of the configuration of the work environment.

First, the Agency stated its belief, based on its experience in enforcing the construction standard, that limiting the exemption only to situations where negative-pressure enclosures are impractical might not reduce employee risk from asbestos exposure. Second, OSHA described the practical limits placed on the scope of the existing small-scale, short-duration exemption by administrative interpretations. OSHA believes that, in light of the evidence existing in the record, the proposed exemptions should be narrowly defined to isolate those cases where negative-pressure enclosures do not appear likely to add more than a *de minimis* increment to employee or bystander worker protection. They represent cases where practicality or limited exposure suggests that steps other than erection of a walk-in enclosure be taken to protect workers from the risks of asbestos.

a. *Clarification of the Small-Scale, Short Duration Exemption.* OSHA is proposing to clarify and modify the exemption from the requirements of paragraph (e)(6) in the case of small-scale, short duration operations. The Agency is both providing general criteria and specifically identifying certain operations which will not require negative pressure walk-in enclosures. The proposed definition states that these operations include "only those demolition, renovation, repair, maintenance, and removal operations which affect small surfaces or volumes of material containing asbestos, tremolite, anthophyllite, or actinolite" and which are unlikely to expose bystander workers to significant amounts of asbestos, and which will be completed within one work shift. OSHA is identifying in the regulatory text, individual tasks which would be deemed to be exempt. The definition lists such tasks, modified by cut-offs for time required for completion, and/or amount of asbestos disturbed or area of operations. Thus the proposed text of the new definition would exempt:

* * * repair of asbestos on piping that is less than 21 linear feet; repair or removal of asbestos panel that is less than 9 square feet; pipe valve repair or replacement of pipe valves containing asbestos gaskets or electrical work that disturbs asbestos that is completed by one worker in less than four hours; removal of drywall which is completed for the facility within an eight-hour workday; renovation projects involving endcapping of pipes and tile removal that is completed in less than four hours; and installation of conduits that is completed within an eight hour work shift.

The Agency bases the above definition on both specific suggestions in the record from its field personnel who have observed asbestos operations, and its general enforcement and consultative experience with the 1986 and 1972 asbestos standards. The proposed criteria are intended to reflect realistic workplace operations. There is no attempt to define operations which rarely exist.

Several additional suggestions and observations were received from field personnel relating to the proposed definition of small scale, short duration operations. Comment and additional information and data are sought by OSHA on these suggestions. They are as follows:

(1) Removal of transite panels should be exempt from the negative-pressure enclosure requirement as long as the transite is removed without cutting or otherwise abrading the material;

(2) Inclusion of size or square footage criterion in the definition of small-scale, short duration operations renders it too inflexible, not allowing adequate use of professional judgment;

(3) There should be no linear footage limit for removal of asbestos insulation on pipe as long as proper glove bag techniques are used;

(4) Adopt the NESHAP reporting criteria as the cutoff for OSHA's small-scale, short duration operations;

(5) Remove exemptions and require negative-pressure enclosures on all projects;

(6) Mini-enclosures should not be included as a suggested method for use in small-scale, short duration jobs; and

(7) OSHA should require *area* monitoring to assess the success of containment and the extent of clean-up.

In addition, OSHA is considering extending the exemption to other operations which are truly small-scale, short-term, even though they may not be listed in the proposed standard. For example. the employer should be able to demonstrate that the claimed exemption applies to a non-recurring operation which does not expose bystander employees to asbestos and which is completed in less than a day by not more than 1 person, or in less than 4 hours by not more than 2 employees and which is not expected to release asbestos in excess of the PEL. OSHA seeks commment on these general criteria and whether they should be included in the regulatory text.

This proposed definition replaces a similar, but more general definition by example in current 29 CFR 1926.58, which appeared to consider all operations such as pipe repair, valve replacement, installing electrical conduits, installing or removing drywall, roofing, and other general building maintenance or renovation as "small-scale, short duration". The Court of Appeals stated that OSHA had not drawn the parameters of the exemption with enough specificity. The new definition attempts to add greater specificity for many of the operations originally defined as operations involving small-scale, short-duration exposures.

The Agency believes that the amount of asbestos contamination released during repair and maintenance activities is often of the same magnitude as other "renovation" or removal jobs. The work operations too are similar, calling for identical work practices, isolation techniques or local ventilation controls.

Based on its experience, the Agency cannot now define a cutoff, either in temporal, spatial, or other terms, which can be classified as always assuring *de minimis* exposure potential. Thus, the proposal considers all repair and maintenance which will disturb asbestos-containing material as requiring appropriate work practices and other controls to protect the worker. In addition, OSHA believes the proposed expansion of the competent person requirement to include oversight of small-scale, short duration operations will also enhance protection of repair and maintenance workers. OSHA seeks comment on the inclusion of these activities as small-scale, short duration operations.

OSHA also solicits information and comment on the validity of listing specific operations and how well the listed criteria correlate with actual practice. For example, is it usual, or even possible, for one worker to perform electrical work which disturbs asbestos in four hours, or are two workers or more time commonly needed for small jobs? Should four hours of floor tile or ceiling tile removal qualify as a small-scale, short duration job? Are other repair, renovation or maintenance jobs which are unlisted, capable of being identified in terms of time, manpower and/or area of disturbance? Should they too be earmarked for an exemption from the negative pressure requirement? Are the general criteria under consideration for additional small-scale, short duration operations appropriate and sufficiently detailed?

In addition, OSHA seeks comment on whether a volume amount of asbestos should be specified in the new definition of small-scale, short duration operations. What difficulties in volume determination would likely be encountered? OSHA also requests comments on the ACCSH recommendation, described below, that OSHA define small-scale, short-term operations primarily in terms of the amount of asbestos disturbed, rather than the surface area of the structural members from which the asbestos is removed. The Agency believes that this suggestion deserves consideration as an alternative to the proposed regulatory text.

In its enforcement of the 1986 standards, OSHA has observed that some employers have divided large-scale asbestos abatement jobs into a series of smaller jobs so as to claim an exemption from the negative pressure enclosure requirement. In order to make clear that the exemption does not apply in such circumstances, the proposal identifies qualifying jobs as those that are completed within stated timeframes and specifically requires that jobs must be "non-repetitive" to qualify as "small-scale, short duration."

OSHA is, nonetheless, requesting comments on this potential problem and the desirability of including specific alternative language in the definition of small-scale, short-duration operations to address these concerns.

In order to assure that workers engaged in small-scale, short-duration operations receive adequate protection from significant asbestos exposure, OSHA has proposed to require alternative protective strategies. The proposed provision for small-scale, short-duration operations requires that the employer use a feasible containment or enclosure method, where appropriate, such as glove bags, including negative-pressure glove boxes, mini-enclosures, or wet methods to reduce worker exposure to asbestos and to minimize any spread of contamination beyond the immediate work area. For some of the operations identified in the definition, additional protection should be easily employed; for example, glove bags can be used in pipe removal and valve replacement. In addition, this proposal specifically would newly require that appropriately trained competent persons supervise small-scale, short duration operations. As discussed below, OSHA

is proposing that a competent person specially trained for small-scale, short-duration operations must be present at the work site to assure that workers engaged in these jobs are protected from hazards of asbestos.

In its March 14, 1990 recommendation, ACCSH offered two alternatives as definitions for small-scale, short duration operations. These are as follows:

Small scale, short-duration operation means an operation which meets all of the following requirements:

(1) A maintenance, repair, or renovation task where the removal, handling or treatment of asbestos is not the primary goal of the job.

(2) An activity where employees' exposures to asbestos can be kept below the action level via worker isolation techniques and methods described in Appendix G.

(3) An operation which has been included in the employer's or building owner's asbestos maintenance program, as required in Appendix G.

(4) The operation is non-repetitive, i.e. not one of a series of small-scale or short-duration jobs which if performed at one time would not constitute a small-scale short-duration operation.

(5) Where the operation results in the removal or disturbance of asbestos or asbestos-containing material, the amount of asbestos or asbestos-containing material may not exceed _____ cubic feet, i.e. the amount of asbestos or asbestos-containing material that would be contained in a _____ gallon sealed drum.

The second definition suggested by ACCSH contains the same language as the first except that (5) is replaced with the following:

(5) Where the operation results in the removal of asbestos or asbestos-containing material, the amount of asbestos or asbestos-containing material shall not exceed that which can be contained in a single glove bag containing not more than two sets of gloves.

OSHA expects that the removal and renovation operations that qualify for the exemption typically will be secondary to the normal business conducted on the premises or by the employer.

Demolition work is not expected to be exempt under the small-scale, short duration definition. However, some demolition work may be exempt under the proposed provisions covering the configuration of the work environment which make the erection of an enclosure infeasible. OSHA notes that to the extent that stripping of asbestos is required prior to demolition, such activity is considered removal work under OSHA's standard and must be contained in a negative-pressure enclosure, unless a specific exemption applies.

The Agency requests comments on the relative merits of the proposed definition of small-scale, short-duration operations, and those of ACCSH, and on its application of the definition to removal, renovation and demolition operations. In particular, the Agency encourages comment on individual elements of the definition and requests submission of any data on the exposures potentially associated with any of these operations.

b. *Other Proposed Exemptions to the Negative-Pressure Enclosure Requirement.* OSHA is also proposing a second exemption from the negative-pressure enclosure requirement, for roofing operations. This would apply almost entirely to the removal of asbestos-containing roofing material. OSHA does not believe that requiring negative-pressure enclosures will result in more than a *de minimis* benefit to workers removing roofing or to other employees in their vicinity. Such installation might pose safety hazards to workers stationed on roofs or scaffolding; thus it is unlikely that there will be any potential net safety and health benefit from the use of such enclosures. OSHA is proposing that employers engaged in roofing operations take specific additional steps to reduce employee exposure to asbestos. These include use of airtight chutes to lower debris from the roof to the ground, or immediate bagging and lowering of debris rather than dumping it from a height. Wetting would be required where feasible to reduce contamination. These methods have been shown to successfully reduce employee and bystander worker exposures.

OSHA notes that roofing materials often contain a high percentage of asbestos and if severely weathered, can be quite friable and fibers potentially airborne. Therefore, it is essential that all other feasible methods be employed to protect workers from asbestos exposure during roofing operations.

ACCSH suggested the addition of the following to the regulatory text describing the exemption of roofing operations from the negative-pressure enclosure requirement:

In roofing operations, where the employer shall institute all feasible controls to minimize exposures including:

1. Establishing the entire roof as a regulated area:
2. Using wet methods prior to and during the cutting and handling of asbestos-containing roofing material (ACRM);
3. Cutting or removing ACRM using hand methods whenever possible;
4. Equipping all powered tools with a HEPA vacuum system or a misting device;
5. HEPA vacuuming all loose dust left by the sawing operation;
6. Double bagging, wrapping in two layers of 6 mil polyethylene, or containerizing all waste material, and requiring all bags, wrapped material and drums be lowered to the ground using a hoist or crane;
7. Isolating all roof level air intake and discharge sources or shutting down all mechanical systems and sealing off all outside vents using two layers of 6 mil polyethylene.

OSHA invites comments on whether it should require employers to adopt all the above provisions, and whether they are feasible in roofing removal operations.

Additionally OSHA is proposing to exempt removal of asbestos containing floor tile from the negative-pressure enclosure requirement. In the preamble to the 1986 standards, OSHA stated that: "data obtained * * * indicate that when the recommendations of the Resilient Floor Covering Institute (e.g., wet sweeping and handling, and prohibiting powersanding and blowing asbestos dust) were followed average TWA airborne fiber concentration were below the 0.2 f/cc PEL during the removal of the old floor." In a recent submission to OSHA from Environ Corporation on behalf of the Resilient Floor Covering Institute and other, mean exposures were between 0.0045 and 0.03 f/cc for workers performing floor tile removal, removal of resilient sheet flooring, or removal of cutback adhesive. These measurements were made during removals which employed work practices recommended by the Resilient Floor Covering Institute. These practices included a prohibition of sanding of floor or residual felt backing, use a of a HEPA vacuum cleaner before and after removal, prohibition of dry sweeping, application of new material over old tiles without removal if possible, wet removal of residual felt, and bagging and disposal of waste in 6 mil plastic containers. Further, the Resilient Floor Covering Institute recommends that unless absolutely positive that a floor is a non-asbestos product, assume it contains asbestos and treat it in the manner prescribed. OSHA is not proposing to include this requirement in this proposal, however, OSHA requests information and data regarding this issue, including any information on the use of the date of installation or manufacture of the floor material in determining whether or not it is likely to contain asbestos. OSHA also seeks information as to safe, effective methods for removal of adherent floor tiles.

In the studies submitted to OSHA, measurements were made of the exposures of bystanders—industrial

hygienists and supervisory personnel. Their 8 hour TWA were even lower than those of the workers performing the removals, with means in the three operations ranging from 0.0043 to 0.023 f/cc. Therefore, OSHA is proposing to exempt such removals from the requirement to establish a negative-pressure enclosure. As in the case of roofing operations OSHA does not feel that requiring enclosures will offer more than a *de minimis* benefit to workers performing floor tile removal nor to bystander employees. OSHA proposes to require that employers engaged in these operations must follow the work practices described by the Resilient Floor Covering Institute to reduce employee exposure to asbestos.

OSHA is also mindful of the potential that deteriorated asbestos containing flooring, backing and adhesives might have for release of asbestos fibers. OSHA requests information on the level of this exposure and comment on the necessity for negative-pressure enclosure and hygiene facilities in instances of flooring removals in which the material is likely to release a significant amount of asbestos fibers. OSHA also solicits comment on the adequacy of the work practices of the Resilient Floor Covering Institute to control worker exposure. OSHA seeks information as to any additional measures to be taken to assure employee safety while performing these operations.

A fourth exemption from the negative-pressure enclosure requirement proposed by OSHA would be wherever an employer demonstrates that such a measure is infeasible. This exception was included in the 1986 standard and is restated in this proposal to make clear that OSHA standards promulgated under section 6(b)(5) of the Occupational Safety and Health Act must be "feasible," as defined by the courts. OSHA's feasibility analysis indicates that very few activities will qualify for this exemption. OSHA seeks comments on factors other than work configuration which might render the establishment of negative pressure walk-in enclosures infeasible.

OSHA is narrowly defining and qualifying these exemptions in order to clarify the conditions under which negative-pressure enclosures are not required to provide significant worker protection. In these narrowly-drawn circumstances, localized containment methods and work practices, if conscientiously used, should reduce exposure to levels equivalent to those achieved with negative pressure enclosures and associated ventilation systems. OSHA notes here, as it advised the Court of Appeals, that it is using this rulemaking to discuss the effectiveness and drawbacks of negative-pressure enclosures, glove bags, and alternative control systems; and to specify more clearly under what circumstances various control systems may be used. Also, OSHA is considering new technology unavailable in 1986, such as negative-pressure glove bags, which appear to offer improved employee protection in certain circumstances either as an alternative to walk-in enclosures, or as required in lieu of conventional "glove bags". These data along with evidence on experience with these systems may limit rather than expand the walk-in enclosure requirement, provide further justification for the proposed exemptions, or provide a basis for expanding the scope or number of exemptions. OSHA also requests information and data on work practices and installation techniques to improve the performance of glove bags and similar equipment. Additional OSHA is concerned about potential electrical and slipping hazards which may result from use of wet methods and seeks comment and information regarding these potential hazards.

In roofing operations and situations where establishment of a negative-pressure enclosure is determined to be infeasible, the hazard that asbestos exposure always presents to employees and bystander workers remains. Therefore, these operations are exempt only from the requirement to establish the walk-in negative-pressure enclosure and not from other worker protective requirements, such as training, work practices, decontamination, showers, clean room, and equipment room. OSHA seeks comment as to the extent to which these requirements should apply to short-term, small-scale operations.

Under the 1986 standards, an employer exempted from the negative-pressure enclosure requirement on the basis that the operation qualified as a small-scale, short-duration operation was also exempted from the competent person requirement. As described more fully below, OSHA is proposing revisions to the construction standard which will require the presence of competent persons on all construction sites subject to this standard. Thus, none of the proposed limited exemptions from the negative-pressure enclosure requirement would exempt employers from the newly clarified and expanded competent person requirements.

B. Proposed Lowering of Permissible Exposure Limit

The Court of Appeals in *BCTD, AFL-CIO* v. *Brock* remanded for reconsideration the issue of whether a permissible exposure limit lower than 0.2 f/cc was warranted in those industries where evidence in the record demonstrated general feasibility of attaining a lower level. The Court was interested in better understanding the Agency's rationale for determining that 0.2 f/cc PEL should be applied across all industry lines, including the weight given to such factors as administrative difficulty of excessive disaggregation or excessive random fluctuations in exposure levels represented in the data. In response, OSHA is proposing a two-part revision. It is reducing across the board the time-weighted average permissible exposure limit to 0.1 f/cc, and is also proposing operation-specific work practices and controls which must be employed, regardless of exposure levels achieved. The basis for the reduced PEL of 0.1 f/cc is OSHA's review of compliance data, new studies available since 1986, and supervening events such as the refinement and development of control methods. OSHA believes that it is feasible for most industry sectors to reach the reduced PEL. The proposed required operation-specific work practices are for certain industry sectors where evidence now points to the success of such practices in reducing exposures, and thus, risk. OSHA believes combining a general performance approach of exposure reduction along with specifying proven control strategies will yield maximum benefit to all employees who may be exposed to asbestos and will avoid administrative and policy concerns relating to enforcing different PELS in different sectors. OSHA also notes the observation that a significant proportion of the personal (8-hour TWA) monitoring samples in its IMIS compliance data since 1986 (Exh. 4) fell within the range of 0.1 to 0.2 f/cc, for example, in asbestos product manufacturing (SIC 3292) approximately 20% were within this range and 22% of those within SIC 1799 (special trade contractors) also were.

In its risk assessment described in the 1986 Asbestos Standard, OSHA found that lifetime exposure at 0.2 f/cc (8-hr TWA) resulted in 7 excess deaths due to cancer per 1,000 workers. Reduction to a 0.1 f/cc PEL reduces this estimate to 3 excess cancer deaths per 1,000 workers. Although this is a substantial reduction, significant risk would remain even at the new PEL. Thus, the newly required

work practices target those operations where they may reduce exposures below the new PEL as well.

Recently, EPA prohibited, at three staged intervals from August 1990 to August 1996, the future manufacture, importation, processing and distribution in commerce of asbestos in almost all products (54 FR at 29460, July 12, 1989). However, the ban would not affect abatement activities involving asbestos or the servicing of asbestos brake and clutch. OSHA requests comment on the proposed reduction in the PEL in light of this ban. OSHA is concerned that the reduction of the PEL would require in some cases, installation of major control systems whose costs would accelerate EPA's scheduled phase-out of various asbestos-producing sectors. Therefore, OSHA is proposing allowing the reduced PEL to be met through the use of respiratory protection for all primary and secondary manufacturing sectors until the dates schedules for phase-out for each sector when engineering controls would be required. In this way, the reduced PEL would not impose engineering control costs on any general industry sector in a way that would change EPA's scheduled phase-out. Either an industry sector would shut down on or before the effective date of the ban, so the engineering control requirement would be irrelevant, or the ban's effective date would have been stayed or lifted, in which case the phase-out schedule would have been changed by supervening events, outside OSHA's purview.

The dates when engineering controls would be required which correspond with the EPA schedules ban are as follows:

Stage 1, August 27, 1990:
- flooring felt
- roofing felt
- pipeline wrap
- asbestos/cement (A/C) flat sheet
- A/C corrugated sheet
- vinyl/asbestos floor tile
- asbestos clothing
- new asbestos products

Stage 2, August 25, 1993:
- beater-add gaskets (except specialty industrial gaskets)
- sheet gaskets (except specialty industrial gaskets)
- clutch facings
- automatic transmission components
- commercial and industrial friction products
- drum brake linings (original equipment market)
- disc brake pads for light- and medium-weight vehicles

Stage 3, August 26, 1996:
- A/C pipe
- commercial paper
- corrugated paper
- rollboard
- millboard
- A/C shingle
- specialty paper
- roof coatings
- non-roof coatings
- brake blocks
- drum brake linings (aftermarket)
- disc brake pads (aftermarket)

OSHA notes that other revised requirements of the standards will become effective in all industries on the effective date for all revisions of the standards.

OSHA requests information and comment on this approach, especially concerning costs of additional respirator programs that a lower PEL would trigger and whether such costs are feasible for sectors schedules for banning. In addition to the proposed requirement for respirator use in general industry just discussed, OSHA is considering whether it should require employers in designated construction operations to use respiratory protection regardless of measured exposures, because variability in exposures is a particular concern and/or because the controls primarily utilized are not considered sufficiently reliable. For example, in construction should OSHA as proposed in mandatory appendix G, require employees working with glove bags always to use respirators because of the possibility of bag leakage? Should employees removing large amounts of asbestos-containing materials wear respirators because exposure levels are expected to vary so that one day's measurements cannot be considered predictive of future exposures?

The Agency seeks comments on expanding the operations in the general industry and construction standards for which respirators should be required, based on the nature of the operation. Commentors should consider whether also requiring respirators, in addition to engineering and work practice controls, would undercut the incentives for employers and employees to install and conscientiously apply such controls. Would employers and employees tend to rely instead on respirators as their major source of protection? OSHA stated in its February 5, 1990 response (55 FR at 3724), that:

> In addition to the problematic nature of respirator use, reliance on engineering and work practice controls for asbestos is preferable because they measurably reduce exposures of employees directly involved in asbestos producing operations, reduce or eliminate bystander exposures, avoid the deposit of asbestos dust on work surfaces and employee clothing which results in further exposures, and include methods of controls such as substitution, or fully bonded asbestos-containing materials which will eliminate or reduce future asbestos exposures.

The Agency will consider requiring additional respirator use, in light of these concerns.

In the case of general industry standards, the affected industries can be divided into two general categories: (1) The asbestos brake and clutch repair and service sector, which employs well over 90% of general industry employees covered by the standard, and (2) numerous processing and manufacturing sectors, which account for relatively few workers and are declining in product volume and employee populations. For the former sector, as described below, employers must use one of several combinations of engineering controls and work practices which are set out in the standard, to reduce exposures below the proposed permissible exposure limit. For the latter group of industries, in general, OSHA believes that those that continue in operation will be able to achieve the proposed PEL using existing engineering controls and work practices.

OSHA also believes that most construction operations will be increasingly able to achieve the proposed reduced PEL, if they conscientiously follow the work practices required in the proposal. As noted above, OSHA acknowledges that in the largest construction sector, abatement operations, variability in exposures because of changing conditions make exposure predictions uncertain. Routine maintenance work may achieve compliance with the proposed reduced PEL where deterioration of asbestos materials is limited and where the work practices in appendix G are followed (Docket H-033c, Exh. 3 at 32-33). Although OSHA is proposing a reduced PEL for this sector, OSHA believes that additional specifications for required work practices will be equally important to assure reduced exposures. OSHA notes that the 1986 record contains data showing reduced exposures during abatement activities and subsequent comment contends that exposure below 0.1 f/cc can be routinely obtained during some major renovation projects (Exh 3-6 and Exh. 84-474, Table A.11) and that "minor" removal activities would be able to comply with 0.1 f/cc on a TWA basis, Docket H-033c, Exh. 84-474, Table 3.10. OSHA is interested in exploring which control devices and work practices demonstrate such reductions in exposure and the conditions of the worksites where low levels were consistently achieved.

Installation of new asbestos-containing construction materials, based on OSHA's enforcement data, and data in the 1986 record is predicted to be able

to easily meet the new exposure limit of 0.1 f/cc (see 51 FR 22662–22663).

In the 1986 asbestos standards, an action level of 0.1 f/cc, half the PEL, triggers monitoring, medical surveillance and training. The Court instructed OSHA to consider reducing the action level to 0.05 f/cc, should the PEL be reduced to 0.1 f/cc. ACCSH, too, has recommended an action level of 0.05 f/cc. However, for two reasons OSHA is not here proposing a reduced action level. First, one technical issue that OSHA must address in resolving this question is whether the variability of sampling would render such measurements unreliable for triggering requirements at an action level of 0.05 f/cc. OSHA believes that especially at the infrequent intervals dictated in the OSHA standard, measurements at such low levels would not be sufficiently reproducible to be readily enforceable. OSHA noted in its STEL notice (53 FR 35610, September 14, 1988) that the excursion limit promulgated, 1 f/cc measured over 30 minutes which corresponded to a time-weighted average of 0.063 f/cc, was the lowest reliable level of detection. The second reason is that OSHA does not believe that more than a *de minimis* benefit would result from a 0.05 f/cc action level which would effectively require only medical surveillance and monitoring to be instituted at that level. In regard to training, OSHA believes that in the two largest employee sectors, brake repair in the general industry standard and abatement work in the construction standard, actual training would not be significantly affected by a reduced action level. First, OSHA believes many removal, renovation and demolition workers are now required to be trained because they are being exposed at or above the current action level. The enhancement of supervisory training in this proposal will additionally protect these employees. Secondly, OSHA does not believe that a reduction of the action level would lead to an expansion of training for brake repair workers, because based on OSHA's data, most such workers have exposures below 0.05 f/cc. In its rule, Asbestos-Containing Materials in Schools (52 FR at 41826, October 30, 1987), EPA noted that the limit of reliable quantitation of the PCM method is 0.01 f/cc. However, at least five samples are required for clearance and all must be below this limit. OSHA feels that for a single workplace monitoring sample, the limit of reliability for the method is substantially above 0.01 f/cc. Comment on this issue is requested.

OSHA is seeking comment on the reduction of the PEL to 0.1 f/cc in all industries and omitting the action level of one-half the PEL from the requirements. OSHA additionally requests comment on the alternative of setting operation-specific PELS rather than lowering the PEL to 0.1 f/cc across the board and prescribing operation-specific work practices. In addition, OSHA seeks information regarding improvement of the methodology for measuring airborne asbestos levels, specifically whether it has advanced sufficiently to allow reliable and reproducible measurements at an action of level of 0.05 f/cc. In addition, OSHA seeks comments on the ACCSH proposal that the STEL be lowered to 0.5 f/cc measured over a 30 minute period.

OSHA is considering some minor modifications to existing laboratory methods of asbestos fiber measurement and a new description, OSHA lab method ID 160, which will provide a safer method and a more complete procedure to follow. These are in the Docket (H033e) as Exhibit 1–129.

1. The Proposed Standard for the Automotive Brake and Clutch Service Industry

As noted above, OSHA is proposing to lower the permissible exposure level for all general industry including the automotive brake and clutch service and repair sectors to 0.1 f/cc as an 8-hour time weighted average. Evidence in the 1986 record demonstrates that exposures below 0.1 f/cc can be achieved using one or more combinations of currently available engineering controls and work practices now included in non-mandatory appendix F to the existing standard. OSHA is now proposing to make three methods, as an alternative and in a revised formulation, mandatory requirements. In addition, OSHA proposes to allow the use of equivalent engineering controls or work practices if the employer can demonstrate that the use of such methods will reduce employee exposure to the same level as the use of the specified methods. Since OSHA believes that the available evidence shows that either of the three methods can reliably reduce exposures to or below 0.05 f/cc, the employer must demonstrate that alternate methods can achieve at least the same level of performance. Use of these or equivalent methods will significantly reduce the risks of asbestos exposure for employees in this largest of the general industry sectors which use materials containing asbestos, tremolite, anthophyllite, or actinolite.

The rationale for this proposal is as follows. In 1986, OSHA established a uniform PEL of 0.2 f/cc for all general industry sectors. The Agency found that brake and clutch repair could achieve exposure levels below 0.2 f/cc by utilizing solvent-spray and HEPA-vacuum methods. The Court asked OSHA to re-examine its PEL for this industry in light of the 1986 record. In re-examining the feasibility data in the record at the time of its original determination and a subsequent study by the National Institute for Occupational Safety and Health (NIOSH) on the exposure levels that can be consistently achieved in brake and clutch repair operations, the Agency believes that the previously recommended combinations of engineering controls and work practices must be made mandatory in order to reduce the significant risk posed by asbestos, in addition to reducing the PEL for this sector. OSHA is adding the wet brush-recycle method to the two recommended work practices, based on the findings in the NIOSH study that this wet method can also reduce asbestos exposures.

Brake repair workers are the largest group of workers occupationally exposed to asbestos in general industry. Data in the National Occupational Hazard Survey by NIOSH estimates that 150,000 brake mechanics and garage workers in the United States are potentially exposed to asbestos during brake servicing operations. (The difference between this and OSHA's estimate of the number of employees at 526,998 may be that OSHA did not convert the number of brake repair workers to full-time equivalents. The OSHA estimates included all potentially exposed auto repair workers, both clutch and brake repair workers.) Workers who repair brakes and clutches made with asbestos are exposed to asbestos fibers because as brakes and clutches deteriorate with wear, asbestos fibers become airborne as asbestos dust. Asbestos dust on automotive brake and clutch parts is easily disturbed during servicing.

Based on the 1986 rulemaking record and additional data, OSHA believes that it is feasible for the automotive brake and clutch service industry to reduce exposures to below 0.1 f/cc by using engineering controls and work practices specified in the proposed standard. This determination is based in part on data obtained from the OSHA IMIS compliance data base and from a November 22, 1982 study by NIOSH used to determine the feasibility of the 1986 standard's general industry PEL of

0.2 f/cc. The OSHA data contained 47 observations of asbestos fiber release resulting from brake servicing operations with a mean 8-hour TWA exposure of 0.03 f/cc, during the period 1979 through 1984. Analysis of OSHA compliance data collected from 1986 through 1989 yielded a mean of 0.012 f/cc as 8-hour TWA in those samples in which any fiber was detected. The NIOSH study demonstrated that average exposures were below 0.1 f/cc when using either the solvent mist/spray can method, the HEPA-filter vacuum system methods or the wet brush-recycle method.

In addition, a December 1989 article entitled "Control of Asbestos Exposure During Brake Drum Service" (Ex. 1–112) reports the results of a NIOSH study quantifying the level of mechanics' exposure to asbestos during brake drum servicing operations using several different control techniques, including the HEPA-filter vacuum system, the solvent mist/spray can system, and the wet brush-recycle method. The study examined the application of the control techniques to a range of vehicle brake repair operations. Eighty-three samples of airborne asbestos fibers from the mechanics' personal breathing zones were collected during the brake servicing operations and analyzed using both phase contrast microscopy (PCM) and transmission electron microscopy (TEM). The concentrations measured ranged from less than 0.013 f/cc to 0.052 f/cc using TEM for all control methods. TEM yields consistently higher exposure estimates than PCM. The results of the study demonstrated that the proposed PEL of 0.1 f/cc can be met using feasible engineering control and work practice methods. OSHA acknowledges that the record may also support the feasible reduction of exposures in this industry to 0.05 f/cc using the proposed work practices and therefore proposes to add mandatory work practice requirements in this sector. Rather than reducing the PEL for this sector to 0.05 f/cc, OSHA has chosen to specify the work practices and controls which appear to be most effective in reducing exposures and will in fact have that effect. The advantages of this approach are the relative administrative ease in enforcing a specification standard and OSHA's belief that reliance on measurements at widely spaced intervals and of doubtful reliability at lower levels would not give employers and employees significant information or protection over the proposed approach.

The proposed standard for the automotive brake and service industry specifies that the employer shall institute the enclosed cylinder/HEPA-filter vacuum system method, a solvent mist/spray can system method, a wet brush-recycle method or any equivalent method of engineering control and work practices which will prevent worker exposure in excess of 0.05 f/cc during brake and clutch servicing operations. Each method consists of engineering controls which must be installed and maintained, and work practices which must be closely followed if the full protection of the control method is to be achieved. As the NIOSH study describes in detail, workers can inadvertently circumvent the protection provided using even those methods that rely most on engineering controls (e.g. the enclosed cylinder/HEPA-filter vacuum method) if certain work practices are not scrupulously applied. The proposed revision to the standard includes the addition of a mandatory appendix which sets out required engineering controls and work practices which must be followed when performing brake and clutch repair operations using the specified methods.

OSHA notes that NIOSH has recommended that while removing, containing and disposing of HEPA filters used during these methods of brake repair, employees wear respirators. OSHA is not adopting that recommendation in this proposal. We note that filter changes occur infrequently (from monthly to more than yearly intervals) and there is no reported data in the record demonstrating that exposures during these operations approach the PEL and/or excursion levels. OSHA notes that requiring respirators triggers other protective provisions of the standard. OSHA does not believe that requiring the regulatory package of respirator-based requirements during these operations would confer any significant benefit. Instead, OSHA requests information concerning recommended work practices employed during filter changes to assure that employees handling asbestos contaminated filters in brake repair and in other operations are not unnecessarily exposed to asbestos.

OSHA has specified three methods that employers may use to achieve compliance, the HEPA-filter vacuum system, the solvent mist/spray can, and the wet brush-recycle method. These three methods have been used successfully for several years and have been studied by NIOSH and private researchers, as indicated in the record [Ex. 84–263, Ex. 90–148]. The enclosed cylinder/HEPA-filter vacuum method and wet brush-recycle method are commercially available, while the solvent mist/spray can system is easily and inexpensively installed. Other methods, as described below, may be acceptable controls, if used according to the specifications in the appendix, to bring exposures of employees engaged in brake and clutch repair to below the proposed PEL. If the rulemaking record provides sufficient supporting evidence, such additional equivalent performance methods may be specified in the final rule as well.

a. *Enclosed cylinder/HEPA vacuum system method.* Paragraph (f)(1)(x) of the proposed standard instructs an employer to comply with the standard through the use of the enclosed cylinder/HEPA-filter vacuum system specified in the proposed appendix. This control method consists of a cylinder designed to enclose the brake or clutch parts during the servicing of the parts. The cylinder must also be designed to prevent the release of asbestos fibers into the worker's breathing zone. The cylinder must have viewing ports and impermeable sleeves through which the worker can handle the brake and clutch servicing. An HEPA-filter vacuum is fitted onto a connection inside the cylinder. A compressed air hose with a nozzle is fitted onto the cylinder and compressed air is used to loosen asbestos dust from the parts. The vacuum is used to remove and contain the loosened material apart from the parts and the cylinder.

A steel cylinder/vacuum enclosure system was one of the five control methods used in the NIOSH study. The steel cylinder/HEPA-filter vacuum enclosure consisted of, besides the steel cylinder, a single glove at one end of the cylinder and an adjustable seal on the other end. While using the steel cylinder/vacuum enclosure in a brake drum servicing operation, the arithmetic mean concentration of airborne asbestos fibers, resulting from the servicing operation, in the personal samples was less than 0.044 f/cc using TEM detection. The study reported that brake dust was observed escaping from the seal of the steel cylinder during the cleaning of the brake parts with compressed air. The problem of scraping asbestos dust from the seals of the steel cylinder would be mitigated by the use of respiratory equipment as specified in the appendix or greater care when directing the spray of compressed air.

An unpublished study of a cylinder held under negative-pressure and the equivalent method described by NIOSH below indicate promising results for reduction of employee exposures in this operation. Since the type of cylinder

which has already been in wide use demonstrates successful achievement of levels below the permissible exposure limit, OSHA is not proposing at this time that negative-pressure cylinders be required.

b. *Solvent/spray can system method.* Paragraph (f)(1)(x) of the proposal allows an employer to comply with the proposed standard through the use of a solvent mist/spray can system as specified in appendix F, as a control method. This system consists of an aerosol or pump spray can filled with a solvent or solvent solution. The spray can is used to dispense the solvent or solvent solution in order to wet the brake or clutch parts. The wetted parts are wiped clean with a cloth which is disposed of according to ways specified in paragraph (k) of the standard or laundered in a way to prevent the release of asbestos fibers in excess of the 0.1 f/cc PEL. The solvent mist/spray can system can be used concurrently with a local exhaust ventilation system to limit the escape of airborne asbestos fibers into the ambient air, but since the method achieves levels well below the PEL without using local exhaust ventilation, OSHA is not proposing to require engineering controls for what appears to be a *de minimis* reduction in exposure over the basic approach.

In the NIOSH study, the aerosol solvent mist/spray can system consisted of the spray can filled with solvent without the use of a ventilation system. The wetted parts were wiped clean by some mechanics using this control method and washed with the aerosol solvent by other mechanics. The use of the aerosol spray can yielded the highest concentrations of ambient asbestos fibers of the four other control methods used in the study. The use of the aerosol spray can method in the study yielded arithmetic mean asbestos fiber concentrations of 0.052 f/cc using TEM detection. The principal advantages of the solvent mist/spray can method are its low cost and the capability to use it on all sizes of brake drums; therefore it is a recommended control method. The problem with the system is that too much force from the solvent spray may cause the suspension of asbestos dust in the air. While the use of a local exhaust ventilation system would catch the suspended dust, OSHA believes that work practices are a practical and immediately applicable substitute.

c. *Wet brush-recycle method.* The wet brush/recycle method used in the NIOSH study consists of a fluid reservoir, a pump, a delivery system (either a low velocity nozzle or a brush attached to a nozzle), and a catch basin. An aqueous solution containing an organic solvent is pumped out of the nozzle or the bristles of the brush and the fluid and brush are used to wash down the dust in the brake assembly into a catch basin. The fluid in the catch basin is returned to a reservoir and recirculated. Using TEM detection, the arithmetic mean concentration of asbestos fibers in the personal samples was less than 0.013 f/cc. The wet brush/recycle system can be used on all sizes of brake systems and limited wetting can be done with the brake drum in place. The wetted brake dust is rinsed down into the catch basin which yields better control of asbestos fibers when the brake drum is removed for further cleaning and servicing. The problem with this system is that the method involves a more problematic cleanup and disposal. The aqueous asbestos contaminated waste must be disposed of in a way which does not violate any OSHA waste disposal or EPA hazardous waste disposal standards. The article recommends that any spill of the contaminated solution be cleaned up using an HEPA filter vacuum or thorough wet mopping and re-mopping. The use of this control method resulted in the lowest concentrations of airborne asbestos fibers among all the control methods used in the NIOSH study.

d. *Equivalent methods.* OSHA has information about potential "equivalent" methods. The NIOSH study describes two alternate engineering controls (a glove box/ vacuum enclosure method, and a HEPA-filter vacuum without enclosure), which may qualify as suitable equivalent methods. Results of the study demonstrated that these control methods are capable of keeping the mechanics' asbestos exposure level to less than 0.05 f/cc. These methods and their characteristics are described below.

The glove box/vacuum enclosure method consists of an adjustable-height, clear plastic, two-glove box with an overlapping neoprene seal; a double motor HEPA filter-equipped vacuum unit; and connections inside the box for an air hose and a vacuum hose. In the study, the glove box was fitted over the brake drum and backing plate on all vehicles except a large truck. Using TEM detection, the arithmetic mean concentration of personal samples was 0.021 f/cc. The article notes the glove box/vacuum enclosure as a superior control method because the two gloves of the system allow both hands to manipulate parts and tools within the enclosure. The primary problem with this control method is the potential for exposure when maintaining and replacing the vacuum filter and when cleaning the enclosure. Care must be taken, through the use of work practices specified in the appendix, to prevent exposures maintenance and replacement of the system parts. Another problem of the system is that it may not be used on all larger brake systems.

The HEPA-filter equipped vacuum cleaner method is used to vacuum dust from inside the brake drum and from around the brake assembly, before and during servicing, as well as dust that falls to the floor and work area. No enclosure, compressed air, or wet methods are used in this control method. The use of this control method resulted in an arithmetic mean concentration of asbestos fibers in personal samples of 0.022 f/cc using TEM detection. One problem with this method is that in order to use the vacuum the drums must be removed before cleaning and this presents a potential for release of asbestos fibers. There is also the potential for exposure during the maintenance and replacement of the vacuum filter and parts. The vacuum cleaner does not use compressed air nor does it generate dust that would need to be contained, as in the vacuum enclosure systems. The vacuum cleaners can be used on brake drums of any size.

In addition to the preferred methods, OSHA is proposing to allow employers to achieve compliance using any other methods equivalent to the solvent spray, wet brush-recycle, and/or HEPA filter vacuum methods, and any other preferred method specified in the final standard. Appendix F also requires that the equivalent method of engineering control and work practices comply with housekeeping standards of paragraph (k) of the standard and labeling requirements of paragraph (j)(2)(ii) of the standard.

Unlike the use of the three specified methods, the employer must demonstrate that the equivalent method reduces employee exposures in that work place to levels approximating the expected reduction achieved through the preferred methods. OSHA is not proposing to use the PEL as the benchmark for equivalency since, as noted above, the reference methods and likely available substitute methods reduce asbestos concentration levels to below the PEL. Based on the evidence available to it, the Agency believes that these reference methods can routinely reduce exposures to or below 0.05 f/cc. OSHA therefore has proposed to require that the employers proof of "equivalency" demonstrate that the

method is capable of routinely achieving such exposure levels. The proposed standard would require that "Such demonstration shall include monitoring data conducted under workplace conditions closely resembling the process, type of asbestos containing materials, control method, work practices and environmental conditions when the equivalent methcd will be used * * *" Further, the method must be reproducible and the number of measurements should be adequate to be valid. Also it must be demonstrated that the "equivalent" method results in exposures which are "equal to or less than the exposures resulting from the use of Method A, the Enclosed Cylinder/HEPA Vacuum System Method, as set for in Ex. 1–112 (Sheehy, J.W., T.C. Cooper, D.M. O'Brien. 1989. Control of Asbestos Exposures During Brake Drum Service. Appl. Ind. Hyg. 4:313–319) In addition, an equivalent method must be used according to manufacturer specifications, the employer must instruct employees in work practices and provide the method in written form to the employee to ensure its correct use, and employ appropriate housekeeping methods. OSHA also is considering whether the employer should be required to request a variance pursuant to section 6(d) in the Act, in order to prove that this method is "equivalent". OSHA seeks information as to what criteria should be included in the standard to ensure that a method meets these tests. Comment on this is sought.

The Agency is requesting comments on each of the methods described as a preferred control method for brake and clutch repair operations. OSHA requests information on any experiences in use of techniques which should be added to the specifications for engineering controls or work practices. In particular, OSHA is asking for comments on the need for local exhaust ventilation during use of the solvent spray can method. Additionally, OSHA is requesting comments on the utility of specifying the described equivalent methods as designated control methods. OSHA seeks comment on whether there are additional work practices OSHA should require which would effectively reduce asbestos exposure. Further, OSHA requests comment on the appropriateness of lowering the permissible exposure limit in brake and clutch repair to 0.05 f/cc.

d. *Additional housekeeping requirements.* Housekeeping practices have been shown to be effective means of reducing employee exposure to asbestos, tremolite, actinolite and anthophyllite. Consequently, OSHA is proposing to specify that the now required cleaning of floors and surfaces on which dust containing asbestos can accumulate be performed at least once per shift in primary and secondary manufacturing. In addition to the current requirement that a vacuum containing a HEPA-filter must be used, OSHA is proposing that where feasible, wet methods must also be used for clean-up. Once asbestos dust is entrained, it can accumulate on surfaces leading to potentially substantial levels of exposure. Routine removal of dust can greatly reduce these accumulations and the risks that they pose.

e. *Sanding requirements.* OSHA is proposing new §§ 1926.58(g)(2)(iv) and 1910.1001(f)(1)(xi), which would prohibit the sanding and/or buffing of floor tiles containing asbestos with high-speed sanders(buffers). In accordance with EPA recommendations (Exhibit 1–108), only low abrasion pads may be used at speeds lower than 190 rpm in these operations. OSHA believes that without such restrictions this type of mechanized activity may result in the release of levels of asbestos fibers into the air, which may pose a significant risk to workers and to bystander employees. OSHA is also requiring that employers inform employees that high-speed floor buffing may expose them to asbestos.

In October 1989, A.F. Meyer and Associates, Inc., an occupational health and safety consultant, conducted a study on the presence and amount of asbestos fiber released from routine buffing (with standard red buffing pad and standard buffing solution) and stripping, two methods: (1) With standard stripping mixture mopped on and standard black stripping pad, and (2) with mist spray of stripper solution and standard black stripping pad) of vinyl asbestos floor tiles in a Maryland public school. The tests conducted before, during, and after these buffing and stripping operations indicated the following results, published in "Vinyl Asbestos Floor Tile Study—Routine Buffing and Stripping Operations for WRC–TV Washington". Air samples collected in the test classroom before any buffing or stripping were performed detected airborne fiber densities of 30.5 and 45.8 structures per mm² (0.01 and 0.015 structures per cc). Asbestos densities of air samples collected inside the work area during the first stripping operation were 91.6 and 229.0 structures per mm² (0.029 and 0.072 structures per cc). Air samples collected during the second stripping operation indicated airborne fiber densities of 236,167.6 and 276,316.1 structures per mm² (77.5 and 89.2 structures per cc). Air samples collected after the final stripping operation indicated airborne fiber densities of 137.4 and 183.2 per mm² (0.045 and 0.06 structures per cc).

On January 25, 1990, in response to the A.F. Meyer study, EPA published a "Recommended Interim Guidance for Maintenance of Asbestos-Containing Floor Coverings," (Ex. 1–108) outlining its analysis of the Meyer's findings. The Agency concluded that, although there was "no clear evidence" that "routine" stripping significantly elevated levels of asbestos fibers, it observed that higher levels did occur after a stripping machine was used on a relatively dry, unwaxed floor.

Work practices recommended by EPA in the same guidance memo ensure that the least abrasive pad available is used to strip wax or finish coat from asbestos-containing floors. EPA also suggests that sanding equipment be operated infrequently and at slow speeds (e.g., 175–190 rpm) to prevent a sudden violent disturbance of asbestos fibers.

On the basis of these and other data, OSHA believes that sanding vinyl floor tiles would likely release high levels of asbestos and, in some cases, asbestos fibers in concentrations in excess of the OSHA proposed permissible exposure limit of 0.1 f/cc. Therefore, OSHA is proposing this prohibition of high-speed sanding. The data indicate that low-speed sanding (i.e., less than 190 rpm) or buffing would not result in levels of airborne asbestos that pose significant exposure risks to employees involved in routine operations, maintenance and repair activities. OSHA's proposed action would reduce the risk from exposure to airborne asbestos fibers with only minimal losses in benefits (i.e., dirtier floors and/or longer cleaning times by hand). OSHA also notes that ACCSH recommended these restrictions, as well as more specific work practices. These recommendations are as follows:

The stripping of wax or finish coat from asbestos-containing floor coverings shall be performed as infrequently as possible. When this operation is performed, the floor shall be kept adequately wet during the entire operation. Prior to machine operation, an emulsion of chemical stripper in water shall be applied to the floor with a mop to soften the wax or finish coat. Following stripping and prior to application of the new wax or finish coat, the floor shall be thoroughly clean, while wet. The machine shall be equipped with the least abrasive pad possible for the operation, and shall be run at speeds no greater than 190 rpm. Stripping shall cease when the old surface coat is removed so as to prevent overstripping. Machines with an

abrasive pad shall not be used on unwaxed or unfinished floors.

Comments on this suggested expansion of the provisions are requested.

C. The Proposed Expansion of the Competent Person Requirement

A competent person is defined in the current asbestos construction standard (29 CFR 1926.58 (b)) as "* * * one who is capable of identifying existing asbestos * * * hazards in the workplace, and has the authority to take prompt corrective measures to eliminate them * * *". The current standard requires employers to designate competent persons to oversee large-scale removal, demolition, and renovation operations; such operations occur at job sites at which employers are also required to establish negative-pressure enclosures. Specially designated training is required for such "competent persons". Exempt from competent person requirements are small-scale, short-duration removal, renovation and demolition operations where negative-pressure enclosures are not erected. In *Building and Construction Trades Department. AFL-CIO* v. *Brock* (DC Cir. Feb 2, 1988), the Court remanded to OSHA the question of whether employers engaged in any kind of asbestos related construction work should be required to designate "competent persons" to oversee safety measures.

OSHA agrees that all construction site employees would benefit from the presence of a competent person to oversee asbestos-related work. Therefore, OSHA is proposing to expand the competent person requirements to require supervision of all asbestos construction work sites by a "competent person" whose qualifications are keyed to the kind of asbestos operation.

First, the proposed revisions in this asbestos rulemaking clarify the general responsibilities of the competent person by referencing the General Provisions for Safety and Health. Currently, the General Safety and Health Provisions for Construction (29 CFR 1926.20 et seq.) require employers to designate a competent person to ensure compliance with general safety and health requirements at every construction job site. The competent person's duties in this regard include prohibiting the use of machinery or tools not in compliance with safety standards, identifying and removing all machinery or tools not in compliance with safety standards, allowing only trained or otherwise qualified employees to operate equipment and machinery, and instructing employees in how to recognize and avoid unsafe conditions and making them aware of the safety and health regulations applicable to their work. OSHA has determined that these general safety and health-related duties apply to all job sites where worker exposure to asbestos occurs. Therefore, at every construction asbestos job site, an employer must comply with these worker protection requirements. The proposed revisions in this asbestos rulemaking clarify the general responsibilities of the competent person by referencing the General Provisions for Safety and Health.

In addition, the 1986 rulemaking record documented the need to specify the prerequisite training necessary for competent persons who will be working at those sites where there is likely to be substantial exposure to asbestos. Thus as noted above, in addition to the general competent person required at all job sites, the current standard requires employers to designate a competent person specifically for asbestos removal, demolition, and renovation work except for small-scale, short term jobs. The duties of the competent person who will oversee asbestos-related jobs include setting up a regulated area, enclosure, or appropriate containment, ensuring the integrity of the enclosure or containment, controlling entry to and exit from the enclosure, and supervising compliance with this standard. The competent person must also be trained in how to identify, recognize, handle, and remove asbestos, in a comprehensive course such as the one conducted by an EPA Asbestos Training Center, a 5-day course (29 CFR 1926.58 (e)(6)(iii). OSHA notes that ACCSH recommended that a comparably trained competent person be assigned to every construction work site, not just abatement operations, and that installation of new asbestos-containing materials requires the presence of a trained competent person.

OSHA is proposing to expand the current competent person provisions of the asbestos standard to require the designation of a specially trained competent person at all renovation, removal and demolition operations covered by the standard. The proposed revisions also clarify the responsibilities of competent persons at such sites and specify the training and qualifications required to equip a competent person to fulfill these duties. The proposed revisions tier the training requirements. Competent persons for small-scale, short-duration operations need not receive the same training as those for large-scale asbestos operations; however, some competent persons who will be overseeing small-scale, short-duration operations may find the additional training useful. Thus, training for small-scale, short-duration operations need not include setting up large-scale enclosures or containment, large-scale removal, demolition, and repair techniques, or other topics applicable only to large-scale operations.

To ensure that competent persons receive training, prospective competent persons will be required to complete a comprehensive training course. OSHA is not proposing at this time to require specific curricula or OSHA accreditation for these training courses. Numerous sources currently offer courses that cover the topics listed above; for example, those courses designed to meet the requirements of EPA's Asbestos Containing Materials in Schools Standard (40 CFR part 763). EPA's Model Accreditation Plan specifies curricula for courses directed at asbestos inspectors, management planners, project designers, abatement contractors, supervisors, workers, and operations and maintenance personnel. The Model Plan specifies the required length of each course and the minimum criteria the course must satisfy in order to receive EPA accreditation. Specifically EPA has stated the following:

> * * * inspectors must take a 3-day training course; management planners must take the inspection course plus an additional 2 days devoted to management planning; and abatement project designers are required to have at least 3 days of training. In addition, asbestos abatement contractors and supervisors must take a 4-day training course and asbestos abatement workers are required to take a 3-day training course. For all disciplines, persons seeking accreditation must also pass an examination and participate in annual re-training courses. A complete description of accreditation requirements can be found in the Model Accreditation Plan at 40 CFR part 763, subpart E, appendix C.I.1.A. through E. (54 FR November 29, 1989 at 49190).

EPA, up until October 15, 1989, required accreditation for training programs offered to meet the requirements of 40 CFR part 763. By that time, EPA had accredited 1,362 courses. States will continue to certify courses with assistance from EPA.

Courses designed to train asbestos abatement supervisors and operations and maintenance personnel are likely to be sufficient training for competent persons. Courses for supervisory

personnel generally last from 4 to 5 days, whereas those for operations and maintenance personnel last about 2 days. The supervisory courses cover all aspects of employee health and safety, use of protective equipment, recognition and handling of asbestos, and emergency procedures. These courses may be sufficient for competent persons overseeing large-scale asbestos operations. Operations and maintenance courses generally cover recognition and identification of asbestos, small-scale removal techniques, employee safety and health, emergency procedures, and glove-bag techniques. These courses may be sufficient for training competent persons to oversee small-scale, short-duration asbestos operations. Some asbestos training programs also offer courses specifically for small-scale, short-duration operations or restricted-handler operations. These courses cover issues specific to small-scale and short-duration removal operations as well as general employee safety techniques. Some asbestos training facilities also offer training that is custom-designed for specific job sites or types of operations.

As a more extensive alternative, ACCSH submitted the following recommendations for training of competent persons:

(i) Prior to performing or supervising any work covered by this section, the competent person shall be trained, examined and certified in accordance with the requirements for the training, examination, and certification of employers set for in paragraph ____ of this standard.

(ii) For small-scale, short-duration operations, the competent person shall be trained, examined and certified in all aspects of asbestos work applicable to small-scale short-duration operations, including the contents of this standard, subpart C of part 1926, and section 59 of part 1926 (Hazard Communication Standard), the identification of asbestos, the ability to determine whether an operation meets the requirements of this section for designation as a small-scale, short-duration operation, procedures for setting up and use of glove bags and mini-enclosures, use of wet methods, and all other controls, techniques, work practices and other requirements of appendix G of this Standard.

The ACCSH further recommended the following regarding the training, examination, and certification of employers:

(1) This paragraph applies to all competent persons engaged in, or supervising, work covered by this section. The training, examination and certification of all of the employer's competent persons shall constitute compliance by that employer with the requirements of this paragraph.

(2) Prior to engaging in any work covered by this section, employers shall be trained, examined, and certified in all of the subjects set forth in paragraph (k)(3) (iii) and (iv) of this section as well as in the following:

(i) Assessing the estimated level of potential asbestos exposure through a knowledge of percentage weight of asbestos in asbestos-containing material, friability, age, deterioration and location.

(ii) Personal air monitoring requirements and procedures, and the knowledge of PEL and action levels.

(iii) The degree of protection afforded by different types of respirators, and the feasibility of different types of respirators for different asbestos-related operations.

(iv) Preparing a work area for asbestos work, including defining the regulated areas, constructing negative-pressure enclosures, otherwise isolating work areas to prevent employee, bystander or public exposure, establishing decontamination areas, and preparing work areas after completion of work.

(v) Employee and employer training, examination and certification requirements and procedures, and qualification requirements for instructors.

(vi) Bonding and insurance requirements for employers engaged in asbestos work.

(vii) Reporting, recordkeeping and record transfer requirements.

(viii) Supervisory techniques and procedures.

(ix) Contract specifications.

(x) Requirements and procedures for providing information to employees and their designated representatives.

(xi) All other duties and functions of competent persons contained in this Standard.

(2) The training required by this paragraph shall include both classroom-type training and hands-on performance-type training.

(3) Examination and Certification. (i) Prior to engaging in any work covered by this section, employers shall be examined by qualified instructors not employed by such employer or by any company affiliated with such employer, on all subjects as to which training is required by this paragraph. The examination shall include both written questions and answers and hands-on proficiency evaluation.

(ii) Certifications issued to employers by qualified instructors shall contain the name, address and telephone number of the employer so certified, the name, address and telephone number, and certification dates and numbers, of all competent persons employed by the employer, the name, address and telephone number of the instructors who provided the employer training and examinations and who issued the certification, the date of issuance of certification, and statement that the certification is valid for one year only.

(4) Access to Training Materials. The employer shall make readily available to affected employees and their designated representatives, without cost, all written materials related to the employer training program and a copy of the employer's current certification.

Although not specifically an issue in the Court remand, OSHA is presenting the following ACCSH recommendations regarding the qualification and certification of employers and employees:

(1) All training of employees and employers, required by paragraphs (k) ____ and ____, shall be provided by individuals knowledgeable and experienced in the construction trade involved, possessing academic credentials and/or field experience in asbestos work, trained in teaching skills, and certified as meeting all such qualifications. Instructors providing training of employees and employers engaged in asbestos removal, renovation or demolition shall be accredited as meeting requirements no less stringent than those contained in the EPA model contractor accreditation plan (52 FR 15876, 1987).

(2) Instructors providing training in air monitoring requirements and procedures must be certified industrial hygienists. Instructors providing instruction on the health effects of asbestos and on medical surveillance program requirements and procedures must be either industrial hygienists or certified health professionals.

Finally, the Committee also described its proposed OSHA oversight of training programs, examinations and certification:

(1) Employee and employer training programs, including training materials, course curricula, course outlines and manuals, description of teaching methods and of hands-on facilities, examinations and examination procedures, and certifications and certification procedures, as well as the names, telephone numbers and addresses of the employer's competent persons and of instructors of employee and employer training, shall be provided to OSHA upon request. OSHA may require changes in any of these items for the purpose of assuring that employees, employers and instructors possess the qualifications set forth in this section.

OSHA believes that the recommendations of ACCSH pertaining to the competent person and training and certification requirements deserve careful consideration. Therefore, OSHA requests comment on these recommendations.

Additionally, OSHA requests comments, including suggested alternatives, on several questions related to training: Are courses available that are sufficient to cover the requirements for specially tailored competent persons? Is the training offered in courses adaptable to small-scale, short-duration operations? Should OSHA supply model curricula for training? Do existing competent person training curricula and requirements need to be updated by incorporating training in new technologies? Should OSHA require certification of training courses? Could OSHA's required training be effectively incorporated into training

that meets current EPA asbestos training requirements? Should training be required for employees in all asbestos removal, demolition and/or removal operations? OSHA additionally requests comment on all aspects of its proposed competent person requirement.

OSHA believes that expanding the competent person requirement raises no feasibility issue. The general construction "competent person" requirement requires no special training. As noted, requiring additional training for supervisors of small-scale, short duration operations would entail a 16-hour asbestos-control course. OSHA believes that demands for this training can be met either by existing resources or by training resources expanded to meet any demands created by this amendment. Comment on this is requested.

In addition to its recommendations for training of competent persons, ACCSH has recommended the following regarding training of *all* exposed workers:

(3) Employee Information and Training. (i) The employer shall institute a training program for all employees exposed to airborne concentrations of asbestos, and shall ensure their participating in the program. The training program shall include examination and certification components. The employer shall not allow any non-certified employee to perform work covered by this section. To be certified, employees must be trained and examined as provided below.

(ii) Training, examination and certification shall be provided by a qualified instructor prior to the time of initial assignment by the employer unless the employee has been provided equivalent training, examination and certification within the preceding 12 months, and at least annually thereafter.

(iii) The training program shall be conducted in a manner that the employee is able to understand. The employer shall ensure that each employee is trained and examined in the following:

(A) Methods for recognizing asbestos, and physical characteristics of asbestos and asbestos-containing material.

(B) The health effects associated with asbestos.

(C) The relationship between smoking and asbestos in producing lung cancer.

(D) The names, addresses, and telephone numbers of public health organizations which provide information, materials and/or conduct programs concerning smoking cessation. The employer may distribute the list of such organizations contained in appendix J to comply with this requirement.

(E) The nature of operations that could result in harmful exposures to asbestos, and the importance of controls to minimize such exposures, including engineering controls, work practices, protective equipment including respirators and protective clothing, housekeeping procedures, hygiene facilities, decontamination procedures, emergency procedures, and waste disposal procedures, and all necessary instruction in the use of these controls and procedures.

(F) The purpose, selection, fitting, testing, maintenance and cleaning, and limitations of respirators.

(G) Medical surveillance program requirements.

(H) the contents of this standard, including appendices, and of 1926.59 (Hazard Communication Standard), subpart C of part 1926 (General construction Safety and Health Standards), and 1910.20 (Employee Access to Exposure Records and Employee Medical Records).

(iv) Notwithstanding paragraph (k)(3)(ii), in addition to the requirements in paragraph (k)(3)(iii), prior to commencing asbestos work at any project or building, every employee shall be trained by the employer in all proper and applicable job-specific work practices including respiratory protection, work area preparation, decontamination, spill and emergency, and waste disposal procedures. Employers shall not allow any employee to perform work at the project or building unless the employee has received such job-specific training.

(v) The training required by paragraphs (k)(3) (iii) and (iv) shall include both classroom-type training and hands-on performance-type training.

(4) Examination and Certification. (i) The examination required by paragraph (k)(3) shall include both written questions and answers and hands-on proficiency evaluation.

(ii) Certifications issued to employees by qualified instructors shall contain the name, address and telephone number of the employee, the name, address and telephone number of the employer, the type of asbestos work in which the employer is engaged, the date of issuance of the certification, the name, address and telephone number of the instructors who provided the training and examination and issued the certification, and a statement that the certification is valid for one year only, and that job-specific training must be provided by the employee's employers at every project and building during the year the certification is in effect.

(5) Access to Training Materials. (i) The employer shall make readily available to all affected employees, and their designated representatives, without cost, all written materials relating to the employee training program.

(ii) Employees shall have access to copies of examinations they have taken, including examination grades and instructor comments. Designated employee representatives shall have access to such information, except for individually identifiable exam results which shall be made available only with the employee's authorization.

(6) Employee Retesting. The employer shall allow trainees to be retested at reasonable intervals and shall adopt written procedures for this purpose which shall be made available to trainees and their designated representatives.

OSHA invites comments on these proposed expansions of the training requirements for asbestos-exposed workers.

Recently, OSHA learned that Congress is considering extending the training requirements of EPA's rule pertaining to Asbestos-Containing Materials in Schools (52 FR 41826, October 30, 1987) pursuant to the Asbestos Hazard Response Act (AHERA) to public and commercial buildings. The EPA rule requires maintenance and custodial staff to receive at least 2 hours of awareness training and that staff which will disturb asbestos-containing building materials receive an additional 14 hours of training. Further, it requires accreditation of persons who inspect for ACM in school buildings; who prepare management plans for such schools; and/or who design or conduct response actions. Accreditation is gained from a State that has instituted a program at least as stringent as the requirements of the EPA's Model Plan (52 FR 15875, April 30, 1987) or by passing an EPA-approved training course an examination consistent with the Model Plan. The Plan requires persons seeking accreditation to take an initial course, pass an examination and participate in continuing education.

OSHA realizes that, if adopted, these requirements will likely impact the training of workers covered under the OSHA standard and wishes to reconcile any differences or inconsistencies in the training requirements for asbestos workers which might lead to confusion or misunderstanding. Therefore, OSHA seeks comment as to how to best apply the training requirements to ensure worker protection and coordinate them with those of other agencies. OSHA seeks comment on the question of whether OSHA should adopt similar training requirements for asbestos workers covered under its standard as those specified in AHERA.

Training programs required in the asbestos standards are to be provided by the employers, who also must ensure the participation of affected employees. As discussed above, most major elements of the required OSHA training program are covered by an asbestos-worker training program required under AHERA. However, the AHERA-required training exceeds in breadth and length of training sessions, the OSHA requirements. Above, OSHA has asked for comments on whether the AHERA worker training and certification should be required also by OSHA.

OSHA now requires that employers provide all training except for initial training under the construction standard if an employee has received "equivalent

training within the previous 12 months." (29 CFR § 1926.58(k)(3)(ii)). This is in recognition of the fact that many abatement workers change employers frequently. Thus, requiring duplicate training from each new employer at each new job would be of *de minimis* benefit to employees. The intent however, of this exception was not to shift to the employee the cost of required OSHA training, nor to encourage him/her to obtain, at employee expense AHERA certification within 12 months of applying for work covered by the OSHA standards.

OSHA has been informed that in certain regions employers are requiring AHERA certification as a condition of employment for abatement work covered by OSHA standards. The Agency is interested in comments and information concerning how widespread such a practice is; whether the reason is to shift the OSHA training cost to employees, or whether there are other reasons; whether such a practice results in little or no job site training; and if so, how employee health and safety are affected.

D. Proposed Extension of Reporting and Information Transfer Requirements

1. Notification and Reporting Requirements

OSHA is proposing expanded notification and reporting provisions in the construction standard to respond to the Court of Appeals remand order and to incorporate some recommendations of the Advisory Committee on Construction (Exhibit 1–126).

The Court's decision dealt with two notification and reporting issues. First BCTD has asked OSHA to require employers contracting asbestos-related work to establish, maintain and transfer to building owners written records of the presence and locations of asbestos or asbestos products, in order to facilitate identification and prevention of asbestos hazards. The Court remanded this issue so that the Agency reach "its own judgment on the issue" of whether it was legally empowered to adopt such a requirement (See *BCTD* v. *Brock, supra* at 1278).

The second issue is whether OSHA should require all construction industry employers to file reports with it prior to engaging in any asbestos work, as maintained by BCTD. The Court remanded the issue for consideration on remand, after finding that the record contains "uncontradicted (and unanalyzed) evidence of non-*de minimis* benefits" (*Id*).

The following discussion explains OSHA's proposal as it pertains to certain of these issues. First, OSHA discusses its expanded provisions dealing with notification by and between employers and building owners in order to facilitate identification of and protection from asbestos in buildings. Second, OSHA discusses proposed provisions requiring some construction employers to report asbestos-related work to the Agency before it is begun.

2. Communication Among Employers, Employees and Building Owners

a. *Notification to and from building owners.* Current regulations, in paragraph (d), require employers to notify other employers in the building of the existence and location of asbestos work. However, the Agency had applied a narrower definition to the term "employer" based on its concern that building owners were "outside the domain of the OSH Act." (OSHA Brief at 96). As noted above, the Court remanded this issue to OSHA for further consideration in light of the statutory prescription that standards are to require conditions, or the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employments and places of employment" (29 U.S.C. 652(8)). Upon further analysis, the Agency believes that it has authority to require building owners who are statutory employers to take necessary and appropriate remedial action such as notifying other employers, to protect employees other than their own. In other standards OSHA has required building owners and other employers who are not the direct employers of the employees exposed to a particular hazard, to warn of defects, take remedial action or provide information to the directly employing employer. For instance, the Hazard Communication standard requires that manufacturers provide information to downstream employers to protect their employees (29 CFR 1910.1200). The powered platform standard, promulgated in 1989, (54 FR 31408, July 28, 1989, at 341412–3) requires the building owner to assure the contract employer that the building and equipment conform to specified design criteria.

Because it is evident that the building or project owner is the best and often the only source of information concerning the location of asbestos installed in structures, OSHA believes it is appropriate to require the owner to receive, maintain, and communicate knowledge of the location and amount of asbestos-containing materials, to employers of employees who may be exposed.

b. *Communication provisions.* OSHA is proposing a comprehensive notification scheme for affected parties—building owners, contract employers and employees, to assure that information concerning the presence, location and quantity of asbestos-containing material in buildings is communicated appropriately and in a timely manner to protect employees who will work with or in the vicinity of such materials. OSHA has reviewed and incorporated in the regulatory text many suggestions recommended by ACCSH at its March 14, 1990 meeting.

The highlights of the proposed notification scheme are as follows. Before non-small-scale, short duration renovation, removal or demolition operations take place, building and/or project owners must notify their own employees and employers whose employees may work in or contiguous to the areas of such operations, of the quantity and location of asbestos-containing materials present in such areas. Employers who have not received notice from the building owner of impending asbestos-related activity, must notify the building owner if the employer is planning any such covered activity and of the location and quantity of asbestos material known or later discovered. The building owner must keep record of all information received through this notification scheme, or through other means, which relates to the presence, location and quantity of asbestos-containing materials in his/her building and must transfer all such information to successive owners.

Other employers may not normally be aware of projects going on in other parts of the building, including regulated areas. Staff and crews not working directly with asbestos, tremolite, anthophyllite, or actinolite may nevertheless come into proximity with the regulated areas, and these staff are unlikely to be aware of the hazards of these substances and of appropriate protection measures. Because the safety and health of his or her employees in the workplace is the responsibility of the building owner, the Agency believes that the building owner must also notify his/her employees who may work near where the work with asbestos is being done. OSHA believes that the employee's presence in the workplace places him at increased risk from asbestos exposure regardless of whether he/she is actually working with asbestos.

Additionally, the proposal expands OSHA's current employer notification

requirements which apply only to multi-employer worksites. Any employer planning to perform work which will be in a regulated area, before starting, must notify the building owner of the location of asbestos and protective measures taken; (Paragraph (d)(2)(i)); upon discovering unexpected asbestos, must immediately provide similar notification ((d)(2)(iii)); and, upon work completion must provide to the owner a written record of the remaining asbestos at the site ((d)(2)(iv)).

To provide notification in small-scale, short-term operations and to make this notification scheme effective, OSHA is building upon its requirement to post regulated areas to encourage posting of small-scale, short duration operations. Thus, notification requirements for these operations will be met if appropriate signs which inform about the fact that asbestos exposing activities are present are posted. OSHA considers site posting to be a particularly effective means to alert employees of hazardous areas. Because, by definition, small-scale, short-term activities present greatly reduced hazard potential, OSHA believes that site posting will adequately notify potentially affected employees who are not working on the operation.

The expanded notification provisions are limited to the construction standard because the primary purpose of the proposed expanded notification provisions is to protect employees from asbestos exposure resulting from construction activities which disturb previously installed asbestos-containing materials in structures and buildings. The ACCSH identified employees who perform security services as requiring notification of in-place asbestos-containing materials. OSHA has no information indicating that such employees face increased hazards from asbestos exposures in buildings, above those faced by other building occupants. Therefore OSHA has not included these employees in its notification scheme. Comments are requested on this approach. However employees who buff asbestos-containing floor tile, as part of a removal activity, would be performing a construction operation, and as a housekeeping function, would be performing a general industry operation. Thus, OSHA has prohibited high-speed buffing of asbestos-containing floor tile in both standards. The newly proposed prohibitions cannot be sufficiently protective unless employees know that the floor is asbestos-containing. Therefore, OSHA has included in the provisions prohibiting high-speed buffing, an additional element that employees must be informed of the reason for the prohibition, i.e. that high-speed buffing may release asbestos fibers.

OSHA requests comments on the proposed notification requirements. In addition, OSHA invites comments on setting a cutoff for asbestos-containing material with minimal asbestos content. For example, is 0.1% asbestos minimum, as provided in the Hazard Communication Standard, appropriate to this standard? In addition, OSHA seeks comment on whether the Agency should require building owners to determine the presence, location and amount of asbestos within their buildings. OSHA requests information on experience and costs involved in such a requirement.

3. Proposed Requirements for Notifying OSHA of Demolition, Renovation, or Removal Operations

OSHA is proposing to add a new provision to the standards that will require employers to provide OSHA with written notification prior to engaging in any building demolition, renovation, and removal operations which involve materials containing asbestos, tremolite, anthophyllite, or actinolite. Operations which meet the proposed definition of small-scale, short duration operations are exempt from this notification requirement.

The Building and Construction Trades Department (BCTD), AFL–CIO, suggested that OSHA should require all construction industry employers to file reports concerning any building demolition, renovation or removal project involving asbestos prior to beginning such project. BCTD believed that information generated by such reports would enable the Agency to more efficiently enforce the regulations, which would have the effect of increasing employer compliance and decreasing the risk to workers. BCTD also pointed out that workplace standards for acrylonitrile and inorganic arsenic require employers to supply the address of their workplace, report the number of employees working within the regulated area, and describe each operation that will cause employees to be exposed to the regulated substances.

The Court remanded the notification issue to OSHA for it to reconsider whether a notification requirement would increase compliance by generating better information for targeting inspections and by increasing self-policing among employers who must submit reports. OSHA is proposing to institute a notification requirement, based on its preliminary conclusion that a notification requirement can be designed in such a way that it will improve the targeting of inspections and heighten employer awareness of applicable requirements without imposing unwarranted burdens on employers or strains on limited Agency enforcement resources. OSHA concludes that such provisions will substantially improve worker protection.

Consistent with the proposed NESHAP revision (54 FR at 912, January 10, 1989), in which EPA proposed a uniform 10-day period for written notification, OSHA is similarly proposing a 10-day requirement. The written notification supplied to OSHA must include the name, address, and telephone number of the employer; the location of the facility where the operation will occur; the scheduled start and completion dates of the operation; a description of the facility on which the operation is to occur, including its size, age, number of floors, how the facility is used at present and was used in the past; the procedure used to detect the presence of asbestos material in the facility; the estimated amount of materials containing asbestos; a description of the planned operation, including methods that will be used to perform the demolition, renovation, or removal activity; a description of work practices and engineering controls to be used to comply with the OSHA worker protection standards for the construction industry; certification that a competent person as required by paragraph (o) of this section will supervise the operation described in the notification.

Given the complexity of some building demolitions and renovation work, it is possible that some asbestos may not be discovered until after the work has begun; therefore, OSHA is considering whether notification should also include a description of the procedures to be used in the event that unexpected amounts of asbestos are discovered during the operation. Written notification of such a contingency plan would enable the OSHA area office to evaluate whether the employer is prepared to adequately handle such a situation. OSHA seeks comment on this matter.

OSHA believes that employer notification would act as an incentive for employers to comply with the worker protection standards and better enable them to police their workplace for hazards. OSHA's objective in proposing these new notification standards is to encourage compliance and to better enforce compliance with health and safety standards through inspections and monitoring. Notification assists

OSHA in locating sites where asbestos projects are scheduled to occur so that OSHA can inspect and monitor the site for compliance with the regulations. Scheduled inspections can be prioritized according to relative risk to workers, based on the information provided in the notification. The notification will also assist OSHA in assessing the success of its regulation and the status of compliance among its local regulated community.

The proposed OSHA notification standard requires that the employer provide notice of an asbestos project in connection with an impending demolition, renovation or removal operation 10 days prior to beginning such an operation; thus, prior notice gives OSHA the opportunity to evaluate compliance efforts before the regulated activity actually begins and thus provides the opportunity for preventive action as opposed to just corrective action. The information included in the notification would also provide OSHA with written indication of how successful the regulations are in achieving compliance among the regulated parties.

The proposed notification is modeled after the notification requirement concerning asbestos abatement projects that occur in conjunction with building demolition and renovation operations as contained in the National Emissions Standards for Hazardous Air Pollutants (NESHAP) (40 CFR part 61.146). Employers in all building demolition operations, and in renovation operations involving amounts of asbestos at least 260 linear feet on pipes and 160 square feet on other facility components must provide notice of these operations to the EPA. One of the purposes of the notification of EPA is to assist the Agency in enforcing its regulations. EPA is in the process of revising its rule to clarify its notification requirements.

Employers can satisfy the OSHA notification requirement simply by forwarding a copy of the EPA form to the OSHA area office when complying with EPA's asbestos NESHAP. The individual items of information requested in the proposed OSHA notification standard parallel the information requested in the Asbestos NESHAP notification requirements. OSHA recognizes that there are minor differences in the content of the OSHA notification and the NESHAP notification but does not believe that these differences will impede the achievement of OSHA's objective in promulgating the notification requirements, that is, to encourage compliance among employers and to facilitate inspection and monitoring. Comment on the proposed method of notification of OSHA is requested.

In its proposed NESHAP revision (54 FR 912, January 10, 1989), EPA proposed to require additional notification if the demolition or removal operation will begin on a date other than the one specified in the original notification. OSHA requests comment as to whether its proposed notification requirements should be similarly modified.

EPA has expressed the belief that the revision of the Asbestos NESHAP to include more stringent notification requirements will serve to improve compliance within the regulated community and to improve enforcement of the regulations (54 FR 915, January 10, 1989). EPA has increased enforcement against employers who fail to comply with notification requirements; such failure is a clear violation that can be cited even if the operation has been completed by the time the inspector arrives. The number of notification submissions has increased substantially during the past few years, from 23,022 to 52,571 between 1985 and 1988. EPA expects to receive an estimated 60,000 notifications in 1989. EPA attributes this increase in notification submissions to increasing employer familiarity with the NESHAP rather than to merely increased numbers of abatement actions. Given the number of notifications that the EPA receives each year, OSHA can expect that its offices would receive as many or more. Such a large number of responses could strain OSHA's administrative resources; therefore, OSHA may share enforcement information with EPA. Information concerning current requirements of local jurisdictions concerning reporting of asbestos-work is requested.

EPA extended the major provisions of the 1986 asbestos standard to state and local government employees not covered by the OSHA standards in its worker protection rule (52 FR 5618, February 25, 1987). Among the few differences between the EPA rule and the OSHA standard is the requirement that EPA be notified 10 days before the start of an abatement project involving more than 3 linear feet or 3 square feet of friable asbestos. No notification is required however, for jobs which do not involve friable asbestos. Comment is requested on this cut-off, as well that the NESHAP cutoff notes above, for the amount of asbestos for exemption from the notification requirements of this proposal.

As noted above, employers involved in operations defined as small scale, short duration are exempt from this requirement to notify OSHA. There are a large number of small-scale, short-duration projects, and such projects are typically completed very quickly. It is anticipated that many notifications reported to OSHA will involve those operations whose size falls between the OSHA-defined small-scale, short duration operation and EPA's minimum for notification, as well as those larger operations which involve asbestos, but for which notification of EPA is not required.

Due to the potential for asbestos emissions in asbestos handling, EPA has proposed to clarify its definition of asbestos-containing material in its NESHAP regulation as follows:

> Asbestos-containing material means friable asbestos material and non-friable asbestos material that potentially can be broken, crumbled, pulverized, or reduced to powder in the course of operations regulated by this subpart. (54 FR 925, January 10, 1989)

As a result of this change, more information will be provided to EPA and existing notification procedures improved. ACCSH agreed that OSHA should require pre-job notification from asbestos employers, but, on a broader basis. Comments are requested on ACCSH's recommended reporting requirements.

OSHA has participated in interagency initiatives to coordinate agency regulation involving communication and notification. EPA and OSHA, along with other agencies which regulate asbestos exposure, are continuing to coordinate their efforts by means of a Federal Asbestos Task Force. Minutes of some meetings of the task force are in the docket of this proceeding (Exh. 1-____). The most recent such effort was begun in 1989 when EPA established "Asbestos in Public and Commercial Building Policy Dialogue" whose purpose is to obtain input from a variety of perspectives on the problems and potential solution to problems related to asbestos in commercial and public buildings. Participants included representatives of the following:

Realty interests
Lenders and insurance interests
Unions
Asbestos manufacturers
Public interest
Asbestos consultants and contractors
States

Following a series of meetings held between May 1989 and May 1990, the "Policy Dialogue" group issued a draft final report on May 31, 1990 (Ex. 1-180). The group failed to reach a consensus on all issues, but did generally agree on

some issues. There was general agreement among the participants that the presence of asbestos should be known to building service workers. Union representatives, citizen representatives, asbestos consultants and contractors, and state officials felt that there should be a requirement to notify workers and building occupants in all circumstances in accordance with the likelihood of building workers of occupants disturbing asbestos. OSHA has recognized these general approaches in its proposed amendments.

The major area of disagreement among the participants in the Policy Dialogue Group dealt with the characterization of risk to general building occupants and office workers. Unions, public interests, and asbestos consultants and contractors held that building occupants are at risk especially when the presence of asbestos is unknown and therefore subject to inadvertent disturbance, resulting in exposure. State, union, public interest representatives, and asbestos consultants and contractors believe that available data is insufficient to allow the conclusion that building occupants are generally safe, regardless of how the asbestos is managed.

The representatives of realty, lenders, and insurance interests as well as those of asbestos manufacturers believe that the data do not show a significant health risk to general building occupants and that building occupants are generally safe, irrespective of how the asbestos in the building is managed. Further, the latter group held that only building service personnel were at potential risk from asbestos and therefore their exposure should be subject to regulation by OSHA.

Union and citizen representatives believe it to be a public health problem, and that EPA should assume the primary regulatory role.

The need for a specific federal asbestos inspection requirement was also discussed by the Policy Dialogue Group, but agreement could not be reached on this point. In the preamble to its 1986 asbestos standards, OSHA stated that it "did not explore in detail the complex area of asbestos contamination in buildings because the available evidence shows that buildings containing even disturbed asbestos expose employees (i.e. who are building occupants) to levels considerably below the action level adopted in this (the 1986) standard." OSHA seeks new information which might be available concerning the risk to building occupants presented by asbestos in buildings.

Additionally, OSHA seeks comment on the question of whether or not to include as a requirement, the operation and maintenance (O & M) program which was part of non-mandatory appendix G in the 1986 standard. This program included: Development of an inventory of all asbestos-containing materials in the facility; periodic examination of all asbestos-containing materials to detect deterioration; written procedures for handling asbestos materials during the performance of small-scale, short duration maintenance and renovation activities; written procedures for asbestos disposal and emergencies; and a training program for maintenance staff. In this rulemaking OSHA proposes to exclude this requirement from mandatory appendix G.

OSHA believes that its requirements in the construction standard, as proposed to be revised are consistent with EPA's NESHAP requirements. OSHA's requirements are directed at reducing worker exposure from all operations which disturb asbestos using effective work practices and engineering controls in order to reduce still significant risks of asbestos-related disease to exposed workers. EPA's requirements are primarily aimed at reducing asbestos emissions from large-scale renovation and demolition activities in order to reduce risk to the general public from increases in ambient levels of asbestos. Therefore some, but not all, OSHA-covered asbestos related activities would be subject to NESHAP requirements; and vice versa. Large-scale removal and renovation projects involving large quantities of asbestos-containing materials (ACM) would be covered under both regulations. However, maintenance and repair activities disturbing small quantities of ACM would not be subject to most NESHAP requirements. A large-scale renovation job subject to both regulatory schemes would, in the Agency's view, not be subject to inconsistent requirements. Thus, under OSHA's regulations, a negative pressure enclosure must be established; under NESHAP, wet methods must be used for removal; under both standards, both Agencies must be notified in advance, but OSHA would accept the EPA notification form. OSHA requests comment on whether it too should explicitly require use of wet methods for all abatement work. The Agency notes that the proposed mandatory appendix G would require that an employer must use feasible wet methods to avail himself of the small-scale, short duration operation exemption from the requirement for establishing a negative-pressure enclosure.

OSHA recognizes the benefits of consistency with other regulatory agencies in its requirements and seeks comments and information from participants to avoid inconsistencies or conflicts. OSHA desires that the Agency's requirements be congruent with those of other agencies and minimize confusion. Comment on the proposed notification requirements is requested. In particular, OSHA seeks to learn of any difficulties or confusion encountered by contractors seeking to comply with the regulations of more than one agency.

E. Other Issues

1. Scope and Application

OSHA is proposing clarifying regulatory text to be inserted in the scope and application paragraph of the construction standard. This would unambiguously state that coverage under the construction standard is based on the nature of the work operation involving asbestos, not on the employer's primary activity (29 CFR 1926.58 (a)(7)). This position in accord with the Agency's longstanding policy on this issue, and should assure that employers are aware of the fact that construction activities trigger the requirements of the construction standard.

2. Maritime Asbestos Activities

In its 1986 rulemaking, OSHA considered maritime asbestos operations to be regulated under the general industry standard (1910.1001). Upon subsequent reconsideration, OSHA has noted that many maritime activities are construction-like in nature. Therefore, OSHA seeks information and comment as to how best to provide equivalent protection to workers engaged in maritime activities.

3. Naturally-Occurring Asbestos in Soil

In recent submissions to the asbestos docket (Exh. 3–10 and 3–11), OSHA has been informed that naturally occurring asbestos deposits are present in areas of the United States and that when disturbed, for example during earthmoving projects, mining and milling operations, drilling, blasting and rock sawing operations, the asbestos in the deposit can become airborne and expose workers performing these activities to significant levels of asbestos fibers. OSHA proposes to consider that this exposure is included under its present construction standard for asbestos and that methods of control be employed to avoid worker exposure

to naturally occurring asbestos deposits which might become airborne during disturbance of the deposits. OSHA solicits comments on this matter. Are there additional or changed requirements to the provisions in the current construction standard which should be adopted in order to protect workers engaged in these activities? Further, OSHA seeks information on the appropriate method for determination of the presence of asbestos in soil and the effectiveness of wet methods and/or other methods in controlling worker exposure. OSHA also requests information on effective decontamination methods for exposed workers.

IV. Preliminary Regulatory Impact and Regulatory Flexibility Analysis: Introduction

In this proposed revision to the standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite, OSHA is seeking to lower the permissible exposure limit in all affected industry sectors to 0.1 f/cc as an 8-hour time-weighted average; extend reporting and transfer requirements for employers engaged in asbestos removal, renovation and demolition; expand the competent person requirement to all employers in construction; require the establishment of negative-pressure enclosures; require engineering and work-practice controls in the automotive brake and service industry; redefine small-scale, short-duration construction operations; add requirements for housekeeping in general industry; and prohibit high-speed sanding of asbestos floor tile. This preliminary regulatory impact analysis examines the population at risk and significance of risk from exposure to asbestos, the estimated costs of compliance, the projected reduction in cancer cases as a result of lower exposures, and the estimated economic impacts of the proposed rule. Much of the analysis presented below is based upon the draft final report submitted to OSHA by CONSAD Research Corporation [2].

Executive Order 12291 (46 FR 13197) requires that a regulatory impact analysis be prepared for any proposed regulation that meets the criteria for a "major rule," that is, one that would likely result in an annual impact on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires an analysis of whether a regulation will have a significant economic impact on a substantial number of small entities.

Consistent with these requirements, OSHA has made a preliminary determination that the proposed revision will constitute a major rule. Accordingly, OSHA has prepared this Preliminary Regulatory Impact and Regulatory Flexibility Analysis to demonstrate the technological and economic feasibility of the proposed revision.

Industry Profile

Industry sectors affected by the proposed revision to the asbestos standard are found within primary manufacturing, secondary manufacturing, automotive brake and clutch repair, shipbuilding and ship repair, and construction, as identified in detail in the 1986 Regulatory Impact Analysis (RIA) [1]. The following two sections briefly profile the sectors in general industry and construction affected by the proposed revision.

General Industry

Primary manufacturers use asbestos fiber as a raw material in the production of an intermediate product to be further processed or fabricated into a finished product. The following industries within primary manufacturing will be impacted by the proposal: Asbestos/cement pipe (A/C pipe); asbestos/cement sheet (A/C sheet); asbestos friction materials; asbestos textile products; asbestos gaskets and packing; asbestos paper products; asbestos adhesives, sealants, and coatings; and asbestos-reinforced plastic products. Two processes—fiber introduction and product finishing/dry mechanical—are common to all primary manufacturing operations and have high potential for generating airborne asbestos fiber.

Secondary manufacturers modify or fabricate an asbestos product to yield a final or intermediate asbestos product. Processes that are employed to modify the product include sawing, drilling, sanding, punching, pressing, routing, milling, and beveling, all of which tend to generate high dust levels. Secondary manufacturing activities where occupational exposures are expected to remain above the proposed 0.1 f/cc PEL without respiratory protection are in A/C sheet, friction materials and textile processing.

The general automotive repair and service sector includes establishments involved in brake and clutch repair work and maintenance. The major source of asbestos exposure in this sector occurs when compressed air is used for blowing the residual dust from the brake lining assembly. Replacement of clutch assemblies can also lead to fiber release. OSHA estimated in the 1986 RIA that approximately 285,000 automobile repair shops and garages, brake and clutch repair establishments, and motor vehicle dealers, employing 527,000 workers, are affected by the current asbestos standard. OSHA proposes to mandate specific engineering controls and work practices that represent current use or practice for much of this industry sector.

According to industry experts, the industry structure and work practices of the primary manufacturing, secondary manufacturing, and service sectors have undergone noticeable changes since 1986. [Details of these changes are forthcoming.] In the future, the Environmental Protection Agency ban of almost all asbestos products (54 FR 29460) would prohibit, at staged intervals, the manufacture, importation, processing, and distribution in commerce of asbestos, and would therefore lead to a further elimination of occupational risk to asbestos in general industry. Moreover, OSHA predicted in 1986 that asbestos production would decline as a result of the current standard. OSHA requests public comment on the current market structure within primary and secondary manufacturing and the industry outlook.

OSHA's estimates of the number of workers in general industry currently exposed to asbestos, and their exposure levels by process within each activity, are shown in Table 1. As the table indicates, approximately 568,000 workers in general industry would be affected by the proposed revision, with the overwhelming majority found in auto repair. Current exposures range from 0.007 f/cc for the wet mechanical process in plastics, to 0.15 f/cc for fiber introduction in A/C sheet. OSHA estimates that more than half of the 43 processes in general industry are below the proposed PEL of 0.1 f/cc in the absence of respiratory protection.

TABLE 1.—CURRENT OCCUPATIONAL EXPOSURE ESTIMATES FOR GENERAL INDUSTRY

(by Industry/Process Group)

Industry process groups	Number of plants in industry	Number of Works exposed	Average full time equivalent worker-years of exposure/yr	Estimated mean exposure level for current PEL of 0.2 f/cc	Number of workers exposed above 0.1 f/cc
Primary Manufacturing:					
A/C Pipe:					
All	5	512	512.00		235
Introduction	5	15	15.00	0.138	15
Wet mechanical	5	169	169.00	0.097	0
Dry mechanical	5	220	220.00	[a] 0.015220	[a] 220
Other	5	108	108.00	0.081	0
A/C Sheet:					
All	6	159	159.00		159
Introduction	6	7	7.00	0.150	7
Wet mechanical	6	21	21.00	0.139	21
Dry mechanical	6	28	28.00	0.147	28
Other	6	103	103.00	0.143	103
Friction Materials:					
All	51	4,801	4,801.00		4,801
Introduction	51	96	96.00	0.141	96
Wet mechanical	51	240	240.00	0.134	240
Dry mechanical	51	720	720.00	0.130	720
Other	51	3,745	3,745.00	0.130	3,745
Gaskets and Packings:					
All	18	306	306.00		265
Introduction	18	102	102.00	0.128	102
Wet mechanical	18	102	102.00	0.125	102
Dry mechanical	18	61	61.00	0.125	61
Other	18	41	41.00	0.097	0
Paper:					
All	22	380	380.00		58
Introduction	22	20	20.00	0.091	0
Wet mechanical	22	58	58.00	0.101	58
Dry mechanical	22	58	58.00	0.054	0
Other	22	244	244.00	0.050	0
Coatings and Sealants:					
All	78	1,327	1,327.00		1,018
Introduction	78	1,018	1,018.00	0.108	1,018
Other	78	309	309.00	0.044	0
Plastics:					
All	4	322	322.00		91
Introduction	4	53	53.00	0.048	0
Wet mechanical	4	73	73.00	0.007	0
Dry mechanical	4	91	91.00	0.145	91
Other	4	105	105.00	0.060	0
Subtotal	184	7,807	7,807		6,627
Secondary Manufacturing:					
Friction Materials: Dry mechanical	40	1,458	1,458.00	0.102	1,458
Gaskets and Packings: Dry mechanical	289	8,741	8,741.00	0.048	0
Textiles: Dry mechanical	51	170	170.00	0.137	170
Plastics: Dry mechanical	245	2,450	2,450.00	0.065	0
Auto Remanufacturing:					
All	181	4,669	4,669.00		0
Dry mechanical	181	2,054	2,054.00	0.094	0
Other	181	2,615	2,615.00	0.063	0
Subtotal	806	17,488	17,488.00		1,628
Service Sectors:					
Auto Repair: Dry mechanical	285,188	526,998	16,468.69	0.015	0
Ship Repair:					
All	400	15,000	15,000.00		15,000
Wet mechanical	400	2,251	2,251.00	[a] 0.042	[a] 2,251
Dry mechanical	400	12,450	12,450.00	[a] 0.016	[a] 12,450
Nuclear ripout	400	299	299.00	[b] 0.004	[b] 299
Subtotal	285,588	541,998	31,468.69		15,000
Industry totals	286,578	567,293	56,763,69		23,255

Source: OSHA [1, pp. V-2 and VI-7, and appendix G].

[a] Exposure in the Dry Mechanical process of Primary A/C Pipe Manufacturing and in the Wet Mechanical and Dry Mechanical processes in Ship Repair reflect the use of half-mask cartridge respirators to supplement engineering controls and work practices.

[b] Estimated exposure in Nuclear Ripout operations reflect the use of supplied-air respirators to supplement engineering controls and work practices.

Construction

The construction industry is the principal market for asbestos materials and products in the United States. The industry accounted for 50 percent of the demand for asbestos in 1984, and for 35 percent of the demand in 1989 [2, p. 39]. Construction products include A/C sheets and pipes, tiles, papers, coatings and sealants, all used in a variety of buildings and structures. Since the early 1970s, the overall demand for these products has declined due to the availability of effective substitutes and to increased regulatory requirements

and restrictions. EPA's 1989 asbestos rule will ban A/C sheet, roofing felts, flooring felts, pipeline wrap, and vinyl-asbestos floor titles effective August 27, 1990, while A/C pipe, roof coatings and shingles will be banned from use effective August 1996.

In construction, each work site usually has its own pattern of material use, building methods, and number and mix of workers. Considerable variation may exist in actual worker use of, or contact with, asbestos materials and products. Whereas many workers in new construction and maintenance face only occasional risk from working with asbestos products, others (e.g., asbestos pipe installers and abatement/removal specialists) continually come into contact with asbestos. Worker mobility, resulting in considerable shifting among both job sites and employers, is another characteristic of the industry. A construction journeyman will often work for a different employer at each new job site. Moreover, frequent entry and exit from the industry reflects cyclical changes in the economy and seasonal work patterns. Collectively, these factors make it very difficult to estimate the actual number of affected construction workers, their duration of employment in the industry, and the duration of their exposure.

CONSAD estimated the number of workers potentially exposed in the activities affected by the proposed revision using the following sources: Product flow data; building permit data; EPA notification data for asbestos removal and renovation projects; census data on the number of firms in the industry and the number of buildings nationwide; construction costing manuals; and survey results [4, chapter 2] describing the frequency of various construction activities, average crew sizes, and average duration of projects.

CONSAD's esitmate of the population exposed to asbestos in construction is shown in Table 2. The first column gives a range for the estimated number of actual workers at risk, while the second column converts the range into full-time equivalent person-years of exposure to asbestos [see 2, Table 3.9]. The last column shows OSHA's projection of current exposures in the wake of the 1986 standard and reflects anticipated respirator usage [1, Table G-20]. Construction workers who now wear respirators to comply with the current asbestos rule will continue to need them to comply with the reduced PEL, while in three construction activities—A/C sheet installation (high exposures only), and routine gasket installation and pipe insulation repair (regulated areas only)—respiratory protection may be added, and in two others—building demolition and drywall demolition—upgrading of respirators may be necessary for some workers. OSHA notes that improved control technologies have enabled construction teams to reach lower fiber levels than in the past. OSHA requests construction data that reflect current exposures in order to update the information upon which this analysis is based.

TABLE 2.—OCCUPATIONAL EXPOSURE TO ASBESTOS DURING CONSTRUCTION AND ROUTINE MAINTENANCE WORK, BY ACTIVITY

[Includes respirator usage]

Construction activity	Estimated annual number of workers potentially exposed	Estimated annual full-time equivalent person-years of exposure	Estimated current exposure levels, f/cc
New Construction	2,460–22,255	2,460–2,635	
A/C Pipe Installation	955–10,600	955–1,130	0.035
A/C Sheet Installation	1,225–9,760	1,225	0.10
Built-Up Roofing Installation	280–1,895	280	0.022
Asbestos Abatement and Demolition	55,101–79,361	17,144–25,446	
Asbestos Removal	44,491–66,476	13,245–19,790	0.021
Encapsulation	4,610–6,885	1,295–1,935	0.022
Demolition	6,000	2,604–3,721	0.001
General Building Renovation	53,535–70,744	53,535	
Drywall Demolition	51,300	51,300	0.003
Built-Up Roofing Removal	2,235–19,444	2,235	0.012
Routine Maintenance in Commercial/Residential Buildings	129,656–739,448	25,771–40,100	
Repair/Replace Ceiling Tiles	13,686–38,650	725–1,067	0.045
Repair/Adjust HVAC/Lighting	39,434–60,793	2,091–3,285	0.006
Other Work Above Drop Ceilings	5,636–4,847	299–469	0.008
Repair Boiler	7,218–180,984	1,126–1,720	0.018
Repair Plumbing	7,218–180,984	1,126–1,720	0.011
Repair Roofing	24,040–127,621	2,404–3,740	0.012
Repair Drywall	3,576–80,231	3,576–5,662	0.075
Repair Flooring	28,848–65,338	14,424–22,437	0.02
Routine Maintenance in General Industry	183,602–426,474	1,497–2,619	
Remove/Install Gaskets (Small)	58,875–55,600	363–130	0.08
Remove/Repair Boiler Insulation (Small)	25,043–21,242	163–51	0.025
Remove/Repair Pipe Insulation (Small)	25,043–21,242	163–51	0.011
Miscellaneous Routine Maintenance Activities (Small)	47,717–42,669	300–100	0.004
Remove/Install Gaskets (Large)	10,770–105,354	203–855	0.08
Remove/Repair Boiler Insulation (Large)	4,039–47,000	76–371	0.025
Remove/Repair Pipe Insulation (Large)	4,039–47,000	76–371	0.011
Miscellaneous Routine Maintenance Activities (Large)	8,077–86,369	153–691	0.004
Industry Totals	424,354–1,404,758	100,407–175,635	

Source: U.S. Dept. of Labor, OSHA, Office of Regulatory Analysis, based on CONSAD [2, Table 3.9] and OSHA [1, Table G-20].

Non-Regulatory Alternatives

Because there remains a risk to workers from asbestos exposures at levels below the current permissible exposure level, and due to the failure of compensation systems, tort litigation and other agency actions to eliminate this risk, OSHA believes that regulatory action is appropriate. In the next three sections, the weaknesses to the alternatives to OSHA regulation are presented.

Compensation Systems

The long latency period associated with many asbestos-related diseases contributes to the uncertainty regarding the occupational nature of such diseases and violates the time constraints specified by some states for filing a claim for Workers' Compensation. Moreover, particularly with lung cancer, it may be difficult to prove the illness is asbestos-related. For example, in at least one study, only 33 percent of the population of workers with asbestos-related disease filed a Worker's Compensation claim, and only 15 percent of those who filed received some benefits prior to death.

Tort Litigation

Employees with an asbestos-related disease may file a product liability suit against a third-party manufacturer, processor, distributor, sales firms, installer, agency, or contractor. In many cases, however, the absence of information may prevent the initiation of a suit. For example, when a worker is removing or repairing asbestos products installed years ago, he or she may not be aware the product contained asbestos; thus, no "known" exposure will have occured. Also, the cost of litigation may be a prohibiting factor in the initiation of litigation, representing a significant transaction cost to the defendant. Such litigation is enormously expensive—as high as $1 billion in the early 1980s—and does nothing in itself to protect the health of workers. However, the prospect of litigation has sparked significant protective strategies by insurers, employers and other government entities.

Other Agency Efforts

Notable among efforts by other governmental bodies to regulate contact with asbestos is the Environmental Protection Agency's phased ban of asbestos products. If the ban goes into effect as scheduled, many products used in construction, and manufactured for commercial use would no longer appear beginning in 1990. As primary and secondary production of asbestos-containing products is eliminated, the risk to production workers is reduced. Similarly, the replacement of asbestos materials with non-asbestos substitutes in new construction and renovation will eliminate much of the risk that remains to workers in those sectors. However, many of the products affected by the EPA rule will not be banned for a number of years. Furthermore, banning these products will not reduce asbestos exposures to workers encountering asbestos installed prior to the ban. Thus, there remains a risk to the health of workers in general industry and construction despite EPA's scheduled ban of asbestos products.

Technological Feasibility and Compliance Costs

Technological Feasibility

General Industry

OSHA's 1986 RIA describes in detail the controls that would be necessary in order to achieve a PEL of 0.2 f/cc in each of the affected sectors in general industry. OSHA determined that compliance with the 0.2 f/cc PEL was feasible through the use of wet methods, engineering controls, and housekeeping practices. There were two operations (fiber introduction and dry mechanical) for which compliance with the PEL of 0.2 f/cc was not achievable without the use of respirators. These operations are found in primary A/C pipe manufacturing, primary and secondary A/C sheet manufacturing, primary and secondary friction products manufacturing, primary textiles manufacturing, and primary plastics manufacturing. (Table 1 shows the estimated exposure levels following implementation of the 1986 exposure limit of 0.2 f/cc.)

For the proposed PEL of 0.1 f/cc, some manufacturing operations will need to supplement engineering controls and work practices with respiratory protection. In all, 23,255 workers (about 4 percent of the 567,293 workers exposed in these industry sectors) in general industry are expected to need respirators at least part of the workday in order to maintain exposures below the proposed PEL. Since all affected employers in general industry will be able to comply with the proposed PEL through the use of engineering controls or, where necessary, respirators, OSHA concludes that the proposed PEL is technologically feasible.

In addition to respirators, ancillary controls will also be needed in these industry/process groups as a result of the lowering of the PEL. These controls include:

- Regulated areas;
- Disposable protective clothing;
- Changeroom/lockers;
- Showers;
- Lunch areas; and
- Annual update of the written compliance program.

Moreover, the proposed housekeeping provision for primary and secondary manufacturing mandates that all floors and surfaces have to be cleaned at least once per shift with a vacuum containing a HEPA-filter. Where feasible, this housekeeping practice is to be combined with wet methods. However, the 1986 RIA assumed that good housekeeping practices would be used in order to reduce occupational exposures to the current PEL of 0.2 f/cc. These housekeeping practices included the use of vacuums equipped with HEPA-filters to achieve compliance with the current PEL of 0.2 f/cc. The proposed new housekeeping requirements are already assumed to be in effect and are, therefore, technologically feasible.

Finally, the proposed revision to the current standard requires certain engineering controls and work practices for brake and clutch repair and services. These requirements include the mandatory use of an enclosed cylinder/HEPA vacuum system method, a solvent system method, or an equivalent method to reduce employee exposure. The solvent system method was judged to be technologically feasible in OSHA's 1986 RIA and the method remains technologically feasible at the proposed PEL of 0.1 f/cc.

This feasibility assessment for general industry does not consider the impacts of the proposed revisions on the production and use of non-asbestiform tremolite, actinolite and anthophyllite. If these three minerals are brought under the scope of the asbestos standard in future rulemaking, an assessment regarding the feasible application of the rule with respect to these minerals will be conducted.

Construction

The evaluation of technological feasibility in construction focused on the various combinations of engineering controls, work practices, and respiratory protection necessary to reduce current exposures to achieve compliance with the proposed PEL of 0.1 f/cc. In addition, a number of engineering controls, work practices, and ancillary requirements which typically do not directly contribute to reducing employee exposures were examined.

Exposures to asbestos in the construction industry were classified into five activity categories:

• *New construction*—including the installation of vinyl/asbestos floor tile, asphalt roofing felts and coatings, and asbestos/cement (A/C) pipe and sheet.

• *Asbestos abatement*—including both asbestos removal and encapsulation with a polymeric coating, or enclosure.

• *Demolition*—involving asbestos removal prior to the demolition of all or part of a building or industrial facility that contains asbestos materials.

• *General building renovation and remodeling*—including drywall demolition involving the removal of pipe and boiler insulation, fireproofing, drywall tape and spackling, and acoustical plasters, and the removal of built-up roofing.

• *Routine facility maintenance in commercial/residential buildings and in general industry*—including maintenance and repair activities involving disturbance of asbestos materials and products (for example, repair of leaking steam pipes, ceiling tiles, roofing, drywall, or flooring; or adjustment of HVAC equipment above suspended ceilings).

To support the regulatory impact analysis for the 1986 asbestos standard, CONSAD derived baseline exposure levels for each construction activity from a database that included personal and area air samples, OSHA inspection reports, expert testimony, and various published reports [2, pp. 46–47]. The technological feasibility assessments for the present proposal were influenced by expected exposure reduction following the promulgation of the 1986 asbestos standard.

OSHA determined in 1986 that, for a variety of construction activities, it was feasible to reach the current PEL of 0.2 f/cc through the use of available engineering controls and work practices (i.e., without the need for respiratory protection). These construction activities included:

• Asbestos/cement (A/C) pipe installation;

• Asbestos/cement (A/C) sheet installation;

• Floor products installation;

• Plumbing repairs in commercial/residential buildings;

• Floor repairs in commercial/residential buildings;

• Gasket removal and installation in general industry; and

• Pipe insulation repairs in general industry.

For the remaining activities, respiratory protection was necessary in order to reach the current PEL of 0.2 f/cc. OSHA assumed that employers would choose the most cost-effective approach and supply their workers with half-mask supplied-air respirators (or full-facepiece supplied-air respirators for asbestos removal projects) in order to eliminate the need for exposure monitoring [1, p. VI–36]. Thus, for many construction activities, workers are assumed to be already using supplied-air respirators.

OSHA is proposing the prohibition of high-speed sanding and the use of highly abrasive pads during asbestos floor tile work. In CONSAD's 1985 study [3, p. 4.17] and in OSHA's RIA [1, p. G–27], exposures during floor tile installation, removal, and sanding were reported to be generally below 0.1 f/cc when the recommendations of the Resilient Floor Covering Institute were followed. These recommended practices included wet sweeping and handling, and the prohibition of power sanding and blowing asbestos dust. OSHA estimated current exposures in floor repair at 0.02 f/cc under the assumption that the Institute's recommended practices were being widely adopted. Therefore, the prohibition of high-speed sanding in the current proposal is not expected to significantly affect floor repair. OSHA requests comment on the potential impact from prohibiting high-speed sanding and the use of highly abrasive pads.

With the proposed PEL of 0.1 f/cc, additional respiratory protection may be necessary. Specifically, building demolition projects and drywall demolition projects may need to upgrade their respiratory protection from half-mask supplied-air to full-facepiece supplied-air to meet the lower permissible exposure limit.

In sum, certain construction activities may require respiratory protection in order to comply with the 0.1 f/cc PEL. The following activities would not need respiratory protection: A/C pipe installation projects; floor products installation projects; plumbing repairs in commercial/residential buildings; floor repairs in commercial/residential buildings; and small-scale, short-duration pipe insulation and gasket removal and installation projects in general industry. In addition, some routine maintenance activities, some minor removal activities, and some major abatement jobs may be able to achieve the proposed PEL of 0.1 f/cc without respirators.

The other incremental controls necessary to comply with OSHA's proposed asbestos standard, include (depending upon the construction activity):

• HEPA vacuums or HEPA vacuum/ventilation systems;

• Glove bags;

• Regulated areas (air-tight or demarcated with caution signs);

• Protective disposable clothing;

• Decontamination area (adjacent to regulated area or remote showers and changerooms);

• Lunch areas;

• Competent person (40-hour or 16-hour training);

• Training;

• Medical exams;

• Recordkeeping (medical exams and training);

• Notification of building owners by contractors;

• Notification of occupants by building owners; and

• Notification to OSHA area office by contractor.

With the exception of the last three, these controls are discussed in detail in OSHA's 1986 RIA and all are deemed feasible for the appropriate construction activities. In conclusion, therefore, OSHA projects that the proposed revisions to the asbestos construction standard will be technologically feasible because all of the provisions, including the lowered PEL, can be met using existing engineering controls, respiratory protection and work practices. The preceding feasibility assessment does not apply to construction jobs where materials containing non-asbestiform tremolite, actinolite and anthophyllite are installed, removed or repaired. If these three minerals are brought under the scope of the asbestos standard in future rulemaking, an assessment regarding the feasible application of the rule with respect to these minerals will be conducted.

Compliance Costs

OSHA has estimated the costs of complying with the proposed revisions to the asbestos standard for general industry and construction. OSHA's cost assumptions and methodologies are based upon CONSAD's draft final report [2] and the previous regulatory analyses performed by OSHA [1], CONSAD [3] and Research Triangle Institute [5]. The section below presents the estimated costs to general industry, followed by the costs to construction.

General Industry

In developing the annual compliance cost estimates, unit cost estimates were first developed for each of the control practices and ancillary measures required by the proposed PEL for each of the industry/process groups affected by the proposed standard. The annual compliance costs for each affected industry/process group were then

developed by combining the unit costs data with the number of units of each type of control practice needed per year to achieve compliance with OSHA's proposed standard. Compliance costs were also adjusted to reflect current compliance with the required control practices.

The industry/process groups with exposures above the proposed PEL of 0.1 f/cc will require the implementation of a set of uniform control practices, including written compliance programs, regulated areas, respirators (including the respirator unit, accessories, fit testing and cleaning), disposable protective clothing and gloves, change rooms and lockers, shower rooms, and lunch rooms. Other controls, while necessary for compliance with the proposed standard, are also required by the current asbestos standard and, thus, are not incremental controls.

Specifically, the use of a solvent system as one of the mandatory engineering controls in auto repair services is not considered an incremental burden since OSHA included compliance costs for use of the solvent spray method in all affected brake establishments in the 1986 RIA and in the 1988 excursion limit analysis. In addition, certain work practices that were required by OSHA's previous standard with a PEL of 2.0 f/cc, and are required by the current standard, as well as by the proposed revisions to the current standard (e.g. wet handling and the collection, disposal, and labelling of wastes in sealed, impermeable bags), are also not identified as additional costs. It is also assumed that wet methods (to the extent that they are feasible), and the use of HEPA vacuums for housekeeping in primary and secondary manufacturing, are already in use. In order to better estimate current compliance with the proposed requirement for per-shift cleanup with HEPA vacuums, OSHA requests information on the frequency with which HEPA vacuums are used for housekeeping in general industry.

To derive estimates of the annual incremental compliance costs for the industry/process groups affected by the proposed PEL of 0.1 f/cc, the estimated unit cost factors were first multiplied by estimates of the resources necessary to achieve compliance for that industry/process group. These gross annual cost estimates were then adjusted to account for current compliance rates (see CONSAD [2, Table 2.12]), which were first projected in the 1986 RIA and are modified as a result of the Regulatory Impact Analysis for the excursion limit rule in 1988 (53 FR 35610).

For each of the manufacturing processes in the affected industries, CONSAD estimated the number of plants with exposures above the proposed PEL of 0.1 f/cc (the number of plants needing controls), the number of processes to be controlled, the number of work stations to be controlled, the number of workers directly exposed, worker-days of exposure per year, and the direct worker-hours of exposure per year. These estimates are based on: The number of establishments as presented in OSHA's 1986 Regulatory Impact Analysis; the percentage of processes within plants with exposures above the proposed PEL of 0.1 f/cc and requiring controls; and finally, characteristics concerning the number of processes per plant, work stations per process, workers per work station, and the frequency and duration of each process in these affected industries. The resource estimates used to develop annual compliance costs are developed in detail in CONSAD's draft final report [2, Table 2.11].

Based on CONSAD's analysis [2], OSHA estimates that annual costs of compliance in general industry will total $24.4 million. Table 3 presents compliance costs by control practice, for each industry process, for the industry sector as a whole, and for all of general industry. As can be seen by comparing costs per provision along the bottom row of the table, respiratory protection—principally in primary and secondary friction materials production—represents approximately half of the total compliance costs. Protective clothing/gloves, and change rooms/lockers would be the next two costliest provisions, at $4.9 million and $4.2 million, respectively. However they are not expected to be incurred because their effective dates coincide with phase-out of affected industries pursuant to the EPA ban. Of the $24.4 million in total costs for general industry, $17.4 million are projected for primary and secondary materials, where the combination of a relatively large population at risk and high per-process exposure levels necessitate the use of greater controls.

TABLE 3.—ESTIMATED COMPLIANCE COSTS FOR AFFECTED SECTORS IN GENERAL INDUSTRY

[1989 dollars]

Industry/Process groups	Annual update of written compliance program	Install regulated areas	Half mask cartridge respirator with HEPA filter	Disposable protective clothing/ gloves	Change rooms/ lockers	Shower rooms	Lunch areas	Total annual incremental control costs
Primary Manufacturing:								
A/C Pipe:								
All	$134	$47	$29,734	$182,657	$159,211	$101,282	$16,168	$489,233
Introduction	67	23	29,734	11,659	10,162	6,465	1,032	59,143
Wet mechanical	0	0	0	0	0	0	0	0
Dry mechanical	67	23	0	170,998	149,049	94,817	15,136	430,090
Other	0	0	0	0	0	0	0	0
A/C Sheet:								
All	$323	$225	$291,712	$114,382	$99,700	$63,424	$10,939	$580,704
Introduction	81	56	12,843	5,036	4,389	2,792	482	25,678
Wet mechanical	81	56	38,528	15,107	13,168	8,377	1,445	76,761
Dry mechanical	81	56	51,371	20,143	17,557	11,169	1,926	102,303
Other	81	56	188,971	74,096	64,585	41,086	7,086	375,961
Friction Materials:								
All	$2,743	$1,320	$6,884,592	$2,302,500	$2,145,363	$1,496,847	$260,938	$13,094,302
Introduction	686	330	137,663	46,040	42,898	29,931	5,218	262,766
Wet mechanical	686	330	344,158	115,101	107,248	74,827	13,044	655,391
Dry mechanical	686	330	1,032,474	345,303	321,737	224,480	39,133	1,964,143
Other	686	330	5,370,298	1,796,055	1,673,481	1,167,609	203,544	10,212,003
Textiles:								
All	$40	$28	$0	$306,159	$266,860	$169,763	$25,731	$769,581

TABLE 3.—ESTIMATED COMPLIANCE COSTS FOR AFFECTED SECTORS IN GENERAL INDUSTRY—Continued

[1989 dollars]

Industry/Process groups	Annual update of written compliance program	Install regulated areas	Half mask cartridge respirator with HEPA filter	Disposable protective clothing/ gloves	Change rooms/ lockers	Shower rooms	Lunch areas	Total annual incremental control costs
Introduction	0	0	0	0	0	0	0	0
Dry mechanical	40	28	0	306,159	266,860	169,763	25,731	768,581
Other	0	0	0	0	0	0	0	0
Floor Tile:								
All	$0	$0	$0	$0	$0	$0	$0	$0
Introduction	0	0	0	0	0	0	0	0
Dry mechanical	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0
Gaskets and Packings:								
All	$726	$334	$402,361	$157,768	$137,517	$108,137	$16,226	$823,068
Introduction	242	111	154,871	60,726	52,931	41,622	6,246	316,749
Wet mechanical	242	111	154,871	60,726	52,931	41,622	6,246	316,749
Dry mechanical	242	111	92,619	36,316	31,655	24,892	3,735	189,570
Other	0	0	0	0	0	0	0	0
Paper:								
All	$296	$70	$48,924	$19,184	$23,410	$14,892	$3,312	$110,087
Introduction	0	0	0	0	0	0	0	0
Wet mechanical	296	70	48,924	19,184	23,410	14,892	3,312	110,087
Dry mechanical	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0
Coatings and Sealants:								
All	$1,049	$534	$1,781,819	$698,660	$550,283	$266,048	$48,325	$3,346,717
Introduction	1,049	534	1,781,819	698,660	550,283	266,048	48,325	3,346,717
Other	0	0	0	0	0	0	0	0
Plastics:								
All	$54	$19	$80,599	$50,415	$43,943	$27,955	$4,695	207,679
Introduction	0	0	0	0	0	0	0	0
Wet mechanical	0	0	0	0	0	0	0	0
Dry mechanical	54	19	80,599	50,415	43,943	27,955	4,695	207,679
Other	0	0	0	0	0	0	0	0
Secondary Manufacturing:								
A/C sheet: Dry mechanical	$309	$78	$458,350	$179,721	$24,865	$15,818	$8,545	$687,687
Friction materials: Dry mechanical	$538	$375	2,244,492	$880,076	$767,110	$267,396	$100,308	$4,260,295
Gaskets and packings: Dry mechanical	$0	$0	$0	$0	$0	$0	$0	$0
Textiles: Dry mechanical	$686	$0	$0	$0	$0	$0	$0	$686
Plastics: Dry mechanical	$0	$0	$0	$0	$0	$0	$0	$0
Auto Remanufacturing:								
All	$0	$0	$0	$0	$0	$0	$0	$0
Dry mechanical	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0
Service Sectors:								
Auto repair: Dry mechanical	$0	$0	$0	$0	$0	$0	$0	$0
Ship Repair:								
All	$0	$0	$0	$0	$0	$0	$0	$0
Wet mechanical	0	0	0	0	0	0	0	0
Dry mechanical	0	0	0	0	0	0	0	0
Nuclear ripout	0	0	0	0	0	0	0	0
Industry Totals	$6,897	$3,029	$12,222,583	$4,891,520	$4,218,263	$2,531,561	$495,187	$24,369,040

Source: CONSAD [2, Table 2.13].

It should be noted that for the products addressed in this analysis, the EPA scheduled ban will lead to an eventual elimination of exposures in general industry and a corresponding reduction in impacts from OSHA's proposal.

Construction

Within the construction industry, 21 unique activities will come under the scope of the proposed revision. These construction activities are found in new construction, asbestos abatement, demolition, general building renovation and remodeling, and routine facility maintenance in commercial/residential buildings and in general industry. Although the construction activities under consideration in this study will require the implementation of different control practices and/or combinations of these practices, the basic characteristics of available control practices are relatively uniform, and the options for combining control practices in the construction industry and during routine maintenance and repair activities in general industry are limited in number.

The control mechanisms considered in this analysis include shrouded tools with HEPA vacuums; HEPA vacuum/ventilation systems; HEPA vacuums; glove bags; regulated areas; respirators (including the respirator unit, accessories, fit testing, cleaning, and training); disposable protective clothing and gloves; decontamination areas (or clean changerooms); lunch areas; training; use of competent persons; exposure monitoring; medical exams; recordkeeping; labelling of installed asbestos products; notification to building owners by contractors; notification to building occupants by building owners; and notification to OSHA. Certain work practices that were required by OSHA's original standard with a PEL of 2.0 f/cc (e.g., wet handling and the collection and disposal of waste in sealed, impermeable bags) are not included as cost elements.

Cost data for control mechanisms were obtained from published price lists of equipment suppliers and from other information collected, developed, and presented in the previous studies by CONSAD [3, 4], RTI [4] AND OSHA [1]. These unit cost estimates, along with the key assumptions, are summarized in CONSAD [2, Tables 3.14 through 3.17]. Unit costs are expressed, as appropriate, on a per-establishment, -crew, -project, -worker, project-day, and worker-day basis.

To derive estimates of the annual incremental compliance costs for the proposed PEL of 0.1 f/cc, the estimated unit cost factors for the controls were multiplied by the estimated number of required control resources. In order to develop net annual compliance cost estimates, these gross annual cost estimates were then adjusted using estimates of current application of controls. Unit costs expressed in 1984 dollars were adjusted to 1989 dollars using appropriate producer price deflators and wage indices.

As indicated in the proposal, EPA notification requirements are sufficient for OSHA notification requirements; thus, to the extent that contractors are notifying EPA when removal, demolition, or renovation work is conducted, no additional incremental cost is assumed. Moreover, in situations where one type of equipment or control requirement is replaced with another (e.g., respirators or increased competent person training), the incremental control cost is calculated as the difference in cost between the two types of equipment or control. This assumes that there will be a sufficient phase-in period so that the full useful life of the already purchased equipment or control can be realized. To the extent that this is not possible, the incremental control cost estimates would be higher to reflect the current non-recoverable value of the capital equipment or control that is now obsolete.

Based on CONSAD's analysis [2], OSHA estimated the costs of compliance with the proposed PEL of 0.1 f/cc and the proposed additional requirements for competent person training and notification. The estimated compliance costs, by control requirement, are shown in Table 4 for each major construction sector. OSHA's estimate of total cost, $103.9 million, is the average cost for a range of construction workers potentially at risk in each of the activities affected by the standard (see CONSAD [2, pp. 92–95]). As can be seen in the last column of Table 4, competent person training will entail the greatest incremental costs: $54.4 million, or 52.4 percent of overall costs in this sector. For competent person training, it was assumed that comprehensive training for large-scale jobs would require five days of training conducted by an EPA-certified asbestos training center, or an equivalent course. The cost for the five-day certification course was estimated by CONSAD [2, p. 146] to be $1,606 per trainee (or $600 for the cost of the course, $756 for five-day salary including fringe benefits, and $250 in travel expenses). For small-scale jobs, two days of training was assumed at a total cost of $702 per trainee ($300 per course, $302 for salary/fringe benefits, and $100 in travel expenses). Competent person training costs will be encountered primarily in routine maintenance activities in general industry ($28.5 million) and in routine maintenance in commercial and residential buildings ($18.4 million).

TABLE 4.—ESTIMATED COMPLIANCE COSTS FOR AFFECTED ACTIVITIES IN CONSTRUCTION

[1989 dollars]

Control requirements	New construction	Asbestos abatement demolition	Renovation remodeling	Routine maint commercial residential	Routine maintenance general industry		Estimated incremental cost
					Small	Large	
Shrouded tools with HEPA vacuums	0	0	0	0	0	0	0
HEPA vacuum/ventilation system	0	0	0	0	0	1,800,841	1,800,841
HEPA vacuums	0	0	0	0	0	(1,706,599)	(1,706,599)
Regulated areas (airtight, caution signs)	0	0	0	0	0	3,515,148	3,515,148
Regulated areas (demarcated, caution signs)	103,480	0	0	0	0	(18,447)	85,033
Glove bags	0	1,539,145	0	25,875,936	1,526,241	460,097	29,401,419
Half mask supplied air respirator	2,855,084	(2,504,662)	(21,414,859)	0	0	1,185,035	(19,879,401)
Full facepiece supplied air respirator	0	2,262,670	19,345,831	0	0	0	21,608,502
Disposable protective clothing/gloves	1,012,922	0	0	0	0	18,402	1,031,324
Decontamination area (adjacent to regulated area)	0	0	0	0	0	7,068,924	7,068,924
Decontamination area (remote) (daily trailer rental)	2,475,507	0	0	0	0	1,606,978	4,082,485
Lunch areas	0	0	0	0	0	0	0
Training	0	0	0	(1,175,853)	0	24,810	(1,151,043)
Competent person	650,843	1,363,701	5,448,542	18,420,712	25,224,534	3,298,964	54,407,296
Exposure monitoring	(1,123,153)	0	0	0	0	0	(1,123,153)
Medical exams	0	0	0	0	0	0	0
Labelling of installed asbestos products	0	0	0	0	0	0	0
Notification to building owners	29,046	263,725	600,147	0	0	465,534	1,358,453
Notification to building occupants	29,046	263,725	600,147	0	0	465,534	1,358,453
Notification to OSHA	0	244,939	800,196	0	0	931,067	1,976,202
Total	6,032,775	3,433,245	5,380,006	43,120,795	26,750,775	19,116,288	103,833,884

Source: CONSAD [2, Table 3.20].

The next costliest provision is the requirement for the use of feasible containment systems (glove bags, mini-enclosures) where negative-pressure enclosures are not feasible. CONSAD estimated that the costs for glove bags (at $8.04 per bag) in asbestos abatement and demolition, routine maintenance in commercial/residential buildings, and routine maintenance in general industry total $29.4 million.

OSHA is proposing to revise the definition of small-scale, short-duration maintenace jobs from an activity-specific definition (pipe repair, valve replacement, installing electrical conduits, etc.) to one that refers to repair of piping of less than 21 feet; repair or removal of asbestos panel that is less than 9 square feet; pipe valve repair, gasket repair or removal, or asbestos-

related electrical work that can be completed by one worker in less than four hours; removal of drywall within an eight-hour workday; renovation projects involving endcapping of pipes and tile removal that can be completed in less than four hours; and installation of conduits that can be completed within an eight-hour work shift. The costs associated with the revised definition for small-scale, short-duration construction activities are an estimated $17.1 million and are found only in routine maintenance in general industry. Of this total cost, $8.7 million are associated with establishing decontamination areas, $3.5 million are associated with the requirement for an air-tight regulated area, while $1.8 million are attributed to the difference between comprehensive and small-scale competent person training. The remaining costs involve notification of building owners, occupants, and OSHA ($2.0 million), the supplemental use of respirator ($1.2 million), and the costs for protective clothing and gloves ($18,402) and employee training ($24,810) associated with establising a regulated area.

In terms of construction sectors, the largest compliance costs, $45.9 million, are associated with routine asbestos maintenance in general industry. For firms in manufacturing, electric utilities and other utilities that replace gaskets, remove boiler insulation, or perform other asbestos-related maintenance operations (see [1, Chapter 2] and [3, pp. 3.46–3.58] for a discussion of these general industry sectors), compliance with the proposed revision to the construction standard will entail competent person training ($28.5 million), use of decontamination areas ($8.7 million), and erection of airtight regulated areas ($3.5 million).

Contractors performing routine maintenance work in commercial/residential buildings will face costs of $43.1 million. Of these total compliance costs, incremental expenses of $25.9 million for glove bags and $17.2 million for competent person training (or a gross cost of $18.4 million minus $1.2 million for current manager training) will be incurred.

Compliance costs for the remaining major construction sectors—new construction, asbestos abatement and demolition, and renovation and remodeling—are expected to total $14.5 million. Incremental training for competent persons represents $7.5 million of the total costs in these three sectors, while incremental notification costs will be $2.8 million.

Benefits

The inhalation of asbestos feber has been clearly associated with three clinical conditions: Asbestosis, mesothelioma (a cancer of the lining of the chest or abdomen), and lung cancer. Studies have also observed increased gastrointestinal cancer risk. Risk from cancer at other sites, such as the larynx, pharynx, and kidneys, is also suspected.

Initial exposure limits for asbestos were based on efforts to reduce asbestosis which was known to be associated with asbestos exposure. The reduction in cases of asbestosis, however, resulted in workers living long enough to develop cancers that are now recognized as associated with asbestos exposure. The following discussion of the benefits associated with a reduction in exposures, therefore, focuses on the number of cancer cases avoided within the exposed work force. The results are expressed in terms of deaths avoided because these cancers almost always result in death.

The benefits of a reduction in the PEL depend upon current exposure levels, the number of workers exposed, and the risk associated with each exposure level. Current ambient air-level estimates for general industry and construction were estimated by CONSAD by applying the respiratory controls projected in the 1986 RIA to the estimated exposures prior to the 1986 standard and assuming 100 percent effectiveness [2, Table 3.9]. These current exposures, the estimated number of workers exposed to asbestos, and the estimated exposure levels after compliance with the proposed rule are presented in Tables 5 and 6 for general industry and construction, respectively. The estimates of the projected exposure levels after compliance with the proposed rule of 0.1 f/cc are based upon CONSAD's [2] application of more-extensive respirator use. The Agency estimated in 1986 that a number of establishments would use engineering controls, work practices and respirators in order to lower exposures below the current 0.1 f/cc action level. Hence, most employees are now estimated to be exposed below 0.1 f/cc. CONSAD estimates that any additional exposure reductions which result from the proposed rule will be the result of increased respirator use.

TABLE 5

Estimated Occupational Exposures to Asbestos and Reduction in Cancer Risk in General Industry as a Result of Proposed Revision to Standard (Annual Averages Using OSHA/CONSAD Current Exposure Estimates)

Sector	Estimated No. of exposed workers	Estimated current exposure levels (f/cc)	Estimated level of exposure (f/cc) after proposed rule	Estimated reduction in cancer deaths
Primary Manufacturing:				
Asbestos/Cement Pipe	512	0.0596	0.0560	0.002
Asbestos/Cement Sheet	159	0.1435	0.0142	0.027
Friction Materials	4,801	0.01304	0.0130	0.729
Textiles	405	0.0207	0.0207	0.000
Floor Tile	278	0.0560	0.0560	0.000
Gaskets and Packings	306	0.1222	0.0243	0.039
Paper	380	0.0608	0.0487	0.007
Coatings and Sealants	1,327	0.0931	0.0187	0.128
Plastics	322	0.0700	0.0700	0.000
Secondary Manufacturing:				
Asbestos/Cement Sheet	345	0.1210	0.0120	0.049
Friction Products	1,458	0.1020	0.0100	0.173
Gaskets and Packings	8,741	0.0480	0.0480	0.000
Textiles	170	0.1370	0.0140	0.027
Plastics	2,420	0.0650	0.0650	0.000

TABLE 5—Continued

Estimated Occupational Exposures to Asbestos and Reduction in Cancer Risk in General Industry as a Result of Proposed Revision to Standard (Annual Averages Using OSHA/CONSAD Current Exposure Estimates)

Sector	Estimated No. of exposed workers	Estimated current exposure levels (f/cc)	Estimated level of exposure (f/cc) after proposed rule	Estimated reduction in cancer deaths
Automotive Remanufacturing	4,669	0.0766	0.0766	0.000
Services:				
Automobile Repair	526,998	0.0150	0.0150	0.000
Shipbuilding and Repair	15,000	0.0197	0.0197	0.000
Total	568,289			1.180

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on CONSAD [2, Table 2.8] and OSHA [1, Table V-2]

TABLE 6

Estimated Occupational Exposures to Asbestos and Reduction in Cancer Risk in Construction as a Result of Proposed Revision to Standard

Sector	Estimated full time equivalent workers	Estimated current exposure levels (f/cc)	Estimated level of exposure (f/cc) after proposed rule	Estimated reduction in cancer deaths
New Construction:				
Abestos/Cement Pipe	1,043	0.0350	0.0350	0.000
Abestos/Cement Sheet	1,225	0.1000	0.0010	0.157
Built-Up Roofing Installation	280	0.0020	0.0020	0.000
Asbestos Abatement and Demolition:				
Asbestos Removal	16,518	0.0030	0.0030	0.000
Asbestos Encapsulation	3,163	0.0020	0.0020	0.000
Demolition	3,163	0.0060	0.0010	0.020
General Building Renovation:				
Drywall Demolition	51,300	0.0340	0.0030	*2.056
Build-Up Roofing Removal	2,235	0.0010	0.0010	0.000
Routine Maintenance in Commercial and Residential Buildings:				
Repair/Replace Ceiling Tiles	896	0.0050	0.0050	0.000
Repair/Adjust Ventilation/Lighting	2,688	0.0030	0.0030	0.000
Other Work Above Drop Ceiling	364	0.0030	0.0030	0.000
Repair Boiler	1,423	0.0020	0.0020	0.000
Repair Plumbing	1,423	0.0110	0.0110	0.000
Repair Roofing	3,073	0.0010	0.0010	0.000
Repair Drywall	4,618	0.0080	0.0080	0.000
Repair Flooring	18,430	0.0200	0.0200	0.000
Routine Maintenance in General Industry:				
Gasket Removal and Installation (Small)	247	0.0400	0.0400	0.000
Remove/Repair of Boiler Insulation (Small)	107	0.0120	0.0120	0.000
Remove/Repair of Pipe Insulation (Small)	107	0.0110	0.0110	0.000
Miscellaneous Routine Maintenance Activities (Small)	200	0.0020	0.0020	0.000
Remove/Install Gaskets (Large)	529	0.0800	0.0008	0.054
Remove/Repair Boiler Insulation (Large)	224	0.0120	0.0120	0.000
Remove/Repair of Pipe Insulation (Large)	224	0.0110	0.0001	0.003
Miscellaneous Routine Maintenance Activities (Large)	414	0.0020	0.0020	0.000
Total	113,911			2.291

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on CONSAD [2, Table 2.10] and OSHA [1, Table V-2].

Cancers avoided in drywall demolition were originally misreported in the 1986 RIA. These benefits should be realized under this proposed rule as a result of increased respirator use.

In construction, exposure reductions in the general industry maintenance sector are anticipated as a result of the reclassification of some jobs as "large scale". Since regulated areas would now be required for these jobs, it is estimated that supplied-air respirators would be used to avoid the need for exposure monitoring. As can be seen in comparing Columns 2 and 3 of Table 6, exposure reductions would also occur in A/C sheet installation, building demolition and drywall demolition in response to the lowered PEL. In these three sectors some jobs produce exposures above 0.1 f/cc, and therefore respirator upgrading would be anticipated, again to avoid the need for exposure monitoring. In general

industry (Table 5), exposure reductions are the result of the use of respirators in response to the lower PEL.

A discussion of the risk assessment used for OSHA's estimate of the number of cancers prevented by the proposed rule is presented in OSHA's 1986 RIA [1, pp. V-5/V-13]. OSHA updated the 1986 risk assessment to include 1987 mortality rates [6, Table 8.5]. Based upon this revised risk assessment, OSHA has estimated the number of deaths from mesothelioma, lung cancer and gastrointestinal cancer prevented by the exposure reductions resulting from the proposed rule. The estimated reductions in cancers—based upon CONSAD's assumption of 100 percent effectiveness of respirators—are presented in Tables 5 and 6. OSHA estimates that reducing the PEL from the current 0.2 f/cc level to 0.1 f/cc will prevent 1.2 cancer deaths in general industry and 2.3 cancer deaths in construction, or a total of 3.5 cancer deaths per year.

OSHA also estimates that adoption of the proposed rule would prevent cases of disabling asbestosis. As these cases represent disabilities and not deaths, they are not included in the total estimated benefits. Asbestosis cases often lead to tremendous societal costs in terms of health care, worker productivity, and in the quality of life to the affected individual. Their prevention, therefore, would have a positive value.

Similarly, OSHA's analysis does not quantify benefits among those incidentally exposed. Many construction workers, for example, can be exposed to asbestos while present at sites where asbestos work is being done. Since OSHA's revised asbestos standard will reduce ambient asbestos levels at these sites, exposure among these workers will also be reduced. Also, to the extent that negative pressure enclosures and glove bags reduce the release of asbestos fibers, the standard will help prevent accidental and long-term exposure to those permanently employed in other parts of buildings in which asbestos-related construction work is being performed. OSHA requests public comment on the effect of negative pressure enclosures on these secondary and tertiary exposures to asbestos.

There are other provisions of the standard for which benefits are difficult to quantify. The provision for a competent person, for example, would help ensure the integrity of negative pressure enclosures, which in turn reduce asbestos exposures. The provision for notification of building owners could lead to a reduction in cases of accidental exposure. To the extent these provisions may reduce potential exposures, additional benefits would be expected. Public comment is requested on the potential benefits from the more-extensive competent person training and from the requirements for building owner and occupant notification. In addition, OSHA will quantify the risks and benefits to bystander employees in the final rule and requests data on the current level of exposures to such employees, the number of exposed employees and the frequency of exposure.

Economic Impact and Regulatory Flexibility Analysis

OSHA has examined the impacts of the costs of compliance on sales and profits for the firms in general industry and construction affected by the proposed revision to the asbestos standard. OSHA's analysis of the economic impacts, based upon the analysis in CONSAD's draft report [2], are presented below.

General Industry

CONSAD compared the compliance costs anticipated for general industry with three financial indicators: annual payroll, value of shipments and pre-tax profits. The comparison with annual payroll conveys the magnitude of compliance costs relative to labor costs. The comparison with value of shipments provides a measure of the extent to which prices would rise to maintain profit levels assuming firms are able to pass 100 percent of incremental costs forward to buyers. If firms, for competitive reasons, are unable to pass costs forward and must instead absorb the full impact internally, pre-tax profits would be expected to fall.

Table 7 presents the estimated impact of compliance costs on annual payroll, value of shipments and pre-tax profits. The figures for payroll and shipments are taken from preliminary 1987 census data for the industry groups within which primary and secondary asbestos manufacturing are classified (see CONSAD [2, Table 2.15]. CONSAD derived pre-tax profits using Dun and Bradstreet post-tax return-on-sales data, census data on value of shipments, and the 1987 tax code. Post-tax profits were derived by multiplying post-tax returns on sale by value of shipments. CONSAD then calculated pre-tax profits using a formula that contains the marginal corporate tax rates for 1987 [2, pp. 71-72].

TABLE 7.—ESTIMATED ECONOMIC IMPACTS IN GENERAL INDUSTRY AS A RESULT OF THE REVISION TO THE GENERAL INDUSTRY ASBESTOS STANDARD

Annual incremental control costs as a percentage of:	Industry group		
	Annual payroll	Value of shipments	Pre-tax profits
Primary Manufacturing:			
A/C Pipe	5.4	1.4	21.6
A/C Sheet	5.4	1.3	21.4
Friction Materials	14.3	.8	56.7
Textiles	14.3	3.6	56.5
Gaskets & Packing	3.5	0.9	22.1
Paper	*0.0	*0.0	0.1
Coatings & Sealants	3.3	0.3	5.6
Plastics	5.2	1.0	16.1
Secondary Manufacturing:			
A/C Sheet	1.7	0.4	6.6
Friction Materials	5.9	1.5	23.6
Textiles	.0.0	0.0	0.0

Source: CONSAD [2, Table 2.16].
* Impacts in primary paper manufacturing are less than 0.1 percent of payroll and value of shipments.

Incremental control costs are not expected to exceed 6 percent of payroll and 2 percent of value of shipments for most of the industry groups, suggesting that price increases as a result of the proposed revision would not be significant if market conditions enable firms to adjust prices upward without loss of sales. However, if competitive factors prevent a pass-forward of costs, the impacts on profits could be large, as seen in the last column of Table 7. The percentage of profits represented by incremental costs exceeds 56 percent for primary friction and textile manufacturing and exceeds 20 percent for primary A/C pipe, primary A/C sheet, gaskets and packing, and secondary friction materials. Because the market structure probably falls somewhere between the extremes of perfect competition (full cost absorption) and monopoly (full cost pass-forward), OSHA anticipates that some, but not all, of the incremental costs would be passed forward, helping to lessen the impact on profits. However, the precise effect on profits is difficult to estimate at this time.

In accordance with the Regulatory Flexibility Act, OSHA also examined the impacts on small establishments to determine if they would be adversely affected by the proposed standards. CONSAD compared compliance costs for small firms with small-firm annual payroll, value of shipments and pre-tax profits for the industries identified in OSHA's 1986 RIA as containing small establishments. (The industries with no small firms include A/C pipe, A/C sheet, friction materials and textiles in

primary manufacturing and friction materials in secondary manufacturing.) Small-firm impacts for general industry are shown in Table 8. Compliance costs as a percentage of small-firm shipments range from 0.4 for paper manufacturing to 7.4 for secondary A/C sheet manufacturing. Costs as a percentage of pre-tax profits, shown in the last column of Table 8, are significantly higher, suggesting that several profit reductions could be felt by the small firms unable to pass forward their incremental compliance costs. These results should be viewed as preliminary, however, and are independent of the effects from the EPA ban. As the scheduled EPA prohibitions of manufactured and imported asbestos products go into effect, production worker exposures would be expected to decline, leading to a reduction in the number of firms impacted by the rule. OSHA requests comment on the impacts in general industry from the proposed revision to the asbestos standard.

TABLE 8

Estimated Economic Impacts on Small Firms in General Industry as a Result of the Revision to the General Industry Asbestos Standard

Industry group	Annual incremental control costs as a percentage of:		
	Annual payroll	Value of shipments	Pre-tax profits
Primary Manufacturing:			
Gaskets & Packing	31.8	5.8	175.8
Paper	3.3	0.4	7.9
Coatings & Sealants	21.8	1.6	30.0
Plastics	41.2	6.8	140.3
Secondary Manufacturing:			
A/C Sheet	16.8	7.4	157.4

Source: CONSAD [2, Table 2.18].

Construction

CONSAD estimated economic impacts in construction by comparing incremental compliance costs with per-firm payroll, net receipts and profits. First, annual incremental control costs per firm were estimated using the costs presented above for new construction, asbestos abatement and demolition, renovation/remodeling and routine maintenance in commercial/residential buildings. (Routine maintenance in general industry is analyzed separately below.) Table 9 gives the estimated costs per exposed worker and per affected firm or crew (Columns 5 and 6). Based on CONSAD's estimate of the number of affected firms within each construction activity, costs are expected to range from $17 per firm for asbestos encapsulation to $7,418 per firm for drywall repair (for activities incurring compliance costs).

TABLE 9

Incremental Control Costs Per Affected Firm in Construction (1989 dollars)

Industry sector	Annual incremental control costs [a] (dollars)	No. of exposed workers [a]	No. of affected firms or crews [a]	Annual incremental control costs per exposed worker (dollars)	Annual incremental control costs per affected firm or crew (dollars)
New Construction:					
A/C Pipe Installation	0	5,778	1,469	0	0
A/C Sheet Installation	5,954,861	5,493	1,373	1,084	4,337
Roofing Felt Installation	77,914	1,088	249	72	313
Floor Products Installation	0	NA	NA	NA	NA
Subtotal	6,032,775	12,359	3,091	488	1,952
Asbestos Abatement and Demolition:					
Removal	1,747,841	55,484	2,450	32	713
Encapsulation	42,640	5,748	2,450	7	17
Demolition	1,642,764	6,000	2,450	274	671
Subtotal	3,433,245	67,232	2,450	51	1,401
Renovation/Remodeling:					
Drywall Demolition	4,578,180	51,300	17,100	89	268
Remove Built-up Roofing	801,826	10,840	2,478	74	324
Subtotal	5,380,006	62,140	19,578	87	275
Routine Maintenance: Commercial/Residential:					
Remove/Repair/Replace Ceiling Tiles	2,491,305	13,686	13,686	182	182
Repair HVAC or Lighting	7,178,292	39,434	19,717	182	364
Other Work Above Drop Ceiling	1,025,938	5,636	2,818	182	364
Repair Boilers	1,313,915	7,218	7,218	182	182
Repair Plumbing	0	7,218	7,218	0	0
Repair Roofing	4,584,460	24,040	12,020	191	381
Repair Drywall	26,526,886	3,576	3,576	7,418	7,418
Repair Flooring	0	28,848	14,424	0	0
Subtotal	43,120,796	129,656	80,677	333	534
Routine Maintenance: General Industry:					
Gasket Removal and Installation (small)	588,399	58,875	72,993	10	8
Gasket Removal and Installation (large)	2,526,122	10,770	4,205	235	601
Removal/Repair of Boiler Insulation (small)	25,224,534	25,043	72,993	1,007	346
Removal/Repair of Boiler Insulation (large)	7,319,685	4,039	4,205	1,812	1,741
Removal/Repair of Pipe Insulation (small)	0	25,043	72,993	0	0
Removal/Repair of Pipe Insulation (large)	8,128,979	8,077	4,205	283	271
Misc. Maintenance Activities (small)	937,842	47,717	72,993	20	13
Misc. Maintenance Activities (large)	8,128,979	8,077	4,205	1,006	1,933
Subtotal (small)	26,750,775	156,678	72,993	171	366
Subtotal (large)	19,116,287	26,925	4,205	710	4,546
Total	45,867,062	183,603	77,198	250	594
Total for all Activities	103,833,884	271,387	182,994	383	567

Source: CONSAD [2, Tables 3.9, 3.10, and 3.19].

[a] Represents average incremental control costs, average number of workers exposed, and average number of firms/crews exposed, for new construction, asbestos abatement and demolition, and renovation/remodeling. Represents lower bound incremental control costs, lower bound number of workers exposed, and lower bound number of firms/crews exposed, for routine maintenance activities.

NA—Data not available.

Economic impacts were estimated by calculating the per-firm incremental costs (given in Table 9) as a percentage of payroll, net receipts and pre-tax profits. Table 10 presents CONSAD's derivation of earnings per establishment in construction. As in the impact analysis for general industry, pre-tax profits for each industry group were derived using post-tax return-on-sales measures from Dun and Bradstreet and net dollar value of construction (see the explanation above). Annual payroll was taken from 1986 *County Business Patterns*.

TABLE 10.—NEXT DOLLAR VALUE AND PRE-TAX PROFITS PER ESTABLISHMENT IN CONSTRUCTION

SIC Code	Number of establishments	Number of employees	Number of construction workers	Annual payroll for construction workers (thousands of dollars)	Net dollar value of construction work (thousands of dollars)	Net dollar value per establishment	Post-tax return on sales (percent)	Estimated pre-tax profits per establishment (thousands of dollars)
SIC 15—Building Construction	159,160	1,291,687	932,191	17,447,811	113,641,096	714,005	3.5	29.4
SIC 1521—Single Family	91,235	403,818	312,599	4,447,462	27,954,692	306,403	4.7	16.9
SIC 1522—Residential	8,147	79,538	59,388	1,101,266	5,940,761	729,196	3.6	31.4
SIC 1531—Operative Builders	21,087	173,874	81,367	1,527,552	28,478,030	1,350,502	4.6	85.7
SIC 1541—Industrial Building	7,112	144,290	111,921	2,523,535	11,266,238	1,584,117	2.7	51.2
SIC 1542—Non-Residential	31,579	490,167	366,916	7,847,996	40,001,375	1,266,708	3.0	45.5
SIC 16—Heavy Construction	24,618	495,680	405,428	9,243,157	36,015,751	1,462,984	4.5	90.8
SIC 1623—Water & Sewer	9,865	195,890	164,676	3,450,417	14,570,114	1,476,950	5.3	108.0
SIC 1629—Not Elsewhere Classified	14,753	299,790	240,752	5,792,740	21,445,637	1,453,646	4.5	90.2
SIC 17—Special Trade Contractors	162,484	1,329,511	1,053,928	20,649,141	84,198,661	518,197	4.8	29.3
SIC 1711—Plumbing, Heating & A/C	69,581	612,376	466,673	10,267,131	42,876,843	616,215	3.7	26.8
SIC 1721—Painting & Paper Hanging	29,944	170,033	145,440	2,414,900	7,413,863	247,591	6.2	18.1
SIC 1752—Floor Laying	8,390	45,796	35,411	662,418	3,433,141	409,194	4.8	23.1
SIC 1761—Roofing & Siding	25,627	232,891	188,560	3,164,497	13,821,810	539,346	4.0	25.4
SIC 1795—Wrecking & Demolition	1,267	14,417	11,963	199,324	850,632	671,375	6.4	51.5
SIC 1796—Install Building Equip.	3,759	62,622	50,732	1,475,994	5,106,700	1,358,526	4.0	75.0
SIC 1799—Not Elsewhere Classified	23,916	191,376	155,149	2,464,877	10,695,672	447,218	6.3	33.7
All Industry Segments	346,262	3,116,878	2,391,547	47,340,109	233,855,508	675,372	NA	35.3

Source: CONSAD [2, Table 3.22].
NA—Data not available.

Table 11 shows the impacts by affected construction activity, by activity group, and for all groups in the analysis. Costs as a percentage of net receipts (Column 2) are under 0.5 percent for all activities except for A/C sheet installation (0.6 percent) and drywall repair (1.1 percent). The results suggest that if incremental control costs were fully passed through to building owners—as is believed to be the case throughout much of construction—the effects on prices and rents would be minor. Impacts on profits (Column 3) are significant in A/C sheet installation and drywall repair, but OSHA believes that the assumption of zero cost pass-through underlying this impact measure is not directly applicable in construction. Profit impacts are shown to demonstrate possible results under extreme conditions.

TABLE 11.—ECONOMIC IMPACTS IN CONSTRUCTION

[Excluding Routine Maintenance in General Industry]

Industry sector	Incremental control costs per firm as a percentage of: Payroll per firm(s)	Net receipts per firm(s)	Pre-tax profits per firm(s)
New Construction:			
A/C Pipe Installation	0.0	0.0	0.0
A/C Sheet Installation	3.2	0.6	12.3
Roofing Felt Installation	0.2	0.0	0.9
Floor Products Installation	0.0	0.0	0.0
Subtotal	1.4	0.3	5.5
Asbestos Abatement and Demolition:			
Removal	0.5	0.1	2.0
Encapsulation	0.0	0.0	0.0
Demolition	0.5	0.1	1.9
Subtotal	1.0	0.2	4.0
Renovation/Remodeling:			
Drywall Demolition	0.2	0.0	0.8
Remove Built-up Roofing	0.2	0.0	0.9
Subtotal	0.2	0.0	0.8

TABLE 11.—ECONOMIC IMPACTS IN CONSTRUCTION—Continued

[Excluding Routine Maintenance in General Industry]

Industry sector	Incremental control costs per firm as a percentage of: Payroll per firm(s)	Net receipts per firm(s)	Pre-tax profits per firm(s)
Routine Maintenance:			
Commercial/Residential:			
Remove/Repair/Replace Ceiling Tiles	0.1	0.0	0.5
Repair HVAC or Lighting	0.3	0.1	1.0
Other Work Above Drop Ceiling	0.3	0.1	1.0
Repair Boilers	0.1	0.0	0.5
Repair Plumbing	0.0	0.0	0.0
Repair Roofing	0.3	0.1	1.1
Repair Drywall	5.4	1.1	21.0
Repair Flooring	0.0	0.0	0.0
Subtotal	0.4	0.1	1.5
Total for All Activities	0.4	0.1	1.6

Source: CONSAD [2, Table 3.23].
(a) The average annual payroll, net receipts, and estimated pre-tax profits per firm are $136,718, $675,372, and $35,268, respectively. These values are averages across all construction industry segments where asbestos exposure may occur (See Table 11).
NA—Data not available.

For the regulatory flexibility analysis, OSHA determined in 1986 [1, VII—38] that the majority of firms in construction average under ten employees. Thus, the impacts described will affect predominantly small firms.

Routine Maintenance in General Industry

CONSAD assumed that routine asbestos maintenance in general industry is performed by plant and maintenance personnel within the establishment. Under this assumption, incremental costs in this sector are expected to impact general industry, despite the classification of these maintenance activities within the construction industry. Incremental costs per affected plant are given in Table 9 and pre-tax profits for affected industry sectors are shown in Table 12. As in the analysis above, incremental costs are expressed as a percentage of annual payroll, value of shipments and pre-tax profits (here, impacts were estimated at the industry level), shown in Table 13. Impacts on value of shipments are negligible (Column 2); the cost ratios are all under 0.1 percent. The third column gives the maximum reduction in profits under the assumption that 100 percent of incremental costs are absorbed internally. As the table shows, impacts on profits are generally less than 0.5 percent.

TABLE 12.—ANNUAL PAYROLL, VALUE OF SHIPMENTS, AND PRE-TAX PROFITS FOR GENERAL INDUSTRY SECTORS PERFORMING ROUTINE ASBESTOS MAINTENANCE

Industry (SIC Code)	Annual payroll per plant (millions of dollars	Value of shipments per plant (millions of dollars)	Post-tax return on sales [a](percent)	Estimated pre-tax profits per plant (thousands of dollars)
Manufacturing				
Malt (alcoholic) beverages (2082)	$10.11	$101.56	1.7	$2,851
Paper products (26)	2.65	17.07	3.7	1,026
Chemicals (28)	2.07	19.00	3.7	1,145
Petroleum refining (29)	1.77	57.98	2.7	2,582
Glass/ceramics (321, 322, 323)	1.72	7.91	4.9	620
Iron and steel (331, 332)	4.71	25.44	3.3	1,372
Fabricated metal products (34)	0.98	4.11	4.0	247
Electric Utilities				
Electric services (491)	3.05	28.41	NA	4,253
Combination electric, gas, and other utilities (493)	5.84	NA	7.0	NA
Other Public Utilities				
Gas production and distribution (492)	1.20	24.18	NA	1,009
Water supply (494)	0.17	NA	7.0	NA
Sanitary services (495)	0.37	NA	7.0	NA

Source: CONSAD [2, Table 3.25].
[a]For Glass/ceramics (SIC 321, 322 and 323), data for SIC 321 and 322 used; for Iron and Steel (SIC 331 and 332), data for SIC 33 used; for Electric Services (SIC 491) and Gas Production (SIC 492), actual data for pre-tax profits utilized; for other utilities, data for SIC 49 used.
NA—Data not available.

TABLE 13.—ECONOMIC IMPACTS IN GENERAL INDUSTRY SECTORS PERFORMING ROUTINE ASBESTOS MAINTENANCE

Industry (SIC code)	Annual incremental control costs per plant(a) as a percentage of:		
	Annual payroll per plant	Value of shipments per plant	Estimated pre-tax profits per plant
Manufacturing:			
Malt (alcoholic beverages (2082)	0.008	0.001	0.021
Paper products (26)	0.022	0.003	0.058
Chemicals (28)	0.029	0.003	0.052
Petroleum refining (29)	0.033	0.001	0.023
Glass/ceramics (321, 322, 323)	0.034	0.008	0.096
Iron and steel (331, 332)	0.013	0.002	0.043
Fabricated metal products (34)	0.038	0.009	0.148
Electric Utilities:			
Electric services (491)	0.019	0.002	0.014

TABLE 13.—ECONOMIC IMPACTS IN GENERAL INDUSTRY SECTORS PERFORMING ROUTINE ASBESTOS MAINTENANCE—Continued

Industry (SIC code)	Annual incremental control costs per plant(a) as a percentage of:		
	Annual payroll per plant	Value of shipments per plant	Estimated pre-tax profits per plant
Combination electric, gas, and other utilities (493)	0.010	NA	NA
Other Public Utilities:			
Gas production and distribution (492)	0.050	0.002	0.059
Water supply (494)	0.350	NA	NA
Sanitary services (495)	0.161	NA	NA

Source: CONSAD [2, Table 3.26].
(a) The overall incremental control cost per affected plant ($594) was utilized in these calculations for all industries except fabricated metal products where the overall incremental control cost per affected plant for small-scale projects ($366) was utilized since all plants in this industry perform only small-scale projects (see Table 10).
NA—Data not available to calculate percentage.

The economic impacts on small firms (under 20 employees) in general industry performing routine asbestos maintenance are presented in Tables 14 and 15. The data indicate no serious economic consequences as a result of the proposed rule change.

TABLE 14.—ANNUAL PAYROLL, VALUE OF SHIPMENTS, AND PRE-TAX PROFITS FOR SMALL FIRMS IN GENERAL INDUSTRY SECTORS PERFORMING ROUTINE ASBESTOS MAINTENANCE

Industry (SIC code)	Annual payroll per plant (millions of dollars)	Estimated value of shipments per plant (millions of dollars)	Post-tax return on sales (percent)	Estimated pre-tax profits per plant (thousands of dollars)
Manufacturing:				
Malt (alcoholic) beverages (2082)	$3.00	$6.17	1.7	$175
Paper products (26)	0.16	0.95	3.7	42
Chemicals (28)	0.16	2.79	3.7	172
Petroleum refining (29)	0.20	2.13	2.7	79
Glass/ceramics (321, 322, 323)	0.14	0.33	4.9	19
Iron and steel (331, 332)	0.19	0.49	3.3	19
Fabricated metal products (34)	0.14	0.38	4.0	18
Electric Utilities:				
Electric services (491)	0.24	2.24	NA	335
Combination electric, gas, and other utilities (493)	0.21	NA	7.0	NA
Other Public Utilities:				
Gas production and distribution (492)	0.21	4.23	NA	177
Water supply (494)	0.05	NA	7.0	NA
Sanitary services (495)	0.10	NA	7.0	NA

Source: CONSAD [2, Table 3.27].
NA—Data not available.

TABLE 15.—ECONOMIC IMPACTS FOR SMALL FIRMS IN GENERAL INDUSTRY SECTORS PERFORMING ROUTINE ASBESTOS MAINTENANCE

Industry (SIC code)	Annual incremental control costs per plant(s) as a percentage of:		
	Annual payroll per plant	Value of shipments per plant	Estimated pre-tax profits per plant
Manufacturing:			
Malt (alcoholic) beverages (2082)	0.012	0.006	0.209
Paper products (26)	0.229	0.039	0.869
Chemicals (28)	0.229	0.013	0.213
Petroleum refining (29)	0.183	0.017	0.461
Glass/ceramics (321, 322, 323)	0.261	0.111	1.924
Iron and steel (331, 332)	0.193	0.075	1.924
Fabricated metal products (34)	0.261	0.096	2.047
Electric Utilities:			
Electric services (491)	0.153	0.016	0.109
Combination electric, gas, and other utilities (493)	0.174	NA	NA
Other Public Utilities:			
Gas production and distribution (492)	0.174	0.009	0.207
Water supply (494)	0.732	NA	NA
Sanitary services (495)	0.366	NA	NA

Source: CONSAD [2, Table 3.28].
(a) The overall incremental control cost per affected plant for small-scale projects ($366) was used in these calculations for all industries since all small plants perform only small-scale projects (see Table 10).
NA—Data not available to calculate percentage.

References

(1) U.S. Dept. of Labor, OSHA, Office of Regulatory Analysis, *Final Regulatory Impact and Regulatory Flexibility Analysis of the Revised Asbestos Standard*, 1986.

(2) CONSAD Research Corporation, *Economic Analysis of the Proposed Revisions to the OSHA Asbestos Standards for Construction and General Industry*, Draft Final Report, Contract Number J-9-F-8-0033, April 1990.

(3) CONSAD Research Corporation, *Economic and Technological Profile Related to OSHA's Revised Permanent Asbestos Standard for the Construction Industry and Asbestos Removal and Routine Maintenance Projects in General Industry*, Final Report, Contract Number J-9-F-4-0024, December 31, 1985.

(4) CONSAD Research Corporation and Clayton Environmental Consultants, Inc., *Asbestos Task Order for Construction Alternatives*, Final Report, Contract Number J-9-F-4-0024, May 25, 1984; Addendum to Final Report, June 14, 1984.

(5) Research Triangle Institute, *Regulatory Impact Analysis of the Proposed OSHA Asbestos Standard*, prepared for the U.S. Department of Labor, Occupational Safety and Health Administration, September 1985.

(6) *Vital Statistics of the United States 1987*, Volume II—Mortality, Part B, U.S. Department of Health and Human Services, Public Health Service, Centers For Disease Control, National Center For Health Statistics, 1989.

V. Clearance of Information Collection Requirements

On March 31, 1983 the Office of Management and Budget (OMB) published 5 CFR part 1320, implementing the information collection provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. (48 FR 13666). Part 1320, which became effective on April 30, 1983 and was revised May 10, 1988 (53 FR 16618) sets forth procedures for agencies to follow in obtaining OMB clearance for information collection requirements.

OMB has approved information collection requests for existing asbestos standards in accordance with the provisions of the Paperwork Reduction

Act under control numbers 1218–0133 and 1218–0134.

OSHA is seeking clearance for the asbestos construction § 1926.58(i) which requires employers to notify OSHA area offices 10 days prior to removal, demolition, or renovations operations of Asbestos. OSHA estimates 348,915 written notifications will be received annually by the Agency. Public reporting burden for this collection is estimated to average 1 hour per response for the Construction industry.

Send comments regarding this burden estimate and/or other aspects of this collection of information, including suggestions for reducing this burden to the Office of Information Management, Department of Labor, room N–1301, 200 Constitution Avenue,, NW., Washington, DC 20210; and to the Office of Information and regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

VI. Public Participation Notice of Hearing

Pursuant to section 6(b)(3) of the Act, an opportunity to submit oral testimony concerning the issues raised by the proposed standard will be provided at an informal public hearing scheduled to begin at 9:30 a.m. at the time and place as follows: Washington, DC: October 23, 1990, The Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Intention to Appear

All persons desiring to participate at the hearings must file in quadruplicate a Notice of Intention to Appear, postmarked on or before September 25, 1990, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H–033e, room N–3647, U.S. Department of Labor, Third Street and Constitution Ave., NW., Washington, DC 20210; telephone 202–523–8615. The Notice of Intention to Appear also may be transmitted by facsimile to 202–523–5046 or (for FTS) to 8–523–5986, provided the original and 4 copies of the notice are sent to the above address thereafter.

Notices of intention to appear, which will be available for inspection and copying at the OSHA Docket Office (room N2625), telephone 202–523–7894, must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time requested for the presentation;
4. The specific issues that will be addressed;
5. A statement of the position that will be taken with respect to each issue addressed;
6. Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence.

Filing of Testimony and Evidence Before Hearings

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of the testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material must be postmarked by September 25, 1990, and will be available for inspection and copying at the OSHA Technical Data Center Docket Office. Each such submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10 minute presentation. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper notices of intention to appear at the hearing will be entitled to ask questions and otherwise participate fully in the proceeding.

Conduct and Nature of Hearings

The hearings will commence at 9:30 a.m., on October 23, 1990. At that time, any procedural matters relating to the proceeding will be resolved.

The nature of an informal hearing is established in the legislative history of section 6 of the Act and is reflected by the OSHA hearing regulations (see 29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, the proceeding shall remain informal and legislative in nature. The Agency's intent, in essence, is to provide an opportunity for effective oral presentations which can proceed expeditiously, in the absence of rigid procedures which impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding, rather than an adjudicative one. The technical rules of evidence, for example, do not apply. The regulations that govern hearings and the pre-hearing guidelines to be issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. Those rules and guidelines will be interpreted in a manner that furthers that development. Thus, questions of relevance, procedure and participation generally will be decided so as to favor development of the record.

The hearing will be conducted in accordance with 29 CFR part 1911. The hearing will be presided over by an Administrative Law Judge who makes no decision or recommendation on the merits of OSHA's proposal. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge, therefore, will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911 including the powers:

(1) To regulate the course of the proceedings;

(2) To dispose of procedural requests, objections and comparable matters;

(3) To confine the presentations to the matters pertinent to the issues raised;

(4) To regulate the conduct of those present at the hearing by appropriate means;

(5) In the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and

(6) In the Judge's discretion, to keep the record open for a reasonable, stated time to receive written information and additional data, views, and arguments from any persons who has participated in the oral proceedings.

Written Comments

Interested persons are invited to submit written comments on the issues raised in the proposal. Written comments must be postmarked by September 25, 1990 and submitted in quadruplicate to the Docket Office, Docket Number H–033e, room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The telephone number of the Docket Office is (202) 523–7894, and its hours of operation are 8:15 a.m. to 4:45 p.m., Monday through Friday, except Federal holidays. Comments limited to

10 pages or less in length may also be transmitted by facsimile to (202) 523-5046 or (for FTS) to 8-523-5046, provided the original and 4 copies of the comment are sent to the Docket Officer thereafter. Written submissions must clearly identify the issues raised in this Notice which are addressed and the position taken on each issue.

All materials submitted will be available for inspection and copying at this address. All timely submissions will be part of the record of the proceeding.

Certification of Record and Final Determination After Hearing

Following the close of the post-hearing comment period, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record and a standard will be issued based on the entire record of the proceeding, including the written comments and data received from the public.

State Plan Applicability

The 25 States with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of a final revised standard. These States include: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

List of Subjects

29 CFR Part 1910

Asbestos, Cancer, Health, Labeling, Occupational safety and health, Protective equipment, Respiratory protection, Signs and symbols.

29 CFR Part 1926

Asbestos, Cancer, Construction industry, Hazardous materials, Health, Labeling, Occupational safety and health. Protective equipment, Respiratory protection, signs and symbols.

VII. Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 635, 653, 657), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), the Longshore and Harbor Workers Compensation Act (33 U.S.C. 941), 29 CFR Part 1911 and Secretary of Labor's Order No. 1-90 (55 FR 9033), it is hereby proposed to amend 29 CFR parts 1910 and 1926 as set forth below.

Signed at Washington, DC, this 12th day of July, 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

Proposed Amended Standards

Part 1910 of title 29 of the Code of Federal Regulations would be amended as follows:

PART 1910—[AMENDED]

Subpart Z—[Amended]

1. The authority citation for subpart Z of part 1910 would be revised to read as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736) or 1-90 (55 FR 9033) as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b), except those substances listed in the Final Rule Limits column of Table Z-1-A, which have identical limits listed in the Transitional Limits columns of Table Z-1-A, Table Z-2 or Table Z-3. The latter was issued under Section 6(a) (29 U.S.C. 655 (a)).

Section 1910.1000, the Transitional Limits columns of Table Z-1-A, Table Z-2 and Z-3 also issued under 5 U.S.C. 553. Section 1910.1000, Table Z-1-A, Z-2 and Z-3 not issued under 29 CFR part 1911 except for the arsenic, benzene, cotton dust and formaldehyde listings.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 *et seq.*

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

Part 1910 of title 29 Code of Federal Regulations is hereby amended as follows:

2. Section 1910.1001 would be amended by revising paragraph (c)(1), (f)(1), (p)(1) and (2), and appendix F and adding paragraphs (c)(3), (f)(1)(x), (xi) and (xii), and (k)(7), (o)(4) and (o)(5), as follows:

§ 1910.1001 Asbestos, tremolite, anthophyllite, and actinolite.

* * * * *

(c) *Permissible exposure limits (PELS)*—(1) *Time-weighted average limit (TWA) for asbestos.* The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 0.1 fiber per cubic centimeter of air as an eight (8)-hour time-weighted average (TWA) as determined by the method prescribed in appendix A of this section, or by an equivalent method.

* * * * *

(3) *Time-weighted average limit (TWA) for tremolite anthophyllite and actinolite.* The employer shall ensure that no employee is exposed to an airborne concentration of tremolite, anthophyllite, actinolite or a combination of these minerals in excess of 0.2 fiber per cubic centimeter of air as an eight (8)-hour time-weighted average (TWA) as determined by the method prescribed in appendix A of this section, or by an equivalent method.

* * * * *

(f) *Methods of Compliance*—(1) *Engineering controls and work practices.* (i) The employer shall institute engineering controls and work practices to reduce and maintain employee exposure to or below the exposure limit prescribed in paragraph (c) of this section, except to the extent that such controls are not feasible and pursuant to paragraph (f)(xii) of this section.

* * * * *

(x) *Engineering controls and work practices for brake and clutch repair and service.* During automotive brake and clutch repair operations, the employer shall institute engineering controls and work practices to reduce employee exposure to materials containing asbestos using an enclosed cylinder/HEPA vacuum system method, solvent system method or wet brush-recycle method, which meets the detailed requirements set out in Appendix F. The employer may also comply using an equivalent method, which follows written procedures, which the employer demonstrates can achieve results equivalent to Method A in

Appendix F as set out in Exhibit 1–112, (Sheehy, J.W., T.C. Cooper, D. M. O'Brien. 1989. Control of Asbestos Exposure During Brake Drum Service. App. Ind. Hyg. 4:313–319). Such demonstration must include monitoring data conducted under workplace conditions closely resembling the process, type of asbestos containing materials, control method, work practices and environmental conditions when the equivalent method will be used, or objective data, which documents that under all foreseeable conditions of brake and clutch repair applications, the method results in exposures which are equivalent to the results of Method A cited above.

(xi)(A) Floor tile containing asbestos may be buffed and/or sanded only with low-abrasion pads at speeds of 190 rpm or less. Buffing and/or sanding of such tile or material at speeds greater than 190 or using highly abrasive pads are prohibited.

(B) Employers shall inform employees buffing and/or sanding floor tile or material containing asbestos that non-compliance with paragraph (f)(i)(xi)(A) may result in exposure to asbestos fibers.

(xii) For the following industry sectors up to and including the following dates, the employer may comply with the revised TWA PEL of 0.1 f/cc by any combination of respiratory protection that complies with the requirements of paragraph (g) of this section, work practices and feasible engineering controls.

August 27, 1990

Flooring felt
Roofing felt
Pipeline wrap
Asbestos/cement (A/C) flat sheet
A/C corrugated sheet
Vinyl/asbestos floor tile
Asbestos clothing
New asbestos products

August 25, 1993

Beater-add gaskets (except specialty industrial gaskets)
Sheet gaskets (except specialty industrial gaskets)
Clutch facings
Automatic transmission components
Commercial and industrial friction products
Drum brake linings (original equipment market)
Disc brake pads for light- and medium weight vehicles

August 26, 1996

A/C pipe
Commercial paper
Corrugated paper
Rollboard
Millboard
A/C shingle
Specialty paper
Roof coatings
Non-roof coatings
Brake blocks
Drum brake linings (aftermarket)
Disc brake pads (aftermarket)

* * * * *

(k) *Housekeeping.*

* * * * *

(7) In primary and secondary manufacturing operations, floors and surfaces shall be cleaned at least once per shift with a vacuum containing a HEPA-filter, combined, where feasible, with wet methods.

* * * * *

(o) *Dates.*

* * * * *

(4) The requirements of paragraphs (c)(1), (f)(1)(x) and (xi) and (p) (1) and (2) shall be complied with (insert date 60 days from publication of the final rule in the Federal Register).

(5) The requirements of paragraphs (i) (1), (2), and (3) which are triggered by the 0.1 f/cc TWA PEL shall be complied with by the following dates for the following industry sectors:

August 27, 1990

Flooring felt
Roofing felt
Pipeline wrap
Asbestos/cement (A/C) flat sheet
A/C corrugated sheet
Vinyl/asbestos floor tile
Asbestos clothing
New asbestos products

August 25, 1993

Beater-add gaskets (except specialty industrial gaskets)
Sheet gaskets (except specialty industrial gaskets)
Clutch facings
Automatic transmission components
Commercial and industrial friction products
Drum brake linings (original equipment market)
Disc brake pads for light- and medium weight vehicles

August 26, 1996

A/C pipe
Commercial paper
Corrugated paper
Rollboard
Millboard
A/C shingle
Specialty paper
Roof coatings
Non-roof coatings
Brake blocks
Drum brake linings (aftermarket)
Disc brake pads (aftermarket)

* * * * *

(p) *Appendices.* (1) Appendices A, C, D, E, and F to the section are incorporated as part of this section and the contents of these Appendices are mandatory.

(2) Appendices B, G and H to this section are informational and are not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.

* * * * *

Appendix F to § 1910.1001—Work Practices and Engineering Controls for Automotive Brake and Clutch Repair and Assembly—Mandatory

This mandatory appendix specifies engineering controls and work practices that must be implemented by the employer during automotive brake and clutch repair and assembly operations. Proper use of these engineering controls and work practices will reduce employees' asbestos exposure below the permissible exposure level during clutch and brake repair and assembly operations. The employer shall institute engineering controls and work practices using either the method set forth in paragraph [A] or paragraph [B], or paragraph [C], or any other method which the employer can demonstrate to be equivalent in terms of reducing employee exposure to asbestos as defined and which meets the requirements described in paragraph [D]:

[A] Enclosed Cylinder/HEPA Vacuum System Method

(1) The brake and clutch assembly and repair work shall be enclosed in a cylinder designed to cover and enclose the wheel/brake assembly and repair to prevent the release of asbestos fibers into the worker's breathing zone.

(2) The cylinder shall be sealed tightly and thoroughly inspected for leaks before work begins on brake and clutch repair and assembly.

(3) The cylinder shall have viewing ports to provide visibility and impermeable sleeves through which the worker can handle the brake and clutch assembly and repair. The integrity of the sleeves and ports shall be examined before work begins.

(4) A HEPA-filtered vacuum with a compressed-air hose and nozzle that fits into a connection on the cylinder shall be used to remove asbestos fibers or particles from the cylinder.

(5) The vacuum cleaner shall be used first to loosen the asbestos containing residue from the brake and clutch parts and then to evacuate the loosened asbestos containing material from the cylinder and capture the material in the vacuum filter.

(6) The vacuum's filter, when full, shall be first wetted with a fine mist of water, then removed and placed immediately in an impermeable container, labeled according to paragraph (j)(2)(ii) of this section and disposed of according to paragraph (k) of this section.

(7) Any spills or releases of asbestos containing waste material from inside of the cylinder or vacuum hose or vacuum filter shall be immediately cleaned up and disposed of according to paragraph (k) of the standard.

[B] Spray Can/Solvent System Method

(1) The spray can/solvent system shall be used to first wet the brake and clutch parts.

Then, the brake and clutch parts shall be wiped clean with a cloth.

(2) The cloth shall be placed in an impermeable container, labelled according to paragraph (j)(2)(ii) of the standard and then disposed of according to paragraph (k) of the standard, or the cloth shall be laundered in a way to prevent the release of asbestos fibers in excess of 0.1 fiber per cubic centimeter of air.

(3) Any spills of solvent or any asbestos containing waste material shall be cleaned up immediately according to paragraph (k) of the standard.

(4) The use of dry brushing during solvent spray operations is prohibited.

[C] Wet Brush-Recycle Method

(1) A catch basin shall be placed under the brake assembly, positioned to avoid splashes and spills.

(2) The reservoir shall contain water containing an organic solvent or wetting agent. The flow of liquid shall be controlled such that the brake assembly is gently flooded through the bristles of the brush to prevent the asbestos-containing brake dust from becoming airborne.

(3) The aqueous solution shall be allowed to flow between the brake drum and brake support before the drum is removed.

(4) After removing the brake drum, the wheel hub and back of the brake assembly shall be thoroughly wetted to suppress dust.

(5) The brake support plate, brake shoes and brake components used to attach the brake shoes shall be thoroughly washed before removing the old shoes.

(6) In systems using filters, the filters, when full, shall be first wetted with a fine mist of water, then removed and placed immediately in an impermeable container, labeled according to paragraph (j)(2)(ii) of this section and disposed of according to paragraph (k) of this section.

(7) Any spills of asbestos-containing aqueous solution or any asbestos-containing waste material shall be cleaned up immediately and disposed of according to paragraph (k) of this section.

(8) The use of dry brushing during wet brush-recycle operations is prohibited.

[D] Equivalent Methods

An equivalent method is one which has sufficient written detail so that it can be reproduced and has been demonstrated that the exposures resulting from the equivalent method are equal to or less than the exposures resulting from the use of Method A, the Enclosed Cylinder/HEPA Vacuum System Method, as set forth in Exhibit 1-112 (Sheehy, M.J., T.C. Cooper, D.M. O'Brien. 1989. Control of Asbestos Exposure During Brake Drum Service. Appl. Ind. Hyg. 4:313-319).

PART 1926—[AMENDED]

Subpart D—[Amended]

3. The authority citation for subpart D of 29 CFR part 1926 would be revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Sec 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333; and Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736) or 1-90 (55 FR 9033), as applicable. Sec. 1926.55(c) and 1926.58 also issued under 29 CFR part 1911.

4. Section 1926.58 would be amended by adding paragraph (a)(7), adding a new definition to paragraph (b), adding paragraphs (c)(3), and (g)(2)(iv); revising paragraphs (c)(1), (d), (e)(1) and (6); redesignating paragraphs (o) and (p) as paragraphs (q) and (r) and revising newly redesignated paragraphs (r) (1) and (2); and adding paragraphs (o), (p) and (q)(4) as follows:

§ 1926.58 Asbestos, tremolite, anthophyllite, and actinolite.

(a) *Scope and Application.*

* * * * *

(7) Coverage under this standard shall be based on the nature of the work operation involving asbestos exposure, not on the primary activity of the employer.

(b) *Definitions.*

* * * * *

Small-scale, short-duration operations means only those demolition, renovation, repair, maintenance, and removal operations which are non-repetitive, affect small surfaces or volumes of material containing asbestos, tremolite, anthophyllite, or actinolite, and will be completed within one work day, and are not expected to expose bystander employees to significant amounts of asbestos. The following operations are included within the definition of small-scale, short-duration: Repair or removal of asbestos on pipes that is less than 21 linear feet; repair or removal of asbestos panel that is less than 9 square feet; pipe valve repair or replacement of pipe valves containing asbestos gaskets or electrical work that disturbs asbestos that is completed by one worker in less than four hours; removal of drywall which is completed for the facility within an eight-hour workday; renovation projects involving endcapping of pipes and tile removal that is completed in less than four hours; and installation of conduits that is completed within an eight hour work shift.

* * * * *

(c) *Permissible exposure limits (PELs)*—(1) *Time-weighted average limit (TWA) for asbestos.* The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 0.1 fiber per cubic centimeter of air as an eight (8)-hour time-weighted average (TWA) as determined by the method prescribed in appendix A of this section, or by an equivalent method.

* * * * *

(3) *Time-weighted average (TWA) for tremolite, anthophyllite and actinolite.* The employers shall ensure that no employee is exposed to an airborne concentration of tremolite, anthophyllite, actinolite, or a combination of these minerals in excess of 0.2 fiber per cubic centimeter of air as an eight (8)-hour time-weighted average (TWA) as determined by the method prescribed in appendix A of this section, or by an equivalent method.

(d) *Communication among employers and owners*—(1) *Notification by owners.* (i) Project or building owners shall provide notification of available information concerning the presence, location, and quantity of asbestos-containing materials on a prospective job site to the following persons before work covered by this section is performed and with respect to new construction contracts for work covered by this section, before the execution of the contract. This requirement does not apply to work and contracts for work which constitute small-scale, short term operation as defined in paragraph (b) of this section:

(A) Employers working on the project or in the building, or prospective employers applying or bidding for work covered by this section whose employees reasonably can be expected to work in or contiguous to areas containing such material; and

(B) Employees of the owner who work in or contiguous to areas where work covered by this section will be performed.

(ii) Upon receipt of notification pursuant to paragraph (d)(2) of this section, project and building owners shall immediately provide written notification of any additional information obtained concerning the presence, location, and quantity of asbestos or asbestos-containing materials to the persons specified in Paragraph (d)(1)(i) of this section and of protective measures to be taken to the extent that such project or building owner previously failed to provide the notification required by paragraph (d)(1)(i).

(iii) Project and building owners shall maintain records of all information provided pursuant to this section or otherwise concerning the presence, location, and quantity of asbestos-containing materials in the building. Such records shall be kept for the duration of ownership and shall be transferred to successive owners of such buildings.

(2) *Notification by Employers.* (i) Any employer planning to perform any work covered by this section except for small-scale, short duration operations as defined in paragraph (b) of this section, shall, prior to the commencement of such work, notify the project or building owner of the presence, location and quantity of asbestos-containing materials on the job site, the nature of operations reasonably expected to result in exposure to asbestos and the measures to be taken by the employer to protect other employees and building occupants from exposure to such materials, to the extent the owner previously has not notified such employer pursuant to paragraph (d)(1) of this section.

(ii) On multi-employer worksites, an employer planning to perform any work covered by this section except for small-scale, short duration operations as defined in paragraph (b) of this section, shall inform all other employers on the site of the presence, location, and quantity of asbestos or asbestos-containing materials to which employees of such employers reasonably can be expected to be exposed, the nature of operations reasonably expected to result in such exposures, and the measures taken by the employer to protect such employees from such exposures.

(iii) Any employer who discovers the presence in the workplace of material containing asbestos, actinolite, tremolite, or anthophyllite, shall immediately notify as required by paragraph (d)(2)(i) of this section, the project or building owner and, on multi-employer sites, other employers as required by paragraph (i)(2)(ii) of this section.

(iv) Following the completion of work covered by the notification requirements of paragraph (d)(2) (i), (ii) and (iii) of this section, by any employer, the employer shall provide to the project or building owner a written record of the presence, location and quantity of asbestos-containing material on the job site as of the time of such completion of work.

(3) *Other Notification Requirements.* (i) Before commencing small-scale, short duration demolition, renovation, repair, removal and maintenance operations as defined in paragraph (b) of this section, the employer shall notify the building owner; and all employers and employees who may reasonably be expected to work in or contiguous to the regulated area of the presence of asbestos and the need for protective equipment before entering the work area.

(ii) Notification to the building owner required by paragraph (d)(3)(i) of this section may be made in writing or verbally.

(iii) Notification to employees and employers required by paragraph (d)(3)(i) of this section will be considered satisfied by the posting of warning signs required by paragraph (k)(1) of this section.

(e) *Regulated areas*—(1) *General.* Except for asbestos removal, demolition, maintenance and renovation operations, the employer shall establish a regulated area in work areas where airborne concentrations of asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals exceed or can reasonably be expected to exceed the permissible exposure limit prescribed in paragraph (c) of this section.

* * * * *

(6) *Regulated areas for asbestos removal, maintenance, demolition, and renovation operations.* (i) All asbestos removal, demolition, maintenance, and renovation operations shall be treated as regulated areas and shall comply with the requirements of paragraphs (e) (1) (2) (3) and (5) of this section.

(ii) In addition, the employer shall establish negative-pressure enclosures before commencing any removal, demolition, maintenance, and renovation operation, except as provided in paragraph (e)(6)(iii) of this section.

(iii) *Exceptions to negative-pressure enclosure requirements.* The employer is not required to install negative-pressure enclosures in the following work situations:

(A) Where establishing a negative-pressure enclosure is not feasible, because of the configuration of the work area. In such situations, the employer shall institute all feasible additional controls to reduce the exposure to asbestos of workers engaged in the removal, demolition, or renovation operation and minimize the spread of contamination to workers not engaged in the removal, demolition, or renovation.

(B) In roofing, where the employer shall institute all feasible additional controls to reduce employee exposure, such as using wet methods to the extent feasible, immediately bagging all asbestos containing materials, and lowering asbestos containing materials to the ground level using airtight chutes.

(C) In small-scale, short-duration operations, as defined in paragraph (b), where the employer uses alternative feasible containment or enclosures, such as glove bags or mini-enclosures pursuant to the requirements in appendix G of this section, and uses feasible wet methods to handle, install, disturb, and/or remove asbestos-containing material pursuant to the requirements in appendix G of this section.

(D) In removal of asbestos-containing floor tile or flooring material where the employer shall institute the following work practices:

(*1*) Flooring or its backing may not be sanded to remove them from the floor;

(*2*) Vacuums equipped with a HEPA filter, disposable dust bag, and metal floor tool (no brush) shall be used to clean floors;

(*3*) All sheet removal shall be done using detergent solution;

(*4*) All felt scraping shall be done wet;

(*5*) All scraping of residual adhesive shall be performed wet;

(*6*) Dry sweeping is prohibited.

* * * * *

(g) *Methods of Compliance.*

* * * * *

(2)(iv)(A) Floor tile containing asbestos may be buffed only with low-abrasion pads at speeds of 190 rpm or less. Buffing of such tile or material at speeds greater than 190 rpm or using highly abrasive pads are prohibited. (B) Employers shall inform employees buffing floor tile containing asbestos that non-compliance with paragraph (g)(2)(iv)(A) may result in exposure to asbestos fibers.

* * * * *

(o) *Competent person*—(1) *General.* On all construction worksites covered by this standard, the employer shall designate a competent person, having the qualifications and authorities for ensuring worker safety and health required by subpart C, General Safety and Health Provisions for Construction (29 CFR 1926.20 through 1926.32).

(2) *Requirements for asbestos removal, demolition, maintenance, and renovation operations.* (i) On all worksites where employees are engaged in removal, demolition, and renovation of asbestos, tremolite, anthophyllite, and actinolite, the competent person designated in accordance with paragraph (g)(1) of this section shall also perform or supervise the following duties, as applicable:

(A) Set up the regulated area, enclosure, or containment;

(B) Ensure the integrity of the enclosure or containment;

(C) Control entry to and exit from the enclosure and/or area;

(D) Supervise all employee exposure monitoring required by this section and ensure that it is conducted as required by paragraph (f);

(E) Ensure that employees working within the enclosure and/or using glove bags wear protective clothing and respirators as required by paragraphs (h) and (i) of this section;

(F) Ensure that employees are trained in the use of engineering controls, work practices, and personal protective equipment;

(G) Ensure that employees use the hygiene facilities and observe the decontamination procedures specified in paragraph (j) of this section;

(H) Ensure that engineering controls are functioning properly; and,

(I) Ensure that notification requirement in paragraph (f)(6) are met.

(ii)(A) The competent person shall be trained in all aspects of asbestos, tremolite, anthophyllite, or actinolite handling relevant to the specific work involved, including abatement, installation, removal and handling; the contents of this standard; the identification of asbestos, tremolite, anthophyllite, or actinolite; removal procedures, where appropriate; and other practices for reducing the hazard. Such training shall be obtained in a comprehensive course, such as a course conducted by an EPA Asbestos Training Center, certified by the EPA or a State, or an equivalent course.

(B) For small-scale, short-duration operations, the competent person shall be trained in aspects of asbestos removal appropriate for small-scale, short-duration work, to include procedures for setting up glove bags and mini-enclosures, practices for reducing asbestos exposures, use of wet methods, the contents of this standard, and the identification of asbestos, anthophyllite, or actinolite. Such training shall be obtained in an appropriate course, such as a course conducted by an EPA Asbestos Training Center for supervisors of small-scale, short-duration work, or an equivalent course.

(p) *Notification to OSHA*—(1) *General.* Before engaging in demolition, renovation, or removal of materials containing asbestos, tremolite, anthophyllite, or actinolite which do not meet the definition of small-scale, short-duration operations, the employer shall provide the OSHA Area Office with written notice of intention to demolish, renovate, or remove asbestos-containing material.

(2) *Method of notification.* The employer shall ensure that OSHA receives written notice at least 10 working days before removal, demolition, or renovation, or other related activities such as site preparation which would disturb asbestos will begin.

(3) *Content.* The employer shall include the following in the notice:

(i) Name, address, and telephone number of employer;

(ii) Type of operation: demolition, renovation, or removal;

(iii) Description of the facility including the size (square feet) and number of floors, age, and present or prior use of the facility;

(iv) Procedure employed to detect the presence of materials containing asbestos;

(v) Estimate of the amount of materials containing asbestos, including separately identified non-friable material, to be affected by the demolition, renovation, or removal, in linear feet or area (square feet);

(vi) Location and address of the facility where demolition, renovation, or removal will occur;

(vii) Scheduled starting and completion date;

(viii) Description of planned demolition, renovation, or removal work to be performed and methods to be employed including demolition, renovation, or removal techniques to be used and description of affected facility components;

(ix) Description of work practices and engineering controls to be used to comply with the requirements of this standard;

(x) A certification that only a competent person trained as required by paragraph (o)(2)(ii)(A) of this section will supervise the demolition, renovation, or removal activity described in this notification; and

(xi) Description of procedures to be followed in the event that unexpected asbestos is found.

(4) *Compliance with EPA reporting.* An employer reporting to the Environmental Protection Agency's National Emissions Standards for Hazardous Air Pollutants for Asbestos (40 CFR part 61.146) may satisfy the notification requirements contained in this paragraph by forwarding a copy of the EPA notification to the OSHA area office.

(q) *Dates.*

* * * * *

(4) The requirements of paragraphs (c)(1), (d), (e) (1) and (6), (g)(2)(iv), (o) and (p) shall be complied with by (insert date 60 days from publication of final rule in **Federal Register**).

* * * * *

(r) *Appendices.* (1) Appendices A, C, D, E, and G to this section are incorporated as part of this section and the contents of these appendices are mandatory.

(2) Appendices B, F, H, and I to this section are informational and are not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.

* * * * *

§ 1926.58 Appendix G [Amended]

5. Appendix G, to § 1926.58 would be revised by changing its heading to "Mandatory;" by removing the introductory paragraph; in the section under the heading "Glove Bags" by replacing the phrase "action level" with "PEL" in the first and third sentences; removing the sections entitled "Enclosure," "Maintenance Program" and "Prohibited Activities"; and by revising the section under the heading "Definition of Small-Scale, Short Duration Activities" to read as follows:

Small-scale, short-duration operations means only those demolition, renovation, repair, maintenance, and removal operations which are non-repetitive, affect small surfaces or volumes of material containing asbestos, tremolite, anthophyllite, or actinolite, and will be completed within one work day, and are not expected to expose bystanders to significant amounts of asbestos. The following operations are included within the definition of small-scale, short duration: Repair or removal of asbestos on pipes that is less than 21 linear feet; repair or removal of asbestos panel that is less than 9 square feet; pipe valve repair or replacement of pipe valves containing asbestos gaskets or electrical work that disturbs asbestos that is completed by one worker in less than four hours; removal of drywall which is completed for the facility within an eight-hour workday; renovation projects involving endcapping of pipes and tile removal that is completed in less than four hours; and installation of conduits that is completed within an eight-hour work shift."

* * * * *

[FR Doc. 90-16687 Filed 7-13-90; 1:27 pm]

BILLING CODE 4510-26-M

federal register

Friday,
July 20, 1990

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Special Review; Transport Category Airplane Airworthiness Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 24344; Amendment No. 25-72]

RIN 2120-AA47

Special Review: Transport Category Airplane Airworthiness Standards

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Final rule.

SUMMARY: These amendments to the Federal Aviation Regulations (FAR) update the standards for type certification of transport category airplanes for clarity and accuracy, and ensure that the standards are appropriate and practicable for the smaller transport category airplanes common to regional air carrier operation.

EFFECTIVE DATE: August 20, 1990.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, Regulations Branch (ANM-114), Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2112.

SUPPLEMENTARY INFORMATION:

Background

These amendments are based on Notice of Proposed Rulemaking (NPRM) 84-21 which was published in the **Federal Register** on December 3, 1984, (49 FR 47358). The notice was based on a review of part 25 which was originally initiated to ensure that the type certification standards contained in that part remain appropriate and practicable for the smaller transport category airplanes. After the review was begun, the scope was expanded to include relieving the regulatory burden wherever possible without compromising the existing standards and to update part 25 for clarity and accuracy. As noted in the notice, relatively few changes were found to be warranted with respect to type certification of the smaller transport category airplanes or relieving the regulatory burden. Consequently, updating part 25 for clarity and accuracy became the dominant reason for the changes proposed in the notice.

Interested persons have been given an opportunity to participate in this rulemaking and due consideration has been given to all matters presented. The proposals and comments are discussed below. Substantive changes and changes of an editorial nature have been made to the proposed rules based on relevant comments received and further review within the FAA. Since the time Notice 84-21 was prepared, the following amendments to part 25 have been adopted:

25-58 (49 FR 43182; October 26, 1984) Floor Proximity Emergency Escape Path Marking.
25-59 (49 FR 43188; October 26, 1984) Flammability Requirement for Aircraft Cushions.
25-60 (51 FR 18236; May 16, 1986) Airworthiness Standards; Fire Protection Requirements for Cargo or Baggage Compartments.
25-61 (51 FR 26206; July 21, 1986) Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins.
25-62 (52 FR 43152; November 9, 1987) Standards for Approval of an Automatic Takeoff Thrust Control System (ATTCS).
25-63 (53 FR 16360; May 6, 1988) Standards Governing the Noise Certification of Aircraft.
25-64 (53 FR 17640; May 17, 1988) Improved Seat Safety Standards.
25-65 (53 FR 26134; July 11, 1988) Cockpit Voice Recorder (CVR) and Flight Recorders.
25-66 (53 FR 32564; August 25, 1988) Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins.
25-67 (54 FR 26688; June 23, 1989) Location of Passenger Emergency Exits in Transport Category Airplanes.
25-68 (54 FR 34284; August 18, 1989) Revision of General Operating and Flight Rules.
25-69 (54 FR 40352; September 29, 1989) Design Standards for Fuel Tank Access Covers.
25-70 (54 FR 43922; October 27, 1989) Independent Power Source for Public Address System in Transport Category Airplanes.

A number of editorial changes have been made for compatibility with the text of these recently adopted amendments. Except for these editorial changes and other minor editorial and clarifying changes and the substantive changes discussed below, these amendments and the reasons therefore are the same as those contained in Notice 84-21.

Discussion of Comments

General

A number of commenters suggest further changes that go beyond the scope of the notice. Because interested persons have not been given the opportunity to comment on these further changes, they can not be considered at this time. Those that are deemed to have merit will, however, be considered for future rulemaking proposals.

Two commenters express disappointment that the proposed changes would not result in significant relief in the type certification of smaller transport category airplanes. As noted in the preamble to the notice, no change considered to adversely affect the level of safety of any transport category airplane was proposed. Further changes were considered; however, they were not proposed because it was considered that they would have adversely affected the level of safety of certain transport category airplanes. One commenter requests that the FAA reopen the comment period, alleging that the explanations contained in this NPRM misinformed its members as to the effects of the proposals. The commenter further alleges that many of the proposals would impose substantial new criteria on manufacturers which would ultimately be borne by the airlines who buy the airplanes. The commenter fails, however, to cite specific examples. The FAA does not agree with the commenter; the explanations do accurately reflect the intent of the proposals. Reopening the comment period is, therefore, not considered justified.

The notice contained numerous printing errors that were noted by commenters. These errors have been corrected accordingly.

Comments on specific proposals. The following discussion corresponds to like-numbered proposals contained in the notice.

Proposal 1. Section 25.2 would be amended for clarity. Two commenters believe that the reference to § 25.721(d) in proposed § 25.2(a)(1) is in error because § 25.721(d) does not currently exist. Proposed § 25.2 is correct because the reference is to paragraph (d) of the rules in effect on October 24, 1967, rather than to current rules. Except for certain editorial changes resulting from the recent adoption of Amendment 25-67, § 25.2 is amended as proposed.

Proposal 2. Two commenters agree with the proposed deletion of § 25.21(b). These commenters also agree with the proposed new wording of § 25.21(d) and remind the FAA that they have offered extensive comments on this same subject in regard to Advisory Circular (AC) 25-7, Flight Test Guide for Certification of Transport Category Airplanes.

Another commenter states deletion of § 25.21(b) in itself is not objectionable, but expresses concern about the FAA explanation given for this change. The commenter's concern is that the explanation "seems to indicate that the FAA's philosophy is such that testing done at forward center of gravity (c.g.) stalling speeds is sufficient for

certification," and "that § 25.21(b) *unnecessarily* requires the testing of airplanes * * * to be based on the rearward c.g. stalling speeds." It appears by the commenter's remarks that there is confusion about testing of an airplane at forward and aft c.g. with the trim speed and possible speed range criteria for these tests. There is no intent to change the requirement of § 25.21(a) to show that all flight requirements can be met at each appropriate combination of weight and c.g. within the range of loading conditions for which certification is requested.

One commenter states an objection to the proposal on the grounds that it would remove provisions to simplify flight testing. He also states that it removes the option to reduce flight testing by accepting performance penalties, and removes a well established system of tolerances for flight testing. The FAA does not agree. The removal of a requirement that could force duplicate stall-speed and flying qualities testing is, in itself, considered a simplification. Removal of § 25.21(b) leaves only one stall speed (the forward c.g. stall speed) to serve as the reference basis for trim and speed range factors that are flown at speeds down to 110 percent of the stalling speed.

No other comments concerning this proposal were received. Section 25.21 is, therefore, adopted as proposed.

Proposal 3. The sole commenter agrees with this proposal. Section 25.29(a)(3)(iii) is, therefore, revised to refer to "* * * fluids intended for injection in the engine," as proposed.

Proposal 4. One commenter agrees with the proposal to amend § 25.33 to include terminology appropriate for turbopropeller engines, and to clarify the wind conditions.

Another commenter notes a typographical error in the third line of § 25.33(c)(3). The word "power" has been changed to "powered" accordingly.

One commenter objects to insertion of the words "or maximum takeoff torque limit for turbopropeller engine powered airplanes" in § 25.33(c)(3). The commenter asserts that the propeller flight fine (low) pitch stop setting on turbine engine powered airplanes normally is such that an increase in propeller speed during a go-around is not necessary. The commenter further states that the previous version of this requirement originated during the era of reciprocating-engined airplanes and was not applied to turbine-engined airplanes when § 25.101 and subsequent sections were introduced. In addition, the commenter states that it would be difficult, in practice, to ensure symmetrical propeller speed for a multi-engined airplane under this requirement. The FAA does not agree with the commenter since the basic purpose of § 25.33 is to limit the maximum propeller speed at maximum power with the governor inoperative. It has no bearing on the propeller/governor rigging or matching the engine/propeller combination in normal operational situations. Contrary to the commenter's assertion, this regulation has been applied to turbine-engine powered airplanes, and the proposed change reflects accepted practice. The adoption of § 25.101 is not relevant, as it refers to airplane performance determinations, not to propeller speed and pitch limits.

Another commenter objects to the "no wind" condition of § 25.33(c)(2), saying that the requirement would severely limit weather conditions under which flight testing could be conducted. The commenter recommends that the test be conducted in as much as 5 knots of wind. The FAA does not concur with allowing a tolerance on wind, such as that proposed, because the results of the test could be adversely affected. It should be noted, however, that "no wind" would not mean that testing could only be conducted when there is no wind blowing. As has been past practice, test data obtained under limited wind conditions could be corrected to "no wind" conditions.

The commenter also states that experience has shown that the definition of propeller pitch limits is not significantly affected by using the maximum engine values available on the day of the test, as required by proposed § 25.33(c)(3). The commenter states that the proposal, which would require testing at maximum torque, implies that test conditions must include very low temperatures and/or very low altitudes. The commenter does not believe that the FAA intended to impose such limitations on testing or to impose the burden of finding such test conditions and suggests an alternative to the proposal. The FAA agrees with the commenter in that rewriting this paragraph was intended to specify the amount of power to be applied to the propeller, and testing under a wide variety of conditions was not intended. The objective of the proposal is to define the maximum torque limit. Consequently, there would be no requirement to perform the testing in cold air or at very low altitudes. Rather, the testing should be performed in ambient conditions where the maximum torque limit can be obtained without exceeding other engine limits. Maximum torque does not occur as a point condition but is a function of a range of temperature and altitude combinations. When ambient conditions preclude obtaining maximum torque without exceeding other engine limits, the other limits are sometimes exceeded for test purposes with the concurrence of the engine manufacturer.

There were no other comments concerning this proposal. Except for correcting the above noted typographical error, § 25.33 is adopted as proposed.

Proposal 5. The sole commenter agrees with this proposal. Section 25.111 is, therefore, amended to correct an editorial error as proposed.

Proposal 6. As proposed, § 25.121 would be amended to clarify the intent of the section and to reflect actual certification practice. One commenter suggests a change to the proposal to incorporate a requirement to account for turbopropeller operation that assumes the propeller to be in the position it takes automatically. The commenter states that this change should also be applied to § 25.121(a)(1). The commenter assumes the word "automatic" refers to an airplane system that produces an automatic function, such as autofeather. In the context of this section, the word "automatic" means without crew action, since the propeller pitch may automatically change from a takeoff to a windmill pitch (but not a feather position) because of the engine failure, aerodynamics, and the related hydromechanical operation of the propeller pitch control system.

The commenter also suggests that the FAA proposal should be changed to require consideration of a lesser power or thrust if the thrust reduction is due to the expiration of takeoff augmented power or thrust. This suggestion is consistent with the intent of the proposal, but it would not allow for other conditions that may cause significant power or thrust reductions. Two commenters state that the normal altitude/thrust lapse rate of turbine engines at fixed revolutions per minute (rpm) and ambient temperature is approximately 1.4 percent per 1000 feet. In the opinion of those commenters, the −0.5 percent thrust change criterion is inappropriate since it would seem to require consideration of normal thrust lapse with altitude, which as stated in the FAA explanation, is not the intent of the proposal. The FAA policy concerning acceptable means of compliance with § 25.121(b)(1) is stated in AC 25-7. A rule change is, therefore, not needed for that purpose. The proposal is, therefore, withdrawn.

Proposal 7. Two commenters favor the proposal to amend § 25.125(a)(2) to substitute the word "stabilized" for

"steady gliding." They state that in their view, however, the amendment does not go far enough toward the real need, which is a fundamental reappraisal of the existing requirement for determining landing distances. The lack of a stated, operationally realistic, approach path angle is cited as an example. The FAA recognizes that there is interest in reevaluating the landing regulations and changes of this nature to the existing regulations have been discussed in the past. Such changes, would, however, be beyond the scope of the notice and could not be considered at this time. It is noted that AC 25-7 contains policy information, including approach path angles that are acceptable to the FAA.

Another commenter agrees with the proposed word change, but suggests an additional change to include specific approach path angles that would be a function of the short takeoff and landing characteristics of the airplane. A change of this nature could not be considered at this time because it too would be beyond the scope of this notice. It should be noted that a definition of short takeoff and landing characteristics would be required before this suggestion could be adopted. This would require consideration of many factors that would result in a long-term rulemaking process. Section 25.125 is, therefore, adopted as proposed.

Proposal 8. As proposed, the wording of § 25.147(a) would reflect the intent of the rule more accurately and would conform to actual type design certification practice. Three commenters note a typographical error in that proposed § 25.147(a) refers to yaw into the inoperative engine. As noted in the explanation for Proposal 8, the intent of § 25.147(a) is to "ensure that some directional control toward the operative engine remains." The intention is to require yaw into the operative engine. This typographical error has been corrected in the final rule.

Two commenters state that reference to c.g. position appears in at least 12 separate places in part 25, subpart B. They suggest that a single all-inclusive statement would be preferable. The FAA will consider this suggestion for possible incorporation in a future revision to part 25.

One commenter suggests that the FAA refer to § 25.147 of Joint Airworthiness Requirements-25 (JAR-25) for guidance. (Joint Airworthiness Requirements-25 is a document developed jointly and accepted by the airworthiness authorities of various European countries for type certification of large airplanes. Joint Airworthiness Requirements-25 is based on part 25 of the FAR; however, there are differences in the requirements of the two documents. Those differences are specified in JAR-25.) The FAA did consider § 25.147 of JAR-25 in making this proposal; however, the resulting proposal more closely reflects the FAA intent regarding this requirement.

One commenter states that the requirement should be for "wings approximately level" rather than "wings level," since there are no indicated tolerances on the latter. The FAA recognizes that literal compliance with a requirement to hold the wings absolutely level would be a most difficult task. The FAA intent in this test requirement is to hold the airplane in the most wings-level flight possible. It is not considered necessary or desirable to introduce a "relaxation factor" by adding "approximately." The policy material contained in AC 25-7 recognizes that wings cannot be held exactly level; however, the regulation encourages the most wings-level flight possible.

No other comments concerning this proposal were received. Except for correction of the above noted typographical error, § 25.147 is amended as proposed.

Proposal 9. As proposed, changes would be made to § 25.149 to clarify the actual intent of the rule. One commenter suggests deleting the words "maintain" and "of" in § 25.149(b) to avoid misinterpretation. The FAA does not consider "maintain control" likely to be misinterpreted, nor that "control" would provide any improvement in that regard.

The same commenter recommends that existing § 25.149(e) be rewritten to delete the words "recover," "of," and the parenthetical statement "without the use of nose-wheel steering." The commenter states that the proposal as written could be interpreted to mean that the demonstration would always be required on a critical runway surface, eliminating the alternative of demonstrating on a dry runway with nose-wheel rudder pedal steering inoperative. In addition, the commenter states there is no accepted definition of critical runway surface. The FAA agrees with the commenter's statement regarding the runway condition, but believes that clarification on the use of controls will resolve this concern. The rule has been rewritten to clarify these points.

The same commenter also proposes a revision to § 25.173. While this would be beyond the scope of the notice, the FAA will take the suggestion under advisement for possible future rulemaking action.

Two commenters suggest that V_{MC} should be the generic term, and that the term V_{MCA} should be used to describe the condition when airborne after takeoff. The FAA will also take these suggestions under advisement for possible future rulemaking action.

The same two commenters state there is no reason to disallow use of lateral control in V_{MCG} demonstrations. The FAA position to allow lateral control only to the extent of keeping the wings level is intended to prevent the use of arbitrary and unnatural pilot inputs, which could produce results that are misrepresentative and unconservative.

Five commenters question the proposed wording of § 25.149(e) with regard to the runway surface, saying that a critical runway surface is not defined. As stated above, the FAA agrees, and the current prohibition on the use of nose-wheel steering has been retained.

One commenter states that the word "recover" should be retained in § 25.149 (b), (f), and (g). The FAA does not agree. The word "recover" is removed because it incorrectly implies that the airplane would be allowed to go out of control before corrective action is taken. Two commenters question the statement in the explanation that the term "sideslip" would be used in lieu of "yaw." This was merely an inadvertent statement that did not reflect the final proposal.

Except as noted above, § 25.149 is amended as proposed.

Proposal 10. As proposed, § 25.177 would be revised to eliminate the requirement for testing that has been found to be unnecessary. It is considered unnecessary to define directional and lateral stability parameters as separate entities to determine whether an airplane has satisfactory directional-lateral stability. One commenter suggests deleting the words "* * * provide positive stability and * * *" in the first sentence of § 25.177(c) because the proposed language infers that the control movements produce positive stability. The FAA agrees, and the proposal has been amended accordingly. This commenter also notes that most airplanes are aileron-control limited and will reach the lateral control stops prior to the application of maximum rudder. The commenter notes, therefore, that the proposed rule, as written, would impose a control power requirement. The FAA does not concur. There is no intent to impose an additional burden. The FAA considers that the proposed regulation is sufficient to preclude misunderstanding in this regard.

One commenter objects to the proposed use of "positive" instead of "not negative" as contained in the

present rule. This commenter's concern is addressed by the change described above.

Two commenters state that the 180 pound rudder pedal force should be changed to 150 pounds. One states that the FAA inadvertently referred to the wrong force limit, and the other states that it should be changed to be consistent with the requirement of § 25.143(c). The FAA does not agree. The force limit in § 25.143(c) is 150 pounds because the intent of that section is to show that the airplane is safely controllable and maneuverable during certain probable operating conditions by a pilot who is capable of applying only 150 pounds of force to the rudder pedals. In § 25.177(c), the force limit is 180 pounds to demonstrate that the airplane remains stable if a stronger pilot applies up to 180 pounds of rudder pedal force.

Two commenters suggest a change to the proposal because the language infers that the control movements produce positive stability. The change described above should satisfy these commenters' concern.

The same two commenters also discuss the proposal and its meaning in considerable detail. The commenters suggest that interpretive material should be incorporated into AC 25-7. The FAA will consider this suggestion for a future revision of the AC.

The same two commenters suggest transposing V_{FC}/M_{FC} and V_{MO}/M_{MO} in § 25.177(d). The FAA agrees, as this would correspond to the sequence in which these speeds occur.

As amended, § 25.177 no longer relates to directional and lateral stability parameters as separate entities. Accordingly, the section title has been changed to "Static lateral-directional stability."

Except as noted above, § 25.177 is amended as proposed.

Proposal 11. Two commenters concur with the proposal to amend § 25.181 (a) and (b) by removing the words "stalling speed" and inserting "1.2 V_s" in their place. They do not, however, share the FAA view that flying qualities between stalling speed and 1.2 V_s are covered in §§ 25.143 and 25.203. The commenters suggest that interpretive material should be added to AC 25-7. The FAA will consider this suggestion for a future revision of the AC.

One commenter is opposed to the proposal because, according to the commenter, it would essentially extend the stalling characteristics out to 1.2 V_s. The FAA does not agree. If dynamic stability is satisfactory at 1.2 V_s it probably would not deteriorate to the extent of being described as "stall onset characteristics" immediately below 1.2 V_s. Dynamic V_{MCA} and stall demonstration tests would uncover undesirable dynamic features. These tests include stalls limited by changes in pitch, roll, abrupt change in control motion, or aerodynamic warning of a magnitude and severity to deter further speed reduction.

No other comments concerning this proposal were received. Section 25.181 is, therefore, amended as proposed.

Proposal 12. One commenter is opposed to the proposal to remove § 25.205 which requires demonstration of stall recovery from a pilot-induced sideslip with asymmetrical thrust and resultant large control deflections. The commenter does not agree with the FAA explanation that this is an unrealistic test. The commenter makes a comparison between the flight test environment, where the events are caused by deliberate actions, and in-service flight where events that result in a critical maneuver must be immediately recognized and corrected by the pilot. The FAA agrees with the commenter's statement. The arguments presented, however, do not indicate that the conditions required by the current regulation are applicable to the scenario the commenter creates. Although not an airworthiness requirement per se, except via interpretation of § 25.143, a "tameness maneuver" is conducted during flight testing, by delaying recovery from an engine cut at takeoff power and takeoff speed. Although not a stall, this maneuver, plus VMC testing, provides a more realistic test of sudden engine-out controllability than the current requirement for moderate asymmetry stalls.

Two commenters favor the proposal. An argument presented as justification for this proposal by one commenter, which is worthy of noting here, is as follows: "The requirement to demonstrate stalls with the critical engine inoperative is restricted to the en-route configuration and to a level or power asymmetry with which the airplane is controllable with wings level at the stalling speed. As a result, the power on the operating engines at the stall is normally fairly low, and thus neither the configuration nor the power setting are representative of the conditions most likely to accompany an inadvertent stall in service. Reduction of the power of the operating engines during the recovery is also permitted, and it is questionable whether such action would be taken promptly in the case of an inadvertent stall in service. Experience shows that stalls with significant power asymmetry can result in a spin; even on airplanes which are certificated to the present requirement. It is thus apparent that the requirement for demonstrating one-engine-inoperative stalls is not effective in ensuring that inadvertent stalls in service with one engine inoperative will have satisfactory characteristics or be recoverable.

"Despite the ineffectiveness of the present requirement as a means of ensuring airworthiness, the accident record does not show that modern transport category airplanes suffer a loss of airworthiness as a result of substandard stalling qualities with asymmetric power. It is considered that sufficient protection against the hazard of stalling with one-engine-inoperative is provided by the one-engine-inoperative performance requirements and operating speed margins, coupled with the requirements for determination of V_{MC} and demonstration of stalling characteristics with symmetric power." The FAA concurs with this comment. Section 25.205 is, therefore, removed as proposed.

Proposal 13. As proposed, § 25.251(e) would be revised to require a determination of the positive maneuvering load factors at which the onset of perceptible buffeting occurs only for faster airplanes or those which operate at higher altitudes. Two commenters support the proposal; however, they believe that it would be more appropriate to express the speed discriminant in terms of an appropriate operational value (e.g., M_{MO}) rather than M_D which is a design value. The FAA does not concur because this would be the basis for deciding whether a test will be conducted rather than determining an in-service operational limit. Furthermore, M_{MO} might not be established at the time this determination is made. Section 25.251 is, therefore, amended as proposed.

Proposal 14. One commenter states that the proposal to revise § 25.253(a)(3) to clarify the intent of the term "control reversal" should be withdrawn because it would require a stable slope of the elevator control force to V_{DF}/M_{DF}, whereas the present rule permits reversal of the stick force gradient from V_{FC}/M_{FC} to V_{DF}/M_{DF}. The FAA does not agree. The intent of the proposal is solely to clarify the term "control reversal" and not to impose more stringent requirements.

Two commenters support the intent of the proposal and suggest an editing change to achieve further clarification. The FAA agrees and has adopted the commenters' suggestion accordingly.

Except as noted above, § 25.253 is amended as proposed.

Proposal 15. As proposed, § 25.307 (b) and (c) would be removed because they contain only redundant references to §§ 25.571, 25.573 and 25.601. One commenter suggests that the proposed removal of paragraph 25.307(c) would create the impression that an analysis conforming to paragraph 25.307(a) would be acceptable for control surfaces which must always be tested in accordance with § 25.561. The FAA does not concur that removing this redundancy would create such an erroneous impression. Section 25.307 is, therefore, amended as proposed.

Proposal 16. No comments within the scope of the notice were received. Section 25.331 is, therefore, amended as proposed to correct existing editorial errors.

One commenter erroneously believes that A_1 and A_2 should be at V_A passing through Point A because V_A is defined in § 25.33S(c) as not less than V_{S1} N. The maneuvering envelope was revised in part 4b of the Civil Air Regulations (CAR) (the predecessor of part 25 of the FAR) in 1962 to reflect the actual C_N MAX curve. The calculation of $V_A = V_{S1}$ N assumes a constant value of C_N MAX from V_{S1} to V_A. The actual C_N MAX usually varies due to compressibility effects. Point A is the intersection of the actual C_N MAX curve with the maneuvering load factor line. Points A_1 and A_2 are, therefore, correctly defined in § 25.333.

Proposal 17. No comments concerning this proposal were received, therefore, § 25.341 is amended as proposed to correct existing editorial errors. Since the time Notice 84–21 was issued, two additional typographical errors have been noted in some printings of § 25.341(b)(3). In some printings, the numerator of the formula for the gust alleviation factor contains the lower Greek letter "mu" with the subscript "n" in lieu of the correct subscript "g." The denominator of the formula correctly contains "mu" with the subscript "g." In the formula for airplane mass ratio, the airplane mass ratio is incorrectly defined as "g." The correct definition is the Greek letter "mu" with the subscript "g." Section 25.341 is also amended to correct these printing errors as well.

Proposal 18. No comments concerning this proposal were received; therefore, § 25.345 is amended as proposed.

Proposal 19. One commenter supports the correction of § 25.361 to ensure application of the limit engine torque factor of 1.25 to the takeoff power condition as well as to the maximum continuous power condition. The commenter is, however, concerned that the application of this factor in combination with the 1.6 propeller malfunction factor of § 25.361(a)(3) would constitute a double failure. The FAA does not agree. The 1.25 factor is intended to account for expected torsional excursions and is, therefore, considered as a limit torque factor. The overall factor for the propeller malfunction is the product of the 1.25 factor and the 1.6 factor, which results in an overall factor of 2.0. This 2.0 factor is the worst case dynamic amplification factor to be used in the absence of a rational analysis of the propeller malfunction condition. Part 4b of the CAR, the predecessor of part 25, originally specified a factor of 2.0 for the propeller malfunction condition; however, this was later reduced to 1.6 to give an overall load factor of 2.0 when both factors are applied simultaneously. Another commenter suggests that the propeller malfunction condition should be considered as an ultimate condition. The FAA does not agree. From its initial inception as a special condition and subsequent adoption in part 4b of the CAR, this condition has been considered to be a limit design condition. It is an attempt to account for an actual load condition that can be expected to occur at the time of failure and is not analogous to maneuver and gust load conditions where the probability of obtaining the limit design load after the failure is unlikely. In the case of propeller malfunction where the loads result from the failure condition itself, a design margin is essential. Although it is true that the 1.6 factor may be conservative, it is a simplified load condition which may be used in lieu of a rational analysis. Section 25.361 is, therefore, amended as proposed.

Proposals 20 and 21. No comments concerning these proposals were received; therefore, §§ 25.365 and 25.373 are amended for clarity as proposed.

Proposal 22. One commenter generally supports the replacement of the words "rugged system" in § 25.395 with the requirement to meet the minimum pilot effort forces of § 25.397(c). No other comments concerning this proposal were received. Section 25.395 is, therefore, amended as proposed.

Proposal 23. As proposed, an editorial error in Footnote 3 of § 25.397 would be corrected. No comments concerning the proposed correction were received; however, two commenters believe that the referenced footnote should be 1, not 3. This discrepancy is due to the fact that the footnote in question has been identified as 1 in some printings of part 25 and as 3 in others. Regardless of which printing is used, the footnote should read, "The unsymmetrical forces must be applied at one of the normal handgrip points on the periphery of the control wheel," and § 25.397 is corrected accordingly.

Proposal 24. No comments were received concerning the proposal to reidentify the control surface area aft of the hinge line as S_s and add the parenthetical definition of W/S in § 25.415. Several commenters did, however, note that the formula in the equation should have read "$H = KcS_sq$." This printing error has been corrected, and § 25.415 is amended accordingly.

Proposal 25. As proposed, § 25.459 would be amended to specifically refer to slats, as well as to slots and spoilers, in order to ensure that slats are not overlooked in determining compliance with this section. One commenter does not believe that this section would be improved by giving an "exhaustive" list of examples of special devices using aerodynamic surfaces. The FAA does not concur. The inclusion of "slots, slats, and spoilers" is considered to clarify the intent of the rule. There were no other comments within the scope of the notice. Section 25.459 is, therefore, amended as proposed.

Proposal 26. Section 25.563 merely cross-references § 25.801(e) and would be removed for simplicity. One commenter believes that it is useful to retain § 25.563 even though it does serve only as a reference to § 25.801(e). The FAA concurs that this reference, which is located in Subchapter C—Structure, may be useful as § 25.801(e) requires a loads evaluation and is contained in Subchapter D—Design and Construction which does not generally contain loads evaluation criteria. The proposed removal of § 25.563 is, therefore, withdrawn.

Proposal 27. One commenter objects to the proposed deletion of the parenthetical expression "fail-safe" from the heading of § 25.571(b) because it would imply that compliance with the damage-tolerance requirements of that section, when combined with inspection provisions, does not result in a fail-safe structure. Fail-safe and damage-tolerance are not synonymous terms. Fail-safe generally means a design such that the airplane can survive the failure of an element of a system or, in some instances one or more entire systems, without catastrophic consequences. Fail-safe, as applied to structures prior to Amendment 25–45, meant complete element failure or obvious partial failure of large panels. It was assumed that a complete element failure or partial failure would be obvious during a general area inspection and would be corrected within a very short time. The probability of detecting damage during routine inspections before it could

progress to catastrophic limits was very high. Damage-tolerance, on the other hand, does not require consideration of complete element failures or obvious partial failures, although fail-safe features may be included in structure that is designed to damage-tolerance requirements. A part may be designed to meet the damage-tolerance requirements of § 25.571(b) even though cracks may develop in that part. In order to ensure that such cracks are detected before they grow to critical lengths, damage-tolerance requires an inspection program tailored to the crack progression characteristics of the particular part when subjected to the loading spectrum expected in service. Damage-tolerance places a much higher emphasis on these inspections to detect cracks before they progress to unsafe limits, whereas fail-safe allows the cracks to grow to obvious and easily detected dimensions. Deletion of the term "fail-safe" from the heading of § 25.571(b) is, therefore, considered appropriate.

One commenter is concerned that the proposed requirement of § 25.571(e) concerning a bird strike at "V_c at sea level" in lieu of "likely operational speeds up to 8,000 feet" would not be conservative for airplanes for which a variation of V_c versus altitude with a low value at sea level is defined. The FAA concurs that the proposed change would be unconservative for some airplanes which have a rapidly increasing V_c with altitude between sea level and 8,000 feet. The amended § 25.571(e), therefore, specifies impact with a 4-pound bird at V_c up to 8,000 feet.

One commenter believes that it would be more appropriate and consistent with previous compliance findings to replace "V_c" with "V_{mo} at sea level" and that this would assure that applicants may select and establish slower speeds as limitations at those altitudes where the airplane is considered more vulnerable to bird strikes. The commenter believes that this would confirm that V_c should be a single value function for use in basic loads determination. This comment goes beyond the scope of the notice; however, the FAA notes that the bird strike requirements of §§ 25.571(e)(1), 25.631 and 25.775 are structural requirements. V_{mo} is an operating speed rather than a structural design speed and is, therefore, not appropriate for structural design.

One commenter suggests that § 25.631 should be deleted as it would be unnecessary in view of the proposed change to § 25.571(e)(1) and would cause conflicting interpretations as to which section would apply. This comment goes beyond the scope of the notice; however, the FAA notes that the section should not cause any confusion because the former section requires consideration of an 8-pound bird while the latter concerns a 4-pound bird.

Two commenters are concerned about the proposal to require evaluation of the Power Spectral Density (PSD) gust loads on the damaged structure. They state that such analyses are not applicable to short time failure situations and would be costly. The PSD load level is determined using a frequency of exceedance of once per 50,000 flight hours. This is not considered frequent, but is on the order of frequency associated with other limit load conditions used in the damage-tolerance analysis. The FAA believes that certain types of structures, especially truss types, will experience significant changes in stiffness with failed elements. This may allow coalescence of modal response in the frequency regime which can result in a significant increase in loads. One commenter estimated that this would result in approximately $300,000 in additional costs to type certificate a new design transport category airplane; however, the commenter presented no data to support this estimation. Because no supporting data was presented, § 25.571 is amended as proposed in this regard.

No comments concerning other proposed changes to § 25.571 were received. Except as noted above, § 25.571 is amended as proposed.

Proposals 28 and 29. The probability bases contained in MIL-HDBK-5 for establishing materials strength allowables are currently incorporated by reference in §§ 25.613 and 25.615. As proposed, § 25.613 would be changed to state these bases explicitly, and the nonredundant portion of § 25.615 would be transferred to § 25.613. One commenter suggests that §§ 25.613 and 25.615 should provide two different approaches to establishing allowables, with § 25.615 allowing a simplified approach. The FAA does not agree. Section 25.613 requires the use of design values established on a probability basis so that the probability of materials being understrength is extremely remote. Section 25.615 provides for the use of design values from MIL-HDBK-5 which have already been established on probability bases. Under the proposed amendment, § 25.613 would be consolidated with some of the criteria from § 25.615. The remaining portions of § 25.615 would serve only to provide an acceptable means of compliance and would be deleted, accordingly. One commenter supports the consolidation of the two sections, but suggests that the reference to military handbooks be included in an AC. Another commenter is concerned that removing the reference to MIL-HDBK-5 would indicate that design criteria for materials and fasteners contained is this document would no longer be acceptable. On the contrary, the values of MIL-HDBK-5 would remain acceptable means of compliance because they are established by the same probability bases as those of proposed § 25.613. Section 25.613 is therefore amended, and § 25.615 is removed as proposed. There does not appear to be any need for an AC that references military handbooks, as suggested; however, the FAA will develop an AC of this nature if the need arises in the future.

Proposal 30. This would be a conforming change to § 25.625(d) necessitated by the proposed deletion of § 25.1413 (Proposal 80). No adverse comments concerning either proposal were received; however, one commenter does correctly note that the word "factors" in § 25.625(d) should be singular. Except for that correction, § 25.625(d) is revised as proposed.

Proposal 31. As proposed, § 25.629 would be amended by correcting an editorial error. One commenter objects to the use of the word "other" in proposed § 25.629(d)(ii). The word "other" is used to exclude the failure conditions specifically identified in the rule, which must be considered under the provisions of § 25.629(b)(1)(i) regardless of probability. The same commenter believes that proposed § 25.629(b)(1) should be reworded to reflect the stated intent. The FAA concurs with the latter comment, and § 25.629(b)(1) is changed to read, "* * * except that the envelope may be limited to a maximum Mach number of 1.0 when M_D is less than * * *." Except for this change, § 25.629 is amended as proposed.

Proposal 32. No comments concerning this proposal to remove redundant and possibly confusing § 25.673 were received. Section 25.673 is, therefore, removed as proposed.

Proposal 33. No comments concerning this proposal were received; therefore, § 25.693 is amended to remove the erroneous reference to MIL-HBDK-5 as proposed.

Proposal 34. This proposed amendment to § 25.697 was made in Amendment 25-57; therefore, no further action with regard to this proposal is necessary.

Proposal 35. As proposed, § 25.701 would be amended to ensure that the

consequences of asymmetrical slat retraction are not overlooked. One commenter suggests changing the title of § 25.701 to "Flap and slat interconnection" as the proposal applies to interconnecting elements as well as to the flap and slat surfaces. The FAA concurs that this addition would be a more descriptive title and has amended this section accordingly.

Two commenters suggest adding the words "or equivalent means" to § 25.701(b) for consistency with § 25.701(a). The FAA concurs that this addition would clarify that any equivalent means must also prevent flap movement under the prescribed loading conditions of this section. Section 25.701(b) is, therefore, amended accordingly.

One commenter prefers the word "asymmetrical" to "unsymmetrical"; however, "unsymmetrical" is retained for consistency with other usage in part 25.

One commenter suggests changing § 25.701(d) to read "* * * when interconnected flap or slat surfaces on one side * * *." The strength requirement for interconnections should apply to each interconnected set separately. The FAA concurs that this would clarify the requirements of this section. Section 25.701(d) is, therefore, amended accordingly.

Except as noted above, § 25.701 is amended as proposed.

Proposal 36. Section 25.723 would be amended to provide more latitude in the use of analyses in determining landing gear energy absorption characteristics. One commenter suggests using the expression "similar design characteristics" in lieu of "identical" since similar energy absorption characteristics could be obtained using different energy absorption methods which would not be valid for comparison analysis. In order to achieve the intent, the following wording, which is more explicit, has been adopted: "This must be shown by energy absorption tests except that analyses based on earlier tests conducted on the same basic landing gear system which has similar energy absorption characteristics may be used for increases in previously approved takeoff and landing weights." Except for this change in wording, § 25.723 is amended as proposed.

Proposal 37. No comments concerning this proposal were received. Section 25.731 is, therefore, amended to refer to maximum weight in lieu of takeoff weight, as proposed.

Proposal 38. As proposed, the requirement to consider the effects of engine thrust on tire loading would be deleted from § 25.733(a)(1).

One commenter objects to the proposed deletion and states that inertia loading should be taken into consideration notwithstanding that it is transient at the initiation of taxi. The commenter believes that tire inertia loading is a rational requirement and that safety considerations outweigh any regulatory burden. According to information available to the FAA, the inertial effects are less than three percent of the design static tire load. They are transient and occur at the initiation of or early in taxi where safety has not been an issue due to the low speeds involved. Furthermore, the inertial effects are insignificant when compared to the effects that taxi distance at maximum loads or the high energies associated with a rejected takeoff (RTO) have on tire design and safety. Technical Standard Order (TSO) TSO–C62c for aircraft tires specifies eight 35,000 feet taxi tests at the rated load and two 35,000-feet taxi tests at 1.2 times the rated load. In addition, the TSO specifies one overload takeoff cycle at 1.5 times the rated load. These tests, together with the taxi and RTO tests conducted for airplane type certification, provide more than ample margins to cover any tire load considerations due to engine thrust.

Another commenter suggests that the term "maximum ramp weight" should be replaced with the term "maximum weight" to account for those airplanes for which another condition, e.g., takeoff weight or taxi weight, is the maximum design weight. The FAA concurs, and the term "maximum weight" is used accordingly.

In addition to the proposed changes, one commenter suggests changes to § 25.733(b) (2) and (3) for clarification. According to the commenter, it is not clear whether vertical ground reactions are to be based on a deceleration of .31g due to braking or are to be based on a deceleration of .31 times the vertical load on the braked wheels. While the changes proposed by the commenter are beyond the scope of Notice 84–21 and cannot be considered at this time, the FAA notes that the vertical ground reactions are based on a deceleration of .31 times the vertical load. The commenter's suggested changes will be considered for future rulemaking if, as the commenter believes, the present wording of § 25.733(b) (2) and (3) is found to be causing confusion.

Except as noted above, § 25.733 is revised as proposed.

Proposal 39. One commenter supports the proposed clarification of § 25.735, but suggests that, in addition, the title should be changed to "Wheel brakes." The commenter correctly notes that there are other types of brakes to which this section does not apply, such as drag producing devices, propeller brakes, etc. The applicability of § 25.735 to only wheel brakes is, however, self evident because that section falls, in turn, under the heading "LANDING GEAR."

No other comments concerning this proposal were received. Section 25.735 is, therefore, amended as proposed.

Proposal 40. As proposed, § 25.772 would be amended to apply to an airplane with any lockable door between the pilot compartment and the passenger compartment, not just to one with a lockable door installed to comply with § 121.313 of this chapter. One commenter expressed a concern that a lockable door installed between the pilot compartment and the passenger compartment should be openable from the passenger compartment with a key. A requirement of this nature would, however, clearly be beyond the scope of the notice. No other comments concerning this proposal were received. Section 25.772 is, therefore, revised as proposed.

Proposal 41. As proposed, § 25.773(b)(1)(i) would be revised to specify that the means to maintain a clear portion of the windshield must be designed to function with all lift and drag devices, e.g., slats and spoilers as well as flaps, retracted. In addition, § 25.773(b)(2) would be amended to allow alternate means of maintaining clear vision in lieu of an openable window.

Three commenters address the proposed requirement of § 25.773(b)(2) to consider the probable damage due to a severe hail encounter. One concurs with the intent of the proposal, but believes that the term "severe hail" and the test condition should be defined. Another commenter asserts that the requirement to consider a severe hail encounter should be deleted because the term is not defined. Another asserts that the proposed requirement might be interpreted to permit no obstruction of any kind on any portion of the window. The commenter also asserts that the requirement of a severe hail encounter should be deleted since (according to the commenter) the intent of the provision for sufficient view, which is to permit continued safe flight and landing, is covered under § 25.775(e).

The FAA does not concur that the requirement to consider the effects of a severe hail encounter could be deleted without a possible degradation of safety. The purpose of the long-standing requirement of this section for an

openable window is to enable the flightcrew to make a safe landing in the event the windshield is obscured due to climatic conditions, insect encounters, or damage. One possible cause of obscuration is the pitting and crazing of the windshield that could result from a severe hail encounter. A nonopenable window would preclude the flightcrew from making a safe landing under these circumstances if the window were subjected to the same obscuration as the windshield. It is, therefore, essential that a nonopenable window used in lieu of the traditional openable window be capable of sustaining a severe hail encounter without obscuration.

As noted in the explanation of this proposal contained in the preamble to Notice 84–21, means of compliance other than an openable window have been found acceptable previously under the equivalent safety provisions of § 21.21(b)(2) of this chapter. The FAA is not aware of any difficulties with the definition of "severe hail encounter" that were experienced when each finding of equivalent safety was made. The FAA will, however, review the matter further to determine whether guidance concerning acceptable means of compliance is needed. If such guidance is needed, it will be published as an AC.

In regard to the commenters' concern that the requirement might be interpreted to permit no obstruction of any kind on any portion of the window, it must be noted the proposed rule would require a "means," not a window, per se. If the entire window were needed to safely land the airplane with the windshield obscured, the entire window would constitute the "means" and would have to be free from obstruction accordingly. If, on the other hand, a certain portion of the window were found to be sufficient to safely land the airplane with the windshield obscured, only that portion would have to be free from obstruction. In the latter case, whether other areas of the window were free from obstruction would be irrelevant insofar as compliance with the proposed rule would be concerned.

There were no comments concerning the proposed changes to § 25.773(b)(1)(i).

In view of the above, § 25.773 is amended as proposed.

Proposal 42. As proposed, § 25.779 would be amended to refer to "power or thrust" in lieu of "throttles," which is a misnomer when applied to turbine powered airplanes. One commenter recommends the use of the term "throttles/thrust" in lieu of "power or thrust." The FAA does not concur with this recommendation. Although "throttle" is an appropriate term for reciprocating-powered airplanes and "thrust" is appropriate for turbojet-powered airplanes, neither term is appropriate for turbopropeller-powered airplanes. "Power or thrust," on the contrary, is appropriate for all types of transport category airplanes. There were no other comments concerning this proposal. Section 25.779 is, therefore, amended as proposed.

Proposal 43. As proposed, § 25.781 would be amended to refer to "POWER OR THRUST CONTROL KNOB" in lieu of "THROTTLE CONTROL KNOB" and to "PROPELLER CONTROL KNOB" in lieu of "RPM CONTROL KNOB" in the diagram. The sole commenter recommends that the terms "THROTTLE" and "RPM" be retained for consistency with a proposal the commenter made on another occasion with regard to part 23 of this chapter. "THROTTLE" is a term appropriate to reciprocating-powered airplanes; but, as noted in the notice, it is a misnomer when applied to turbine-powered airplanes. "POWER or THRUST," on the contrary, are terms applicable to all transport category airplanes. Current industry practice is to refer to these controls as "power levers" or "thrust levers," as appropriate for the airplane involved. "RPM" is an ambiguous term in this context since there are, in some instances, engine speeds that are not proportional to the propeller speed. In other instances, the control in question may control propeller pitch rather than propeller speed, which is directly controlled by an engine governor. The term "PROPELLER" is, therefore, more accurate technically and, as noted in the notice, consistent with the terminology used in § 25.779. Section 25.781 is, therefore, amended as proposed.

Proposal 44. As noted in the explanation, the purpose of the proposed change to § 25.783(g) was to replace the reference to paragraph (f) that was inadvertently deleted during a previous revision. Unfortunately, the notice contained a printing error that left the incorrect impression that § 25.783(g) would also be changed substantively. No comments concerning the change actually intended were received; therefore, § 25.783(g) is amended as described in the explanation.

Proposal 45. As proposed, a number of changes would be made to § 25.785 for clarity. In addition, the requirement presently contained in § 25.1307 to provide a seat for each occupant would be transferred to this section for ease of reference and relaxed to allow the use of a berth in lieu of a seat for a nonambulant person. The requirement would also be clarified by specifically stating that it applies only to persons that are two years of age or older. Section 25.785(h) would be amended to permit placing a flight attendant seat at a location other than near a floor level emergency exit if the emergency egress of passengers would be enhanced by that location. The strength requirements presently contained in § 25.1413 (b) and (c) for safety belts and harnesses would be transferred to § 25.785 and combined with the corresponding requirements for seats and berths. The contents of § 25.1413(d) concerning belts with metal to metal latching devices would also be transferred to § 25.785 for ease of reference.

One commenter believes that the expression "* * * has reached his or her second birthday" in proposed § 25.785(a) would be confusing. The FAA does not concur. This expression has been used in corresponding § 121.311 of this chapter for some time without confusion. Another commenter believes that this expression could lead to the implied inclusion of operating rule criteria for child restraint wear when determining the maximum occupancy for certification purposes. As discussed in Notice 84–21, the change was proposed to reflect actual type certification practice and for consistency with the operating rule of § 121.311. The FAA, therefore, does not concur that any implication of additional requirements would result from this wording.

Three commenters express concern that the requirements of proposed § 25.785(h) for seats designated for the use of flight attendants would also be applied to seats for flight attendants not required by operating rules, e.g., "dead-heading" flight attendants, flight attendants in excess of the minimum number required by operating rules, or a "barman" on an executive type transport. As one of the commenters correctly notes, § 121.311(f)(3) specifically states that "the requirements of § 25.785(h) do not apply to passenger seats occupied by flight attendants not required by § 121.391." Section 25.785(h) is revised to clarify the applicability in this regard.

One commenter brings to the attention of the FAA a discrepancy between proposed § 25.785(f)(1) and current § 25.561. As the commenter correctly notes, § 25.561 requires the structure of the airplane to be designed to protect the occupant from serious injury when the occupant experiences an upward ultimate inertia force as well as forces in other directions. (At the time Notice 84–21 was issued, the upward ultimate inertia force specified in § 25.561 was 2.0 g. Due to the recent adoption of

Amendment 25–64 (53 FR 17640; May 17, 1988), the upward ultimate inertia force has been increased to 3.0 g.) "Structure," in this context, includes seats, berths, and their attachments. Proposed § 25.785(f)(1), which would contain the requirements of current § 25.785(i)(1)(i), would require consideration of forward, sideward, downward, and rearward loads in the analysis and testing of seats, berths, and their supporting structure. Unlike § 25.561, proposed § 25.785(f)(1) and current § 25.785(i)(1)(i) do not specify consideration of upward loads. This omission resulted from an inadvertent error that occurred during the recodification of § 4b.358 of the CAR into § 25.785 of the FAR. To avoid confusion and for consistency with the requirements of § 25.561, § 25.785(f)(1) is changed to specify consideration of upward loads in addition to those in the other directions.

Another commenter states that proposed § 25.785(f)(1) should read, "* * * acts separately or using selected combinations * * *." The use of the word "and" in lieu of the word "or" has also been traced to an error that occurred during the codification of § 4b.358 into § 25.785. This section has been amended to correct that error.

One commenter notes a discrepancy in the expression " * * * items dislodged from service areas or service equipment * * * " in proposed § 25.785(h)(4) and the corresponding expression " * * * items dislodged in a galley, or from a stowage compartment or serving cart * * * " in current § 25.785(j). As the commenter correctly notes, stowage compartments, other than those in galley areas, would be exempt. Section 25.785(h)(4), therefore, specifies, " * * * service areas, stowage compartments, or service equipment."

No comments concerning the other proposed changes were received. Except as noted above, § 25.785 is amended as proposed.

Proposal 48. As proposed, the requirements of § 25.853 concerning "no smoking" signs, and signs indicating that disposal of cigarettes in receptacles intended for flammable waste is prohibited, would be transferred to § 25.791. In addition, § 25.791(e) would be added to allow the use of acceptable symbols in lieu of letters. One commenter questions whether the use of the word "either" in proposed § 25.791 (a) and (b) would mean that the passenger information signs must be operable from both pilot seats. The intent of the proposal is that the signs be operable by one member of the flightcrew, not by each member. In order to ensure that there will be no confusion in this regard, the phrase, " * * * operable from either pilot seat * * * " is replaced with the phrase, " * * * operable by a member of the flightcrew * * * " in both § 25.791(a) and (b). Another commenter objects to the proposed transfer from § 25.853 to § 25.791 of the requirement for "no smoking" signs and signs indicating that disposal of cigarettes in receptacles intended for flammable waste is prohibited. The commenter believes that this requirement would be obscured by the proposed transfer. The FAA does not concur with the commenter. Section 25.853 deals primarily with qualification standards for interior materials. The transfer of this requirement to § 25.791, which deals specifically with passenger information signs and placards, will actually make the requirement less likely to be overlooked. The same commenter notes that the present requirements for placards containing the specific words "no smoking" (in the lavatory) and "no cigarette disposal" are widely used and well understood in the industry and that substitution of corresponding objective requirements would lead to considerable variation in placard wording. The FAA concurs that the present requirements are well understood by the aviation industry (and, of equal importance, by the travelling public) and that the proposed substitution of objective requirements might prove to be counterproductive. The present requirements for specific placard wording will, therefore, be retained. This, of course, will not preclude acceptance of acceptable alternate wording under the equivalent safety provisions of § 21.21(b)(1) of this chapter, and acceptable symbols may be used in lieu of the specified wording under the provisions of § 25.791(e). Except as noted above, § 25.791 is revised as proposed.

Proposal 47. This is a conforming change necessitated by Proposal 50. Section 25.801(a) is, therefore, amended as proposed.

Proposal 48. As proposed, the emergency evacuation test criteria presently contained in § 25.803 would be transferred to new Appendix I for clarity and editorial consistency with part 121 of this chapter. One commenter suggests the addition of the words "using not more than 50 percent of the doors in the sides of the fuselage" at the end of the first sentence of proposed § 25.803(c). While this addition would not be incorrect, it reflects a test condition that is more properly presented in proposed appendix I with the other pertinent test conditions. The same commenter suggests the addition of the parenthetical expression "(full-scale or partial)" following the word "testing" in the second sentence of proposed § 25.803(c). Again, this addition would not be incorrect, but it is considered superfluous in the context of the sentence.

For reasons discussed below under Proposals 49–52, § 25.803(e) concerning emergency escape routes has been transferred to new § 25.810(c).

Except as noted, § 25.803 is amended and revised as proposed.

Proposals 49, 50, 51 and 52. As proposed, a number of related changes to §§ 25.805, 25.807, 25.809, and 25.813 would be made for consistency and clarity. The requirements for flightcrew exits would be transferred from § 25.805 to § 25.807. Ancillary requirements for Type A exits would be transferred to §§ 25.785, 25.809, or 25.813, as appropriate. The requirements of § 25.807(b) concerning exit accessibility would be transferred to § 25.813. The requirements of § 25.807(c) concerning uniform distribution of exits would also be transferred to § 25.813. Section 25.807 would provide for alternate emergency exit configurations. The provisions of § 25.803(b) concerning ventral and tail cone exits and other fuselage openings would be transferred to § 25.807 and combined with the related requirements of that section.

Two commenters suggest that § 25.807 should also define a door size that is larger than a Type I exit, but smaller than a Type A exit. The definition of this exit size, which is identified by the commenter as Type B, is beyond the scope of the notice. It, therefore, cannot be considered at this time because interested persons have not been given the opportunity to comment on its merits.

Separate emergency exits for flight crewmembers are not required for an airplane with a passenger capacity of 20 or less in which the proximity of passenger emergency exits offers a convenient and readily accessible means of evacuation for the flight crewmembers. One commenter believes that this exception should also be extended to airplanes with larger passenger capacities, such as 79. This comment is also beyond the scope of the notice; however, the FAA does not concur that adequate evacuation means would be provided for the flight crewmembers if this exception were extended to larger airplanes.

Since the time Notice 84–21 was prepared, considerable confusion has been noted regarding the requirements for means to assist passengers in egressing from nonoverwing exits to the

ground, means to assist passengers in egressing from overwing exits to the wing, and means to assist passengers in descending from the escape routes required by § 25.803(e). The requirements for escape routes are, in themselves, inappropriately contained in present § 25.803 which deals primarily with emergency evacuation demonstrations. In order to preclude further confusion and improve clarity, these requirements have been transferred to a new § 25.810 which deals specifically with emergency egress assist means and escape routes. This is an editorial change which does not affect the level of safety required or place any additional burden on any person.

Several commenters consider the phrase " * * * the most adverse anticipated wind conditions" in proposed § 25.809(h) to be too general and subject to varying interpretations. The FAA concurs, and this paragraph (which, as noted above, is now § 25.810(a)) has been changed to refer to " * * * 25-knot winds directed from the most critical angle," accordingly. This wording for escape route assist means is consistent with the corresponding wording of existing § 25.809(f)(1)(iv) for emergency exit assist means.

One commenter notes the inadvertent deletion from the proposal of the requirement that the assist means for escape routes leading from Type A exits "* * * must be automatically deployed and erected, concurrent with the opening of the exit, and self-supporting within 90 seconds [sic]." (Current § 25.807(a)(7)(ix) actually specifies 10 seconds rather than 90.) This inadvertent deletion has been corrected by placing the requirement in § 25.810(a).

Proposed § 25.807(d)(6)(ii) has been changed to read "door or exit" in lieu of "exit" for consistency with the present wording of § 25.803(d) and to clarify that any door that might be used by passengers for emergency egress must meet the applicable requirements, not just those designated by the applicant as "exits."

Section 25.813(b) is also revised to clarify that there must be adequate assist space next to each side of each Type A exit as required by current § 25.807(a)(7)(vii), and that such space is required for a Type A door regardless of whether it is located more than 6 feet from the ground.

Other editorial errors are noted by commenters. These are also corrected accordingly. Minor changes are made for compatibility with recently adopted Amendment 25–67.

Except as noted above, § 25.805 is removed, § 25.807 and § 25.809 are revised, § 25.810 is added, and § 25.813 is amended as proposed.

Proposal 53. No comments concerning this proposal were received. Section 25.833 is, therefore, revised to remove the redundant reference to engine exhaust heaters as proposed.

Proposal 54. The intent of this proposal was to correct the implication that the requirements of § 25.851(b) do not apply to fire extinguishing systems installed in addition to those required by the minimum standards of part 25. Although this intent was discussed in the Explanation for Proposal 54, the actual change to implement it was inadvertently omitted. Two commenters note this omission; however, no adverse comments concerning the stated intent were received. Section 25.851 is, therefore, amended as proposed except that § 25.851(b) reads, "Built-in fire extinguishers. If a built-in fire extinguisher is provided—* * *."

Proposals 55 and 56. As proposed, the test criteria presently contained in §§ 25.853, 25.855, and 25.1359 would be transferred to appendix F for editorial improvement and consistency. The requirement for "no smoking" signs and signs indicating that disposal of cigarettes in receptacles intended for flammable waste is prohibited would be transferred to § 25.791 for consistency with other passenger information sign requirements. The remaining nonredundant portions of § 25.855 for cargo or baggage compartments would be transferred to § 25.853 and combined with those for crew or passenger compartments. Section 25.853 would be amended to require lavatory entry ashtrays only if smoking is to be allowed in other areas of the airplane.

Since the time Notice 84–21 was issued, § 25.853 has been amended to include flammability requirements for seat cushions (Amendment 25–59; 49 FR 43188; October 26, 1984) and improved flammability standards for materials used in cabins (Amendment 25–61; 51 FR 26206; July 21, 1986 and Amendment 25–66; 53 FR 32564; August 25, 1988). Amendment 25–66 also includes a new requirement for smoke testing. In addition, § 25.855 has been amended to include new standards for cargo or baggage compartments (Amendment 25–60; 51 FR 18236; May 16, 1986). In view of these recent amendments, it is no longer considered advisable to combine the requirements for cargo or baggage compartments with those for crew or passenger compartments; therefore, those requirements proposed as § 25.853(a) remain in that section, and those proposed as § 25.853(b) are now identified as § 25.855. Other editorial changes are also made as necessary for compatibility with the recently adopted amendments.

As discussed under Proposal 46 above, one commenter objects to the proposed transfer of the requirement for "no smoking" signs and signs indicating that disposal of cigarettes in receptacles intended for flammable waste is prohibited to § 25.791. The FAA does not concur with the commenter's objection for the reasons discussed under Proposal 46.

The same commenter believes that the phrase, "If smoking is to be allowed," in proposed § 25.853(a)(2) may be misinterpreted to allow smoking in lavatories. The FAA concurs, and the phrase is changed to read, "Smoking is not to be allowed in the lavatories. If smoking is to be allowed in any other compartment occupied by the crew or passengers * * *." A corresponding change has also been made to retain the current requirement for ashtrays on lavatory doors regardless of whether smoking is allowed in any other part of the airplane.

The commenter notes that the phrase, "* * * or other approved equivalent methods," that formerly appeared in §§ 25.853 and 25.855 has been omitted from proposed § 25.853(a)(1) and (b)(1). This inadvertent error is corrected.

The commenter objects to the requirement in proposed § 25.853(a)(3) to demonstrate by test that receptacles have the capability to contain fires under all probable conditions of wear, misalignment, and ventilation expected in service. According to the commenter, this requirement, which is also contained in current § 25.853(e), is ambiguous and should be deleted. Any change of this nature would be beyond the scope of Notice 84–21; however, the FAA believes that this requirement is clearly stated as written.

Except as noted above, §§ 25.853 and 25.855 are amended as proposed.

Proposal 57. As proposed, § 25.867 would be removed on the assumption that § 25.1193(e) covers the same subject in a more comprehensive and objective manner. In light of the comments received, it appears that the requirements of § 25.867 are not entirely covered by those of § 25.1193(e). This proposal to remove § 25.867 is, therefore, withdrawn.

Proposal 58. As proposed, all fire protection requirements for systems would be combined and transferred to subpart D and designated as new § 25.869 for clarity. One commenter supports this proposal. Another states that the oxygen system fire protection

requirements should remain in § 25.1451 so that they are in close proximity to other safety considerations for oxygen systems. The ideal editorial structure for interrelated requirements is somewhat subjective. While this commenter's position has some merit, the FAA considers grouping fire protection requirements together to be more beneficial than grouping all oxygen system requirements together and, by doing so, placing fire protection requirements for the various systems in separate locations. The same commenter suggests adding the phrase "or other approved equivalent methods." This addition is unnecessary due to the provisions of existing § 21.21(b)(1) of this chapter which permit findings of an equivalent level of safety. Section 25.869 is, therefore, added as proposed.

Proposal 59. Section 25.901(c) would be revised to use the term "extremely improbable" in lieu of "extremely remote." While this proposed change is intended to merely substitute current terminology, several commenters believe that it would actually result in a change in the level of safety and present additional burden. The proposal is, therefore, withdrawn for further study.

Proposal 60. One commenter supports the change proposed to clarify the present requirement for qualification of the auxiliary power unit (APU). Another opposes the proposed § 25.903(f) as being ambiguous and failing to clearly state the requirement or intent of the rule. In lieu of stating that each APU must be approved, the commenter proposes a requirement that the APU be "* * * certified to TSO–C77 or FAA approved equivalent * * *" As noted in the explanation for Proposal 53, the term "approved," when used in part 25 in this context, means that the product must comply with an applicable Technical Standard Order (TSO) or, in lieu thereof, be approved in conjunction with the type certification process for the airplane on which it is to be installed. Because TSO–C77 is the TSO applicable to an APU, the proposed use of the term "approved" meets the intent of the commenter's proposal. It is also noted that the term "certified" (or the related term "certificated") is a misnomer with respect to products authorized under the TSO system. The commenter also proposes adding the parenthetical expression "essential or non-essential" following the word "category;" however, it does not appear that this addition would add clarity to the rule. Accordingly, § 25.903(f) is added as proposed.

Proposal 61. Under this proposal, which is related to Proposal 27, the following requirement would be added to § 25.905, "Design precautions must be taken to minimize the hazards to the airplane in the event a propeller blade fails or is released by a hub failure." One commenter suggests that the expression "design precautions" be replaced with the expression "practical design precautions." The FAA considers this change to be unnecessary, because these, like any other means of meeting type certification requirements, must be practical. Current § 25.571(e)(2), which would be replaced in part by § 25.905(d), requires consideration of damage only to structure due to the impact of a failed or released propeller blade. As noted in the preamble to Notice 84–21, the hazards that would have to be considered for compliance with § 25.905(d) also include damage to vital systems due to blade impact and unbalance due to the loss of a blade. In order to ensure that the expanded scope does not cause any confusion, § 25.905(d) has been amplified in this regard. Except for this clarification, new § 25.905(d) is adopted as proposed.

Proposal 62. No adverse comments were received concerning this proposal to clarify the applicability of § 25.925 to airplanes with dual wheels. Section 25.925 is, therefore, amended as proposed.

Proposal 63. As discussed in Notice 84–21, unwanted deployments of thrust reversing systems that were designed only for ground operation have occurred in flight on turbojet powered airplanes, sometimes with catastrophic results. Section 25.933 currently requires an applicant to show that the reverser can be restored to the forward flight position or that the airplane is capable of continued safe flight and landing under any possible position of the thrust reverser. An unwanted, inflight deployment is generally accompanied by damage to the reversing system due to the dynamic nature of the deployment, particularly at high speed. Although it might be possible to demonstrate that an undamaged reverser could be restored to the forward thrust position, there is no assurance that the reverser could be restored following an actual unwanted, inflight deployment due to the possibility of unpredictable damage. It is, therefore, essential that the airplane be capable of continued safe flight and landing with any possible position of the reverser. Conversely, it is also essential that an operable reverser be restored to the forward thrust position whenever possible. The word "or" would, therefore, be replaced with the word "and" to require showing that the reverser can be restored to the forward thrust position, if undamaged, and that the airplane is capable of continued safe flight and landing under any possible position of the thrust reverser. In addition, § 25.933 would be changed to clarify the applicability of the requirements of this section to other types of reversing systems, such as reversible pitch propellers.

As noted above, the applicant would have to show that the reverser can be restored to the forward thrust position, if undamaged, and that the airplane is capable of continued safe flight and landing under any possible position of the thrust reverser. Three commenters believe that this proposed requirement is unnecessary. One of the three commenters further speculates that safe flight cannot be assured should a reverser be deployed at liftoff. The FAA does not concur that showing both conditions is unnecessary. As discussed in Notice 84–21, an unwanted, inflight deployment is generally accompanied by damage to the reversing system due to the dynamic nature of the deployment, particularly at high speed. Although it might be demonstrated that an undamaged reverser could be restored to the forward thrust position, there is not assurance that the reverser could be restored in an actual unwanted, inflight deployment due to the possibility of unpredictable damage. It is, therefore, essential that the airplane be capable of continued safe flight and landing under any possible position of the thrust reverser. Conversely, it is also essential that an operable reverser be restored to the forward thrust position whenever possible. The FAA is aware of at least four incidents in which the thrust reversers of transport category airplanes could not be restowed following unwanted, inflight deployment. Each of the airplanes involved was landed safely with the reverser unstowed, because it had the capability for making a safe landing under such circumstances. Notwithstanding the option provided by current § 25.933(a), the manufacturers of transport category airplanes have recognized the need to show that the airplanes can be landed safely under these circumstances. The manufacturers of most, if not all, transport category, turbojet-powered airplanes certificated under part 25 have demonstrated this capability. The commenter's speculation that safe flight cannot be assured in the event a reverser is deployed at lift off is

inconsistent with past certification experience.

The capability of restowing an undamaged reverser in flight is considered to be equal in importance to having the capability for safe landing with an unstowed reversed. Inflight deployment of a reverser designed only for ground operation generally results in drag, buffeting, and possibly hazardous aerodynamic loads. Although initially undamaged, a deployed reverser may sustain damage from prolonged exposure to such buffeting and aerodynamic loads. It is, therefore, essential that a deployed reverser be restowed whenever possible so that the airplane can resume normal, hazard-free operation. One commenter suggests that § 25.933(a)(1) should read "* * *during inadvertent or deliberate reversal* * *" in lieu of "* * *during any reversal* * *." The FAA does not consider that this change would serve any purpose because any reversal is either inadvertent or deliberate.

Another commenter suggests that § 25.933(a)(1)(i) should contain the provision "if undamaged" for consistency with the explanation given in Notice 84–21. This change is also considered unnecessary because the requirement pertains to each operable reverser.

As discussed under Proposal 59 above, several commenters believe that the proposed use of the term "extremely improbable" would actually result in a change in the level of safety and present an additional burden. This aspect of the proposal is, therefore, withdrawn for further study.

One commenter suggests that § 25.933(a) (1) and (3) should refer to "* * *producing no more than reverse* * *" in lieu of "* * *producing no more than idle* * *." In addition to this suggested change being beyond the scope of the notice, the FAA does not agree with the change because it would represent a significant degradation in the established level of safety.

Another commenter suggested three editorial changes that are considered to be beyond the scope of the notice and unnecessary.

Except as noted above, § 25.933 is amended as proposed.

Proposal 64. Section 25.937 would be amended to use the word "improbable" in lieu of "remote." While this proposed change is intended to merely substitute current terminology, several commenters believe that it would actually result in a change in the level of safety and increased burden. The proposal is, therefore, withdrawn for further study.

Proposals 65 and 66. One commenter supports the proposed transfer of the requirement for marking the augmentation system tank filler openings from § 25.945 to § 25.1557 and removal of the redundant reference to § 25.1557(c) from § 25.973. Another commenter opposes deletion of marking requirements based on the rationale that the requirements are redundant. The commenter notes that, in other sections of part 25, the FAA proposes to add reference to requirements to ensure that important requirements are not overlooked and states that this policy is preferable from an airworthiness standpoint. The FAA concurs that references are appropriate, in some instances, to ensure that important requirements are not overlooked. In other instances, however, references are unnecessary and merely serve to obscure other requirements. The FAA does not concur that the transfer of the marking requirements of § 25.945(b)(4) to § 25.1557 and the elimination of the cross reference in § 25.979 will adversely affect airworthiness since the requirement continues to exist in another section appropriately identified as a marking section. Sections 25.945(b)(4) and 25.973(a) are, therefore, removed as proposed.

Proposal 67. One commenter supports the proposal to clarify the intent of the term "desired level" in § 25.979. Another makes a comment which, although it appears to be beyond the scope of the notice, may indicate a misunderstanding. Because there seems to be some misunderstanding of the intent of this section, the following clarification is provided. Each fuel tank must have an expansion space of 2 percent of the tank capacity, as required by § 25.969, to allow for thermal expansion of the fuel that might occur after the tank is filled. In order to clarify the intent of the term "desired level" in § 25.979, i.e., that this expansion space is not filled during refueling, each tank must have a corresponding maximum fuel quantity that does not include the expansion space. The purpose of § 25.979(b)(2) is to require a means to alert personnel when this maximum fuel quantity is exceeded so that corrective action may be taken before a hazardous situation develops. Exceeding a chosen intermediate quantity of fuels, as suggested by the commenter, is, therefore, not relevant to this requirement. The FAA has reviewed the comments and has determined that the proposal will eliminate the confusion that currently exists concerning the intent of this rule. Section 25.979 is, therefore, amended as proposed.

Proposal 68. One commenter supports the proposed removal of an unnecessary reference to § 25.1557(b)(2) from § 25.1013(c)(2). The commenter that opposes Proposal 66 opposes this proposal for the same reason. Again, the FAA does not consider that the deletion of the marking cross reference will adversely affect airworthiness since the requirement continues to exist in another section appropriately identified as a marking standard. Accordingly, § 25.1013(c) is amended as proposed. One commenter noted an editorial error in § 25.1013(a) as amended by Amendment 25–36. The preamble to Amendment 25–36 stated that the last sentence of § 25.1013(a) concerning a reciprocating engine with an integral oil sump was removed and placed in § 25.1183(a). The requirement was placed in § 25.1183(a); however, due to an inadvertent error, it was not removed from § 25.1013(a). As this is a correction and the change has previously been offered for public comment, § 25.1013(a) is amended to delete the last sentence.

Proposal 69. Two commenters respond to the proposal to correct an editorial error in § 25.1093(b)(1) concerning induction system anti-ice provisions. One commenter supports the proposal. The other commenter opposes the proposed change because, according to the commenter, it could be interpreted to require full ice protection at idle power conditions. The commenter further explains that this would impose undue limitations on induction system design and excessive economic operational penalties. The commenter also states that requirements for engine operation in icing conditions down to idle rpm should be specified in part 33 of this chapter. The commenter continues by disagreeing that the phrase, "* * * within the limitations established for the airplane," was introduced by an editorial error; finally, the commenter objected to "* * * the implication made in the notice that an operational limitation implies lack of providing the capability to operate the engines safely in icing conditions."

The FAA is concerned that the current regulatory wording implies that an operating limitation may be accepted in lieu of a design having the capability to operate the engines safely in icing conditions. For example, a statement such as, "Do not operate in icing conditions," would provide an operating limitation whereby no anti-icing provisions would need to be incorporated into the airplane design. This is considered unacceptable because airplanes do encounter

unexpected icing conditions during flight.

Certain engines and engine inlet configurations may be prone to ingesting snow in quantities sufficient to adversely affect engine operation, especially during ground operations. In contrast to icing conditions, snow can be detected visually. An airplane limitation prohibiting operation in falling and blowing snow would, therefore, be satisfactory in lieu of induction system redesign.

The FAA disagrees with the comment that anti-icing provisions should be specified in part 33. At the time of engine type certification, the engine manufacturer may not know the type of installations that will be made and the amount of engine bleed air or power extraction that will be necessary to protect the engine, as installed in the airplane, from icing. It is, therefore, inappropriate to address the issue in part 33.

The commenter is correct in the interpretation that "* * * full ice protection is required at idle power conditions." Some recent airplane designs have incorporated a conditional inflight idle setting that is activated when the flightcrew selects "anti-ice on." This feature increases the normal idle engine speed to a level sufficient to supply adequate engine bleed air for complete ice protection. Systems designed to incorporate a conditional in-flight idle setting would not suffer undue limitations on system design and excessive economic operational penalties.

The commenter is also correct in stating that the phrase "* * * within the limitations established for the airplane" was not introduced as an editorial error by Amendment 25–40; however, previous to Amendment 25–40, that phrase applied only to operation in snow. Amendment 25–40 addressed a minor change that made it clear that the engine air inlet system was also included with the engine under the deicing requirements. Inadvertently, the phrase "* * * within the limitations established for the airplane" was misplaced so that it appears to refer to the methods used to comply with the icing conditions specified in appendix C. This was never intended.

The commenter suggests that operation at idle engine power in icing conditions should be discouraged because, according to the commenter, the proposed regulatory change, which removes operating limitations as a means for finding compliance with appendix C, implies a lack of capability to operate safely in icing conditions. The suggestion is considered impractical because modern fuel-efficient airplanes are so streamlined that idle or near idle power is necessary for descent from cruise altitude.

In view of the above, § 25.1093(b)(1) is amended as proposed.

Proposal 70. As proposed, § 25.1141(e) would be added to require that the critical powerplant controls in the engine compartment be at least fire resistant. One commenter supports the proposal. Another suggests that the term "in a designated fire zone" should be used in lieu of "in the engine compartment." The FAA concurs that the former term would be more descriptive. Except for this change, § 25.1141(e) is amended as proposed.

Proposal 71. Section 25.1165 would be amended by adding a new paragraph which specifies that turbine engine ignition systems must be considered essential electrical loads. One commenter concurs with the proposal. Another commenter suggests that since each engine has dual ignition systems, the wording should be changed to, "At least one ignition system per engine * * *." The FAA does not concur with this commenter. Because most ignition system designs either require or allow selection of both ignitor systems (which would normally be the selection for certain flight conditions, such as icing), the complete ignition system should be considered an essential electrical load. Section 25.1165 is, therefore, amended as proposed.

Proposal 72. Section 25.1181(b) currently refers incorrectly to "* * * the requirements of §§ 25.1185 through 25.1205." Section 25.1205 was previously recodified as § 25.867, and § 25.1181(b) should have been amended to read, "* * * the requirements of § 25.867 and §§ 25.1185 through 25.1203," at that time. Section 25.867 was proposed to be removed (Proposal 57), and the wording proposed for § 25.1181(b) reflected that proposed removal. Because § 25.867 is not being removed as proposed, § 25.1181(b) is changed to refer to "* * * the requirements of § 25.867, and § 25.1185 through § 25.1203."

Proposal 73. Section 25.1305(e) currently requires both a means to indicate when the propeller blade angle is below the flight low-pitch position (Beta) and to indicate when the propeller is in reverse. No comments were received concerning this proposal to remove the requirement for indication of reverse pitch. Section 25.1305 is, therefore, amended as proposed.

Proposal 74. Section 25.1307 would be amended by transferring the contents of paragraph (a) to § 25.785, and removing paragraphs (f), (g), and (h). No comments concerning this proposal were received; therefore, § 25.1307 is amended as proposed.

Proposal 75. No comments concerning this proposal to clarify § 25.1351 were received. Section 25.1351 is, therefore, amended as proposed.

Proposal 76. No comments concerning this specific proposal were received; however, it is related to Proposals 58 and 98. In light of the disposition of those proposals, § 25.1359 is removed as proposed.

Proposal 77. Section 25.1381 would be clarified by indicating that sufficient illumination must be provided to make each instrument, switch, and other device necessary for safe operation easily readable, not just those arbitrarily chosen for illumination.

The sole commenter believes that it is not necessary to provide illumination for every control and instrument required for safe operation. The commenter cites power levers, landing gear levers, and flap controls where the size, location, and shape are sufficient (according to the commenter) for ready location of the control in the dark.

The FAA concurs that the shape and location of some items may be such that minimal illumination would be sufficient and that other lighting in the area may, in fact, provide sufficient illumination. Section 25.1381(a) has been changed to clarify that other available lighting may be acceptable in this regard. Nevertheless, the FAA does not concur that such items should be excluded without evaluation to determine that available lighting is sufficient. Except as noted above, § 25.1381 is amended as proposed.

Proposal 78. As proposed, the present requirements of § 25.1403 would be transferred to § 25.1419. This proposal is withdrawn for the reason discussed in Proposal 82 below.

Proposal 79. This proposal is withdrawn for the reason discussed in Proposal 81 below.

Proposal 80. No comments concerning this proposal were received. Section 25.1413 is, therefore, removed as proposed.

Proposal 81. The provisions of § 25.1411(d) through (g) were proposed to be transferred and combined with those of § 25.1415 for consistency and clarity. One commenter correctly notes that the applicability of these provisions would be changed by the proposal. As proposed, life rafts and life preservers would be required for all transport category airplanes approved with provisions for ditching. Current §§ 25.1411 and 25.1415, on the other hand merely provide standards for such equipment when the equipment is

required by operating rules, e.g., § 121.339 or § 125.209. Because this change in applicability was not intended, this proposal, along with related Proposal 79, is withdrawn. The present wording of § 25.1415(a) also appears to be somewhat misleading in this regard. It is, therefore, revised for clarity to read, "Ditching equipment used in airplanes to be certificated for ditching under § 25.801, and required by the operating rules of this chapter, must meet the requirements of this section."

A number of other comments were received; however, these are no longer relevant because the proposal is withdrawn.

Proposals 82 and 83. As proposed, §§ 25.1403, 25.1416, and 25.1455 pertaining to operation in icing conditions would be transferred to § 25.1419 for clarification and editorial improvement. In addition, the contents of present § 25.1416(c) would be revised to allow use of the "dark cockpit" concept, i.e., a warning when failure occurs rather than continual pilot monitoring of a healthy system.

One commenter objects to the proposed transfer of the contents of present § 25.1455 pertaining to the drainage of fluids subject to freezing to § 25.1419. As the commenter notes, present § 25.1455 deals primarily with design and installation of systems while present § 25.1419 basically contains test requirements. Although the commenter did not include § 25.1403 in the comment, the same observation could be made with respect to the proposed transfer of the standards for wing icing detection lights from § 25.1403 to § 25.1419. The best method of combining or grouping interrelated requirements is subjective. It is noted, in this regard, that §§ 25.1403 and 25.1455, as well as § 25.1419, contain requirements pertinent to protection from icing hazards. There is, therefore, merit to grouping the requirements in one section. The FAA does note, however, that present § 25.1419 contains test requirements that are applicable only if certification with ice protection provisions is desired. Section 25.1455, on the other hand, requires means to prevent the formation of hazardous quantities of ice on the airplane as a result of drainage regardless of whether certification with ice protection provisions is desired and whether the airplane is, in turn, approved for operation in icing conditions. Similarly, § 25.1403 requires wing icing detection lights unless operations at night in known or forecast icing conditions are prohibited. Section 25.1403 is, therefore not related to certification for daytime operation with ice protection provisions. In view of these circumstances, Proposals 78 and 88, and this aspect of this proposal, are withdrawn.

Two commenters suggest that minor editorial changes should be made to proposed § 25.1419(b)(2) for consistency with AC 20-73. One of the two notes that the term "* * * as found necessary * * *" could be incorrectly interpreted to apply to all of the testing required by proposed § 25.1419(b)(2) and not just to "* * * one or more of the following tests * * *" Accordingly, this paragraph is revised to read "* * * must be flight tested in the various operational configurations in measured natural atmospheric icing conditions and, as found necessary, by one or more of the following means * * *."

One commenter objects to the proposed requirement to test the airplane or its components in the various operational configurations. In this regard, the commenter notes that this could lead to conducting natural icing tests over a range of airplane and engine speeds, flight attitudes, altitudes, flap settings, etc. The commenter contends that the present wording of § 25.1419 allows flexibility in demonstrating only the most critical airplane operational configurations. The proposed wording does not reduce the latitude of the rule in this regard; however, the commenter's concern is moot. Due to the widely differing icing conditions that may be encountered in service and the subtle differences in airplane design, it would be extremely difficult to predict the effects of icing that would be experienced with different airplane configurations. Consequently, it is impossible in most instances to predict which configuration will be the most critical from an icing standpoint. Contrary to the commenter's contention, it is generally necessary to conduct icing tests over a range of configurations under the present wording of § 25.1419. The proposed wording does not change the scope of testing required. Instead, it merely clarifies the existing requirement.

One commenter suggests that the requirement of proposed § 25.1419(b)(3) for flightcrew caution indication is unnecessary as system failure indication requirements are adequately covered in § 25.1309(c). The FAA concurs that such indication would be required by current § 25.1309(c) in the absence of a specific rule, such as proposed § 25.1419(b)(3). The general nature of § 25.1309(c), however, introduces a degree of uncertainty as to its applicability to specific airplane systems. It is, therefore, considered appropriate to retain the specific requirement of proposed § 25.1419(b)(3).

Another commenter objects to the proposed requirement for flightcrew caution information because, according to the commenter, it implies that adding an annunciator is the only acceptable means of compliance. Contrary to the commenter's belief, the proposed requirement is for flightcrew caution information, not for a caution light, per se. While the proposed rule does cite a caution light as one means of providing the necessary cautionary information, it would permit other equivalent means of providing this information to the flightcrew.

One commenter suggests that if the "warning when failure occurs" concept is adopted, it should be readily possible to determine, under all lighting conditions, that correct or intended switching has been selected. This determination is accomplished during the evaluation of the cockpit for compliance with current §§ 25.1309, 25.1381, 25.1541, and 25.1543; therefore, no further action is needed in this regard.

Except as noted above, § 25.1416 is removed, and § 25.1419 is amended as proposed.

Proposal 84. As proposed, § 25.1421 would be removed in order to remove a redundancy. In light of the comment received, it appears that the requirements of § 25.1421 are not entirely duplicated by those of § 25.561(b)(3). This proposal is, therefore, withdrawn.

Proposal 85. No comments concerning this specific proposal were received; however, it is related to Proposal 58. In light of the disposition of that proposal, § 25.1433 is amended by removing § 25.1433 (b) and (c) as proposed.

Proposal 86. As proposed, the provisions of § 25.1435(a)(2) pertaining to crew indication of hydraulic system pressure and quantity would be deleted because such requirements are covered by the provisions of § 25.1309. In addition, the provisions of § 25.1435(a)(4) (i) and (ii), which presently establish hydraulic system pressure limits expressed in terms of pump discharge pressure, would be replaced with a requirement that limits be established to meet the safety requirements of § 25.1309. Other changes would also be made to clarify this section.

Several commenters disagreed with the proposed deletion of § 25.1435(a)(2), noting that there is no requirement for indication of normal system pressure or quantity in § 25.1309. One commenter

believes that this deletion would be inconsistent with the retention of similar requirements for electrical systems.

As discussed in the preamble to Amendment 25–41 (42 FR 36960; July 18, 1977), Proposal 5–32, the FAA does not consider that pressure and quantity gauges are needed for all hydraulic systems. Indicating means other than gauges, including warning lights, are considered adequate for some hydraulic systems. Generally, indication of normal operation is necessary only for systems for which trends must be monitored by the flightcrew, e.g., fuel quantity and pressure, engine oil temperature and pressure, etc. The warning information required by the provisions of § 25.1309 is, therefore, considered appropriate and adequate for the hydraulic system.

One commenter generally concurs with the proposed changes to § 25.1435, but believes that proposed § 25.1435(b)(1) should be deleted in its entirety. According to the commenter, the test of the complete hydraulic system to 1.5 times the design operating pressure would be unnecessary in view of the requirement in proposed § 25.1435(a)(2) to test each component to 1.5 times the design operating pressure. This comment is beyond the scope of the notice, as it was not proposed to delete this requirement. The FAA does not, however, concur. Proposed § 25.1435(a)(2) contains a design requirement for elements of the hydraulic system. Proposed § 25.1435(b)(1), on the other hand, would require a proof test of the complete system to verify the integrity and function of the complete system. For example, the proof test would verify that deformation would not preclude the system from performing its intended function, that adequate clearance with structural members is maintained and that there are no leaks or weaknesses. One commenter believes that § 25.1435(b)(2)(ii) implies that a test rig must be vibrated in a representative fashion. In this regard, the commenter notes that vibration is normally accounted for on a component qualification basis and by flight experience. The FAA concurs that vibration testing can be completed on a component basis and supplemented with flight test surveys. The FAA does not concur, however, that the proposed wording implies that a test rig must be vibrated.

Another commenter suggests that policy and guidance concerning this section should be published in the form of an AC. The FAA will review this subject to determine whether an AC is warranted.

In view of the above, § 25.1435 is amended as proposed.

Proposal 87. No comments concerning this specific proposal were received; however, it is related to Proposal 58. In light of the disposition of that proposal, § 25.1451 is removed as proposed.

Proposal 88. As proposed, the present requirements of § 25.1455 would be transferred to § 25.1419. This proposal is withdrawn for the reason discussed under Proposal 82 above.

Proposal 89. The only commenter on this proposal to clarify the powerplant limitations of § 25.1521 states that the phrase "* * * and do not exceed the values on which compliance with any other requirements of this part is based" is unnecessary and too general. The commenter further notes that compliance with certain requirements (e.g., § 25.175) is based on less than rated power or thrust. The FAA does not concur with the commenter's assessment of the proposed clarification. The limitations of the powerplant, as installed, have been, by definition, the corresponding limits for which the engines and propellers have been type certificated under parts 33 and 35 of this chapter (or predecessor regulations) or, in the case of derated engine installations, lesser values on which compliance with other requirements of part 25 is based. The use of derated engine installations in transport category airplanes is becoming more prevalent. It is therefore necessary that the basis for establishing powerplant limitations be well understood. The commenter correctly notes that compliance with certain requirements is based on less than rated power or thrust; however, by definition, compliance with those requirements would have no bearing on compliance with proposed § 25.1521(a). The same commenter recommends the use of the phrase "* * * must be established * * *" in lieu of the phrase "* * * established * * *" in proposed § 25.1521 (b) and (c). The FAA concurs that the former phrase is preferable. Except for this change, § 25.1521 is revised as proposed.

Proposal 90. The only commenter on this proposal is in support of the proposed change to clarify the requirements for APU limitations. Section 25.1522 is, therefore, amended as proposed.

Proposal 91. There were no comments on this proposal within the scope of the notice. Section 25.1533 is, therefore, revised to correct an existing editorial error as proposed.

Proposal 92. No comments were received on this proposal concerning the visibility of instrument markings. Section 25.1543 is, therefore, revised as proposed.

Proposal 93. No comments were received concerning this proposal. Section 25.1551 is, therefore, revised to clarify the requirements for oil quantity indication as proposed.

Proposal 94. No adverse comments were received concerning this proposal to transfer the requirement for marking the augmentation system tank filler openings from § 25.945 to § 25.1557. Section 25.1557 is, therefore, amended as proposed.

Proposal. 95. Under this proposal, § 25.1581 would be amended to specify that the Airplane Flight Manual must contain any limitation established as a condition of compliance with the applicable noise standards of part 36 of this chapter. The sole commenter recommends insertion of the word "airworthiness" between "any" and "limitation," asserting that the insertion would clearly delineate other aspects of noise findings from part 25 certification. The FAA does not concur with this recommendation because it would negate the intent of the proposal. The limitations in question are those established for noise certification purposes, not those established for airworthiness.

Since the time Notice 84–21 was issued, it has been noted that § 36.1581 also specifies that the Airplane Flight Manual (AFM) must also contain procedures and other information approved under § 36.1501. Section 25.1581 is, therefore, amended as proposed, except that paragraph(a)(3) reads, "Any limitation, procedure, or other information established * * *," for consistency with § 36.1581. This addition presents no additional burden as § 36.1581 already contains the same requirement.

Proposal 96. As proposed, § 25.1583 would be amended to add a reference to § 25.1522 in § 25.1583(b)(1). In addition, § 25.1583(b)(3), which contains the requirement to furnish information concerning instrument markings in the AFM would be removed; and § 25.1583(f) would be revised to delete the requirement to explain the altitude limiting factors in the AFM. The sole commenter believes that it is necessary to furnish information concerning instrument markings in the AFM so that the pilot will have access to such information. The FAA concurs, and § 25.1583(b)(3) is retained accordingly. Except for the retention of § 25.1583(b)(3), § 25.1583 is amended as proposed.

Proposal 97. As discussed in Notice 84–21, the parenthetical phrase, "* * * including §§ 25.115, 25.123, and 25.125 for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable," presently contained in § 25.1587(b) has created confusion because some of the items cited are inconsistent with those mentioned in the specified sections. The parenthetical phrase would, therefore, be deleted. The sole commenter objects to this proposed deletion and asserts that, although there may be confusion, the parameters listed are legitimate performance criteria. The FAA concurs, and paragraph (b) is amended to exclude only the reference to particular sections.

Proposal 98. As proposed, the test criteria presently contained in §§ 25.853, 25.855, and 25.1359 would be transferred to appendix F for editorial improvement and accuracy. In addition, the term "acrylic" would be replaced by the generic term "clear plastic." One commenter recommends extensive changes to appendix F to reflect current industry practices and standards. While these recommendations may have merit, they go beyond the scope of the notice and cannot be considered at this time. They will, however, be considered for future rulemaking action. Another commenter states that a sentence in proposed appendix F is redundant; however, the cited location of the redundancy does not exist in the text of the proposal. It is also noted that appendix F was redesignated as appendix F, part I, subsequent to issuance of Notice 84–21. Appendix F, part I, is, therefore, amended as proposed.

Proposal 99. No comments were received concerning this proposal. Appendix G is, therefore, amended to correct an error as proposed.

Proposal 100. Subsequent to issuance of Notice 84–21, emergency evacuation demonstrations became the subject of considerable public interest. As a result, a public technical conference on that subject was held by the FAA in Seattle, Washington, on September 3 through 6, 1985. In light of the further study being given to emergency evacuation demonstrations, any substantive changes to the requirements for emergency evacuation demonstration will be deferred for future rulemaking action. The existing test criteria and procedures are, however, transferred from § 25.803 to new appendix J, as proposed, for editing improvement. (Subsequent to the issuance of Notice 84–21, Amendment 25–62 was adopted to include standards for automatic takeoff thrust control systems. Because those standards became appendix I, the standards for evacuation demonstrations have been redesignated appendix J accordingly.)

Correction of miscellaneous editing and typographical errors. Since the time Notice 84–21 was issued, a number of editing and typographical errors have been brought to the attention of the FAA.

Prior to Amendment 25–38, the performance requirements for reciprocating engine-powered airplanes were contained in §§ 25.45 through 25.75. With the adoption of that amendment, those sections were removed, and the performance requirements for reciprocating engine-powered airplanes were combined with those for turbine engine-powered airplanes contained in §§ 25.101 through 25.125. Although § 25.49(c)(2)(i) no longer exists, § 25.145 erroneously refers to that section as well as the correctly referenced § 25.103(b)(1). Similarly, § 25.729 erroneously refers to "* * * when the wing flaps are extended beyond the maximum approach position determined under § 25.67(e) * * *." (Actually, the reference was inaccurate prior to Amendment 25–38, as well, because the maximum approach flap position was used for compliance with, not determined by, § 25.67(e).) As these are corrections and the substance of the changes has already been offered for public comment in conjunction with Amendment 25–38, § 25.145 and § 25.729 are amended to delete the references to § 25.49 and § 25.67, respectively.

At the time Amendment 25–57 (49 FR 6848; February 23, 1984) was adopted, paragraphs (h) and (i) of § 25.1001 were redesignated (e) and (f), respectively. Due to an inadvertent error, an existing reference in § 25.343(a) to § 25.1001 (e) and (f) was not changed to conform to the redesignation. This error is corrected accordingly.

In some printings of paragraph (b) of § 25.351, the air density is erroneously denoted by the lower case letter "p" in lieu of the Greek letter "rho." In some printings of this paragraph, the superscript "2" has been omitted from the expression

$$\frac{\text{"(K)"}}{\text{"(It)"}}$$

in the formula for lateral mass ratio. In addition, the word "ration" incorrectly appears in lieu of the word "ratio." These typographical errors in § 25.351 are corrected accordingly.

Regulatory Evaluation

This Regulatory Evaluation analyzes the cost and benefit of the amendments. A more detailed Regulatory Evaluation has been placed in the docket. The majority of the amendments contain numerous changes to clarify rules that have been shown to be confusing, to correct editing errors, to reflect current terminology, and to update the rules to reflect actual certification practices. The administrative savings associated with such clarifications cannot be readily determined and benefits are not estimated. There are nine amendments, addressed below, which relieve manufacturers of certain costly current requirements. None of the amendments impose additional costs. As discussed below, in some cases the benefits are not quantifiable. The total benefit of all the changes is more than $100,000 for type certification of smaller transport category airplanes and exceeds $400,000 for type certification of larger transport category airplanes.

Section 25.21 Proof of Compliance

The change to § 25.21 deletes current § 25.21(b) and changes § 25.21(d) to delete specific tolerances specified in the current regulation. Section 25.21(b) is to be deleted to simplify the regulation. It has no applicability to existing or envisioned airplanes, and it incorrectly implies that specific testing is required to meet the conditions of the section.

Benefits

The FAA does not require the tests that § 25.21(b) might be interpreted to require. Thus, there is no specific test eliminated by this portion of the amendment.

Section 25.21(d) is changed to make it more objective. This may generate savings in future applications because placing the specific tolerance into advisory circular material provides for more flexibility in establishing a specific test program. Such flexibility will doubtless make future certification test programs more efficient and therefore less costly.

Based on FAA field estimates, the future savings would involve approximately two hours of airplane flight test time, and about two personweeks of associated analyses and reporting. The value of flight test time varies greatly with the size and type of airplanes being certificated. FAA field estimates set the approximate range as between $20,000 per hour for smaller turbopropeller-driven or business jet airplanes to $100,000 for larger turbojet airplanes. In addition to flight test time, this proposal involves a saving of

engineering time for reduced analysis and test reporting. The FAA estimates an average engineer's daily salary and overhead at $400, or approximately $4,000 for the two-person weeks of time saved. The range of total saving, therefore, is from $44,000 to $204,000, depending on the size of the airplane. This saving occurs during each certification program.

Section 25.177 Static lateral-directional stability

This amendment to § 25.177 clarifies and simplifies the regulations involving certain stability testing. The purpose of the amendment is to relieve certain test burdens, and simplify the current regulation. The practical impact of the amendment is a change in the test procedures for each Part 25 certification approval program. There will be reduced airplane test time, because the amendment will enable the applicants to restructure their stability test programs. The value of potential savings is based on a reduction in airplane test time of approximately 2 hours. Additionally, an estimated two weeks of engineering time would be eliminated because of reduced need for analysis and test reporting. Based on estimates discussed above, the amendment would save between $40,000 and $200,000 of the cost of airplane test time in each certification program. The two weeks of additional engineering time is valued at an estimated $4,000 based on the same assumptions as in the discussion above.

Section 25.181 Dynamic stability

This amendment to § 25.181 relieves applicants from having to test between stalling speed and 1.2 times stalling speed. The purpose of the amendment is to eliminate one or two specific conditions and thus release the test airplane for other tests. It is anticipated that the equivalent of 10 minutes of test time will be saved. Using the range established above for an hour of test time, the benefit for each certification program will be in the range of $3,300 for smaller airplanes to $16,700 for larger airplanes.

Section 25.205 Stalls; Critical engine inoperative

This amendment deletes § 25.205, which requires demonstration of stall recovery with the critical engine inoperative. The purpose of the amendment is to reduce the testing required. The practical impact of the amendment is to eliminate approximately one hour of test time. In addition, the change would reduce engineering time by eliminating an estimated two weeks of analysis and test reporting. Based on the estimates discussed above under § 25.21, adopting this change would save between $20,000 and $100,000 for airplane test time in a certification program, and $4,000 in engineering time.

Section 25.251 Vibration and buffeting

This amendment to § 25.251 relieves certain applicants from particular test burdens. The practical impact of the amendment is to eliminate a test program for airplanes which fit the characteristics outlined. Certain turbopropeller-driven airplanes and slower turbojet-powered airplanes, for example, would have a simpler test program under the amendment. The previously required test program is not justified for those airplanes, as the required tests have not been found critical. This amendment could save up to five hours of flight testing, and four weeks of associated engineering time for analysis and reporting. Using the factors developed above, the airplane test time is valued at up to $100,000. This analysis assumes that the airplane would probably be a smaller airplane. The engineering time is valued at $8,000. These savings apply to each certification program for affected airplanes.

Section 25.571 Damage-tolerance and fatigue evaluation of structure

There are four changes to § 25.571. One is editorial, two are clarifying changes that will not cause any additional costs to be incurred, and one is relieving an impracticable test.

The change to the heading of § 25.571(b) is editorial only.

The change to § 25.571(b)(2) is a clarification of the present rule. While this clarification appears to add conditions which must be met for damage-tolerance, any such testing is at no cost, since it can be accomplished at the same time as other damage-tolerance evaluation. Further, the FAA expects that there should be no design-cost difference resulting from this requirement.

The change to § 25.571(e)(1) clarifies the requirements of the bird impact test of the present rule. Confusion exists as a result of § 91.70(a) of the FAR, which limits operational speed to 250 knots within the continental U.S. Section 91.70(a) does not apply to operations outside the continental U.S., and the FAA has interpreted the current rule as meaning cruise velocity at sea level. The test criteria are similar, and it is expected that no redesign or testing changes will be required as a result of this proposal.

Service experience has shown compliance with a requirement for propeller-driven airplanes to be impossible. As a result of the granting of exemptions for good cause, no manufacturer has, in fact, been required to show compliance with the current requirement. The safety of propeller airplanes is not diminished, however, as a more practical means of compliance is required by new § 25.905(d). The benefits of the proposal are not quantifiable because the FAA cannot predict how many certification programs there will be for transport category propeller-driven airplanes.

Section 25.723 Shock, absorption tests

This amendment to § 25.723 allows the use of analysis in lieu of testing in more instances when there are changes in landing gears and in takeoff and landing weights. The purpose of the change is to relieve a regulatory burden and clarify the intent of the rule. Because of the use of the phrase "identical energy absorption characteristics" in the current rule, some testing could be required when increases are sought in previously approved takeoff and landing weights. The amendment allows for greater use of analysis in lieu of testing. In practice, considerable analysis is allowed today, so there is no quantifiable saving associated with the proposal. However, if it saves a future landing gear retest program, the potential savings are considerable.

Section 25.733 Tires

This amendment to § 25.733 deletes the requirement to consider the effects of inertia in tire ratings. The purpose of the change is to relieve a regulatory burden. For example, when engine thrust ratings are changed, an analysis must be completed under present regulations to evaluate the impact the change might have on tire ratings. Experience has shown that this impact is not significant. The relief from preparing an analysis saves approximately one day of engineering time whenever engine thrust ratings are increased. This is approximately $400, using the labor rate developed above.

Section 25.773 Pilot compartment view

This amendment to § 25.773 clarifies the current regulation and allows an alternative means of compliance with the requirement for an openable window. The purpose of the amendment is to relieve a current burden, and clarify the rules. There is no impact as a result of the change to § 25.773(b)(1)(ii) since this is the present certification

practice today. The change to § 25.733(b)(2) provides alternative means of achieving the objective of a clear view for the pilot under adverse conditions. Such alternative means have been approved as equivalent safety findings under the provision of § 21.21 in recent certification programs. Generally, these alternative means are additional windows which provide a clear view for the flight pilot and which, because of their design, will not be affected by severe weather situations, such as hailstorms. While hailstorms, for example, may fracture a forward-facing windshield, side windows are not harmed by hail. The potential benefit associated with this relief is considerable, and could amount to over $200,000 over the production life of a large transport category airplane. Not only is design and engineering complex for an openable window, but there are recurring production costs with each airplane. Pressure seals, special latching devices and waterproofing must all be incorporated in design and production of such openable windows. Also, there are occasional maintenance problems associated with openable windows which are eliminated with an alternative means of compliance. The actual benefit associated with this change is hypothetical, since equivalency has been granted in recent certification programs. However, it is not unreasonable to estimate that use of alternate means of compliance could easily save at least $200,000 over the production life of a large transport category airplane. This is a very general estimate covering both engineering and production costs.

Discussion of Comments

There were no comments which directly addressed the economic evaluation in the NPRM or the Regulatory Evaluation placed in the docket. Nor were there any comments relating to the Regulatory Flexibility Determination. In addressing each of the proposals there were some comments made relating to costs and these have been addressed in previous sections which discussed the comments relating to each of the proposals.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The Act requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities. Since the Act applies to U.S. entities, only U.S. manufacturers of transport category airplanes will be affected.

In the United States, there are two manufacturers that specialize in commercial transport category airplanes, The Boeing Company and McDonnell Douglas Corporation. In addition, there are manufacturers that specialize in the manufacture of other transport category airplanes, such as those designed for executive transportation. These are Cessna Aircraft Corporation, Beech Aircraft Corporation, Gulfstream American Corporation and Gates Learjet Corporation.

The FAA size threshold for a determination of a small entity for U.S. airplane manufacturers is 75 employees; any manufacturer with more than 75 employees is considered not to be a small entity. Because none of the U.S. manufacturers of transport category airplanes is a small entity, this final rule will have no impact on any manufacturer that is a "small entity.

Because this final rule will not have a "significant economic impact on a substantial number of small entities, no review is required in this regard by the Act.

International Trade Impact Assessment

This rule is not expected to have an adverse impact on the trade opportunities of either U.S. manufacturers of transport category airplanes doing business abroad or foreign aircraft manufacturers doing business in the United States. Since the certification rules are applicable to both foreign and domestic manufacturers, which sell their products in the United States, there will be no competitive trade advantage to either.

Federalism Implications

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

Conclusion

Because the regulations adopted herein are not expected to result in significant costs, the FAA has determined that this final rule is not major as defined in Executive Order 12291. For the same reason and because this is an issue that has not prompted a great deal of public concern, this final 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 rulemaking, it is certified, under the criteria of the Regulatory Flexibility Act, that this final rule will not have a significant economic impact, positive or negative on a substantial number of small entities. The regulatory evaluation prepared for this final rule remains has been placed in the docket. A copy of this evaluation may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety, Tires.

Adoption of the Amendment

Accordingly, part 25 of the Federal Aviation Regulations (FAR) (14 CFR part 25) is amended as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 49 CFR 1.47(a).

2. By revising § 25.2 to read as follows:

§ 25.2 Special retroactive requirements.

The following special retroactive requirements are applicable to an airplane for which the regulations referenced in the type certificate predate the sections specified below—

(a) Irrespective of the date of application, each applicant for a supplemental type certificate (or an amendment to a type certificate) involving an increase in passenger seating capacity to a total greater than that for which the airplane has been type certificated must show that the airplane concerned meets the requirements of:

(1) Sections 25.721(d), 25.783(g), 25.785(c), 25.803(c) (2) through (9), 25.803 (d) and (e), 25.807 (a), (c), and (d), 25.809 (f) and (h), 25.811, 25.812, 25.813 (a), (b), and (c), 25.815, 25.817 25.853 (a) and (b), 25.855(a), 25.993(f), and 25.1359(c) in effect on October 24, 1967 and

(2) Sections 25.803(b) and 25.803(c)(1) in effect on April 23, 1969.

(b) Irrespective of the date of application, each applicant for a

supplemental type certificate (or an amendment to a type certificate) for an airplane manufactured after October 16, 1987, must show that the airplane meets the requirements of § 25.807(c)(7) in effect on July 24, 1989.

(c) Compliance with subsequent revisions to the sections specified in paragraph (a) or (b) above may be elected in accordance with § 21.101(a)(2) of this chapter or may be required in accordance with § 21.101(b) of this chapter.

3. By amending § 25.21 by removing paragraph (b) and marking it "reserved" and revising paragraph (d) to read as follows:

§ 25.21 Proof of compliance.

* * * * *

(b) [Reserved]

* * * * *

(d) Parameters critical for the test being conducted, such as weight, loading (center of gravity and inertia), airspeed, power, and wind, must be maintained within acceptable tolerances of the critical values during flight testing.

* * * * *

4. By amending § 25.29 by revising paragraph (a)(3)(iii) to read as follows:

§ 25.29 Empty weight and corresponding center of gravity.

(a) * * *

(3) * * *

(iii) Other fluids required for normal operation of airplane systems, except potable water, lavatory precharge water, and fluids intended for injection in the engine.

* * * * *

5. By amending § 25.33 by revising paragraph (c) to read as follows:

§ 25.33 Propeller speed and pitch limits.

* * * * *

(c) The means used to limit the low pitch position of the propeller blades must be set so that the engine does not exceed 103 percent of the maximum allowable engine rpm or 99 percent of an approved maximum overspeed, whichever is greater, with—

(1) The propeller blades at the low pitch limit and governor inoperative;

(2) The airplane stationary under standard atmospheric conditions with no wind; and

(3) The engines operating at the takeoff manifold pressure limit for reciprocating engine powered airplanes or the maximum takeoff torque limit for turbopropeller engine-powered airplanes.

§ 25.111 [Amended]

6. By amending § 25.111, paragraph (a)(1), by removing the regulatory reference "§ 25.101(c)" and inserting "§ 25.101(f)" in its place.

§ 25.125 [Amended]

7. By amending § 25.125, paragraph (a)(2), by removing the words "steady gliding" and inserting the word "stabilized" in their place.

8. By amending § 25.145 by revising paragraphs (a) and (a)(1) to read as follows:

§ 25.145 Longitudinal control.

(a) It must be possible at any speed between the trim speed prescribed in § 25.103(b)(1) and V_{s1} to pitch the nose downward so that the acceleration to this selected trim speed is prompt with—

(1) The airplane trimmed at the trim speed prescribed in § 25.103(b)(1).

* * * * *

9. By amending § 25.147, by revising paragraph (a) introductory text to read as follows and by removing and reserving paragraph (b)(2):

§ 25.147 Directional and lateral control.

(a) *Directional control; general.* It must be possible, with the wings level, to yaw into the operative engine and to safely make a reasonably sudden change in heading of up to 15 degrees in the direction of the critical inoperative engine. This must be shown at $1.4V_{s1}$ for heading changes up to 15 degrees (except that the heading change at which the rudder pedal force is 150 pounds need not be exceeded), and with—

* * * * *

(b) * * *

(2) [Reserved]

* * * * *

10. By amending § 25.149 by revising paragraph (b), and the introductory text of (e), (f) and (g) to read as follows:

§ 25.149 Minimum control speed.

* * * * *

(b) V_{mc} is the calibrated airspeed at which, when the critical engine is suddenly made inoperative, it is possible to maintain control of the airplane with that engine still inoperative and maintain straight flight with an angle of bank of not more than 5 degrees.

* * * * *

(e) V_{mcg}, the minimum control speed on the ground, is the calibrated airspeed during the takeoff run at which, when the critical engine is suddenly made inoperative, it is possible to maintain control of the airplane using the rudder control alone (without the use of nosewheel steering), as limited by 150 pounds of force, and the lateral control to the extent of keeping the wings level to enable the takeoff to be safely continued using normal piloting skill. In the determination of V_{mcg}, assuming that the path of the airplane accelerating with all engines operating is along the centerline of the runway, its path from the point at which the critical engine is made inoperative to the point at which recovery to a direction parallel to the centerline is completed may not deviate more than 30 feet laterally from the centerline at any point. V_{mcg} must be established with—

* * * * *

(f) V_{mcl}, the minimum control speed during landing approach with all engines operating, is the calibrated airspeed at which, when the critical engine is suddenly made inoperative, it is possible to maintain control of the airplane with that engine still inoperative and maintain straight flight with an angle of bank of not more than 5 degrees. V_{mcl} must be established with—

* * * * *

(g) For airplanes with three or more engines, $V_{mcl\text{-}2}$, the minimum control speed during landing approach with one critical engine inoperative, is the calibrated airspeed at which, when a second critical engine is suddenly made inoperative, it is possible to maintain control of the airplane with both engines still inoperative and maintain straight flight with an angle of bank of not more than 5 degrees. $V_{mcl\text{-}2}$ must be established with—

* * * * *

11. By revising § 25.177 to read as follows:

§ 25.177 Static lateral-directional stability.

(a) [Reserved]

(b) [Reserved]

(c) In straight, steady sideslips, the aileron and rudder control movements and forces must be substantially proportional to the angle of sideslip in a stable sense; and the factor of proportionality must lie between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder is used or a rudder force of 180 pounds is obtained, the rudder pedal forces may not reverse; and increased rudder deflection must be needed for increased angles of sideslip. Compliance with this paragraph must be demonstrated for all landing gear and flap positions and symmetrical power conditions at speeds from 1.2 V_{s1} to V_{fe}, V_{le}, or V_{fc}/M_{fc}, as appropriate.

(d) The rudder gradients must meet the requirements of paragraph (c) at speeds between V_{mo}/M_{mo} and V_{fc}/M_{fc} except that the dihedral effect (aileron deflection opposite the corresponding rudder input) may be negative provided the divergence is gradual, easily recognized, and easily controlled by the pilot.

§ 25.181 [Amended]

12. By amending § 25.181, paragraphs (a) and (b), by removing the words "stalling speed" and inserting "1.2 V_s" in their place.

§ 25.205 [Removed]

13. By removing § 25.205.

14. By amending § 25.251 by revising paragraph (e) to read as follows:

§ 25.251 Vibration and buffeting.

* * * * *

(e) For an airplane with M_D greater than .6 or with a maximum operating altitude greater than 25,000 feet, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined with the airplane in the cruise configuration for the ranges of airspeed or Mach number, weight, and altitude for which the airplane is to be certificated. The envelopes of load factor, speed, altitude, and weight must provide a sufficient range of speeds and load factors for normal operations. Probable inadvertent excursions beyond the boundaries of the buffet onset envelopes may not result in unsafe conditions.

15. By amending § 25.253 by revising paragraph (a)(3) to read as follows:

§ 25.253 High-speed characteristics.

(a) * * *

(3) With the airplane trimmed at any speed up to V_{MO}/M_{MO}, there must be no reversal of the response to control input about any axis at any speed up to V_{DF}/M_{DF}. Any tendency to pitch, roll, or yaw must be mild and readily controllable, using normal piloting techniques. When the airplane is trimmed at V_{MO}/M_{MO}, the slope of the elevator control force versus speed curve need not be stable at speeds greater than V_{FC}/M_{FC}, but there must be a push force at all speeds up to V_{DF}/M_{DF} and there must be no sudden or excessive reduction of elevator control force as V_{DF}/M_{DF} is reached.

* * * * *

§ 25.307 [Amended]

16. By amending § 25.307 by removing paragraphs (b) and (c) and marking them [Reserved].

§ 25.331 [Amended]

17. By amending § 25.331, paragraph(c)(2)(i), by removing the expression "A to D" following the word "Points" and inserting the expression "A_1 to D_1" in its place and, paragraph (c)(2)(ii), by removing the expression "A to D" following the word "Points" and inserting the expression. "A^2 to D^2" in its place.

18. By amending § 25.341, by revising paragraph (b)(1) as follows, and by redesignating existing paragraph (b)(3) as paragraph (c) and revising the text as follows:

§ 25.341 Gust loads.

* * * * *

(b) * * *

(1) The shape of the gust is

$$U = \frac{U_{de}}{2}\left(1-\cos\frac{2\pi s}{25C}\right)$$

where—

s = distance penetrated into gust (ft);
C = mean geometric chord of wing (ft); and
U_{de} = derived gust velocity referred to in paragraph (a) (fps).

(2) * * *

(c) In the absence of a more rational analysis, the gust load factors must be computed as follows:

$$n = 1 + \frac{K_g U_{de} V a}{498\,(W/S)}$$

where—

$$K_g = \frac{0.88\mu_g}{5.3+\mu_g} = \text{gust alleviation factor;}$$

$$\mu_g = \frac{2(W/S)}{\rho \bar{C}_{ag}} = \text{airplane mass ratio:}$$

U_{de} = derived gust velocities referred to in paragraph (a) (fps);
ρ = density of air (slugs cu. ft.);
W/S = wing loading (psf);
$\bar{C}$ = mean geometric chord (ft);
g = acceleration due to gravity (ft/sec²);
V = airplane equivalent speed (knots); and
a = slope of the airplane normal force coefficient curve C_{NA} per radian if the gust loads are applied to the wings and horizontal method. The wing lift curve slope C_{AL} per radian may be used when the gust load is applied to the wings only and the horizontal tail gust loads are treated as a separate condition.

§ 25.343 [Amended]

19. By amending § 25.343, paragraph (a), by removing the reference to § 25.1001 (h) and (i) and inserting a reference to § 25.1001 (e) and (f) in its place.

20. By amending § 25.345 by revising paragraph (c)(1) to read as follows:

§ 25.345 High lift devices.

* * * * *

(c) * * *

(1) Maneuvering to a positive limit load factor as prescribed in § 25.337(b); and

* * * * *

21. By amending § 25.351, by revising paragraph (b) as follows:

§ 25.351 Yawing conditions.

* * * * *

(b) *Lateral gusts.* The airplane is assumed to encounter derived gusts normal to the plane of symmetry while in unaccelerated flight. The derived gusts and airplane speeds corresponding to conditions B' through J' (in § 25.333(c)) (as determined by §§ 25.341 and 25.345(a)(2) or § 25.345(c)(2)) must be investigated. The shape of the gust must be as specified in § 25.341. In the absence of a rational investigation of the airplane's response to a gust, the gust loading on the vertical tail surfaces must be computed as follows:

$$L_t = \frac{K_{gg} U_{de} V_{ag} S_t}{498}$$

where—

L_t = vertical tail load (lbs.);

$$K_{gg} = \frac{0.88\mu_{gg}}{5.3+\mu_{gg}} = \text{gust alleviation factor;}$$

$$\mu_{gg} = \frac{=_g 12W}{\rho \overline{C_t} g a_t S_t} \left(\frac{K_z}{l_t}\right)^2 = \text{lateral mass ratio;}$$

U_{de} = derived gust velocity (fps);
ρ = air density (slugs/cu. ft.);
W = airplane weight (lbs.);
S_t = area of vertical tail (ft.^{2});
$\overline{C_t}$ = mean geometric chord of vertical surface (ft.);
a_t = lift curve slope of vertical tail (per radian);
K = radius of gyration in yaw (ft).;
l_t = distance from airplane c.g., to lift center of vertical surface (ft.);
g = acceleration due to gravity (ft./sec.^{2}): and
V = airplane equivalent speed (knots).

22. By amending § 25.361 by revising paragraphs (a) introductory text, (a)(2) and (c) introductory text to read as follows:

§ 25.361 Engine torque.

(a) Each engine mount and its supporting structure must be designed for the effects of—

(1) * * *

(2) A limit torque corresponding to the maximum continuous power and propeller speed, acting simultaneously with the limit loads from flight condition A of § 25.333(b); and

(3) * * *

* * * * *

(c) The limit engine torque to be considered under paragraph (a) of this section must be obtained by multiplying mean torque for the specified power and speed by a factor of—

* * * * *

§ 25.365 [Amended]

23. By amending the introductory sentence of § 25.365 by removing the words "for occupants."

24. By amending § 25.373 by revising paragraph (a), to read as follows:

§ 25.373 Speed control devices.

* * * * *

(a) The airplane must be designed for the symmetrical maneuvers and gusts prescribed in §§ 25.333, 25.337, and 25.341, and the yawing maneuvers and lateral gusts in § 25.351, at each setting and the maximum speed associated with that setting; and

* * * * *

25. By amending § 25.395 by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 25.395 Control system.

* * * * *

(b) The system limit loads, except the loads resulting from ground gusts, need not exceed the loads that can be produced by the pilot (or pilots) and by automatic or power devices operating the controls.

(c) The loads must not be less than those resulting from application of the minimum forces prescribed in § 25.397(c).

§ 25.397 [Amended]

26. By amending Footnote 3 to § 25.397 by removing the word "most" and inserting the words "must be" in its place.

27. By amending § 25.415 by revising paragraph (a)(2), to read as follows:

§ 25.415 Ground gust conditions.

(a) * * *

(2) The control system stops nearest the surfaces, the control system locks, and the parts of the systems (if any) between these stops and locks and the control surface horns, must be designed for limit hinge moments H obtained from the formula, $H = KcS_s q$, where—

H = limit hinge moment (ft. lbs.);
c = mean chord of the control surface aft of the hinge line (ft.);
S_s = area of the control surface aft of the hinge line (sq. ft.);
q = dynamic pressure (p.s.f.) based on a design speed not less than $14.6(W/S)^{1/2} + 14.6$ (f.p.s.), except that the design speed need not exceed 88 f.p.s. (W/S is wing loading based on maximum airplane weight and wing area); and
K = limit hinge moment factor for ground gusts derived in paragraph (b) of this section.

* * * * *

§ 25.459 [Amended]

28. By amending § 25.459 by inserting the word "slats," after the word "slots," and before the word "and spoilers."

29. By amending § 25.571 by revising the heading of paragraph (b) and by revising paragraphs (b)(2), (e)(1), and (e)(2) to read as follows:

§ 25.571 Damage-tolerance and fatigue evaluation of structure.

* * * * *

(b) *Damage-tolerance evaluation.* * * *

(2) The limit gust condition specified in §§ 25.305(d), 25.341, and 25.351(b) at the specified speeds up to V_c, and in § 25.345.

* * * * *

(e) * * *

(1) Impact with a 4-pound bird at V_c at sea level to 8,000 feet;

(2) Uncontained fan blade impact;

* * * * *

30. By amending § 25.613 by revising paragraphs (b) and (e) to read as follows:

§ 25.613 Material strength properties and design values.

* * * * *

(b) Design values must be chosen to minimize the probability of structural failures due to material variability. Except as provided in paragraph (e) of this section, compliance with this paragraph must be shown by selecting design values which assure material strength with the following probability:

(1) Where applied loads are eventually distributed through a single member within an assembly, the failure of which would result in loss of structural integrity of the component, 99 percent probability with 95 percent confidence.

(2) For redundant structure, in which the failure of individual elements would result in applied loads being safely distributed to other load carrying members, 90 percent probability with 95 percent confidence.

* * * * *

(e) Greater design values may be used if a "premium selection" of the material is made in which a specimen of each individual item is tested before use to determine that the actual strength properties of that particular item will equal or exceed those used in design.

§ 25.615 [Removed]

31. By removing § 25.615.

32. By amending § 25.625, by revising paragraph (d), to read as follows:

§ 25.625 Fitting factors.

* * * * *

(d) For each seat, berth, safety belt, and harness, the fitting factor specified in § 25.785(f)(3) applies.

33. By amending § 25.629 by revising paragraphs (b)(1) and (d)(1)(ii) to read as follows:

§ 25.629 Flutter, deformation, and fail-safe criteria.

* * * * *

(b) * * *

(1) The airplane must be designed to be free from flutter and divergence (unstable structural distortion due to aerodynamic loading) for all combinations of altitude and speed encompassed by the V_D/M_D versus altitude envelope enlarged at all points by an increase of 20 percent in equivalent airspeed at both constant Mach number and constant altitude, except that the envelope may be limited to a maximum Mach number of 1.0 when M is less than 1.0 at all design altitudes and the following is established—

* * * * *

(d) * * *

(1) * * *

(ii) Any other combination of failures, malfunctions, or adverse conditions not shown to be extremely improbable.

* * * * *

§ 25.673 [Removed]

34. By removing § 25.673.

35. By revising § 25.693 to read as follows:

§ 25.693 Joints.

Control system joints (in push-pull systems) that are subject to angular motion, except those in ball and roller bearing systems, must have a special factor of safety of not less than 3.33 with respect to the ultimate bearing strength of the softest material used as a bearing. This factor may be reduced to 2.0 for joints in cable control systems. For ball or roller bearings, the approved ratings may not be exceeded.

36. By revising § 25.701 to read as follows:

§ 25.701 Flap and slat interconnection.

(a) Unless the airplane has safe flight characteristics with the flaps or slats retracted on one side and extended on the other, the motion of flaps or slats on opposite sides of the plane of symmetry must be synchronized by a mechanical interconnection or approved equivalent means.

(b) If a wing flap or slat interconnection or equivalent means is used, it must be designed to account for the applicable unsymmetrical loads, including those resulting from flight with the engines on one side of the plane of symmetry inoperative and the remaining engines at takeoff power.

(c) For airplanes with flaps or slats that are not subjected to slipstream conditions, the structure must be designed for the loads imposed when the wing flaps or slats on one side are carrying the most severe load occurring in the prescribed symmetrical conditions and those on the other side are carrying not more than 80 percent of that load.

(d) The interconnection must be designed for the loads resulting when interconnected flap or slat surfaces on one side of the plane of symmetry are jammed and immovable while the surfaces on the other side are free to move and the full power of the surface actuating system is applied.

37. By amending § 25.723 by revising paragraph (a) to read as follows:

§ 25.723 Shock absorption tests.

(a) It must be shown that the limit load factors selected for design in accordance with § 25.473 for takeoff and landing weights, respectively, will not be exceeded. This must be shown by energy absorption tests except that analyses based on earlier tests conducted on the same basic landing gear system which has similar energy absorption characteristics may be used for increases in previously approved takeoff and landing weights.

* * * * *

38. By amending § 25.729 by revising paragraph (e)(4) to read as follows:

§ 25.729 Retracting mechanism.

* * * * *

(e) * * *

(4) Landplanes must have an aural warning device that will function continuously, when the wing flaps are extended beyond the maximum approach position, if the gear is not fully extended and locked. There must not be a manual shutoff for this warning device. The flap position sensing unit may be installed at any suitable location. The system for this device may use any part of the system (including the aural warning device) for the device required in paragraph (e)(2) of this section.

* * * * *

§ 25.731 [Amended]

39. By amending § 25.731, paragraph (b)(1), by removing the word "takeoff" and inserting the word "maximum" in its place.

40. By amending § 25.733 by revising paragraphs (a)(1), (c), introductory text and (c)(1) to read as follows:

§ 25.733 Tires.

(a) * * *

(1) The loads on the main wheel tire, corresponding to the most critical combination of airplane weight (up to maximum weight) and center of gravity position, and

* * * * *

(c) When a landing gear axle is fitted with more than one wheel and tire assembly, such as dual or dual-tandem, each wheel must be fitted with a suitable tire of proper fit with a speed rating approved by the Administrator that is not exceeded under critical conditions, and with a load rating approved by the Administrator that is not exceeded by—

(1) The loads on each main wheel tire, corresponding to the most critical combination of airplane weight (up to maximum weight) and center of gravity position, when multiplied by a factor of 1.07; and

* * * * *

41. By amending § 25.735 by revising paragraph (b), to read as follows:

§ 25.735 Brakes.

* * * * *

(b) The brake system and associated systems must be designed and constructed so that if any electrical, pneumatic, hydraulic, or mechanical connecting or transmitting element (excluding the operating pedal or handle) fails, or if any single source of hydraulic or other brake operating energy supply is lost, it is possible to bring the airplane to rest under conditions specified in § 25.125, with a mean deceleration during the landing roll of at least 50 percent of that obtained in determining the landing distance as prescribed in that section. Subcomponents within the brake assembly, such as brake drum, shoes, and actuators (or their equivalents), shall be considered as connecting or transmitting elements, unless it is shown that leakage of hydraulic fluid resulting from failure of the sealing elements in these subcomponents within the brake assembly would not reduce the braking effectiveness below that specified in this paragraph.

* * * * *

42. By revising § 25.772 to read as follows:

§ 25.772 Pilot compartment doors.

For an airplane that has a maximum passenger seating configuration of more than 20 seats and that has a lockable door installed between the pilot compartment and the passenger compartment:

(a) The emergency exit configuration must be designed so that neither crewmembers nor passengers need use

that door in order to reach the emergency exits provided for them; and

(b) Means must be provided to enable flight crewmembers to directly enter the passenger compartment from the pilot compartment if the cockpit door becomes jammed.

43. By amending § 25.773, by revising paragraphs (b)(1)(i) and (b)(2), to read as follows:

§ 25.773 Pilot compartment view.

* * * * *

(b) * * *

(1) * * *

(i) Heavy rain at speeds up to 1.6 V_{s1} with lift and drag devices retracted; and

(ii) * * *

(2) The first pilot must have—

(i) A window that is openable under the conditions prescribed in paragraph (b)(1) of this section when the cabin is not pressurized, provides the view specified in that paragraph, and gives sufficient protection from the elements against impairment of the pilot's vision; or

(ii) An alternate means to maintain a clear view under the conditions specified in paragraph (b)(1) of this section, considering the probable damage due to a severe hail encounter.

* * * * *

§ 25.779 [Amended]

44. By amending § 25.779, paragraph (b)(1), by removing the word "Throttles" and inserting the words "Power or thrust" in its place.

45. By amending § 25.781 by revising the chart as follows:

* * * * *

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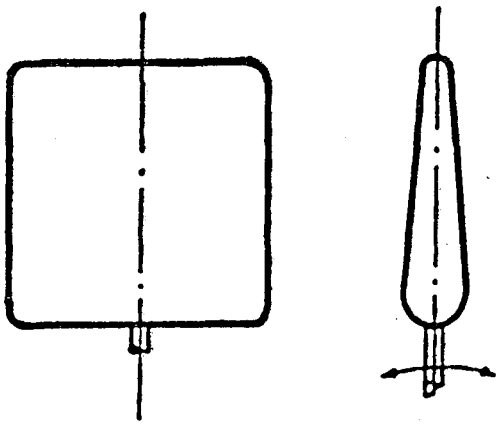
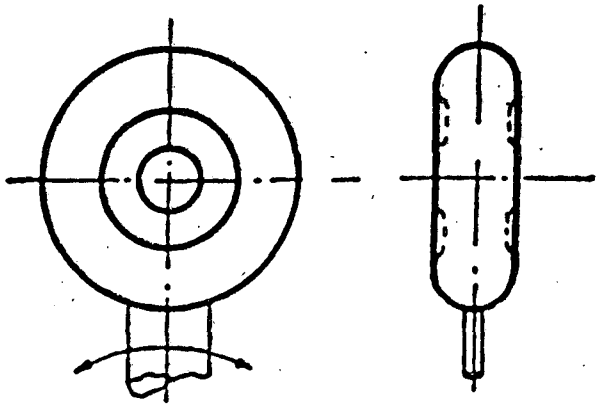
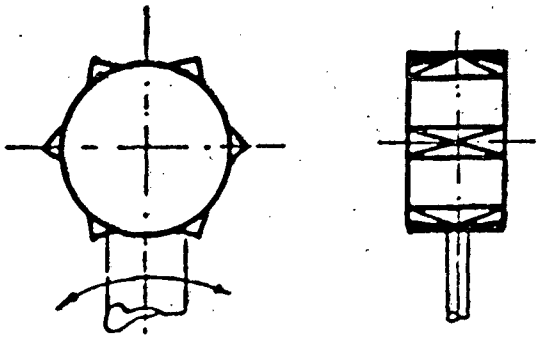


FLAP CONTROL KNOB



LANDING GEAR CONTROL KNOB



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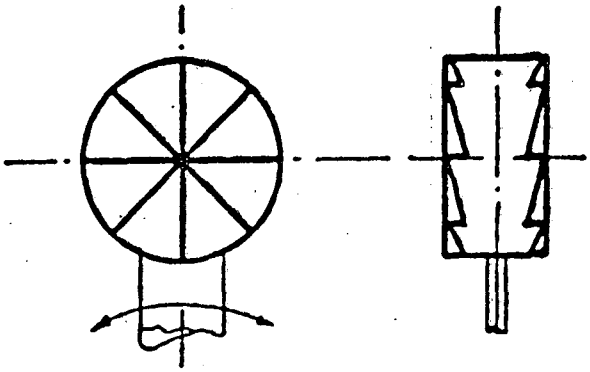
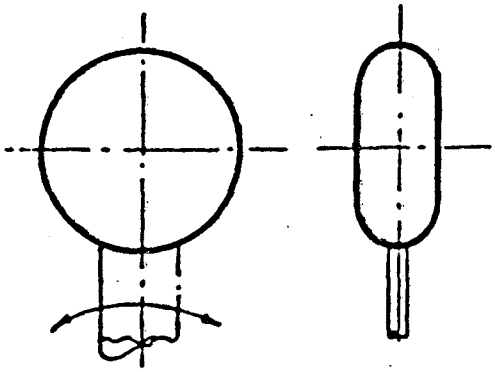
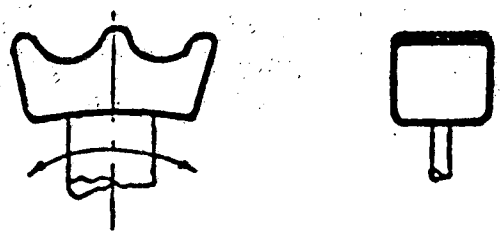


SUPERCHARGER CONTROL KNOB



POWER OR THRUST KNOB



PROPELLER CONTROL KNOB

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46. By amending § 25.783 by revising paragraph (g) to read as follows:

§ 25.783 Doors.

* * * * *

(g) Cargo and service doors not suitable for use as emergency exits need only meet paragraphs (e) and (f) of this section and be safeguarded against opening in flight as a result of mechanical failure or failure of a single structural element.

* * * * *

47. By revising § 25.785 to read as follows:

§ 25.785 Seats, berths, safety belts, and harnesses.

(a) A seat (or berth for a nonambulant person) must be provided for each occupant who has reached his or her second birthday.

(b) Each seat, berth, safety belt, harness, and adjacent part of the airplane at each station designated as occupiable during takeoff and landing must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia forces specified in §§ 25.561 and 25.562.

(c) Each seat or berth must be approved.

(d) Each occupant of a seat that makes more than an 18-degree angle with the vertical plane containing the airplane centerline must be protected from head injury by a safety belt and an energy absorbing rest that will support the arms, shoulders, head, and spine, or by a safety belt and shoulder harness that will prevent the head from contacting any injurious object. Each occupant of any other seat must be protected from head injury by a safety belt and, as appropriate to the type, location, and angle of facing of each seat, by one or more of the following:

(1) A shoulder harness that will prevent the head from contacting any injurious object.

(2) The elimination of any injurious object within striking radius of the head.

(3) An energy absorbing rest that will support the arms, shoulders, head, and spine.

(e) Each berth must be designed so that the forward part has a padded end board, canvas diaphragm, or equivalent means, that can withstand the static load reaction of the occupant when subjected to the forward inertia force specified in § 25.561. Berths must be free from corners and protuberances likely to cause injury to a person occupying the berth during emergency conditions.

(f) Each seat or berth, and its supporting structure, and each safety belt or harness and its anchorage must be designed for an occupant weight of 170 pounds, considering the maximum load factors, inertia forces, and reactions among the occupant, seat, safety belt, and harness for each relevant flight and ground load condition (including the emergency landing conditions prescribed in § 25.561). In addition—

(1) The structural analysis and testing of the seats, berths, and their supporting structures may be determined by assuming that the critical load in the forward, sideward, downward, upward, and rearward directions (as determined from the prescribed flight, ground, and emergency landing conditions) acts separately or using selected combinations of loads if the required strength in each specified direction is substantiated. The forward load factor need not be applied to safety belts for berths.

(2) Each pilot seat must be designed for the reactions resulting from the application of the pilot forces prescribed in § 25.395.

(3) The inertia forces specified in § 25.561 must be multiplied by a factor of 1.33 (instead of the fitting factor prescribed in § 25.625) in determining the strength of the attachment of each seat to the structure and each belt or harness to the seat or structure.

(g) Each seat at a flight deck station must have a restraint system consisting of a combined safety belt and shoulder harness with a single-point release that permits the flight deck occupant, when seated with the restraint system fastened, to perform all of the occupant's necessary flight deck functions. There must be a means to secure each combined restraint system when not in use to prevent interference with the operation of the airplane and with rapid egress in an emergency.

(h) Each seat located in the passenger compartment and designated for use during takeoff and landing by a flight attendant required by the operating rules of this chapter must be:

(1) Near a required floor level emergency exit, except that another location is acceptable if the emergency egress of passengers would be enhanced with that location. A flight attendant seat must be located adjacent to each Type A emergency exit. Other flight attendant seats must be evenly distributed among the required floor level emergency exits to the extent feasible.

(2) To the extent possible, without compromising proximity to a required floor level emergency exit, located to provide a direct view of the cabin area for which the flight attendant is responsible.

(3) Positioned so that the seat will not interfere with the use of a passageway or exit when the seat is not in use.

(4) Located to minimize the probability that occupants would suffer injury by being struck by items dislodged from service areas, stowage compartments, or service equipment.

(5) Either forward or rearward facing with an energy absorbing rest that is designed to support the arms, shoulders, head, and spine.

(6) Equipped with a restraint system consisting of a combined safety belt and shoulder harness unit with a single point release. There must be means to secure each restraint system when not in use to prevent interference with rapid egress in an emergency.

(i) Each safety belt must be equipped with a metal to metal latching device.

(j) If the seat backs do not provide a firm handhold, there must be a handgrip or rail along each aisle to enable persons to steady themselves while using the aisles in moderately rough air.

(k) Each projecting object that would injure persons seated or moving about the airplane in normal flight must be padded.

(l) Each forward observer's seat required by the operating rules must be shown to be suitable for use in conducting the necessary enroute inspection.

48. By revising § 25.791 to read as follows:

§ 25.791 Passenger information signs and placards.

(a) If smoking is to be prohibited, there must be at least one placard so stating that is legible to each person seated in the cabin. If smoking is to be allowed, and if the crew compartment is separated from the passenger compartment, there must be at least one sign notifying when smoking is prohibited. Signs which notify when smoking is prohibited must be operable by a member of the flightcrew and, when illuminated, must be legible under all probable conditions of cabin illumination to each person seated in the cabin.

(b) Signs that notify when seat belts should be fastened and that are installed to comply with the operating rules of this chapter must be operable by a member of the flightcrew and, when illuminated, must be legible under all probable conditions of cabin illumination to each person seated in the cabin.

(c) A placard must be located on or adjacent to the door of each receptacle used for the disposal of flammable waste materials to indicate that use of

the receptacle for disposal of cigarettes, etc., is prohibited.

(d) Lavatories must have "No Smoking" or "No Smoking in Lavatory" placards conspicuously located on or adjacent to each side of the entry door.

(e) Symbols that clearly express the intent of the sign or placard may be used in lieu of letters.

§ 25.801 [Amended]

49. By amending § 25.801, paragraph (a), by removing the regulatory reference "§ 25.807(d)" and inserting "§ 25.807(e)" in its place.

50. By amending § 25.803 by removing paragraphs (b), (d) and (e) and marking them [Reserved], and by revising paragraphs (a) and (c) to read as follows:

§ 25.803 Emergency evacuation.

(a) Each crew and passenger area must have emergency means to allow rapid evacuation in crash landings, with the landing gear extended as well as with the landing gear retracted, considering the possibility of the airplane being on fire.

(b) [Reserved]

(c) For airplanes having a seating capacity of more than 44 passengers, it must be shown that the maximum seating capacity, including the number of crewmembers required by the operating rules for which certification is requested, can be evacuated from the airplane to the ground under simulated emergency conditions within 90 seconds. Compliance with this requirement must be shown by actual demonstration using the test criteria outlined in appendix J of this part unless the Administrator finds that a combination of analysis and testing will provide data equivalent to that which would be obtained by actual demonstration.

(d) [Reserved]

(e) [Reserved]

§ 25.805 [Removed]

51. By removing § 25.805.

52. By revising § 25.807 to read as follows:

§ 25.807 Emergency exits.

(a) *Type.* For the purpose of this part, the types of exits are defined as follows:

(1) *Type I.* This type is a floor level exit with a rectangular opening of not less than 24 inches wide by 48 inches high, with corner radii not greater than one-third the width of the exit.

(2) *Type II.* This type is a rectangular opening of not less than 20 inches wide by 44 inches high, with corner radii not greater than one-third the width of the exit. Type II exits must be floor level exits unless located over the wing, in which case they may not have a step-up inside the airplane of more than 10 inches nor a step-down outside the airplane of more than 17 inches.

(3) *Type III.* This type is a rectangular opening of not less than 20 inches wide by 36 inches high, with corner radii not greater than one-third the width of the exit, and with a step-up inside the airplane of not more than 20 inches. If the exit is located over the wing, the step-down outside the airplane may not exceed 27 inches.

(4) *Type IV.* This type is a rectangular opening of not less than 19 inches wide by 26 inches high, with corner radii not greater than one-third the width of the exit, located over the wing, with a step-up inside the airplane of not more than 29 inches and a step-down outside the airplane of not more than 36 inches.

(5) *Ventral.* This type is an exit from the passenger compartment through the pressure shell and the bottom fuselage skin. The dimensions and physical configuration of this type of exit must allow at least the same rate of egress as a Type I exit with the airplane in the normal ground attitude, with landing gear extended.

(6) *Tail cone.* This type is an aft exit from the passenger compartment through the pressure shell and through an openable cone of the fuselage aft of the pressure shell. The means of opening the tailcone must be simple and obvious and must employ a single operation.

(7) *Type A.* This type is a floor level exit with a rectangular opening of not less than 42 inches wide by 72 inches high with corner radii not greater than one-sixth of the width of the exit.

(b) *Step down distance.* Step down distance, as used in this section, means the actual distance between the bottom of the required opening and a usable foot hold, extending out from the fuselage, that is large enough to be effective without searching by sight or feel.

(c) *Over-sized exits.* Openings larger than those specified in this section, whether or not of rectangular shape, may be used if the specified rectangular opening can be inscribed within the opening and the base of the inscribed rectangular opening meets the specified step-up and step-down heights.

(d) *Passenger emergency exits.* Except as provided in paragraphs (d) (3) through (7) of this section, the minimum number and type of passenger emergency exits is as follows:

(1) For passenger seating configurations of 1 through 299 seats:

Passenger seating configuration (crewmember seats not included)	Emergency exits for each side of the fuselage			
	Type I	Type II	Type III	Type IV
1 through 9				1
10 through 19			1	
20 through 39		1	1	
40 through 79	1		1	
80 through 109	1		2	
110 through 139	2		1	
140 through 179	2		2	

Additional exits are required for passenger seating configurations greater than 179 seats in accordance with the following table:

Additional emergency exits (each side of fuselage)	Increase in passenger seating configuration allowed
Type A	110
Type I	45
Type II	40
Type III	35

(2) For passenger seating configurations greater than 299 seats, each emergency exit in the side of the fuselage must be either a Type A or Type I. A passenger seating configuration of 110 seats is allowed for each pair of Type A exits and a passenger seating configuration of 45 seats is allowed for each pair of Type I exits.

(3) If a passenger ventral or tail cone exit is installed and that exit provides at least the same rate of egress as a Type III exit with the airplane in the most adverse exit opening condition that would result from the collapse of one or more legs of the landing gear, an increase in the passenger seating configuration beyond the limits specified in paragraph (d) (1) or (2) of this section may be allowed as follows:

(i) For a ventral exit, 12 additional passenger seats.

(ii) For a tail cone exit incorporating a floor level opening of not less than 20 inches wide by 60 inches high, with corner radii not greater than one-third the width of the exit, in the pressure shell and incorporating an approved assist means in accordance with § 25.809(h), 25 additional passenger seats.

(iii) For a tail cone exit incorporating an opening in the pressure shell which is at least equivalent to a Type III emergency exit with respect to dimensions, step-up and step-down distance, and with the top of the opening not less than 56 inches from the passenger compartment floor, 15 additional passenger seats.

(4) For airplanes on which the vertical location of the wing does not allow the installation of overwing exits, an exit of at least the dimensions of a Type III exit must be installed instead of each Type IV exit required by subparagraph (1) of this paragraph.

(5) An alternate emergency exit configuration may be approved in lieu of that specified in paragraph (d) (1) or (2) of this section provided the overall evacuation capability is shown to be equal to or greater than that of the specified emergency exit configuration.

(6) The following must also meet the applicable emergency exit requirements of §§ 25.809 through 25.813:

(i) Each emergency exit in the passenger compartment in excess of the minimum number of required emergency exits.

(ii) Any other floor level door or exit that is accessible from the passenger compartment and is as large or larger than a Type II exit, but less than 46 inches wide.

(iii) Any other passenger ventral or tail cone exit.

(7) For an airplane that is required to have more than one passenger emergency exit for each side of the fuselage, no passenger emergency exit shall be more than 60 feet from any adjacent passenger emergency exit on the same side of the same deck of the fuselage, as measured parallel to the airplane's longitudinal axis between the nearest exit edges.

(e) *Ditching emergency exits for passengers.* Ditching emergency exits must be provided in accordance with the following requirements whether or not certification with ditching provisions is requested:

(1) For airplanes that have a passenger seating configuration of nine seats or less, excluding pilots seats, one exit above the waterline in each side of the airplane, meeting at least the dimensions of a Type IV exit.

(2) For airplanes that have a passenger seating configuration of 10 seats or more, excluding pilots seats, one exit above the waterline in a side of the airplane, meeting at least the dimensions of a Type III exit for each unit (or part of a unit) of 35 passenger seats, but no less than two such exits in the passenger cabin, with one on each side of the airplane. The passenger seat/exit ratio may be increased through the use of larger exits, or other means, provided it is shown that the evacuation capability during ditching has been improved accordingly.

(3) If it is impractical to locate side exits above the waterline, the side exits must be replaced by an equal number of readily accessible overhead hatches of not less than the dimensions of a Type III exit, except that for airplanes with a passenger configuration of 35 seats or less, excluding pilots seats, the two required Type III side exits need be replaced by only one overhead hatch.

(f) *Flightcrew emergency exits.* For airplanes in which the proximity of passenger emergency exits to the flightcrew area does not offer a convenient and readily accessible means of evacuation of the flightcrew, and for all airplanes having a passenger seating capacity greater than 20, flightcrew exits shall be located in the flightcrew area. Such exits shall be of sufficient size and so located as to permit rapid evacuation by the crew. One exit shall be provided on each side of the airplane; or, alternatively, a top hatch shall be provided. Each exit must encompass an unobstructed rectangular opening of at least 19 by 20 inches unless satisfactory exit utility can be demonstrated by a typical crewmember.

§ 25.809 [Amended]

53. By amending § 25.809 by removing paragraphs (f) and (h), and by redesignating existing paragraphs (d), (e), (i), (g) and (j) as paragraphs (f), (g), (d), (e) and (h), respectively.

54. By adding a new § 25.810 to read as follows:

§ 25.810 Emergency egress assist means and escape routes.

(a) Each nonoverwing landplane emergency exit more than 6 feet from the ground with the airplane on the ground and the landing gear extended and each nonoverwing Type A exit must have an approved means to assist the occupants in descending to the ground.

(1) The assisting means for each passenger emergency exit must be a self-supporting slide or equivalent; and, in the case of a Type A exit, it must be capable of carrying simultaneously two parallel lines of evacuees. In addition, the assisting means must be designed to meet the following requirements:

(i) It must be automatically deployed and deployment must begin during the interval between the time the exit opening means is actuated from inside the airplane and the time the exit is fully opened. However, each passenger emergency exit which is also a passenger entrance door or a service door must be provided with means to prevent deployment of the assisting means when it is opened from either the inside or the outside under nonemergency conditions for normal use.

(ii) It must be automatically erected within 10 seconds after deployment is begun.

(iii) It must be of such length after full deployment that the lower end is self-supporting on the ground and provides safe evacuation of occupants to the ground after collapse of one or more legs of the landing gear.

(iv) It must have the capability, in 25-knot winds directed from the most critical angle, to deploy and, with the assistance of only one person, to remain usable after full deployment to evacuate occupants safely to the ground.

(v) For each system installation (mockup or airplane installed), five consecutive deployment and inflation tests must be conducted (per exit) without failure, and at least three tests of each such five-test series must be conducted using a single representative sample of the device. The sample devices must be deployed and inflated by the system's primary means after being subjected to the inertia forces specified in § 25.561(b). If any part of the system fails or does not function properly during the required tests, the cause of the failure or malfunction must be corrected by positive means and after that, the full series of five consecutive deployment and inflation tests must be conducted without failure.

(2) The assisting means for flightcrew emergency exits may be a rope or any other means demonstrated to be suitable for the purpose. If the assisting means is a rope, or an approved device equivalent to a rope, it must be—

(i) Attached to the fuselage structure at or above the top of the emergency exit opening, or, for a device at a pilot's emergency exit window, at another approved location if the stowed device, or its attachment, would reduce the pilot's view in flight;

(ii) Able (with its attachment) to withstand a 400-pound static load.

(b) Assist means from the cabin to the wing are required for each Type A exit located above the wing and having a stepdown unless the exit without an assist means can be shown to have a rate of passenger egress at least equal to that of the same type of nonoverwing exit. If an assist means is required, it must be automatically deployed and automatically erected, concurrent with the opening of the exit and self-supporting within 10 seconds.

(c) An escape route must be established from each overwing emergency exit, and (except for flap surfaces suitable as slides) covered with a slip resistant surface. Except where a means for channeling the flow of evacuees is provided—

(1) The escape route must be at least 42 inches wide at Type A passenger emergency exits and must be at least 2

feet wide at all other passenger emergency exits, and

(2) The escape route surface must have a reflectance of at least 80 percent, and must be defined by markings with a surface-to-marking contrast ratio of at least 5:1.

(d) If the place on the airplane structure at which the escape route required in paragraph (c) of this section terminates, is more than 6 feet from the ground with the airplane on the ground and the landing gear extended, means to reach the ground must be provided to assist evacuees who have used the escape route. If the escape route is over a flap, the height of the terminal edge must be measured with the flap in the takeoff or landing position, whichever is higher from the ground. The assisting means must be usable and self-supporting with one or more landing gear legs collapsed and under a 25-knot wind directed from the most critical angle. The assisting means provided for each escape route leading from a Type A emergency exit must be capable of carrying simultaneously two parallel lines of evacuees. For other than Type A exits, the assist means must be capable of carrying simultaneously as many parallel lines of evacuees as there are required escape routes.

55. By amending § 25.813 by adding a new introductory paragraph and by revising paragraphs (a) and (b) to read as follows:

§ 25.813 Emergency exit access.

Each required emergency exit must be accessible to the passengers and located where it will afford an effective means of evacuation. Emergency exit distribution must be as uniform as practical, taking passenger distribution into account; however, the size and location of exits on both sides of the cabin need not be symmetrical. If only one floor level exit per side is prescribed, and the airplane does not have a tail cone or ventral emergency exit, the floor level exit must be in the rearward part of the passenger compartment, unless another location affords a more effective means of passenger evacuation. Where more than one floor level exit per side is prescribed, at least one floor level exit per side must be located near each end of the cabin, except that this provision does not apply to combination cargo/passenger configurations. In addition—

(a) There must be a passageway leading from each main aisle to each Type I, Type II, or Type A emergency exit and between individual passenger areas. If two or more main aisles are provided, there must be a cross aisle leading directly to each passageway between the exit and the nearest main aisle. Each passageway leading to a Type A exit must be unobstructed and at least 36 inches wide. Other passageways and cross aisles must be unobstructed and at least 20 inches wide. Unless there are two or more main aisles, each Type A exit must be located so that there is passenger flow along the main aisle to that exit from both the forward and aft directions.

(b) Adequate space to allow crewmember(s) to assist in the evacuation of passengers must be provided as follows:

(1) The assist space must not reduce the unobstructed width of the passageway below that required for the exit.

(2) For each Type A exit, assist space must be provided at each side of the exit regardless of whether the exit is covered by § 25.810(a).

(3) For any other type exit that is covered by § 25.810(a), space must at least be provided at one side of the passageway.

* * * * *

56. By revising § 25.833 to read as follows:

§ 25.833 Combustion heating systems.

Combustion heaters must be approved.

57. By amending § 25.851 by revising paragraphs (a), (b) introductory text, and (b)(1) to read as follows:

§ 25.851 Fire extinguishers.

(a) *Hand fire extinguishers.* (1) The following minimum number of hand fire extinguishers must be conveniently located in passenger compartments:

Passenger capacity	Number of extinguishers
7 through 30	1
31 through 60	2
61 or more	3

(2) At least one hand fire extinguisher must be conveniently located in the pilot compartment.

(3) A readily accessible hand fire extinguisher must be available for use in each Class A or Class B cargo compartment.

(4) Each hand fire extinguisher must be approved.

(5) The types and quantities of each extinguishing agent used must be appropriate to the kinds of fires likely to occur where used.

(6) Each extinguisher for use in a personnel compartment must be designed to minimize the hazard of toxic gas concentration.

(b) *Built-in fire extinguishers.* If a built-in fire extinguisher is provided—

(1) The capacity must be adequate for any fire likely to occur in the compartment where used, considering the volume of the compartment and the ventilation rate; and

* * * * *

58. By revising § 25.853 to read as follows:

§ 25.853 Compartment interiors.

For each compartment occupied by the crew or passengers, the following apply:

(a) Materials (including finishes or decorative surfaces applied to the materials) must meet the applicable test criteria prescribed in part I of appendix F of this part or other approved equivalent methods.

(b) In addition to meeting the requirements of paragraph (a), seat cushions, except those on flight crewmember seats, must meet the test requirements of part II of appendix F of this part, or equivalent.

(c) For airplanes with passenger capacities of 20 or more, interior ceiling and wall panels (other than lighting lenses), partitions, and the outer surfaces of galleys, large cabinets and stowage compartments (other than underseat stowage compartments and compartments for stowing small items, such as magazines and maps) must also meet the test requirements of parts IV and V of appendix F of this part, or other approved equivalent method, in addition to the flammability requirements prescribed in paragraph (a) of this section.

(d) Smoking is not to be allowed in lavatories. If smoking is to be allowed in any compartment occupied by the crew or passengers, an adequate number of self-contained, removable ashtrays must be provided for all seated occupants, and

(e) Regardless of whether smoking is allowed in any other part of the airplane, lavatories must have self-contained removable ashtrays located conspicuously on or near the entry side of each lavatory door, except that one ashtray may serve more than one lavatory door if the ashtray can be seen readily from the cabin side of each lavatory served.

(f) Each receptacle used for the disposal of flammable waste material must be fully enclosed, constructed of at least fire resistant materials, and must contain fires likely to occur in it under normal use. The ability of the receptacle to contain those fires under all probable conditions of wear, misalignment, and

ventilation expected in service must be demonstrated by test.

59. By revising § 25.855 to read as follows:

§ 25.855 Cargo or baggage compartments.

For each cargo and baggage compartment not occupied by crew or passengers, the following apply:

(a) The compartment must meet one of the class requirements of § 25.857.

(b) Class B through Class E cargo or baggage compartments, as defined in § 25.857, must have a liner, and the liner must be separate from (but may be attached to) the airplane structure.

(c) Ceiling and sidewall liner panels of Class C and D compartments must meet the test requirements of part III of appendix F of this part or other approved equivalent methods.

(d) All other materials used in the construction of the cargo or baggage compartment must meet the applicable test criteria prescribed in part I of appendix F of this part or other approved equivalent methods.

(e) No compartment may contain any controls, wiring, lines, equipment, or accessories whose damage or failure would affect safe operation, unless those items are protected so that—

(1) They cannot be damaged by the movement of cargo in the compartment, and

(2) Their breakage or failure will not create a fire hazard.

(f) There must be means to prevent cargo or baggage from interfering with the functioning of the fire protective features of the compartment.

(g) Sources of heat within the compartment must be shielded and insulated to prevent igniting the cargo or baggage.

(h) Flight tests must be conducted to show compliance with the provisions of § 25.857 concerning—

(1) Compartment accessibility,

(2) The entries of hazardous quantities of smoke or extinguishing agent into compartments occupied by the crew or passengers, and

(3) The dissipation of the extinguishing agent in Class C compartments.

(i) During the above tests, it must be shown that no inadvertent operation of smoke or fire detectors in any compartment would occur as a result of fire contained in any other compartment, either during or after extinguishment, unless the extinguishing system floods each such compartment simultaneously.

60. By adding a new § 25.869 as follows:

§ 25.869 Fire protection: systems.

(a) Electrical system components:

(1) Components of the electrical system must meet the applicable fire and smoke protection requirements of §§ 25.831(c) and 25.863.

(2) Electrical cables, terminals, and equipment in designated fire zones, that are used during emergency procedures, must be at least fire resistant.

(3) Main power cables (including generator cables) in the fuselage must be designed to allow a reasonable degree of deformation and stretching without failure and must be—

(i) Isolated from flammable fluid lines; or

(ii) Shrouded by means of electrically insulated, flexible conduit, or equivalent, which is in addition to the normal cable insulation.

(4) Insulation on electrical wire and electrical cable installed in any area of the fuselage must be self-extinguishing when tested in accordance with the applicable portions of part I, appendix F of this part.

(b) Each vacuum air system line and fitting on the discharge side of the pump that might contain flammable vapors or fluids must meet the requirements of § 25.1183 if the line or fitting is in a designated fire zone. Other vacuum air systems components in designated fire zones must be at least fire resistant.

(c) Oxygen equipment and lines must—

(1) Not be located in any designated fire zone,

(2) Be protected from heat that may be generated in, or escape from, any designated fire zone, and

(3) Be installed so that escaping oxygen cannot cause ignition of grease, fluid, or vapor accumulations that are present in normal operation or as a result of failure or malfunction of any system.

61. By amending § 25.903 by adding a new paragraph (f) to read as follows:

§ 25.903 Engines.

* * * * *

(f) *Auxiliary Power Unit.* Each auxiliary power unit must be approved or meet the requirements of the category for its intended use.

62. By amending § 25.905 by adding a new paragraph (d) to read as follows:

§ 25.905 Propellers.

* * * * *

(d) Design precautions must be taken to minimize the hazards to the airplane in the event a propeller blade fails or is released by a hub failure. The hazards which must be considered include damage to structure and vital systems due to impact of a failed or released blade and the unbalance created by such failure or release.

§ 25.925 [Amended]

63. By amending § 25.925, paragraph (a), by removing the word "tire" in the last sentence and inserting the word "tire(s)" in its place.

64. By revising § 25.933 to read as follows:

§ 25.933 Reversing systems.

(a) For turbojet reversing systems—

(1) Each system intended for ground operation only must be designed so that during any reversal in flight the engine will produce no more than flight idle thrust. In addition, it must be shown by analysis or test, or both, that—

(i) Each operable reverser can be restored to the forward thrust position; and

(ii) The airplane is capable of continued safe flight and landing under any possible position of the thrust reverser.

(2) Each system intended for inflight use must be designed so that no unsafe condition will result during normal operation of the system, or from any failure (or reasonably likely combination of failures) of the reversing system, under any anticipated condition of operation of the airplane including ground operation. Failure of structural elements need not be considered if the probability of this kind of failure is extremely remote.

(3) Each system must have means to prevent the engine from producing more than idle thrust when the reversing system malfunctions, except that it may produce any greater forward thrust that is shown to allow directional control to be maintained, with aerodynamic means alone, under the most critical reversing condition expected in operation.

(b) For propeller reversing systems—

(1) Each system intended for ground operation only must be designed so that no single failure (or reasonably likely combination of failures) or malfunction of the system will result in unwanted reverse thrust under any expected operating condition. Failure of structural elements need not be considered if this kind of failure is extremely remote.

(2) Compliance with this section may be shown by failure analysis or testing, or both, for propeller systems that allow propeller blades to move from the flight low-pitch position to a position that is substantially less than that at the normal flight low-pitch position. The analysis may include or be supported by the analysis made to show compliance with the requirements of § 35.21 of this

chapter for the propeller and associated installation components.

§ 25.945 [Amended]

65. By amending § 25.945 by removing paragraph (b)(4) and marking it:

* * * * *

(b) * * *

(4) [Reserved].

* * * * *

§ 25.973 [Amended]

66. By amending § 25.973 by removing paragraph (a) and marking it:

* * * * *

(a) [Reserved].

* * * * *

67. By amending § 25.979 by revising paragraph (b)(2), to read as follows:

§ 25.979 Pressure fueling system.

* * * * *

(b) * * *

(2) Provide indication at each fueling station of failure of the shutoff means to stop the fuel flow at the maximum quantity approved for that tank.

* * * * *

68. By amending § 25.1013 by revising paragraphs (a) and (c), to read as follows:

§ 25.1013 Oil tanks.

(a) *Installation.* Each oil tank installation must meet the requirements of § 25.967.

(b) * * *

(c) *Filler connection.* Each recessed oil tank filler connection that can retain any appreciable quantity of oil must have a drain that discharges clear of each part of the airplane. In addition, each oil tank filler cap must provide an oil-tight seal.

* * * * *

69. By amending § 25.1093 by revising paragraph (b)(1) to read as follows:

§ 25.1093 Induction system deicing and anti-icing provisions.

* * * * *

(b) *Turbine engines.* (1) Each turbine engine must operate throughout the flight power range of the engine (including idling), without the accumulation of ice on the engine, inlet system components, or airframe components that would adversely affect engine operation or cause a serious loss of power or thrust—

(i) Under the icing conditions specified in appendix C, and

(ii) In falling and blowing snow within the limitations established for the airplane for such operation.

* * * * *

70. By amending § 25.1141 by adding a new paragraph (e) to read as follows:

§ 25.1141 Powerplant controls: general.

* * * * *

(e) The portion of each powerplant control located in a designated fire zone that is required to be operated in the event of fire must be at least fire resistant.

* * * * *

71. By amending § 25.1165 by adding a new paragraph (h) to read as follows:

§ 25.1165 Engine ignition systems.

* * * * *

(h) Each engine ignition system of a turbine powered airplane must be considered an essential electrical load.

72. By amending § 25.1181 by revising paragraph (b) to read as follows:

§ 25.1181 Designated fire zones; regions included.

(a) * * *

(b) Each designated fire zone must meet the requirements of §§ 25.867, and 25.1185 through 25.1203.

§ 25.1305 [Amended]

73. By amending § 25.1305 by removing paragraph (e)(3).

§ 25.1307 [Amended]

74. By amending § 25.1307 by removing paragraph (a) and marking it [Reserved], and by removing paragraphs (f), (g) and (h).

75. By amending § 25.1351 by revising paragraphs (d) (1) and (2) to read as follows and by removing paragraph (d)(3):

§ 25.1351 General.

* * * * *

(d) * * *

(1) A single malfunction, including a wire bundle or junction box fire, cannot result in loss of both the part turned off and the part turned on; and

(2) The parts turned on are electrically and mechanically isolated from the parts turned off.

§ 25.1359 [Removed]

76. By removing § 25.1359.

77. By amending § 25.1381 by revising paragraph (a)(1) to read as follows:

§ 25.1381 Instrument lights.

(a) * * *

(1) Provide sufficient illumination to make each instrument, switch and other device necessary for safe operation easily readable unless sufficient illumination is available from another source; and

* * * * *

§ 25.1413 [Removed]

78. By removing § 25.1413.

79. By amending § 25.1415 by revising paragraph (a) to read as follows:

§ 25.1415 Ditching equipment.

(a) Ditching equipment used in airplanes to be certificated for ditching under § 25.801, and required by the operating rules of this chapter, must meet the requirements of this section.

* * * * *

§ 25.1416 [Removed]

80. By removing § 25.1416.

81. By revising § 25.1419 to read as follows:

§ 25.1419 Ice protection.

If certification with ice protection provisions is desired, the airplane must be able to safely operate in the continuous maximum and intermittent maximum icing conditions of appendix C. To establish that the airplane can operate within the continuous maximum and intermittent maximum conditions of appendix C:

(a) An analysis must be performed to establish that the ice protection for the various components of the airplane is adequate, taking into account the various airplane operational configurations; and

(b) To verify the ice protection analysis, to check for icing anomalies, and to demonstrate that the ice protection system and its components are effective, the airplane or its components must be flight tested in the various operational configurations, in measured natural atmospheric icing conditions and, as found necessary, by one or more of the following means:

(1) Laboratory dry air or simulated icing tests, or a combination of both, of the components or models of the components.

(2) Flight dry air tests of the ice protection system as a whole, or of its individual components.

(3) Flight tests of the airplane or its components in measured simulated icing conditions.

(c) Caution information, such as an amber caution light or equivalent, must be provided to alert the flightcrew when the anti-ice or de-ice system is not functioning normally.

(d) For turbine engine powered airplanes, the ice protection provisions of this section are considered to be applicable primarily to the airframe. For the powerplant installation, certain additional provisions of subpart E of this part may be found applicable.

§ 25.1433 [Amended].

82. By amending § 25.1433 by removing paragraphs (b) and (c) and by redesignating paragraph (a) as the whole of § 25.1433.

83. By amending § 25.1435 by revising paragraphs (a) and (b) to read as follows:

§ 25.1435 Hydraulic systems.

(a) *Design.* (1) Each element of the hydraulic system must be designed to withstand, without deformation that would prevent it from performing its intended function, the design operating pressure loads in combination with limit structural loads which may be imposed.

(2) Each element of the hydraulic system must be able to withstand, without rupture, the design operating pressure loads multiplied by a factor of 1.5 in combination with ultimate structural loads that can reasonably occur simultaneously. Design operating pressure is maximum normal operating pressure, excluding transient pressure.

(b) *Tests and analysis.* (1) A complete hydraulic system must be static tested to show that it can withstand 1.5 times the design operating pressure without a deformation of any part of the system that would prevent it from performing its intended function. Clearance between structural members and hydraulic system elements must be adequate and there must be no permanent detrimental deformation. For the purpose of this test, the pressure relief valve may be made inoperable to permit application of the required pressure.

(2) Compliance with § 25.1309 for hydraulic systems must be shown by functional tests, endurance tests, and analyses. The entire system, or appropriate subsystems, must be tested in an airplane or in a mock-up installation to determine proper performance and proper relation to other aircraft systems. The functional tests must include simulation of hydraulic system failure conditions. Endurance tests must simulate the repeated complete flights that could be expected to occur in service. Elements which fail during the tests must be modified in order to have the design deficiency corrected and, where necessary, must be sufficiently retested. Simulation of operating and environmental conditions must be completed on elements and appropriate portions of the hydraulic system to the extent necessary to evaluate the environmental effects. Compliance with § 25.1309 must take into account the following:

(i) Static and dynamic loads including flight, ground, pilot, hydrostatic, inertial and thermally induced loads, and combinations thereof.

(ii) Motion, vibration, pressure transients, and fatigue.

(iii) Abrasion, corrosion, and erosion.

(iv) Fluid and material compatibility.

(v) Leakage and wear.

* * * * *

§ 25.1451 [Removed].

84. By removing § 25.1451.

85. By revising § 25.1521 to read as follows:

§ 25.1521 Powerplant limitations.

(a) *General.* The powerplant limitations prescribed in this section must be established so that they do not exceed the corresponding limits for which the engines or propellers are type certificated and do not exceed the values on which compliance with any other requirement of this part is based.

(b) *Reciprocating engine installations.* Operating limitations relating to the following must be established for reciprocating engine installations:

(1) Horsepower or torque, r.p.m., manifold pressure, and time at critical pressure altitude and sea level pressure altitude for—

(i) Maximum continuous power (relating to unsupercharged operation or to operation in each supercharger mode as applicable); and

(ii) Takeoff power (relating to unsupercharged operation or to operation in each supercharger mode as applicable).

(2) Fuel grade or specification.

(3) Cylinder head and oil temperatures.

(4) Any other parameter for which a limitation has been established as part of the engine type certificate except that a limitation need not be established for a parameter that cannot be exceeded during normal operation due to the design of the installation or to another established limitation.

(c) *Turbine engine installations.* Operating limitations relating to the following must be established for turbine engine installations:

(1) Horsepower, torque or thrust, r.p.m., gas temperature, and time for—

(i) Maximum continuous power or thrust (relating to augmented or unaugmented operation as applicable).

(ii) Takeoff power or thrust (relating to augmented or unaugmented operation as applicable).

(2) Fuel designation or specification.

(3) Any other parameter for which a limitation has been established as part of the engine type certificate except that a limitation need not be established for a parameter that cannot be exceeded during normal operation due to the design of the installation or to another established limitation.

(d) *Ambient temperature.* An ambient temperature limitation (including limitations for winterization installations, if applicable) must be established as the maximum ambient atmospheric temperature established in accordance with § 25.1043(b).

86. By revising § 25.1522 to read as follows:

§ 25.1522 Auxiliary power unit limitations.

If an auxiliary power unit is installed in the airplane, limitations established for the auxiliary power unit, including categories of operation, must be specified as operating limitations for the airplane.

87. By amending § 25.1533 by revising paragraph (a)(2) to read as follows:

§ 25.1533 Additional operating limitations.

(a) * * *

(2) The maximum landing weights must be established as the weights at which compliance is shown with the applicable provisions of this part (including the landing and approach climb provisions of §§ 25.119 and 25.121(d) for altitudes and ambient temperatures).

* * * * *

88. By amending § 25.1543 by revising paragraph (b) to read as follows:

§ 25.1543 Instrument markings: general.

* * * * *

(b) Each instrument marking must be clearly visible to the appropriate crewmember.

89. By revising § 25.1551 to read as follows:

§ 25.1551 Oil quantity indication.

Each oil quantity indicating means must be marked to indicate the quantity of oil readily and accurately.

90. By amending § 25.1557, by revising the heading of paragraph (b), and adding a new paragraph (b)(3) to read as follows:

§ 25.1557 Miscellaneous markings and placards.

* * * * *

(b) Powerplant fluid filler openings.

(1) * * *

(2) * * *

(3) Augmentation fluid filler openings must be marked at or near the filler cover to identify the required fluid.

* * * * *

91. By amending § 25.1581 by adding a new paragraph (a)(3) to read as follows:

§ 25.1581 General.

(a) * * *

(1) * * *

(2) * * *

(3) Any limitation, procedure, or other information established as a condition

of compliance with the applicable noise standards of part 36 of this chapter.

* * * * *

92. By amending § 25.1583, by revising paragraphs (b)(1), (f) and (i) to read as follows:

§ 25.1583 Operating limitations.

* * * * *

(b) * * *

(1) Limitations required by § 25.1521 and § 25.1522.

(2) * * *

(3) * * *

* * * * *

(f) *Altitudes.* The altitude established under § 25.1527.

* * * * *

(i) *Maneuvering flight load factors.* The positive maneuvering limit load factors for which the structure is proven, described in terms of accelerations, must be furnished.

93. By amending § 25.1587 by revising the introductory text of paragraph (b) to read as follows:

§ 25.1587 Performance information.

* * * * *

(b) Each Airplane Flight Manual must contain the performance information computed under the applicable provisions of this part for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable, within the operational limits of the airplane, and must contain the following:

* * * * *

94. By revising appendix F, part I, to read as follows:

Appendix F to Part 25

Part I—Test Criteria and Procedures for Showing Compliance with § 25.853, or 25.855

(a) *Material test criteria*—(1) *Interior compartments occupied by crew or passengers.* (i) Interior ceiling panels, interior wall panels, partitions, galley structure, large cabinet walls, structural flooring, and materials used in the construction of stowage compartments (other than underseat stowage compartments and compartments for stowing small items such as magazines and maps) must be self-extinguishing when tested vertically in accordance with the applicable portions of part I of this appendix. The average burn length may not exceed 6 inches and the average flame time after removal of the flame source may not exceed 15 seconds. Drippings from the test specimen may not continue to flame for more than an average of 3 seconds after falling.

(ii) Floor covering, textiles (including draperies and upholstery), seat cushions, padding, decorative and nondecorative coated fabrics, leather, trays and galley furnishings, electrical conduit, thermal and acoustical insulation and insulation covering, air ducting, joint and edge covering, liners of Class B and E cargo or baggage compartments, floor panels of Class B, C, D, or E cargo or baggage compartments, insulation blankets, cargo covers and transparencies, molded and thermoformed parts, air ducting joints, and trim strips (decorative and chafing), that are constructed of materials not covered in subparagraph (iv) below, must be self-extinguishing when tested vertically in accordance with the applicable portions of part I of this appendix or other approved equivalent means. The average burn length may not exceed 8 inches, and the average flame time after removal of the flame source may not exceed 15 seconds. Drippings from the test specimen may not continue to flame for more than an average of 5 seconds after falling.

(iii) Motion picture film must be safety film meeting the Standard Specifications for Safety Photographic Film PH1.25 (available from the American National Standards Institute, 1430 Broadway, New York, NY 10018). If the film travels through ducts, the ducts must meet the requirements of subparagraph (ii) of this paragraph.

(iv) Clear plastic windows and signs, parts constructed in whole or in part of elastomeric materials, edge lighted instrument assemblies consisting of two or more instruments in a common housing, seat belts, shoulder harnesses, and cargo and baggage tiedown equipment, including containers, bins, pallets, etc., used in passenger or crew compartments, may not have an average burn rate greater than 2.5 inches per minute when tested horizontally in accordance with the applicable portions of this appendix.

(v) Except for small parts (such as knobs, handles, rollers, fasteners, clips, grommets, rub strips, pulleys, and small electrical parts) that would not contribute significantly to the propagation of a fire and for electrical wire and cable insulation, materials in items not specified in paragraphs (a)(1)(i), (ii), (iii), or (iv) of part I of this appendix may not have a burn rate greater than 4.0 inches per minute when tested horizontally in accordance with the applicable portions of this appendix.

(2) *Cargo and baggage compartments not occupied by crew or passengers:*

(i) Thermal and acoustic insulation (including coverings) used in each cargo and baggage compartment must be constructed of materials that meet the requirements set forth in paragraph (a)(1)(ii) of part I of this appendix.

(ii) A cargo or baggage compartment defined in § 25.857 as Class B or E must have a liner constructed of materials that meet the requirements of paragraph (a)(1)(ii) of part I of this appendix and separated from the airplane structure (except for attachments). In addition, such liners must be subjected to the 45 degree angle test. The flame may not penetrate (pass through) the material during application of the flame or subsequent to its removal. The average flame time after removal of the flame source may not exceed 15 seconds, and the average glow time may not exceed 10 seconds.

(iii) A cargo or baggage compartment defined in § 25.857 as Class B, C, D, or E must have floor panels constructed of materials which meet the requirements of paragraph (a)(1)(ii) of part I of this appendix and which are separated from the airplane structure (except for attachments). Such panels must be subjected to the 45 degree angle test. The flame may not penetrate (pass through) the material during application of the flame or subsequent to its removal. The average flame time after removal of the flame source may not exceed 15 seconds, and the average glow time may not exceed 10 seconds.

(iv) Insulation blankets and covers used to protect cargo must be constructed of materials that meet the requirements of paragraph (a)(1)(ii) of part I of this appendix. Tiedown equipment (including containers, bins, and pallets) used in each cargo and baggage compartment must be constructed of materials that meet the requirements of paragraph (a)(1)(v) of part I of this appendix.

(3) *Electrical system components.* Insulation on electrical wire or cable installed in any area of the fuselage must be self-extinguishing when subjected to the 60 degree test specified in part I of this appendix. The average burn length may not exceed 3 inches, and the average flame time after removal of the flame source may not exceed 30 seconds. Drippings from the test specimen may not continue to flame for more than an average of 3 seconds after falling.

(b) *Test Procedures*—(1) *Conditioning.* Specimens must be conditioned to 70±5 F., and at 50 percent ±5 percent relative humidity until moisture equilibrium is reached or for 24 hours. Each specimen must remain in the conditioning environment until it is subjected to the flame.

(2) *Specimen configuration.* Except for small parts and electrical wire and cable insulation, materials must be tested either as section cut from a fabricated part as installed in the airplane or as a specimen simulating a cut section, such as a specimen cut from a flat sheet of the material or a model of the fabricated part. The specimen may be cut from any location in a fabricated part; however, fabricated units, such as sandwich panels, may not be separated for test. Except as noted below, the specimen thickness must be no thicker than the minimum thickness to be qualified for use in the airplane. Test specimens of thick foam parts, such as seat cushions, must be ½-inch in thickness. Test specimens of materials that must meet the requirements of paragraph (a)(1)(v) of part I of this appendix must be no more than ⅛-inch in thickness. Electrical wire and cable specimens must be the same size as used in the airplane. In the case of fabrics, both the warp and fill direction of the weave must be tested to determine the most critical flammability condition. Specimens must be mounted in a metal frame so that the two long edges and the upper edge are held securely during the vertical test prescribed in subparagraph (4) of this paragraph and the two long edges and the edge away from the flame are held securely during the horizontal test prescribed in subparagraph (5) of this paragraph. The exposed area of the specimen must be at least 2 inches wide and 12 inches long, unless the actual size used in the airplane is smaller. The edge to which the burner flame is applied must not consist of the finished or protected edge of the specimen but must be representative of the actual cross-section of the material or part as

installed in the airplane. The specimen must be mounted in a metal frame so that all four edges are held securely and the exposed area of the specimen is at least 8 inches by 8 inches during the 45° test prescribed in subparagraph (6) of this paragraph.

(3) *Apparatus.* Except as provided in subparagraph (7) of this paragraph, tests must be conducted in a draft-free cabinet in accordance with Federal Test Method Standard 191 Model 5903 (revised Method 5902) for the vertical test, or Method 5906 for horizontal test (available from the General Services Administration, Business Service Center, Region 3, Seventh & D Streets SW., Washington, DC 20407). Specimens which are too large for the cabinet must be tested in similar draft-free conditions.

(4) *Vertical test.* A minimum of three specimens must be tested and results averaged. For fabrics, the direction of weave corresponding to the most critical flammability conditions must be parallel to the longest dimension. Each specimen must be supported vertically. The specimen must be exposed to a Bunsen or Tirrill burner with a nominal ⅜-inch I.D. tube adjusted to give a flame of 1½ inches in height. The minimum flame temperature measured by a calibrated thermocouple pyrometer in the center of the flame must be 1550 °F. The lower edge of the specimen must be ¾-inch above the top edge of the burner. The flame must be applied to the center line of the lower edge of the specimen. For materials covered by paragraph (a)(1)(i) of part I of this appendix, the flame must be applied for 60 seconds and then removed. For materials covered by paragraph (a)(1)(ii) of part I of this appendix, the flame must be applied for 12 seconds and then removed. Flame time, burn length, and flaming time of drippings, if any, may be recorded. The burn length determined in accordance with subparagraph (7) of this paragraph must be measured to the nearest tenth of an inch.

(5) *Horizontal test.* A minimum of three specimens must be tested and the results averaged. Each specimen must be supported horizontally. The exposed surface, when installed in the aircraft, must be face down for the test. The specimen must be exposed to a Bunsen or Tirrill burner with a nominal ⅜-inch I.D. tube adjusted to give a flame of 1½ inches in height. The minimum flame temperature measured by a calibrated thermocouple pyrometer in the center of the flame must be 1550 °F. The specimen must be positioned so that the edge being tested is centered ¾-inch above the top of the burner. The flame must be applied for 15 seconds and then removed. A minimum of 10 inches of specimen must be used for timing purposes, approximately 1½ inches must burn before the burning front reaches the timing zone, and the average burn rate must be recorded.

(6) *Forty-five degree test.* A minimum of three specimens must be tested and the results averaged. The specimens must be supported at an angle of 45° to a horizontal surface. The exposed surface when installed in the aircraft must be face down for the test. The specimens must be exposed to a Bunsen or Tirrill burner with a nominal ⅜-inch I.D. tube adjusted to give a flame of 1½ inches in height. The minimum flame temperature measured by a calibrated thermocouple pyrometer in the center of the flame must be 1550 °F. Suitable precautions must be taken to avoid drafts. The flame must be applied for 30 seconds with one-third contacting the material at the center of the specimen and then removed. Flame time, glow time, and whether the flame penetrates (passes through) the specimen must be recorded.

(7) *Sixty degree test.* A minimum of three specimens of each wire specification (make and size) must be tested. The specimen of wire or cable (including insulation) must be placed at an angle of 60° with the horizontal in the cabinet specified in subparagraph (3) of this paragraph with the cabinet door open during the test, or must be placed within a chamber approximately 2 feet high by 1 foot by 1 foot, open at the top and at one vertical side (front), and which allows sufficient flow of air for complete combustion, but which is free from drafts. The specimen must be parallel to and approximately 6 inches from the front of the chamber. The lower end of the specimen must be held rigidly clamped. The upper end of the specimen must pass over a pulley or rod and must have an appropriate weight attached to it so that the specimen is held tautly throughout the flammability test. The test specimen span between lower clamp and upper pulley or rod must be 24 inches and must be marked 8 inches from the lower end to indicate the central point for flame application. A flame from a Bunsen or Tirrill burner must be applied for 30 seconds at the test mark. The burner must be mounted underneath the test mark on the specimen, perpendicular to the specimen and at an angle of 30° to the vertical plane of the specimen. The burner must have a nominal bore of ⅜-inch and be adjusted to provide a 3-inch high flame with an inner cone approximately one-third of the flame height. The minimum temperature of the hottest portion of the flame, as measured with a calibrated thermocouple pyrometer, may not be less than 1750 °F. The burner must be positioned so that the hottest portion of the flame is applied to the test mark on the wire. Flame time, burn length, and flaming time of drippings, if any, must be recorded. The burn length determined in accordance with paragraph (8) of this paragraph must be measured to the nearest tenth of an inch. Breaking of the wire specimens is not considered a failure.

(8) *Burn length.* Burn length is the distance from the original edge to the farthest evidence of damage to the test specimen due to flame impingement, including areas of partial or complete consumption, charring, or embrittlement, but not including areas sooted, stained, warped, or discolored, nor areas where material has shrunk or melted away from the heat source.

* * * * *

95. By adding a new appendix J to read as follows:

Appendix J to Part 25 Emergency Demonstration

The following test criteria and procedures must be used for showing compliance with § 25.803:

(a) The emergency evacuation must be conducted either during the dark of the night or during daylight with the dark of night simulated. If the demonstration is conducted indoors during daylight hours, it must be conducted with each window covered and each door closed to minimize the daylight effect. Illumination on the floor or ground may be used, but it must be kept low and shielded against shining into the airplane's windows or doors.

(b) The airplane must be in a normal attitude with landing gear extended.

(c) Stands or ramps may be used for descent from the wing to the ground, and safety equipment such as mats or inverted life rafts may be placed on the floor or ground to protect participants. No other equipment that is not part of the airplane's emergency evacuation equipment may be used to aid the participants in reaching the ground.

(d) Except as provided in paragraph (a) of this Appendix, only the airplane's emergency lighting system may provide illumination.

(e) All emergency equipment required for the planned operation of the airplane must be installed.

(f) Each external door and exit, and each internal door or curtain, must be in the takeoff configuration.

(g) Each crewmember must be seated in the normally assigned seat for takeoff and must remain in the seat until receiving the signal for commencement of the demonstration. Each crewmember must be a person having knowledge of the operation of exits and emergency equipment and, if compliance with § 121.291 is also being demonstrated, a member of a regularly scheduled line crew.

(h) A representative passenger load of persons in normal health must be used as follows:

(1) At least 30 percent must be females.

(2) At least 5 percent must be over 60 years of age with a proportionate number of females.

(3) At least 5 percent, but not more than 10 percent, must be children under 12 years of age, prorated through that age group.

(4) Three life-size dolls, not included as part of the total passenger load, must be carried by passengers to simulate live infants 2 years old or younger.

(5) Crewmembers, mechanics, and training personnel, who maintain or operate the airplane in the normal course of their duties, may not be used as passengers.

(i) No passenger may be assigned a specific seat except as the Administrator may require. Except as required by subparagraph (g) of this paragraph, no employee of the applicant may be seated next to an emergency exit.

(j) Seat belts and shoulder harnesses (as required) must be fastened.

(k) Before the start of the demonstration, approximately one-half of the total average amount of carry-on baggage, blankets, pillows, and other similar articles must be distributed at several locations in aisles and emergency exit access ways to create minor obstructions.

(l) No prior indication may be given to any crewmember or passenger of the particular exits to be used in the demonstration.

(m) The applicant may not practice, rehearse, or describe the demonstration for the participants nor may any participant have

taken part in this type of demonstration within the preceding 6 months.

(n) The pretakeoff passenger briefing required by § 121.571 may be given. The passengers may also be advised to follow directions of crewmembers but not be instructed on the procedures to be followed in the demonstration.

(o) If safety equipment as allowed by paragraph (c) of this appendix is provided, either all passenger and cockpit windows must be blacked out or all of the emergency exits must have safety equipment in order to prevent disclosure of the available emergency exits.

(p) Not more than 50 percent of the emergency exits in the sides of the fuselage of an airplane that meets all of the requirements applicable to the required emergency exits for that airplane may be used for the demonstration. Exits that are not to be used in the demonstration must have the exit handle deactivated or must be indicated by red lights, red tape, or other acceptable means placed outside the exits to indicate fire or other reason why they are unusable. The exits to be used must be representative of all of the emergency exits on the airplane and must be designated by the applicant, subject to approval by the Administrator. At least one floor level exit must be used.

(q) All evacuees, except those using an over-the-wing exit, must leave the airplane by a means provided as part of the airplane's equipment.

(r) The applicant's approved procedures must be fully utilized during the demonstration.

(s) The evacuation time period is completed when the last occupant has evacuated the airplane and is on the ground. Provided that the acceptance rate of the stand or ramp is no greater than the acceptance rate of the means available on the airplane for descent from the wing during an actual crash situation, evacuees using stands or ramps allowed by paragraph (c) of this Appendix are considered to be on the ground when they are on the stand or ramp.

Issued in Washington, DC, on June 26, 1990.

James B. Busey,

Administrator.

[FR Doc. 90-16852 Filed 7-19-90; 8:45 am]

BILLING CODE 4910-13-M

federal register

Friday
July 20, 1990

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 227

Listing of Steller Sea Lions as Threatened Under the Endangered Species Act; Proposed Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 900387-0183]

RIN 0648-AD13

Listing of Steller Sea Lions as Threatened Under the Endangered Species Act

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

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: An emergency rule published April 5, 1990 (55 FR 12645) listing the Steller (northern) sea lion as threatened will expire December 3, 1990. In a separate notice of proposed rulemaking, NMFS is proposing to list the Steller sea lion as a threatened species under the Endangered Species Act of 1973 (ESA) with protective measures similar to those contained in the emergency rule. In this advance notice of proposed rulemaking, NMFS is requesting comments to assist in developing a proposed rule that will consider the designation of critical habitat and a broader range of conservation measures. Public comments received will be considered in conjunction with recommendations by the Steller Sea Lion Recovery Team and the Marine Mammal Commission.

DATES: Comments must be received by August 20, 1990.

ADDRESSES: Comments should be mailed to Dr. Nancy Foster, Director, Office of Protected Resources (F/PR), NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, Chief, Protected Species Management Division, Silver Spring, MD, 301-427-2322.

SUPPLEMENTARY INFORMATION: On November 21, 1989, the Environmental Defense Fund and 17 other environmental organizations petitioned NMFS for an emergency rule listing the Steller sea lion as endangered and to initiate a rulemaking to make that emergency listing permanent. Under section 4 of the Endangered Species Act, NMFS determined that the petition presented substantial information indicating the action may be warranted and requested comments (February 22, 1990, 55 FR 6301).

On April 5, 1990, NMFS published an emergency interim rule (55 FR 12645) listing the Steller sea lion as a threatened species under ESA and establishing conservation regulations as emergency interim measures to begin the population recovery process. The interim measures prohibit shooting at or near Steller sea lions, establish a 3-nautical mile buffer zone around certain rookeries in Alaska in which all vessel traffic is prohibited, and limit the number of Steller sea lions that may be killed incidental to commercial fishing. Also, as a result of the emergency listing, Federal agencies will have to consult in accordance with section 7 of the ESA to ensure that their actions are not likely to jeopardize the continued existence of the species.

In March 1990, NMFS commissioned a recovery team for the Steller sea lion. The team held its first meeting on April 27, 1990. A second meeting was held on June 13, 1990. The team is scheduled to meet again on July 23, 1990 in Anchorage, Alaska. A draft recovery plan describing site-specific management actions necessary for recovery and criteria for determining when the species can be removed from the list of endangered and threatened species is scheduled to be available in late July. In addition, the team will provide estimates of the time and cost to carry out the recommended recovery measures and any areas that should be considered for critical habitat.

Current Steller sea lion research conducted by NMFS includes aerial surveys from the Kenai Peninsula to Kiska Island, Alaska. Adults and juveniles will be counted from photographs obtained by flying in fixed-wing airplanes at low levels over rookeries and haul-out sites. Counts will be compared to historical data for significant differences. Pups will be counted by spook counts at most Gulf of Alaska and Aleutian Island rookeries. Counts obtained in 1990 will be compared to historical data for statistical significance. Under an existing scientific research permit, 24 satellite monitored tags will be attached to female sea lions at selected rookeries. The tags will transmit information on location, depth of dive, and water temperature by depth. The at-sea position information obtained from the satellite tag will be mapped and compared to rookery or haul-out location to determine the maximum, minimum, and mean distance travelled during feeding trips. Another 20 tags will be placed on females during November, 1990. The satellite tags deployed will fall from the animal during the autumn molt. Two or three satellite tags will be placed on females in Oregon during fall, 1990, and about 12 will be placed on females in the Kuril Islands during summer, 1991.

A body fitness, physiological status, and foraging energetics study will assess the relative health and fitness of sea lions in Alaska and Oregon. Body fitness will be measured by blubber thickness, lean body mass, and water content. Physiological status will be measured by blood and tissue levels of important metabolites, hematocrit, and other blood measures. Milk samples will be analyzed for nutrient content.

A stock identification study to determine if different genetic and morphological characters exist between Steller sea lions that breed in the Kuril Islands from those that breed in the Aleutian Islands, Gulf of Alaska, or Oregon and California.

Other studies to be conducted by NMFS include an analysis of fisheries data and a blood and tissue analysis. Commercial catch data, fisheries abundance data, and sea lion abundance data will be summarized by 60 square nautical mile areas near existing sea lion rookeries. These data will be statistically analyzed to determine the relative influence of commercial fish catch on sea lion abundance by correlation analysis and other statistical procedures. Existing tissue samples will be analyzed for pollutants. Blood samples will be analyzed for disease antibodies.

In proposing a rule, NMFS will consider the measures that may be needed to avoid or control impacts that may be contributing to the decline of the species, including but not limited to, the following: (1) Prey deprivation and food stress; (2) commercial fishery interactions, including incidental and direct mortality from fishing; (3) biological interactions; (4) subsistence harvesting; (5) nonhuman predator interactions; (6) effect of marine debris; (7) rookery disturbance; and (8) oil and gas development.

NMFS is requesting comments on the need for and types of conservation regulations that should be proposed. The range of alternatives suggested in comments to previous rulemaking and at public meetings have included the following: Reducing the quota for allowed mortalities incidental to commercial fishing operations; limiting trawling to daylight hours; prohibiting fishing for pollock when they are carrying roe and reducing the overall quota of groundfish; increasing the buffer zones and including buffer zones around other rookeries and haul-out areas throughout the species range: regulating subsistence taking; and designating critical habitat.

In proposing critical habitat, NMFS will consider physical and biological factors essential to the conservation of the species that may require special management consideration or protection. These habitat requirements include breeding rookeries, haulout sites, feeding areas and nutritional requirements. In describing critical habitat, NMFS will take into consideration terrestrial habitats adjacent to rookeries and their need for protection from development and other uses, such as logging or mining.

In a separate rulemaking, NMFS is proposing to list the Steller sea lion as threatened with conservation regulations similar to those contained in the previous emergency rule. The listing is being done separately to expedite the final listing of the Stellar sea lion. The final listing is scheduled to be in place within the 240-day period as described in which the emergency rule is effective.

Authority: 16 U.S.C. 1531 et seq.
Date: July 13, 1990.

William W. Fox, Jr.
Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-17002 Filed 7-19-90; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 227

[Docket No. 900387-0182]

RIN 0648-AD13

Listing of Steller Sea Lions as Threatened Under the Endangered Species Act

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

ACTION: Proposed rule and request for comments.

SUMMARY: The number of Steller (northern) sea lions (*Eumetopias jubatus*) observed on certain rookeries in Alaska has declined by 63% since 1985 and by 82% since 1960. Declines are occurring in previously stable areas and are accelerating. Significant declines have also occurred on the Kuril Islands, USSR. NMFS is proposing to list the Steller sea lion throughout its range as threatened under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (ESA) and is proposing to establish protective measures similar to those contained in the previous emergency rule (April 5, 1990, 55 FR 12645). More comprehensive protective regulations and critical habitat designation are being considered in a separate rulemaking. These actions are being separated to expedite the final listing of the Steller sea lion.

DATES: Comments on the proposed rule must be received by September 18, 1990. Requests for public hearings must be received by September 4, 1990.

ADDRESSES: Comments on this proposed rule, requests for supporting documents, and requests for a public hearing should be sent to Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs (F/PR), NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, Chief, Protected Species Management Division, Silver Spring, MD, 301-427-2322.

SUPPLEMENTARY INFORMATION:

Background

On November 21, 1989, the Environmental Defense Fund and 17 other environmental organizations petitioned NMFS for an emergency rule listing the Steller sea lion as an endangered species and to initiate a rulemaking to make the listing permanent. Under section 4 of the ESA, NMFS determined that the petition presented substantial information indicating the action may be warranted and requested comments (February 22, 1990, 55 FR 6301). On April 5, 1990 (55 FR 12645), NMFS issued an emergency interim rule listing the Steller sea lion as threatened and requested comments.

In response to the emergency listing, NMFS appointed a Steller sea lion recovery team, which held its first meeting on April 27, 1990. The team is responsible for drafting a recovery/conservation plan and providing recommendations to NMFS on necessary protective regulations for the Steller sea lion. A draft recovery plan is expected to be made available to NMFS by late July.

The emergency listing is effective for 240 days and expires on December 3, 1990. There is not sufficient time to issue a proposed rule with comprehensive protective regulations including a proposed critical habitat designation, solicit public comments, provide an opportunity for public hearings, conduct the required regulatory and economic analyses, and issue a final rule by December 3, 1990. NMFS believes it is imperative to avoid a lapse in listing and to continue protective measures similar to those in the emergency rule. Further, NMFS believes it is preferable to consider the views of the recovery team prior to publishing comprehensive proposed protective regulations. Therefore, NMFS issues this proposed rule with protective regulations similar to those of the emergency rule. More comprehensive protective regulations and critical habitat will be proposed in a separate rulemaking, after considering the recommendations of the Recovery Team, the Marine Mammal Commission, and the public (See Advance Notice of Proposed Rulemaking in this issue of the Federal Register).

Comments on Emergency Interim Rule

NMFS received eight comments specifically in response to the emergency rule, including comments from Congressman Norm Dicks and the Marine Mammal Commission. Comments pertinent to the listing classification and regulations are discussed below. The comments received concerning the recovery team, funding priorities, necesssary research and other actions necessary for the conservation of the species are being considered by NMFS in developing an overall recovery program.

Process

One commenter objected to the publication of the emergency rule without the opportunity for public comment on the draft.

NMFS does not release draft proposed or final rules for public comment. Under section 4(b)(7) of the ESA, emergency regulations may be issued without prior opportunity for public comment if there is a significant risk to the well-being of the species. On February 22, 1990, NMFS published a notice in the Federal Register concerning the petition to list the Steller sea lion as endangered and requested public comment.

Listing Classification

Some commenters believed that the species should be listed as endangered rather than threatened based on the dramatic and continuing declines in abundance in Alaska. One commenter noted that if the rate of decline observed between 1985 and 1989 persists, by the year 2000, the population in the area from Kiska Island to Kenai Peninsula will have been reduced to about 1% of its 1960 level. Further, Steller sea lion numbers in other areas have experienced substantial declines. Other commenters believed that the available information about the decline and threats does not support listing as endangered because the "danger of extinction" standard cannot be met. One commenter believed that NMFS did not justify even a threatened listing based on the listing criteria because evidence of a decline without knowledge of the causes of the decline is not sufficient justification for listing.

NMFS believes that a demonstrated decline can justify listing a species as threatened or endangered, and that precise knowledge of the reasons for the decline is not a prerequisite for listing. Each of the five factors described in section 4(a)(1) of the ESA is discussed in detail below. NMFS has determined that the Steller sea lion is a threatened species and that it is likely that this condition is caused by a combination of the factors specified under section 4(a)(1) of the ESA.

NMFS believes that the available information supports a threatened classification for the Steller sea lion rather than an endangered classification. There is not sufficient information to consider animals in different geographic regions as separate populations; therefore, the status of the entire species must be considered. Total counts of sea lions at rookeries and haulout sites throughout most of Alaska and the USSR in 1989 were about 56,000, which would indicate a total population size in this area of at least one third more than this number. There are areas where Steller sea lion abundance is stable or not declining significantly. Therefore, NMFS does not believe that the species currently is in danger of extinction throughout all or a significant portion of its range (i.e., endangered). If the declines continue at the present rate and continue to spread, NMFS will reconsider the listing classification. In this regard, the 1989 sea lion survey in Alaska is being repeated this summer, which will provide additional information regarding the species status.

One commenter believed that the available data supported the threatened listing for certain Alaska populations only and that the lack of comparable population declines from southeastern Alaska southward argues against classifying these segments as threatened.

Under the ESA, only "species" may be listed as threatened or endangered. The term "species" includes any subspecies of fish or wildlife and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (see section 3(15) of the ESA). As discussed above, NMFS does not believe that there is sufficient information to consider animals in different geographic regions as distinct population segments, and therefore NMFS proposes to list the entire species.

Three commenters requested that the listing be amended to include the California populations of Steller sea lion. One of these commenters provided significant information concerning the status of the Steller sea lion in California, noting declines since the 1930's of 90% at Ano Nuevo, 93% at the Farallon islands and 90% at Sugarloaf Rock.

The emergency rule listed, and this rule proposes to list, the Steller sea lion throughout its range; therefore, the California populations are included. Although specific protective measures for Steller sea lions in California (such as buffer areas) are not proposed, NMFS and the Recovery Team are reviewing the status of the species throughout its range and the need for additional protective measures. In a separate rulemaking, NMFS will propose more comprehensive protective regulations and critical habitat after considering the recommendations of the Recovery Team, the Marine Mammal Commission and the public.

Inadequate Data

One commenter expressed concern over NMFS' inability to determine the cause of the Steller sea lion's population decline and emphasized the necessity to have solid scientific data on which to base management decisions for threatened species.

NMFS agrees that more information is needed to determine the cause(s) of the decline and the steps that need to be taken to reverse this trend. NMFS has expanded its research program to address some important questions. Studies have begun to determine important feeding locations by using satellite monitored tags attached to female sea lions, which should also provide information on locations of at-sea mortalities. Studies to determine stock differentiation will continue. Resource surveys on the density of sea lion prey species are proposed. Satellite-linked telemetry will be used to determine sea lion feeding areas for comparison to the findings from these surveys. The behavior of sea lions in relation to commercial fishing activities and the association between feeding sea lions and principal fishing areas will also be examined.

Emergency Protective Measures

One commenter believed that NMFS should include specific procedures for restricting fishing activities in a timely fashion when the kill quota is approached or reached.

NMFS proposes to clarify the quota provisions contained in the emergency rule to specify that if "data indicate that the quota is being approached, the Assistant Administrator will issue emergency rules to establish closed areas, allocate the remaining quota among fisheries, or take other action(s) to ensure that commercial fishing operations do not exceed the quota."

One commenter recommended that the exception for research be modified to require a permit issued under the ESA.

NMFS concurs and has proposed this requirement. The blanket exception for research in the emergency rule was made to allow essential research to continue without delays of applying for and receiving an additional permit under the ESA.

One commenter objected to the exception to the prohibitions allowing government officials to (1) take sea lions for the protection or welfare of the animal, the protection of the public health and welfare or the non-lethal removal of nuisance animals and (2) enter buffer areas to perform legitimate governmental activities.

The first provision parallels section 109(h) of the Marine Mammal Protection Act that, among other things, allows the taking of beached and stranded animals for rehabilitation purposes, an activity that may benefit the species. NMFS believes that local officials need the authority to protect the safety of their citizens when necessary. Only a very small number of animals would likely be taken for the protection of the public health and welfare or by non-lethally removal of "nuisance animals," and this provision is not likely to have any affect on the population. NMFS believes the second provision is necessary to allow government functions, such as Coast Guard activities, NOAA's nautical charting responsibilities and wildlife surveys, to continue. None of these activities is expected to significantly affect the sea lion population. Further, Federal agencies must consult under section 7(a)(2) of the ESA on any action that may affect Steller sea lions to ensure that the action is not likely to jeopardize its continued existence.

One commenter objected to the exception for navigational transit and believed that advanced approval and a showing of necessity should be required.

NMFS believes that alternative navigational routes exist and has not included this exception in this proposed rule. The exception for emergency situations is included. Therefore, any strait, narrow or pass can be used for navigation if an emergency exists in which compliance with the restriction presents a threat to the health, safety or life of a person or presents a significant threat to the vessel of property.

Two commenters objected to the exemption provision for any activity that has been conducted historically or traditionally in the buffer areas for

which there is no feasible alternative to, or site for, the activity. The commenters believed that NMFS should justify this exception and detail the procedure for applying for and receiving an exemption, including required public notice and consultation with the Marine Mammal Commission.

Although NMFS expects very few exemptions, NMFS believes this provision should be retained to account for unforseen circumstances. Notice of any exemption must be published in the **Federal Register**. In developing the proposed comprehensive protective regulations, NMFS will review the exemptions and any comments received on the exemptions to determine if a regulatory exception is appropriate and if the exemption provisions should be deleted.

Additional Protective Measures

Most commenters believed that additional protective regulations are needed and that the interim protective measures under the emergency rule are inadequate. Additional protective regulations suggested include reducing the quota for allowed mortalities incidental to commercial fishing operations and establishing quotas by area with a zero quota in areas experiencing significant declines; limiting trawling to daylight hours; prohibiting the use of gill nets around rookeries; prohibiting fishing for pollock when they are carrying roe and reducing the overall quota of groundfish; increasing the buffer zone (up to a 60-mile (96.6-kilometer) radius in some areas) and including buffer zones around other rookeries and haulout areas throughout the species range; establishing protective measures off Washington, Oregon and California; regulating subsistence taking; and designating critical habitat. One commenter recommended that, if the species is listed as threatened rather than endangered, NMFS should implement a blanket prohibition on taking and importing Steller sea lions and establish appropriate exceptions.

In a separate rulemaking, NMFS will propose more comprehensive protective regulations and critical habitat after considering the recommendations of the Recovery Team, the Marine Mammal Commission and the public. NMFS does not want to delay the listing of the species while proposed protective regulations are being determined and evaluated. Further, NMFS believes it is preferable to consider the views of the recovery team prior to publishing comprehensive proposed protective regulations. Therefore, NMFS proposes to include with the proposed listing only limited protective regulations similar to those in the emergency rule.

Summary of the Status of the Species

The Steller (northern) sea lion, *Eumetopias jubatus*, ranges from Hokkaido, Japan, through the Kuril Islands and Okhotsk Sea, Aleutian Islands and central Bering Sea, Gulf of Alaska, southeast Alaska, and south to central California. There is not sufficient information to consider animals in different geographic regions as separate populations. The centers of abundance and distribution are the Gulf of Alaska and Aleutian Islands, respectively. Rookeries (breeding colonies) are found from the central Kuril Islands (45° N) to Ano Nuevo Island, California (37° N); most large rookeries are in the Gulf of Alaska and Aleutian Islands. More than 50 Steller sea lion rookeries and a greater number of haulout sites have been identified.

During the 1985 breeding season, 68,000 animals were counted on Alaska rookeries from Kenai Peninsula to Kiska Island, compared to 140,000 counted in 1956–60. A 1988 Status Report concluded that the population size in 1985 was probably below 50% of the historic population size in 1956–60 and below the lower bound of its optimum sustainable population level under the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* (MMPA). A comparable survey conducted in 1989 showed that the number observed on rookeries from Kenai to Kiska declined to 25,000 animals. This indicates a decline of about 82% from 1956–60 to 1989 in this area. The counts are not an estimate of total numbers of animals but include only those animals on the beach (excluding pups) at the time of the survey. As such, they can be used to indicate trends in abundance, rather than to estimate total species abundance. Copies of the 1988 Status Report and a 1989 Update are available from the ADDRESS listed above.

Species abundance estimates during the late 1970's ranged from 245–290,000 adult and juvenile animals. A current total population estimate is not available. However, counts at rookeries and haulout sites throughout most of Alaska and the USSR in 1989, plus estimates from surveys conducted in recent years at locations not counted in 1989, provide a minimum number for the species during 1989. The summaries of these counts and estimates are:

Alaska	53,000
WA, OR and CA	4,000
British Columbia	6,000
USSR	3,000
	66,000

Summary of Factors Affecting the Species

An endangered species is any species in danger of extinction throughout all or a significant portion of its range and a threatened species is any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the ESA. These factors as they apply to Steller sea lions are discussed below.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Steller sea lions breed on islands in the North Pacific Ocean, generally far from human habitations. There is no evidence that the availability of rookery space is a limiting factor for this species. As the number of animals continues to decline, rookeries are being abandoned and available rookery space is increasing. However, activities that result in disturbance, prey availability or other factors may be affecting the suitability of the available habitat.

The feeding habitats of Steller sea lions in Alaska may have changed. State of Alaska biologists found that populations in the Gulf of Alaska during the 1980's had slower growth rates, poorer physical fitness (lower weights, smaller girth), and lowered birth rates. Some data show a high negative correlation between the amount of walleye pollock caught and sea lion abundance trends in the eastern Aleutians and central Gulf of Alaska. It is possible that a reduction in availability of pollock, the most important prey species in most areas, is a contributing factor in the decline in the amount of Steller sea lions in western and central Alaska.

B. *Over-utilization for commercial, recreational, scientific, or educational purposes.* Between 1963 and 1972, more than 45,000 Steller sea lions pups were commercially harvested in the eastern Aleutian Islands and Gulf of Alaska. This harvest may explain the declines in these areas through the 1970's. The actual level of subsistence harvest of Steller sea lions is unknown, but is probably less than 100 animals annually, primarily at St. Paul Island in the Pribilofs during fall and winter months. This taking is not of sufficient magnitude to contribute to the overall decline. A small number have also been taken for public display and scientific research purposes.

C. *Disease or predation.* Sharks, killer whales and brown bears are known to prey on Steller sea lion pups. Mortality from sharks and bears is not believed to be significant. When sea lion abundance was high, the level of mortality from killer whales was probably not significant, but as sea lion numbers decline, this mortality may exacerbate the decline in certain areas.

Disease resulting in reproductive failure or death could be a source of increased mortality in Steller sea lions populations, but it probably does not explain the massive declines in numbers. Antibodies to two types of pathological bacteria (*Leptospira* and *Chlamydia*), marine calicivirus (San Miguel Sea Lion Virus), and seal herpesvirus were found in the blood of Steller sea lions in Alaska. Leptospires and San Miguel sea lion viruses may be associated with reproductive failures and deaths in California sea lions and North Pacific fur seals. *Chlamydia* has not been studied previously in sea lions, but is known from studies of Pribilof Island fur seals. None of these agents is thought to be a significant cause of mortality in Steller sea lions.

D. *The inadequacy of existing regulatory mechanisms.* Some protection for the Steller sea lion is provided under the MMPA, which prohibits the taking of Steller sea lions, with certain exceptions, including an interim exemption for commercial fishing. Once 1,350 Steller sea lions have been killed incidental to commercial fishing, section 114 of the MMPA requires NMFS to prescribe emergency regulations to prevent, to the maximum extent practicable, for further taking. Intentional lethal takes are prohibited. In addition, section 114(g) of the MMPA provides that regulations may be prescribed to prevent taking of a marine mammal species in a commercial fishery if it is determined that such taking is having, or is likely to have, a significant adverse impact on that marine mammal population stock. The MMPA also requires NMFS to prepare a conservation plan for Steller sea lions by December 31, 1990.

E. *Other natural or manmade factors affecting its continued existence.* Steller sea lions are taken incidental to commercial fishing operations in the Gulf of Alaska and the Bering Sea. Between 1973 and 1988, U.S. observers on foreign and joint venture vessels operating in these areas reported 3,661 marine mammals taken. Steller sea lions accounted for 90% of this observed total. Based on these observed takes and an extrapolation of total tonnage of fish caught over this time period, the total number of Steller sea lions incidentally killed by the foreign and joint venture commercial trawl fisheries during 1973–1988 is estimated at 14,000. However, since 1985, the level and rate of observed incidental take has decreased to the point where, by itself, it is not significant to account for the most recently observed declines.

Observer programs under the MMPA, and for the groundfish fisheries of Alaska under the Magnuson Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.* (Magnuson Act), will assist NMFS in determining whether the incidental take of Steller sea lions during commerical fishing operations or other observable activities are factors in the decline in the number of these animals in Alaska.

There are reports of fishermen and other people shooting adult Steller sea lions at rookeries, haulout sites, and in the water near boats, but the magnitude of this mortality is unknown. These activities also have the potential for disruption of breeding activities and use of rookeries and haulout sites.

Proposed Determination

NMFS believes the available data support the proposed threatened classification for Steller sea lions. NMFS has determined that it is likely that this condition is caused by a combination of the factors specified under section 4(a)(1) of the ESA, although the precise causes(s) are not fully understood.

The number of Steller sea lions observed on certain rookeries in Alaska declined by 63% since 1985 and by 82% since 1960. Declines are occurring in previously stable areas and are accelerating. The decline has spread from the eastern Aleutian Islands, where it began in the early 1970's, east to the Gulf of Alaska, and west to the previously stable central Aleutian Islands. Significant declines have also occurred on the Kuril Islands, USSR. However, there is not sufficient information to consider animals in different geographic regions as separate populations; therefore, the status of the entire species must be considered. Total counts of sea lions at rookeries and haulout sites throughout most of Alaska and the USSR in 1989 were about 56,000, which would indicate a total population size in this area of at least one-third more than this number. There are areas were Steller sea lion abundance is stable or not declining significantly. Therefore, NMFS does not believe that the species currently is in danger of extinction throughout all or a significant portion of its range (i.e. endangered), and proposes to list the species as threatened.

Proposed Protective Regulations

Until more comprehensive regulations are developed, NMFS proposes to adopt protective measures similar to those in the emergency interim rule, as follows:

1. *Prohibit shooting near sea lions.* Although the MMPA prohibits intentional lethal take of Steller sea lions in the course of commercial fishing, fishermen have not been prohibited from harassing sea lions that are interfering with their gear or catch by shooting at or near them. Since these practices may result in inadvertent mortalities, NMFS proposes to prohibit shooting at or within 100 yards (91.4 meters) of a Steller sea lion.

Exceptions to the shooting provisions are proposed: For activities authorized by a permit issued in accordance with the endangered species permit provisions of 50 CFR part 222, subpart C; for government officials taking Steller sea lions in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare or the nonlethal removal of nuisance animals; and for the taking of Steller sea lions for subsistence purposes under section 10(e) of the ESA.

2. *Establish Buffer Zones.* NMFS proposes to establish a buffer zone of 3 nautical miles (5.6 kilometers) around the principal Steller sea lion rookeries in the Gulf of Alaska and the Aleutian Islands. Rookeries in southeastern Alaska, east of 141 °W. longitude, have not experienced the declines reported in central and western Alaska and no buffer zones are proposed for these areas. No vessels would be allowed to operate within the 3-mile buffer zones, with certain exceptions. Similarly, no person would be allowed to approach on land closer than one-half (½) mile (0.8 kilometer) or within sight of a listed Steller sea lion rookery. On Marmot Island, no person would be allowed to approach on land closer than one and one-half (1½) miles (2.4 kilometers) from the eastern shore. Marmot Island has traditionally been the largest Steller sea lion rookery in Alaska and the eastern beaches are used throughout the year by the sea lions.

The purposes of the buffer zones include restricting the opportunities for individuals to shoot at sea lions and facilitating enforcement of this restriction; reducing the likelihood of interactions with sea lions, such as accidents or incidental takings in these areas where concentrations of these animals are expected to be high;

minimizing disturbances and interference with sea lion behavior, especially at pupping and breeding sites; and avoiding or minimizing other related adverse effects.

Exceptions to the buffer zone restrictions are proposed: For activities authorized by permits issued in accordance with the endangered species permit provisions of 50 CFR part 222, subpart C; for government officials taking Steller sea lions in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare or the nonlethal removal of nuisance animals; for government officials conducting activities necessary for national defense or the performance of other legitimate governmental activities; and for emergency situations that present a threat to the health, safety or life of a person or a significant threat to the vessel or property. Further, a mechanism is provided to allow the Director, Alaska Region, NMFS (Regional Director) to issue exemptions for traditional or historic activities that do not have a significant adverse effect on sea lions and for which there is no readily available and acceptable alternative. Notice of all such exemptions will be published in the **Federal Register**. There is no overall exception to the buffer zone restrictions for subsistence taking of Steller sea lions; an exemption issued by the Regional Director, would be needed.

3. *Establish Incidental Kill Quota.* When the MMPA was amended in 1988 to require emergency regulations once 1,350 Steller sea lions were incidentally killed in any year, the population numbers were based, in part, on 1985 data. In four study areas in Alaska, Steller sea lions declined by an average of 63% from 1985 to 1989. Therefore, NMFS proposed to prohibit the incidental killing of more than 675 Steller sea lions on an annual basis in Alaskan waters and adjacent areas of the U.S. Exclusive Economic Zone (EEZ) west of 141 °W. longitude. In association with the emergency rule, NMFS instituted a more efficient monitoring system. Foreign processors and domestic groundfish vessels 125 feet (38 meters) or more in length now carry observers during 100% of their operations in the EEZ of the Bering Sea and in the Gulf of Alaska. Groundfish vessels of 60 to 124 feet (18 to 38 meters) in length carry observers during 30% of their operations in each quarter. Three additional fisheries in Alaska that are classified as Category I under the MMPA, the Prince William Sound set and drift gillnet fishery for salmon and the South Unimak (Unimak and False Passes) drift gillnet fishery for salmon, will have observer coverage during the 1990 fishing season. The total incidental take of sea lions will be estimated monthly during the course of the fishing season, based on the in-season observer reports. In order to continue to monitor this quota, NMFS proposes to retain the observer authority of the emergency rule by allowing the Regional Director to place an observer on any fishing vessel. If data indicate that the quota is being approached, the Assistant Administrator for Fisheries, NOAA, will issue emergency rules to establish closed areas, allocate the remaining quota among fisheries, or take other action to ensure that commercial fishing operations do not exceed the quota.

Critical Habitat

The ESA requires that critical habitat be specified to the maximum extent prudent and determinable at the time the species is proposed for listing. NMFS intends to propose critical habitat at the earliest possible date as a part of the comprehensive protective regulations.

Additional Conservation Measures

In addition to protective regulations, conservation measures for species that are listed as endangered or threatened under the ESA include recognition, recovery actions, designation and protection of critical habitat, and Federal agency consultation. NMFS has established a Recovery Team to assist in developing a Recovery Plan for the Steller sea lion. This plan will help guide the recovery efforts of NMFS and other agencies and organizations.

Section 7(a)(2) of the ESA requires that each Federal agency insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat. Federal actions most likely to affect the Steller sea lion include approval and implementation of Fishery Management Plans and regulations under the Magnuson Act; permitted activities on land near rookeries and haulout sites, such as timber, mineral and oil development; and leasing activities associated with offshore oil and gas exploration and development on the Outer Continental Shelf.

Once the Steller sea lion is listed as endangered or threatened, it is, by definition, considered depleted under the MMPA, and additional restrictions apply under the Act, such as a prohibition on taking for public display purposes.

Classification

Section 4(b)(1) of the ESA restricts the information that may be considered when assessing species for listing. Based on this limitation and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F.2d 829 (6th Cir. 1981), NMFS has categorically excluded all listing actions under the ESA from environmental assessment requirements of the National Environmental Policy Act (48 FR 4413, February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process.

List of Subjects in 50 CFR Part 227

Endangered and threatened wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.4, paragraph (f) is revised to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(f) Steller (northern) sea lion (*Eumetopias jubatus*).

3. In subpart B, § 227.12 is revised to read as follows:

§ 227.12 Steller sea lion.

(a) *Prohibitions*—(1) *No discharge of firearms.* Except as provided in paragraph (b) of this section, no person subject to the jurisdiction of the United States may discharge a firearm at or within 100 yards (91.4 meters) of a Steller sea lion. A firearm is any weapon, such as a pistol or rifle, capable of firing a missile using an explosive charge as a propellant.

(2) *No approach in buffer areas.* Except as provided in paragraph (b) of this section:

(i) No owner or operator of a vessel may allow the vessel to approach within 3 nautical miles (5.6 kilometers) of a Steller sea lion rookery site listed in paragraph (a)(3) of this section;

(ii) No person may approach on land not privately owned within one-half statutory mile (0.8 kilometers) or within sight of a Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater, except on Marmot Island; and

(iii) No person may approach on land not privately owned within one and one-half statutory miles (2.4 kilometers) or within sight of the eastern shore of Marmot Island, including the Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater.

(3) *Listed sea lion rookery sites.* Listed Steller sea lion rookery sites consist of the rookeries in the Aleutian Islands and the Gulf of Alaska listed in Table 1.

TABLE 1. LISTED STELLER SEA LION ROOKERY SITES [1]

Island	From		To		NOAA Chart	Notes
	Latitude	Longitude	Latitude	Longitude		
1. Outer I	59°20.5 N	150°23.0 W	59°21.0 N	150°24.5 W	16681	S quadrant.
2. Sugarloaf I	58°53.0 N	152°02.0 W			16580	Whole island.
3. Marmot I	58°13.0 N	151°48.0 W	58°09.5 N	151°52.0 W	16580	SE quadrant.
4. Chirikof I	55°47.5 N	155°33.5 W	55°48.5 N	155°43.0 W	16580	S quadrant.
5. Chowiet I	56°02.0 N	156°41.0 W	56°01.5 N	156°44.0 W	16013	S quadrant.
6. Atkins I	55°03.5 N	159°18.5 W			16540	Whole island.
7. Chernabura I	54°47.5 N	159°31.0 W	54°45.5 N	159°33.5 W	16540	SE corner.
8. Pinnacle Rock	54°46.0 N	161°46.0 W			16540	Whole island.
9. Clubbing Rks (N)	54°43.0 N	162°26.5 W			16540	Whole island.
9. Clubbing Rks (S)	54°42.0 N	162°26.5 W			16540	Whole island.
10. Sea Lion Rks	55°28.0 N	163°12.0 W			16520	Whole island.
11. Ugamak I	54°14.0 N	164°48.0 W	54°13.0 N	164°48.0 W	16520	E end of island.
12. Akun I	54°17.5 N	165°34.0 W	54°18.0 N	165°31.0 W	16520	Billings Head Bight.
13. Akutan I	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W	16520	SW corner, Cape Morgan.
14. Bogoslof I	53°56.0 N	168°02.0 W			16500	Whole island.
15. Ogchul I	53°00.0 N	168°24.0 W			16500	Whole island.
16. Adugak I	52°54.5 N	169°09.5 W			16500	Whole island.
17. Yunaska I	52°42.0 N	170°38.5 W	52°41.0 N	170°34.5 W	16500	NE end.
18. Seguam I	52°21.0 N	172°35.0 W	52°21.0 N	172°33.0 W	16480	N coast, Saddleridge Pt.
19. Agligadak I	52°06.25N	172°54.0 W			16480	Whole island.
20. Kasatochi I	52°10.0 N	175°31.0 W	52°10.5 N	175°29.0 W	16480	N half of island.
21. Adak I	51°36.0 N	176°55.5 W	51°38.0 N	176°59.0 W	16460	SW point, Cape Yakak.
22. Gramp rock	51°29.0 N	178°20.5 W			16460	Whole island.
23. Tag I	51°33.5 N	178°34.5 W			16460	Whole island.
24. Ulak I	51°20.0 N	178°57.0 W	51°18.5 N	178°59.5 W	16460	SE corner, Hasgox Pt.
25. Semisopochnoi	51°58.5 N	179°45.5 E	51°57.0 N	179°46.0 E	16440	E quadrant, Pochnoi Pt.
25. Semisopochnoi	52°01.5 N	179°37.5 E	52°01.5 N	179°39.0 E	16440	N quadrant, Petrel Pt.
26. Amchitka I	51°23.5 N	179°26.0 E	51°22.0 N	179°23.0 E	16440	East Cape.
27. Amchitka I	51°32.5 N	178°50.0 E			16440	Column Rocks.
28. [unnamed I.]	51°45.5 N	178°24.5 E			16440	1 mi. SE of Ayugadak Pt.
29. Kiska I	51°56.5 N	177°19.0 E	51°58.0 N	177°20.5 E	16440	W central, Lief Cove.
30. Kiska I	51°53.0 N	177°13.0 E	51°54.0 N	177°14.0 E	16440	Cape St. Stephen.
31. Walrus I	57°11.0 N	169°56.0 E			16380	Whole island.

[1] Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low water to the second set of coordinates; or, if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.

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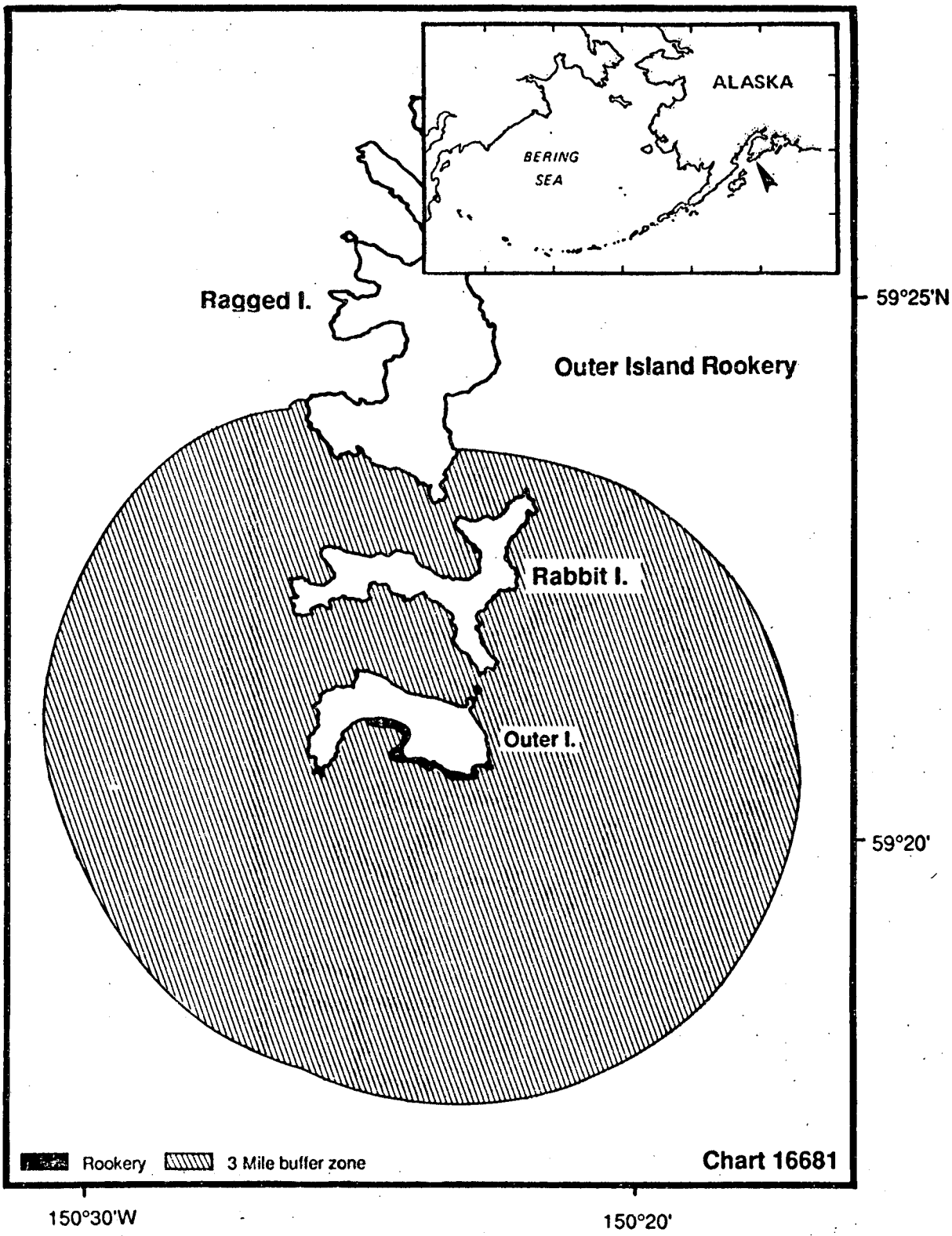
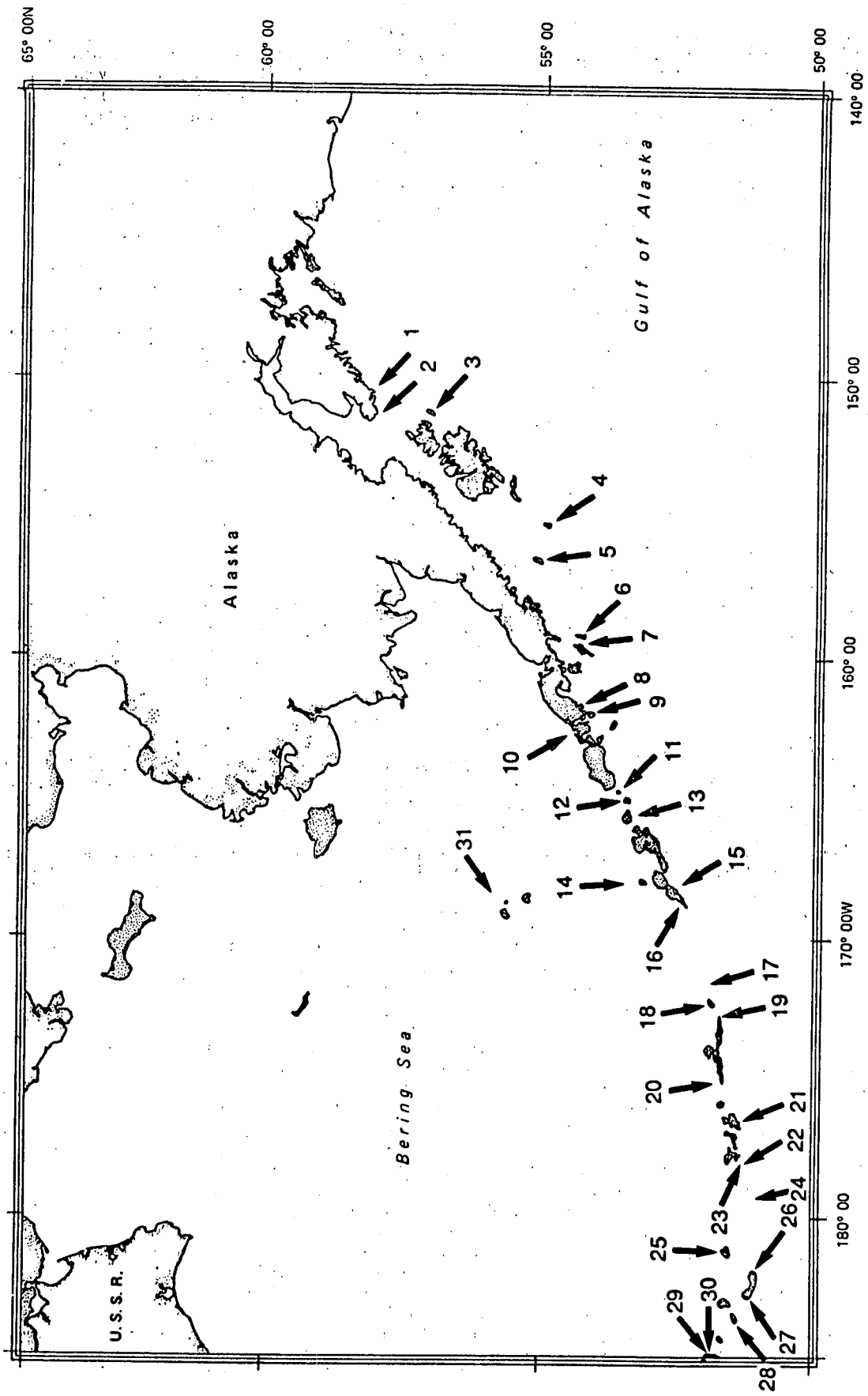

ALASKA
BERING SEA
Ragged I.
Outer Island Rookery
Rabbit I.
Outer I.
59°25'N
59°20'
Rookery
3 Mile buffer zone
Chart 16681
150°30'W
150°20'


65° 00N
60° 00
55° 00
50° 00
140° 00
150° 00
160° 00
170° 00W
180° 00
Alaska
Gulf of Alaska
Bering Sea
U.S.S.R.
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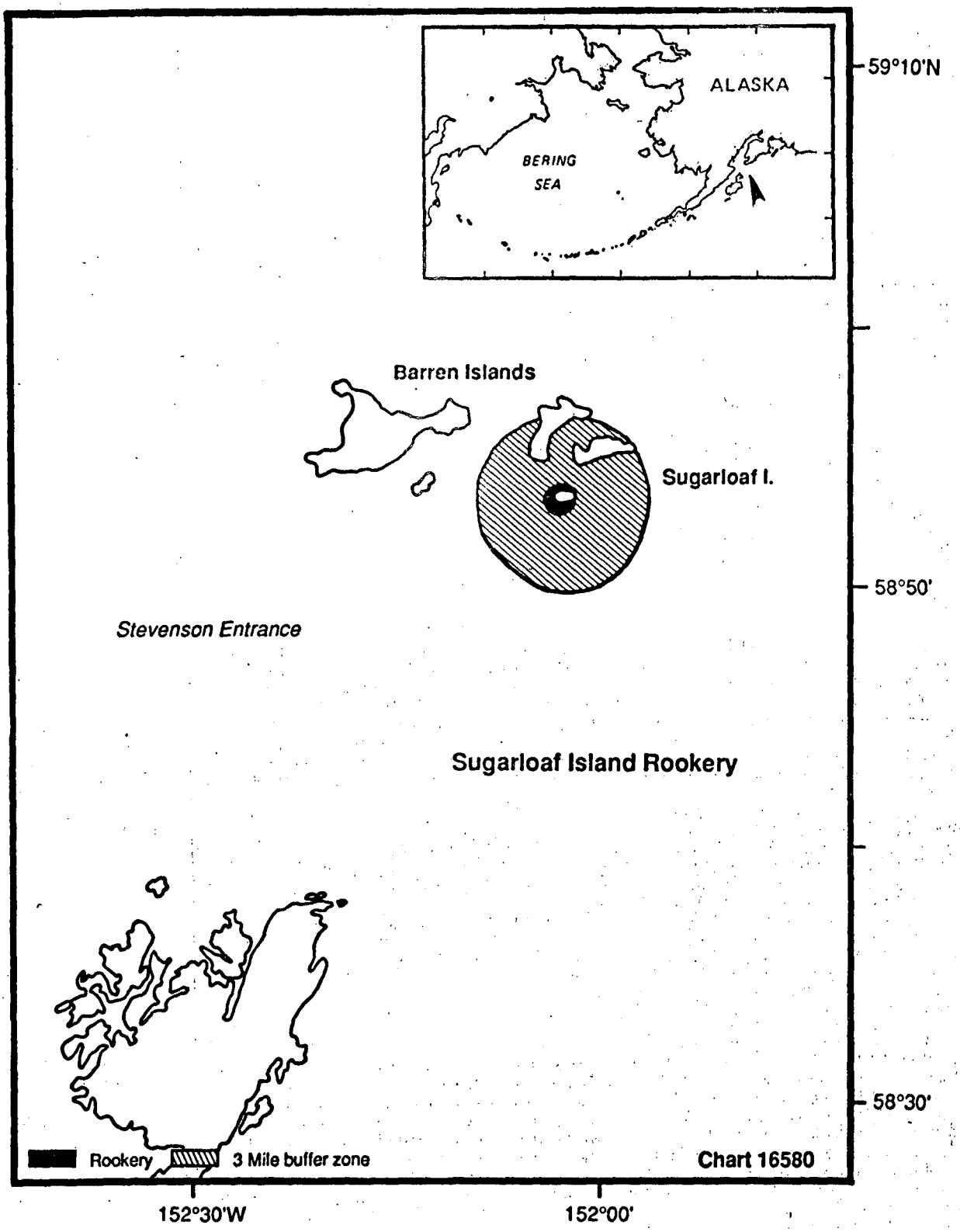
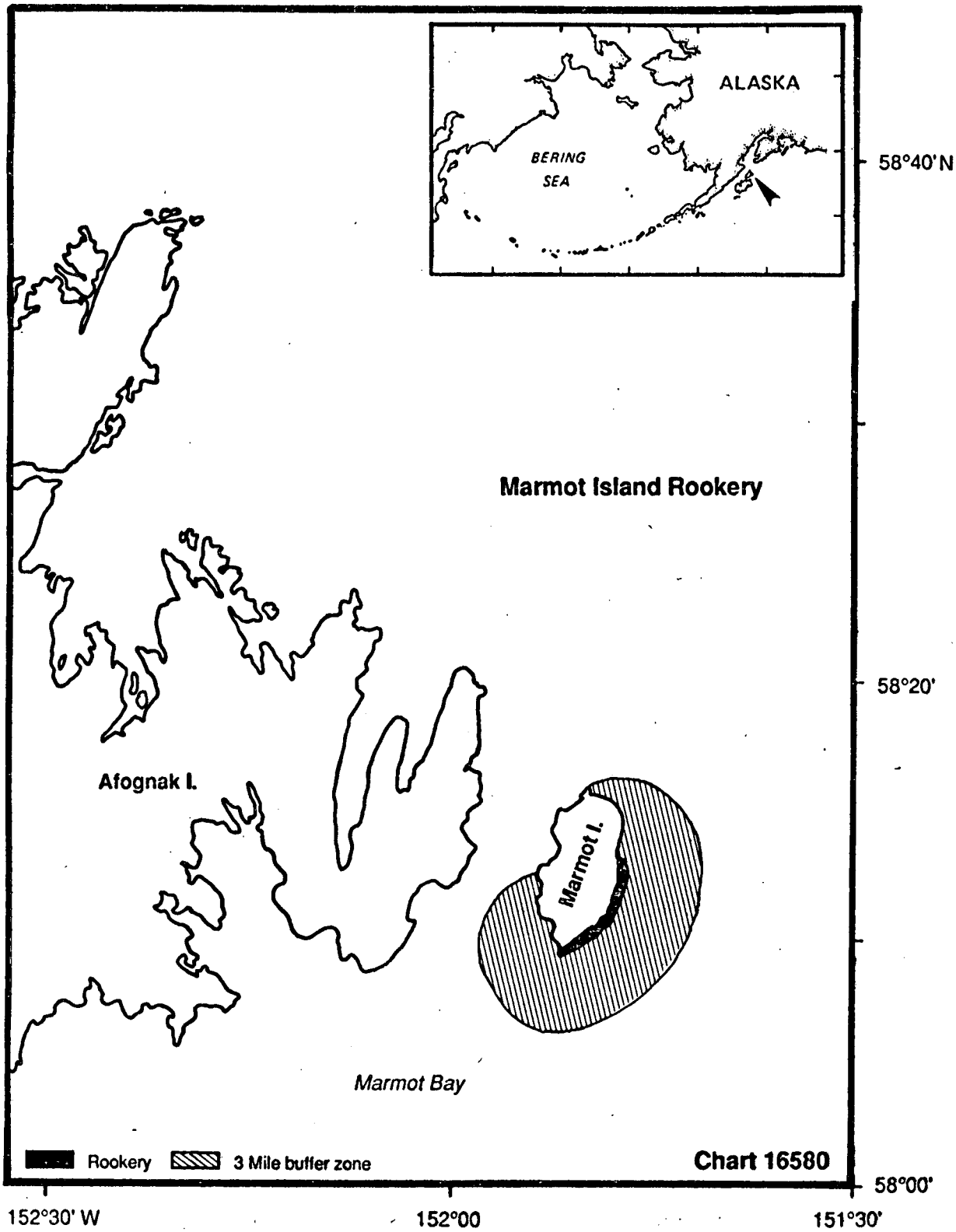
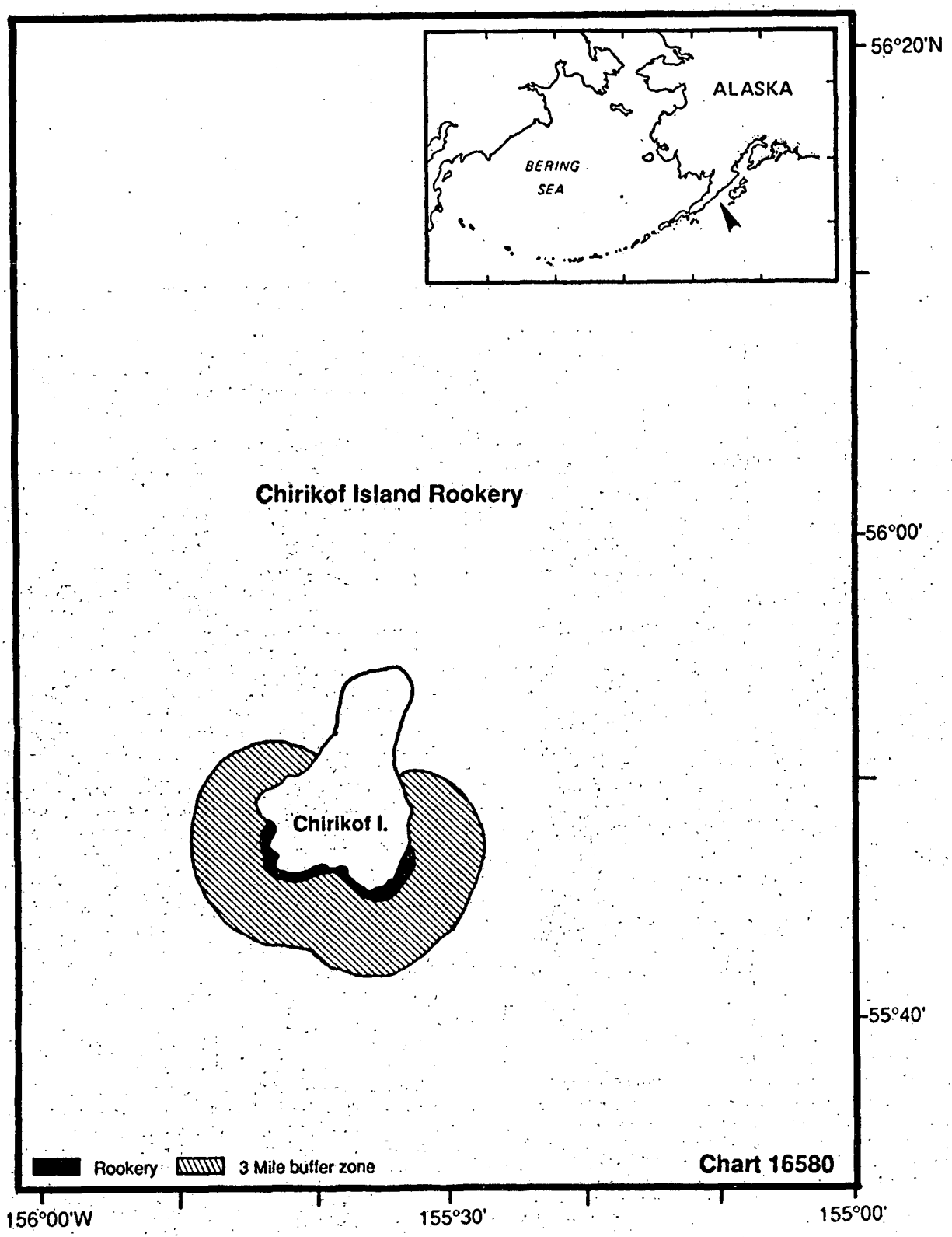
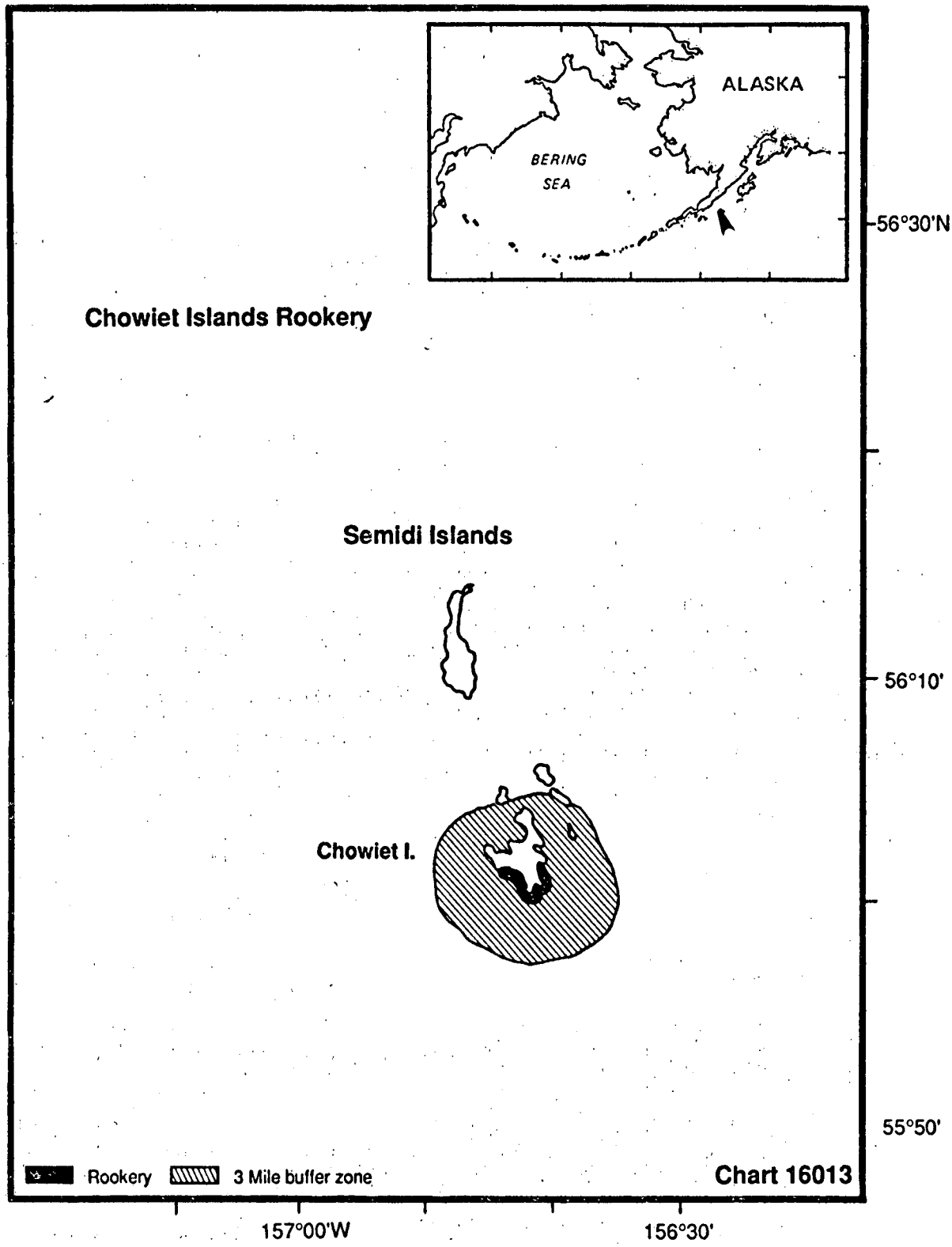
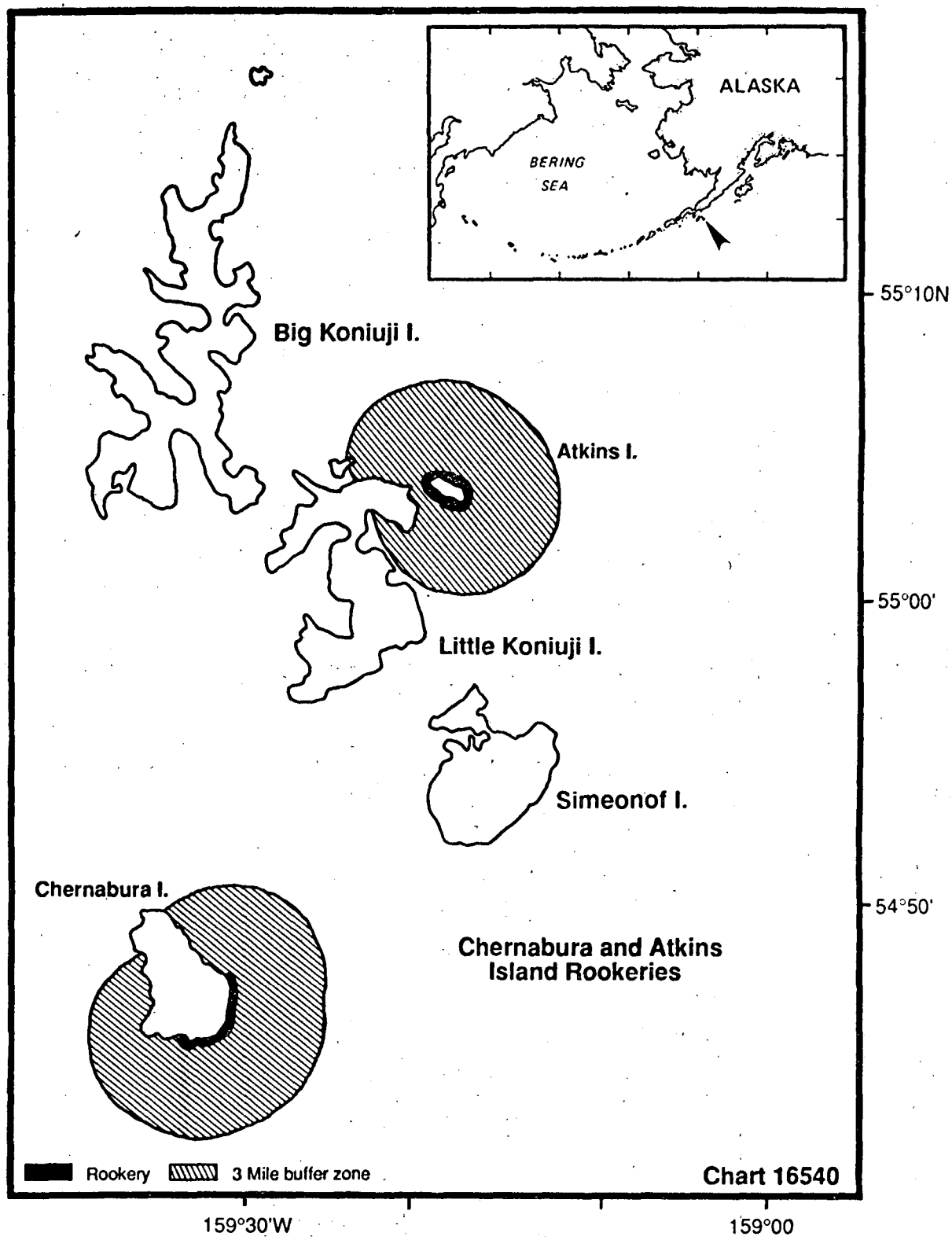
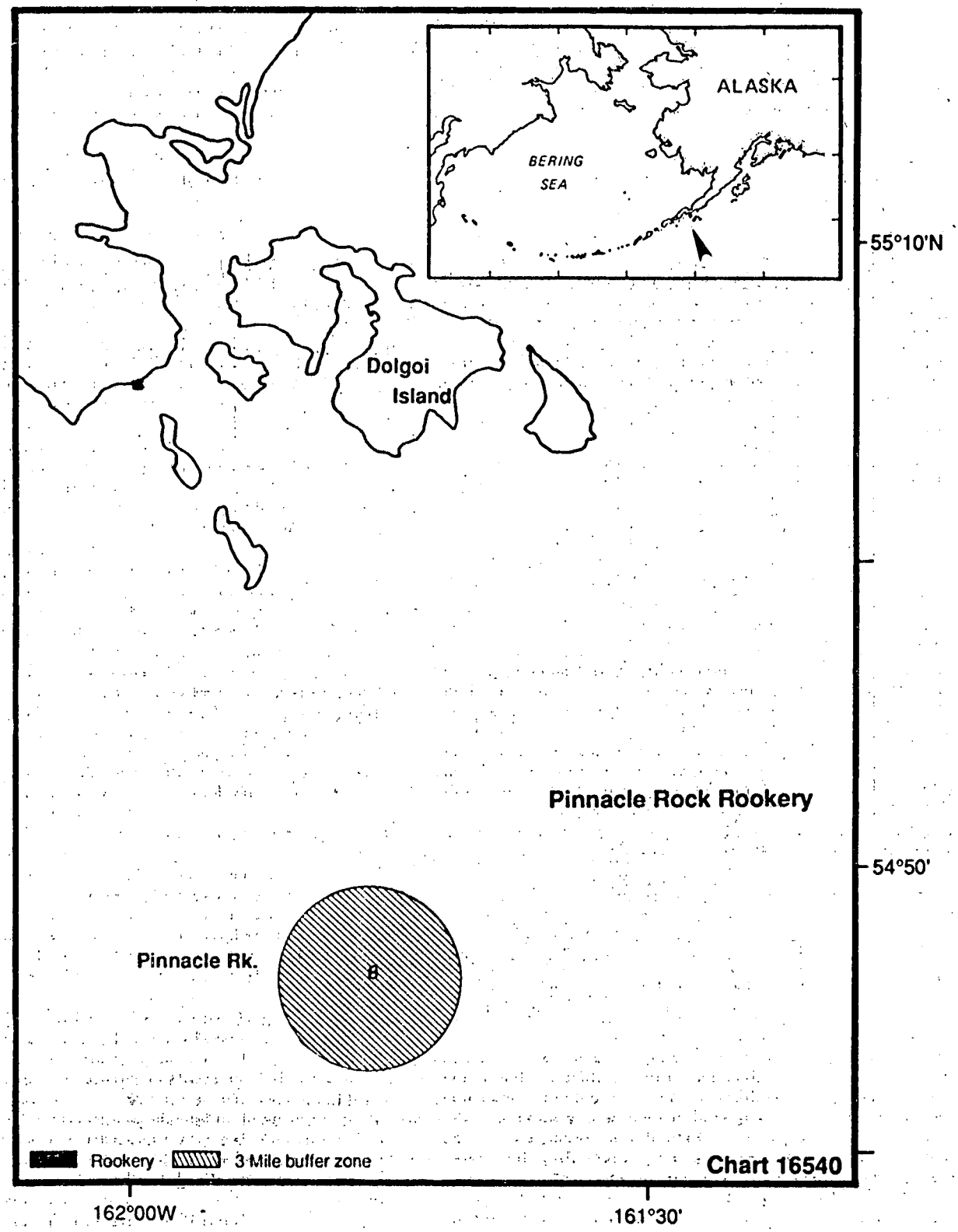

ALASKA
BERING SEA
59°10'N
Barren Islands
Sugarloaf I.
58°50'
Stevenson Entrance
Sugarloaf Island Rookery
58°30'
Rookery
3 Mile buffer zone
Chart 16580
152°30'W
152°00'

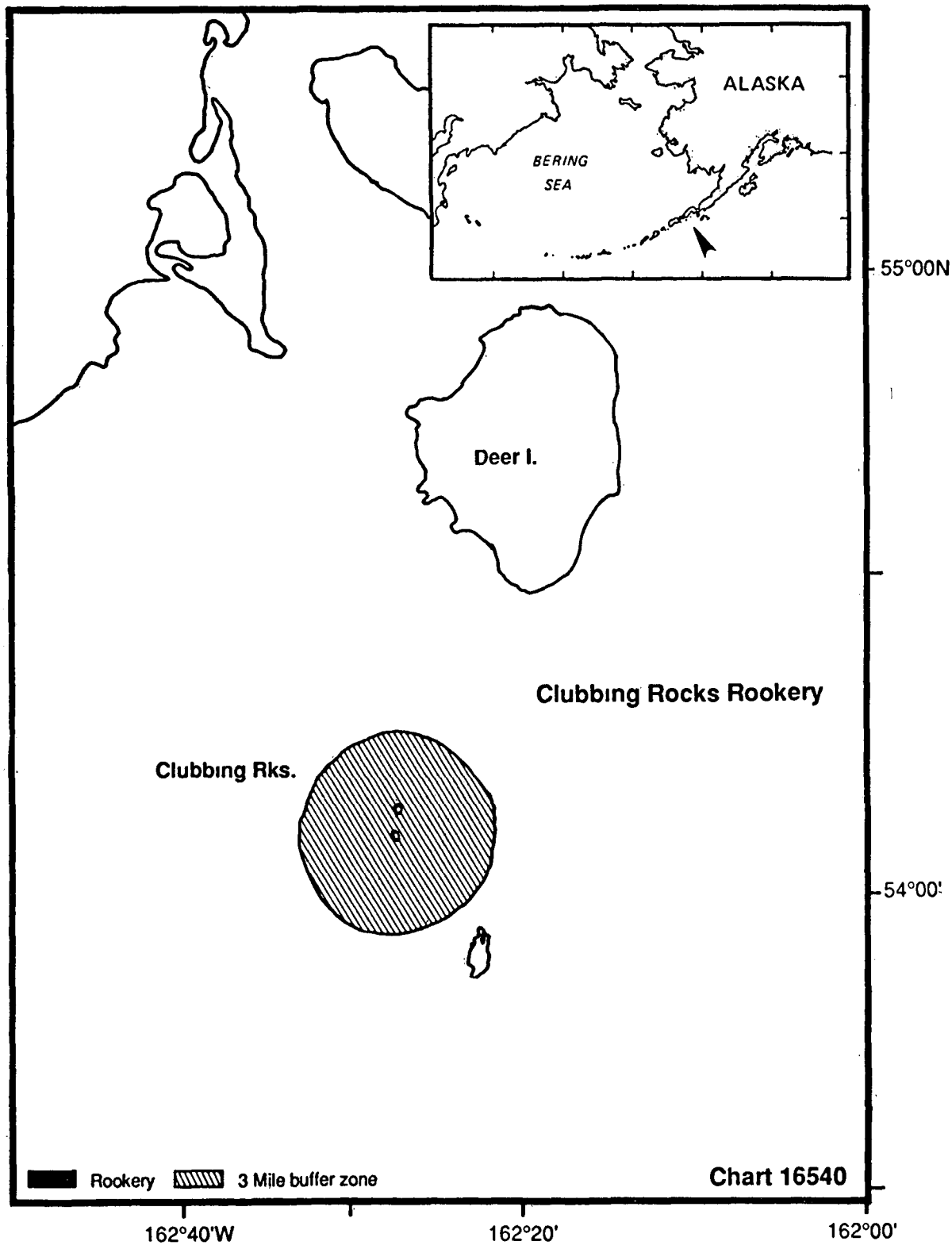

ALASKA
BERING SEA
58°40'N
Marmot Island Rookery
58°20'
Afognak I.
Marmot I.
Marmot Bay
Rookery
3 Mile buffer zone
Chart 16580
58°00'
152°30' W
152°00
151°30'

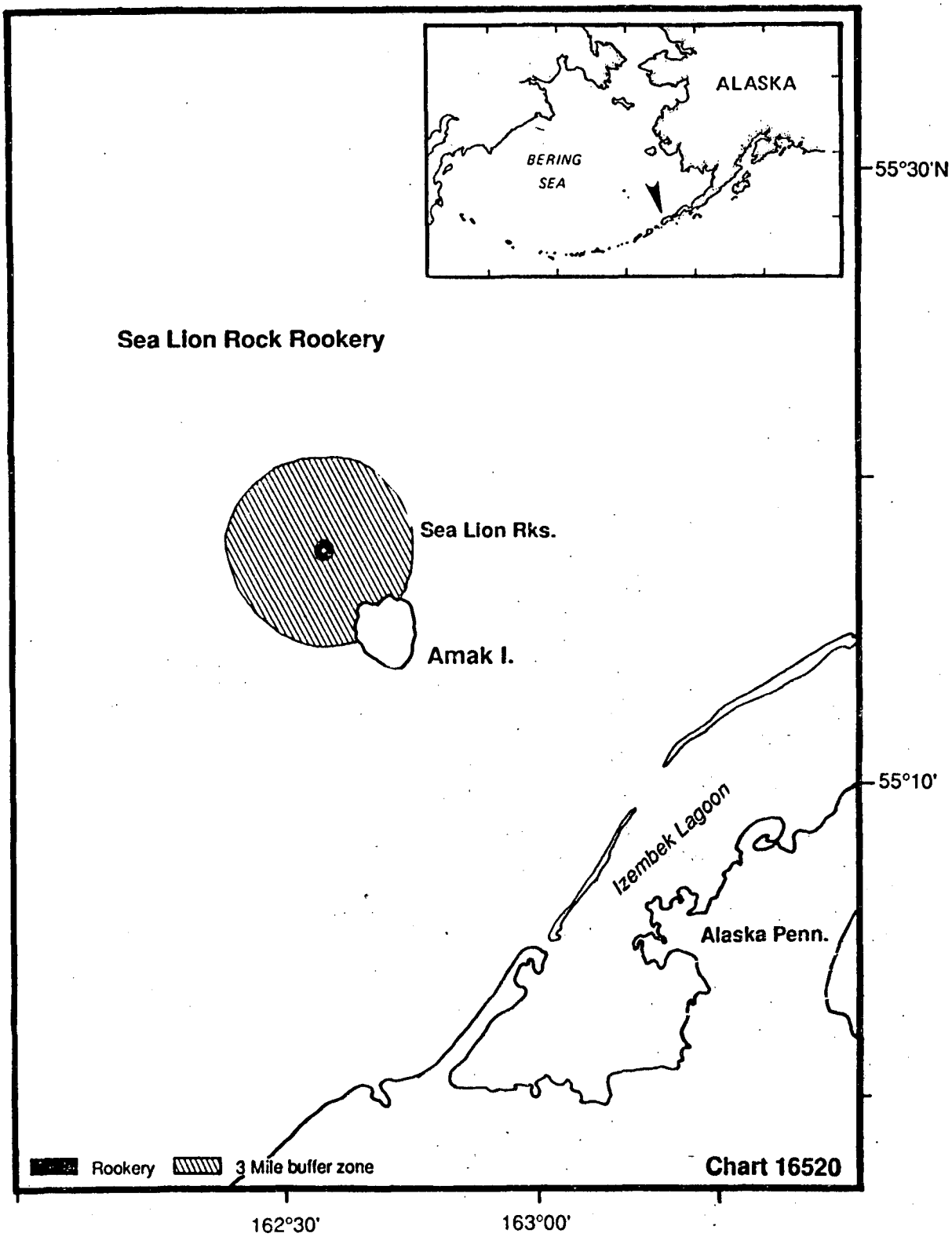

ALASKA
BERING SEA
Chirikof Island Rookery
Chirikof I.
56°20'N
56°00'
55°40'
156°00'W
155°30'
155°00'
Rookery
3 Mile buffer zone
Chart 16580

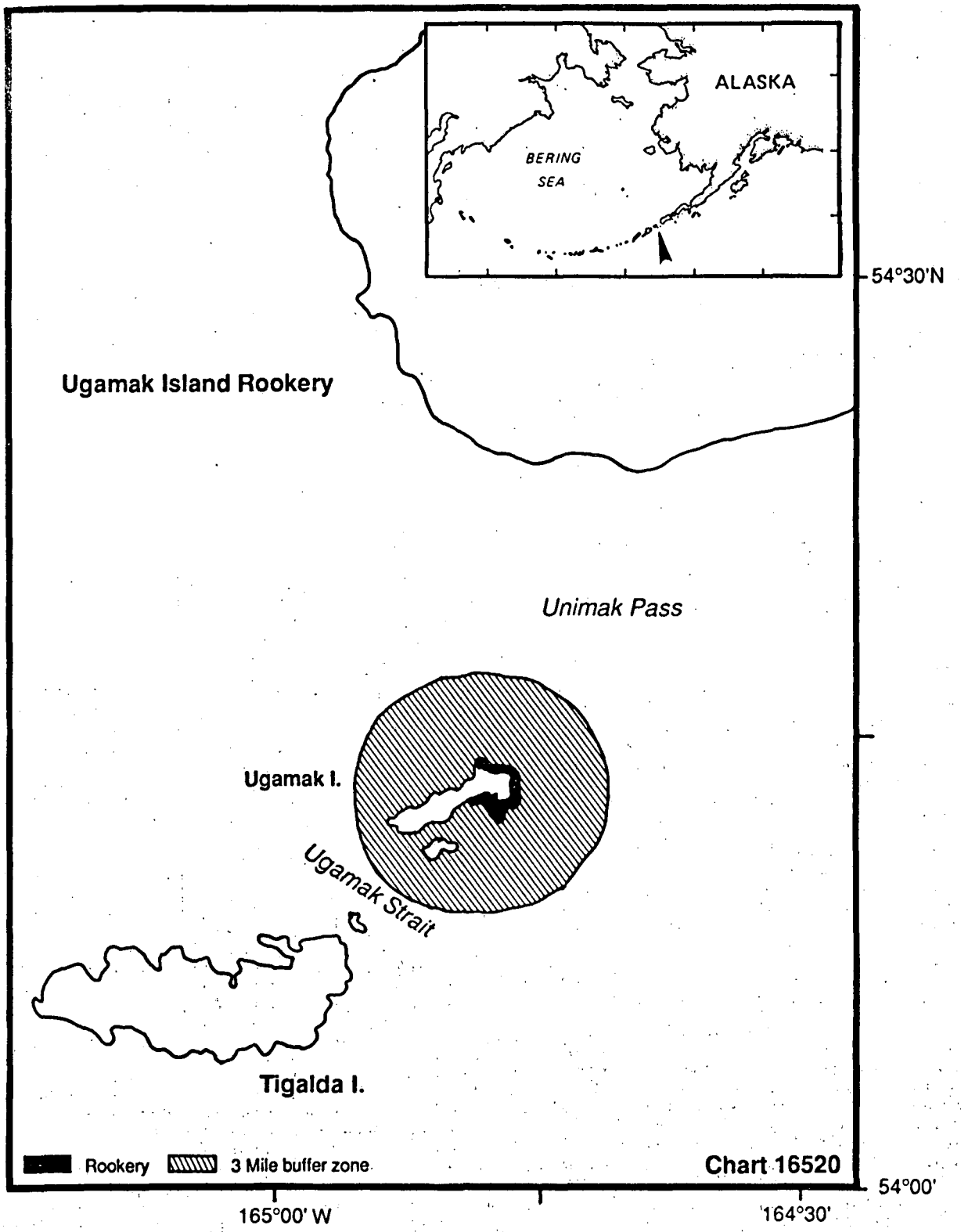

ALASKA
BERING SEA
56°30'N
Chowiet Islands Rookery
Semidi Islands
56°10'
Chowiet I.
55°50'
Rookery
3 Mile buffer zone
Chart 16013
157°00'W
156°30'

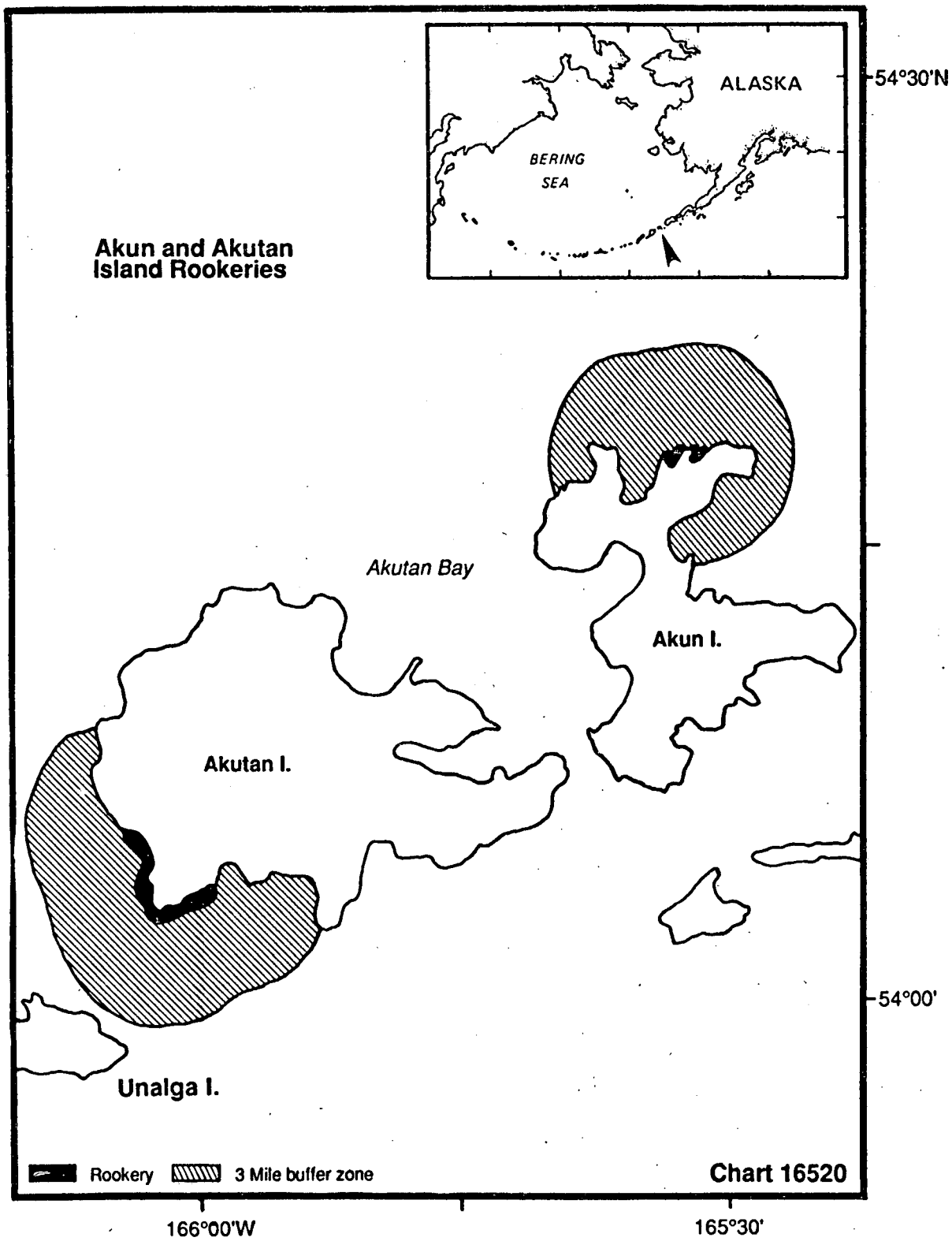

ALASKA
BERING SEA
55°10N
Big Koniuji I.
Atkins I.
55°00'
Little Koniuji I.
Simeonof I.
Chernabura I.
54°50'
Chernabura and Atkins Island Rookeries
Rookery
3 Mile buffer zone
Chart 16540
159°30'W
159°00

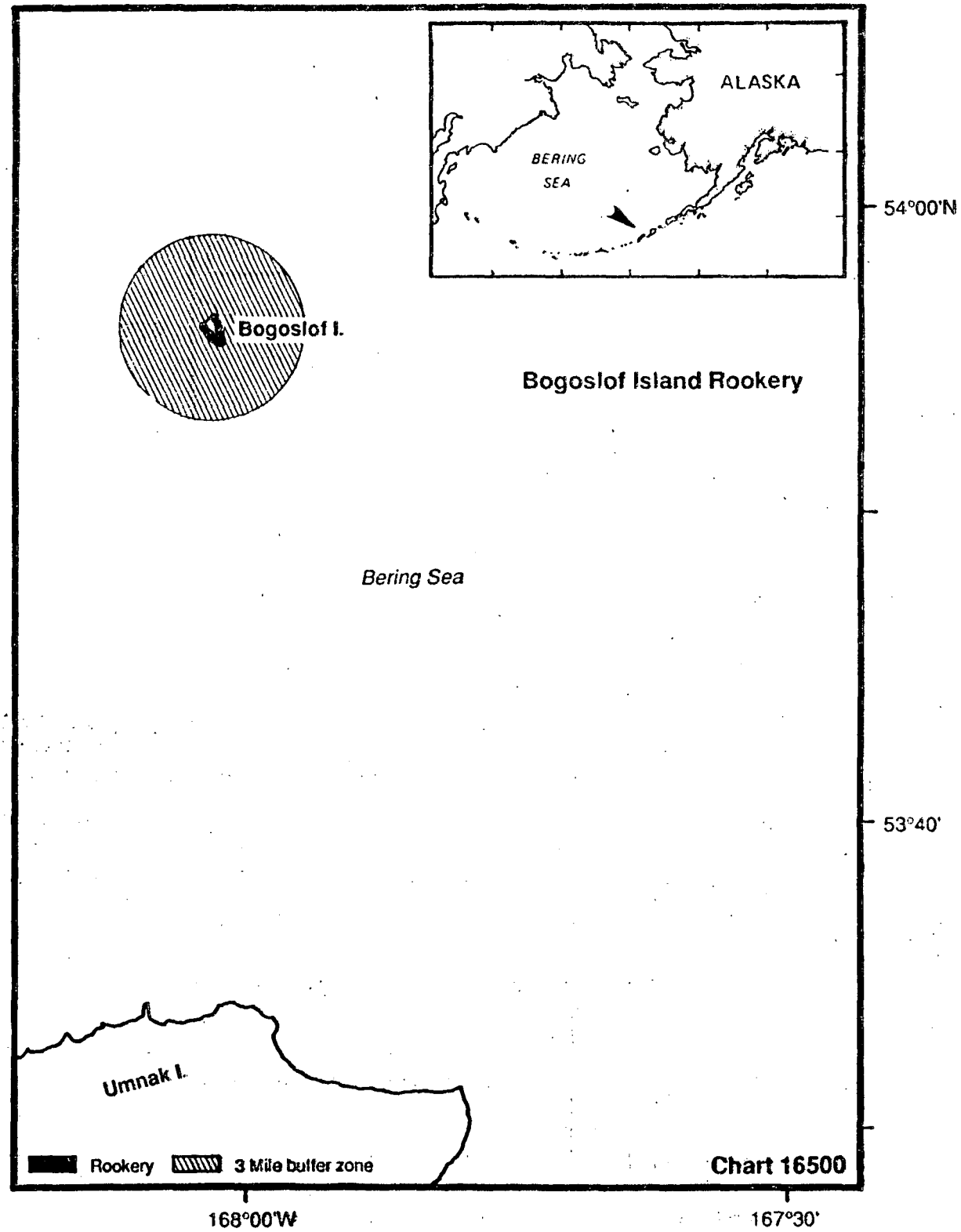

ALASKA
BERING SEA
55°10'N
Dolgoi Island
Pinnacle Rock Rookery
54°50'
Pinnacle Rk.
Rookery
3 Mile buffer zone
Chart 16540
162°00W
161°30'

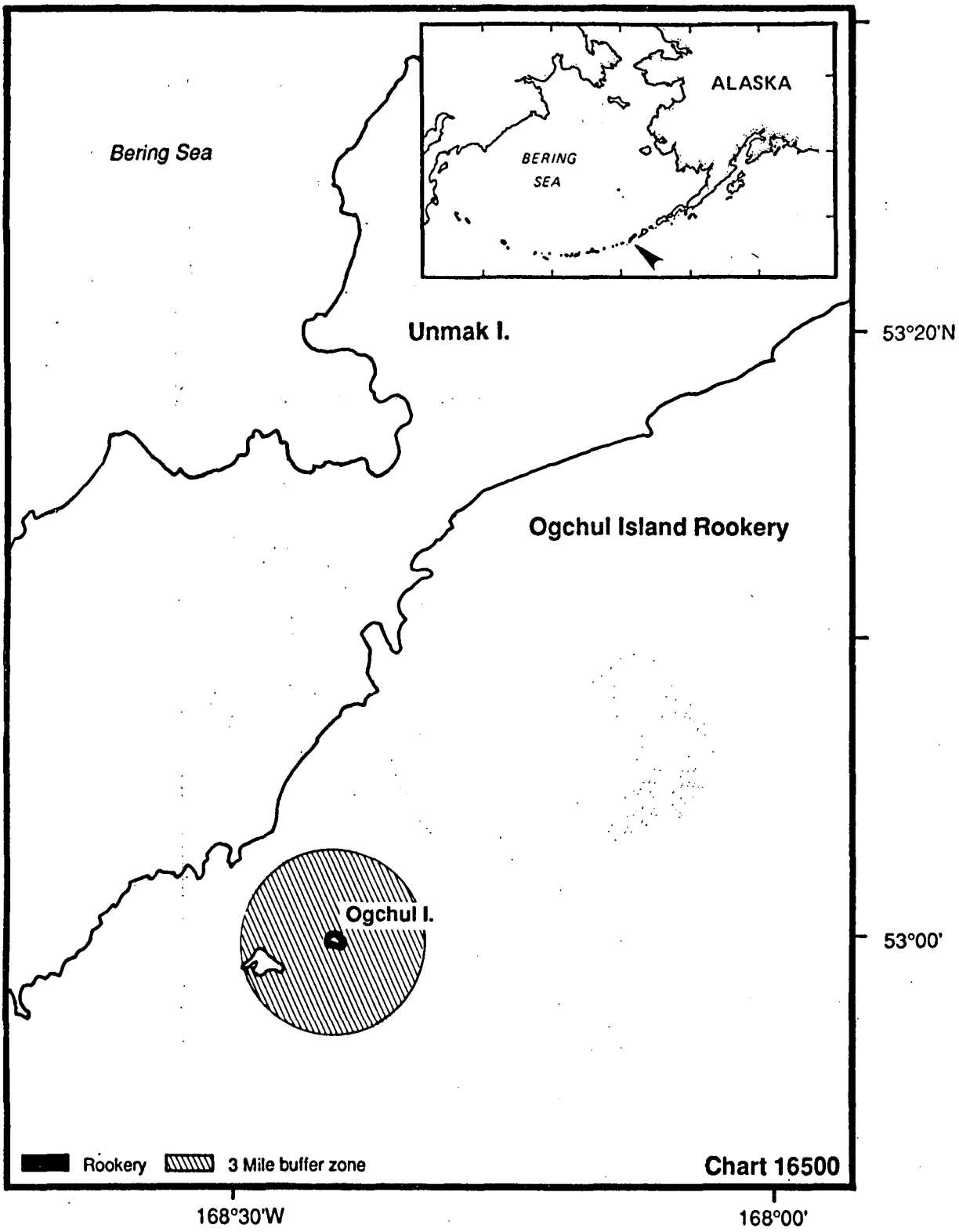

ALASKA
BERING SEA
55°00N
Deer I.
Clubbing Rocks Rookery
Clubbing Rks.
54°00'
Rookery
3 Mile buffer zone
Chart 16540
162°40'W
162°20'
162°00'

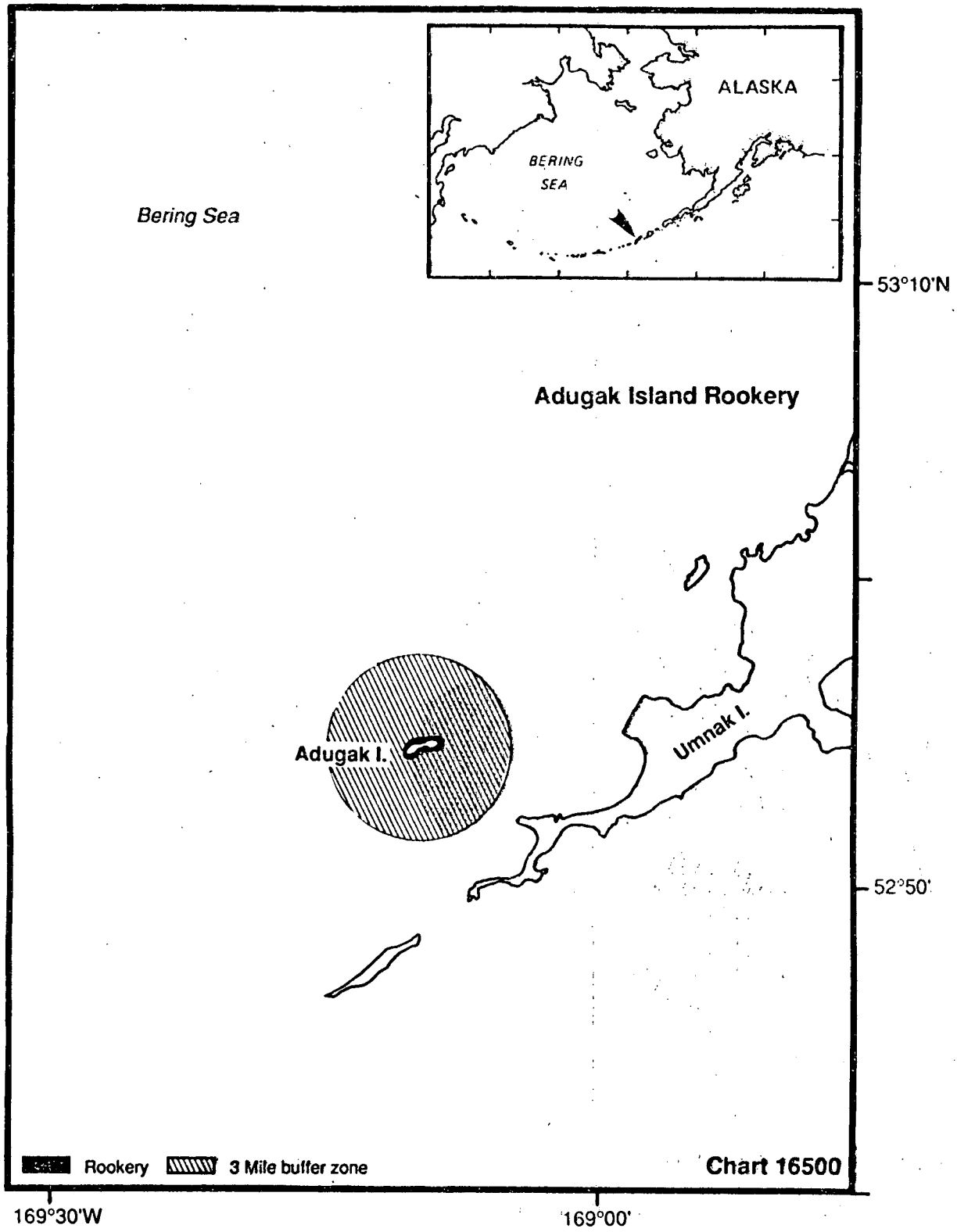

ALASKA
BERING SEA
55°30'N
Sea Lion Rock Rookery
Sea Lion Rks.
Amak I.
55°10'
Izembek Lagoon
Alaska Penn.
Rookery
3 Mile buffer zone
Chart 16520
162°30'
163°00'

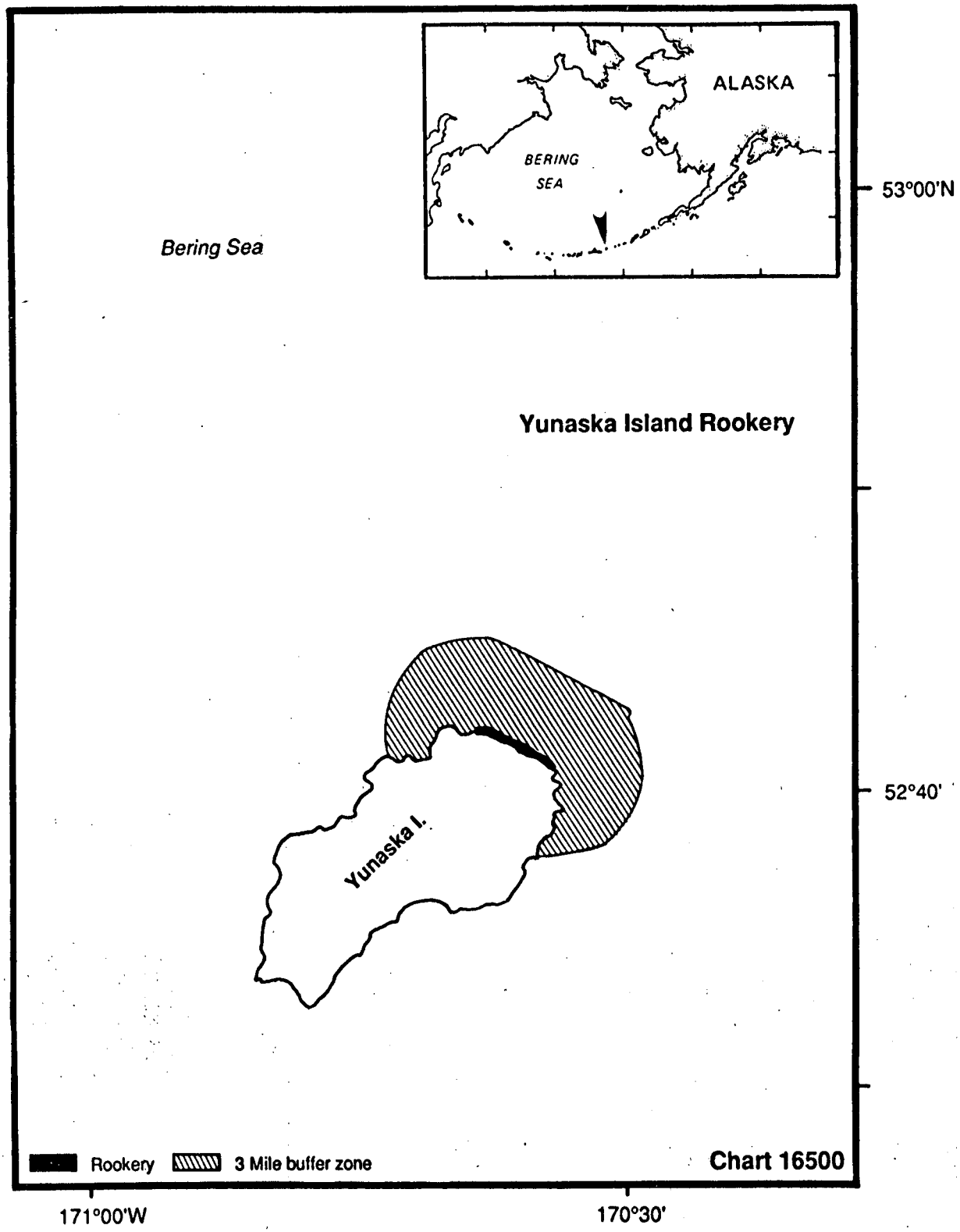

ALASKA
BERING SEA
54°30'N
Ugamak Island Rookery
Unimak Pass
Ugamak I.
Ugamak Strait
Tigalda I.
Rookery
3 Mile buffer zone
Chart 16520
54°00'
165°00' W
164°30'

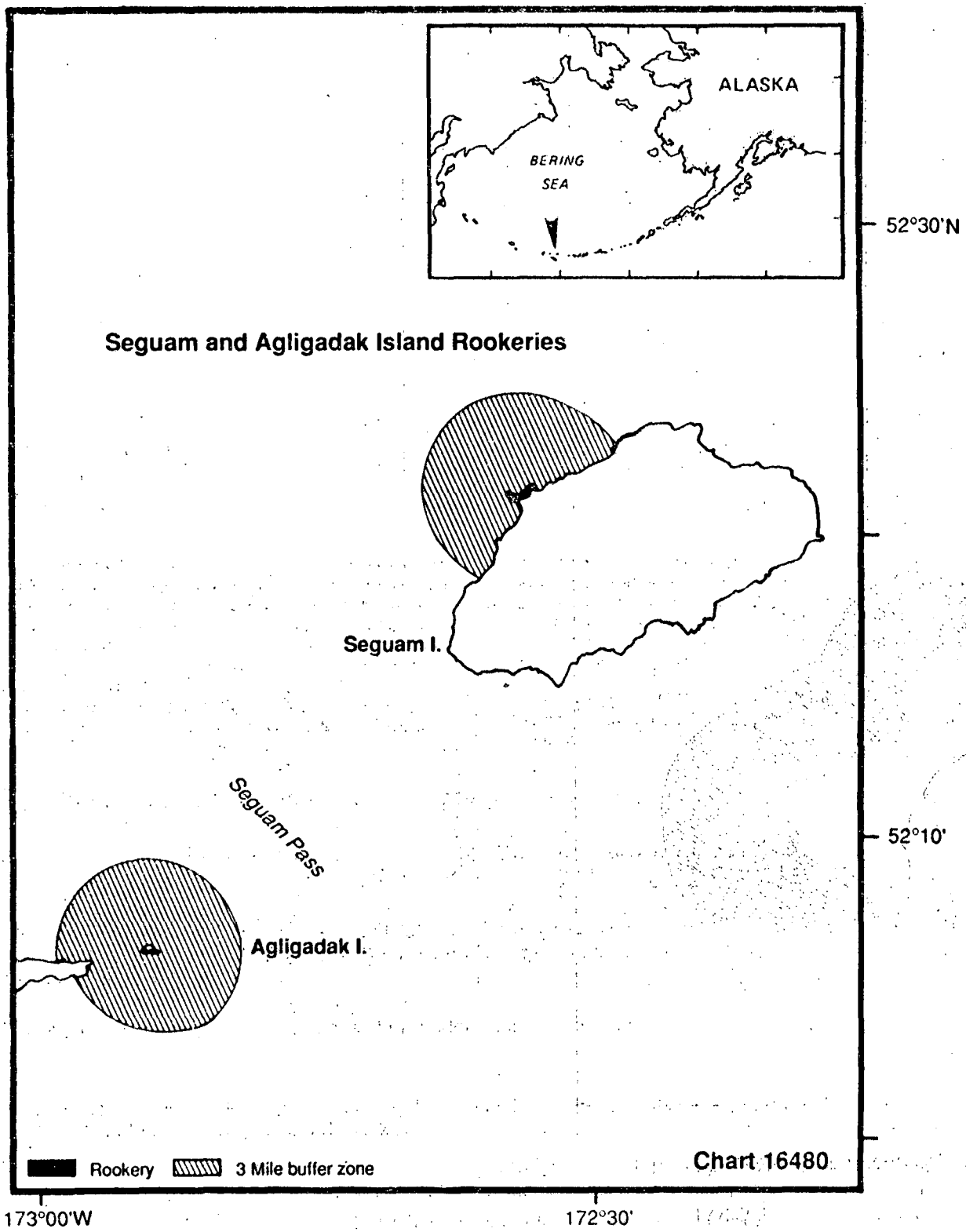

Akun and Akutan Island Rookeries
ALASKA
BERING SEA
54°30'N
Akutan Bay
Akun I.
Akutan I.
54°00'
Unalga I.
Rookery
3 Mile buffer zone
Chart 16520
166°00'W
165°30'

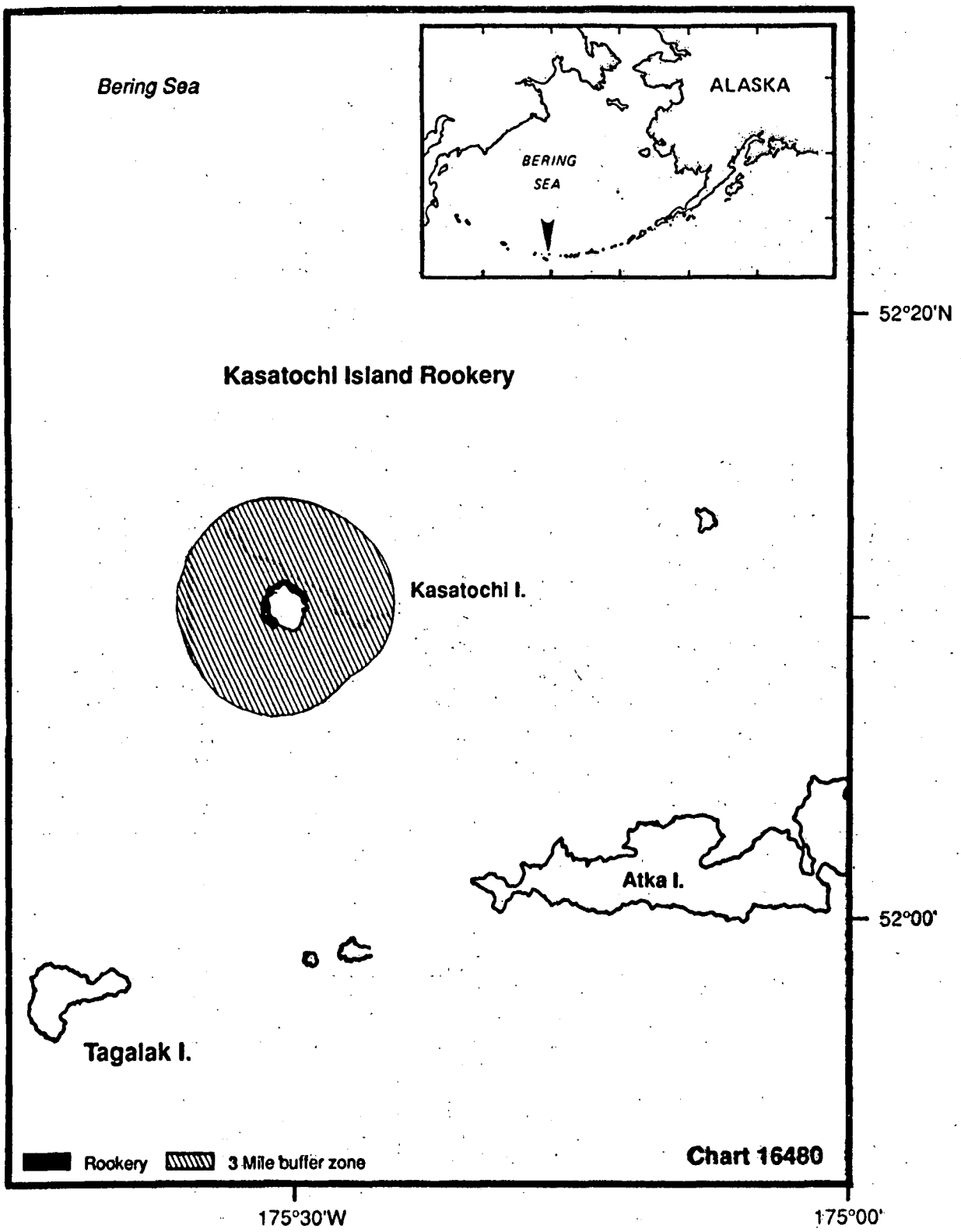

ALASKA
BERING SEA
54°00'N
Bogoslof I.
Bogoslof Island Rookery
Bering Sea
53°40'
Umnak I.
Rookery
3 Mile buffer zone
Chart 16500
168°00'W
167°30'

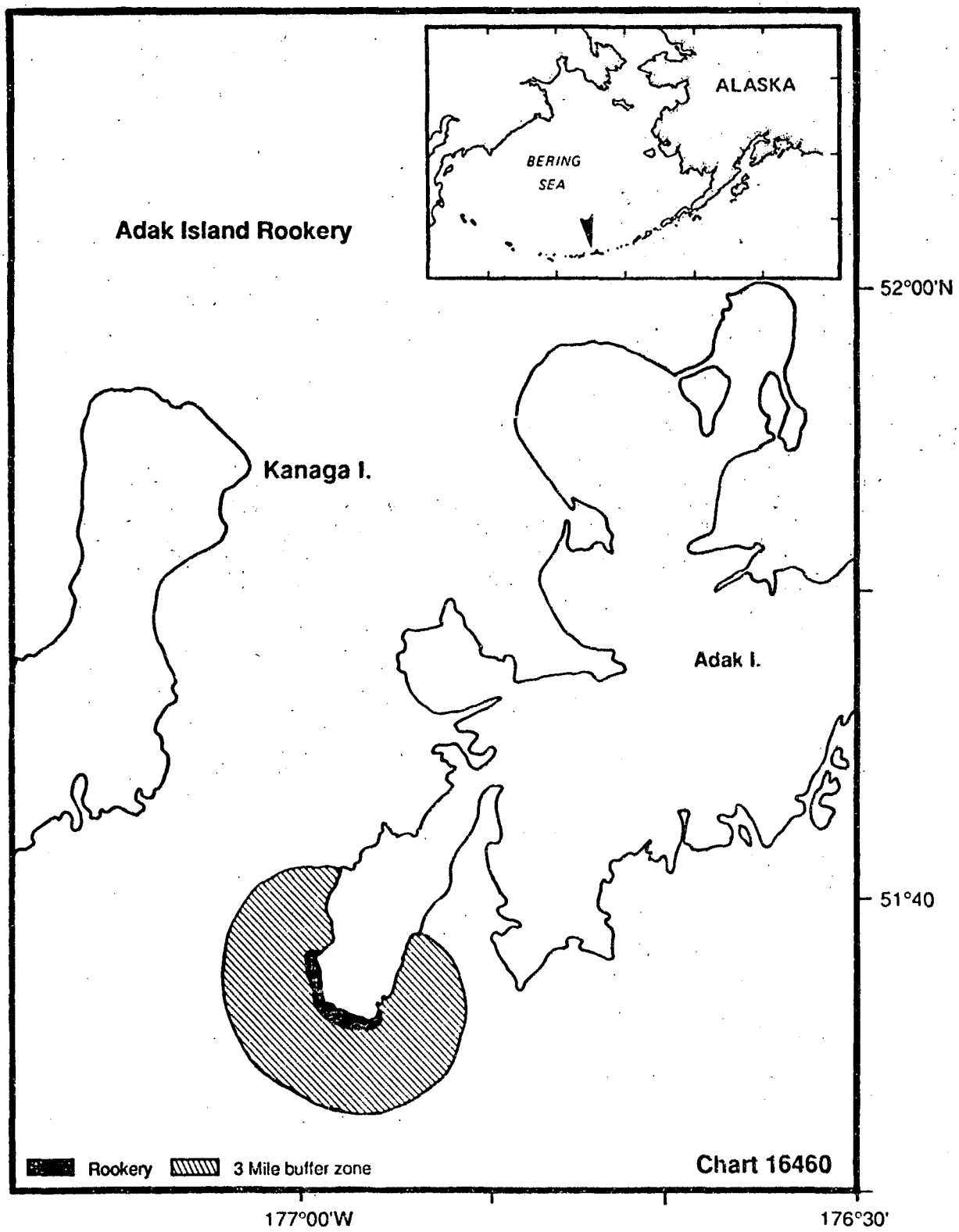

ALASKA
BERING SEA
Bering Sea
Unmak I.
53°20'N
Ogchul Island Rookery
Ogchul I.
53°00'
Rookery
3 Mile buffer zone
Chart 16500
168°30'W
168°00'

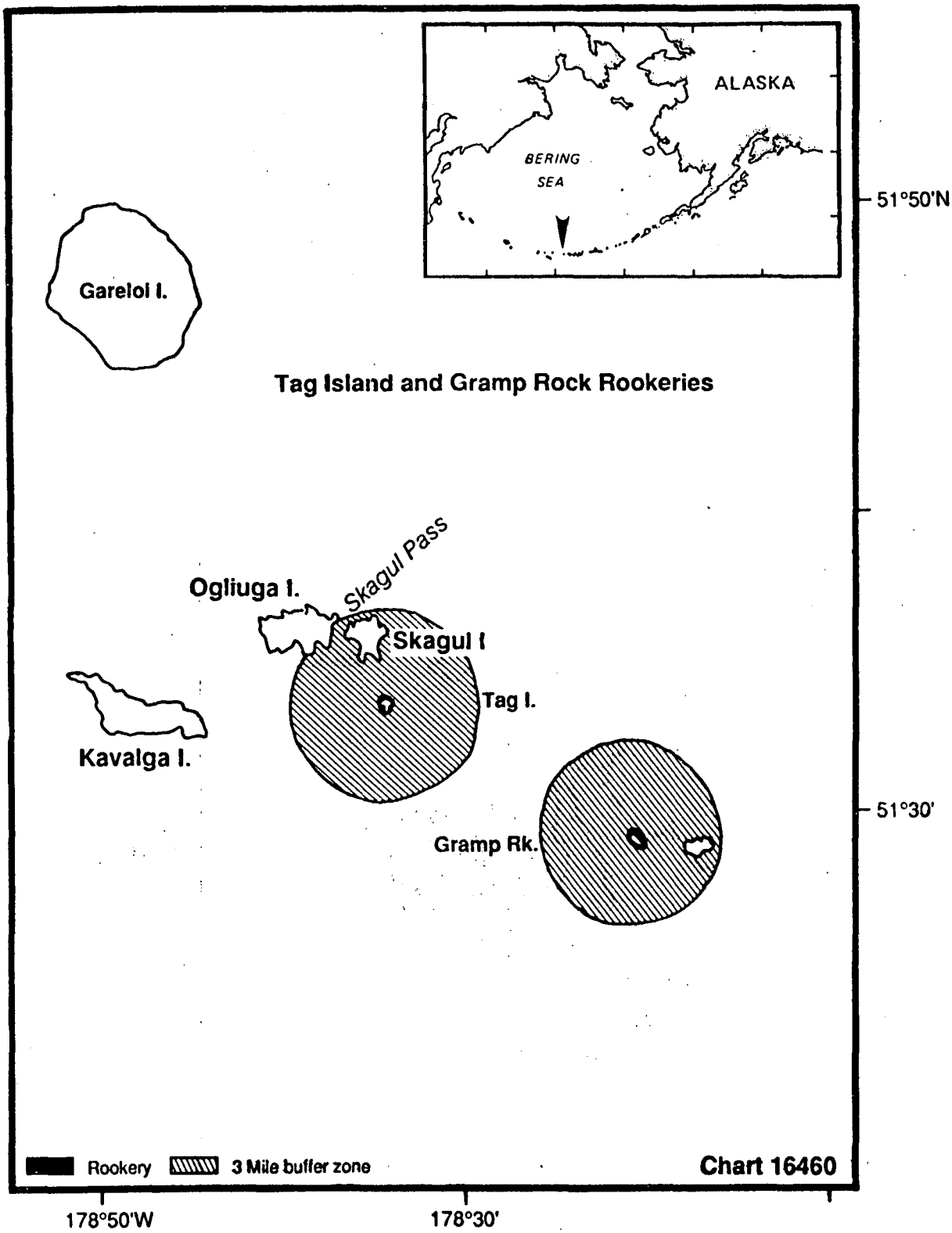

ALASKA
BERING SEA
Bering Sea
53°10'N
Adugak Island Rookery
Adugak I.
Umnak I.
52°50'
Rookery
3 Mile buffer zone
Chart 16500
169°30'W
169°00'

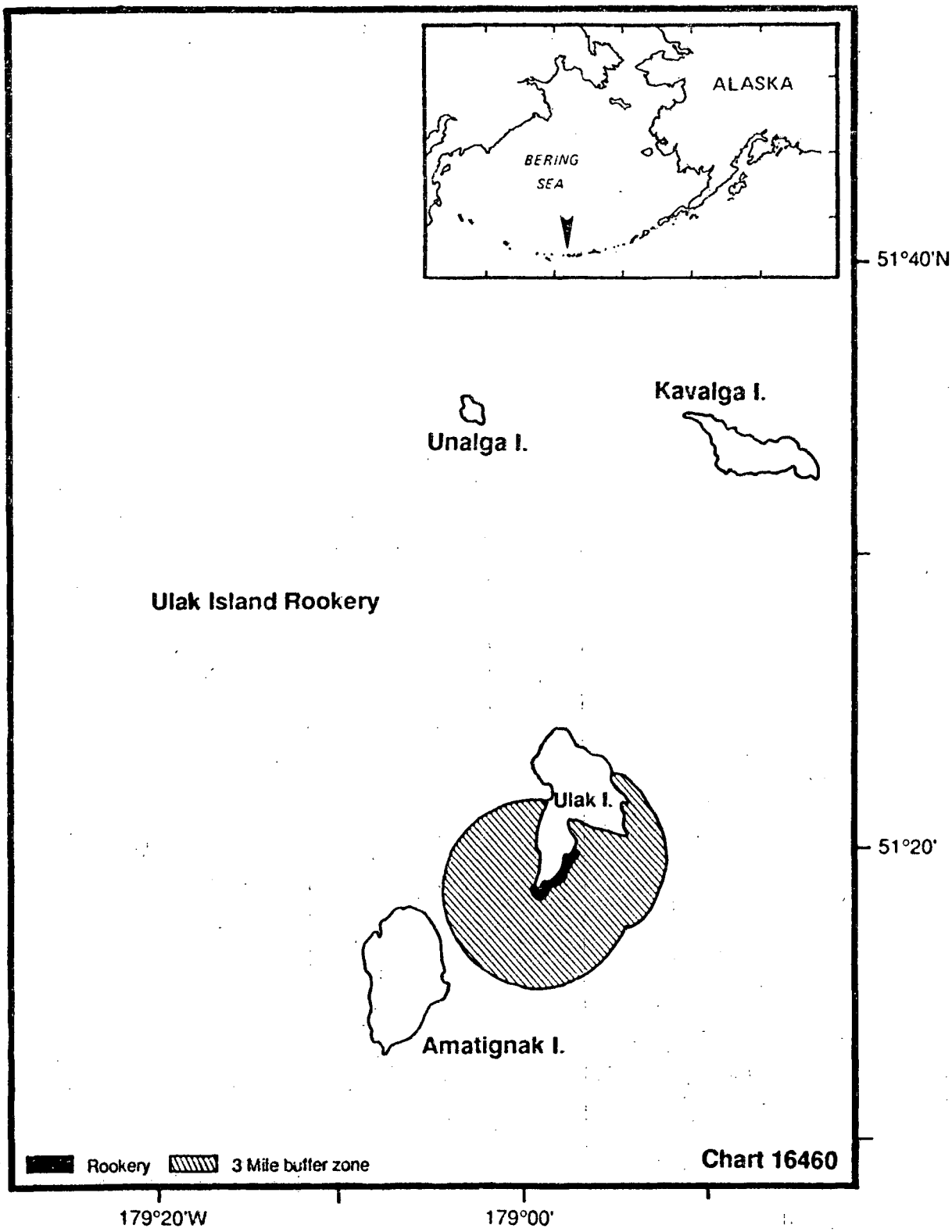

ALASKA
BERING SEA
Bering Sea
53°00'N
Yunaska Island Rookery
52°40'
Yunaska I.
Rookery
3 Mile buffer zone
Chart 16500
171°00'W
170°30'

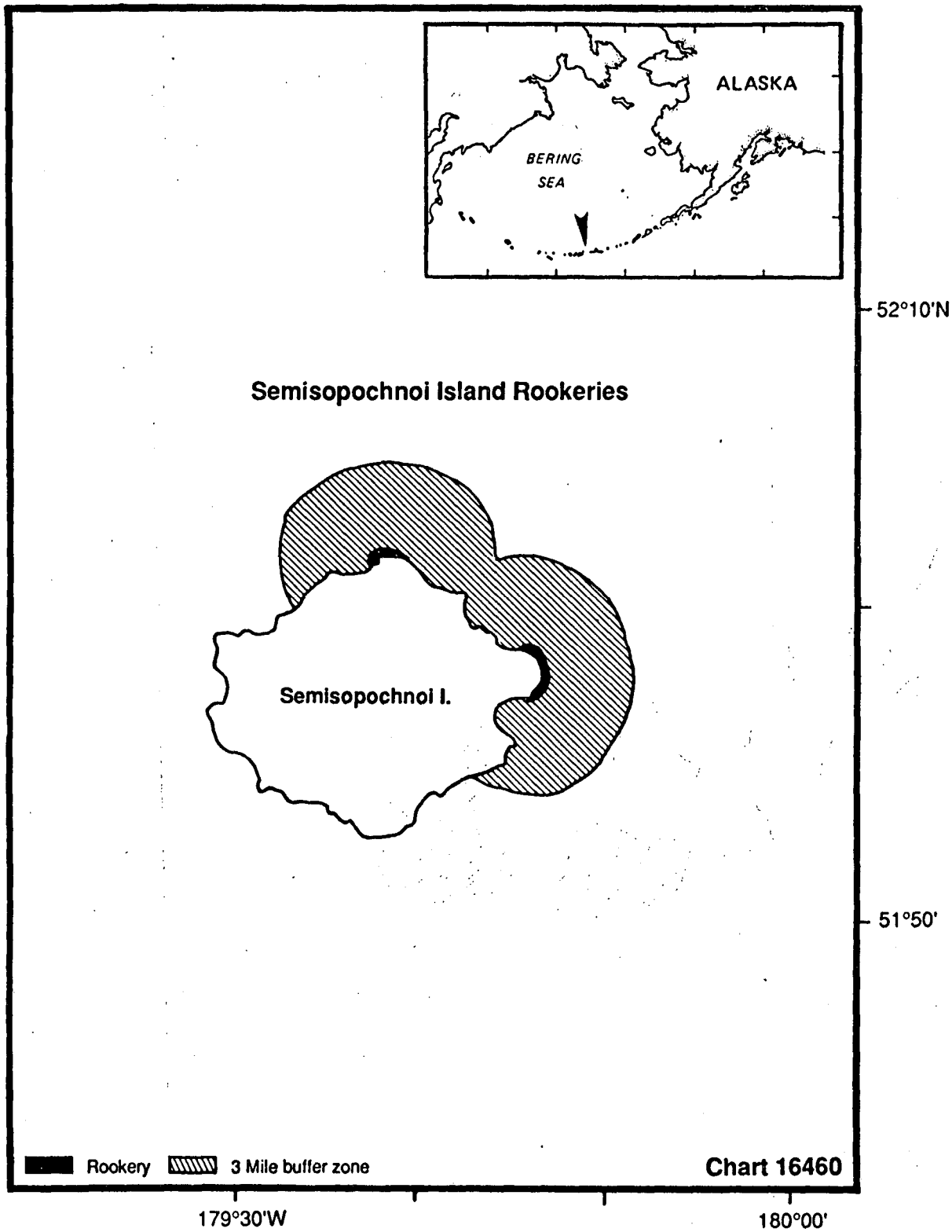

ALASKA
BERING SEA
52°30'N
Seguam and Agligadak Island Rookeries
Seguam I.
Seguam Pass
52°10'
Agligadak I.
Rookery
3 Mile buffer zone
Chart 16480
173°00'W
172°30'

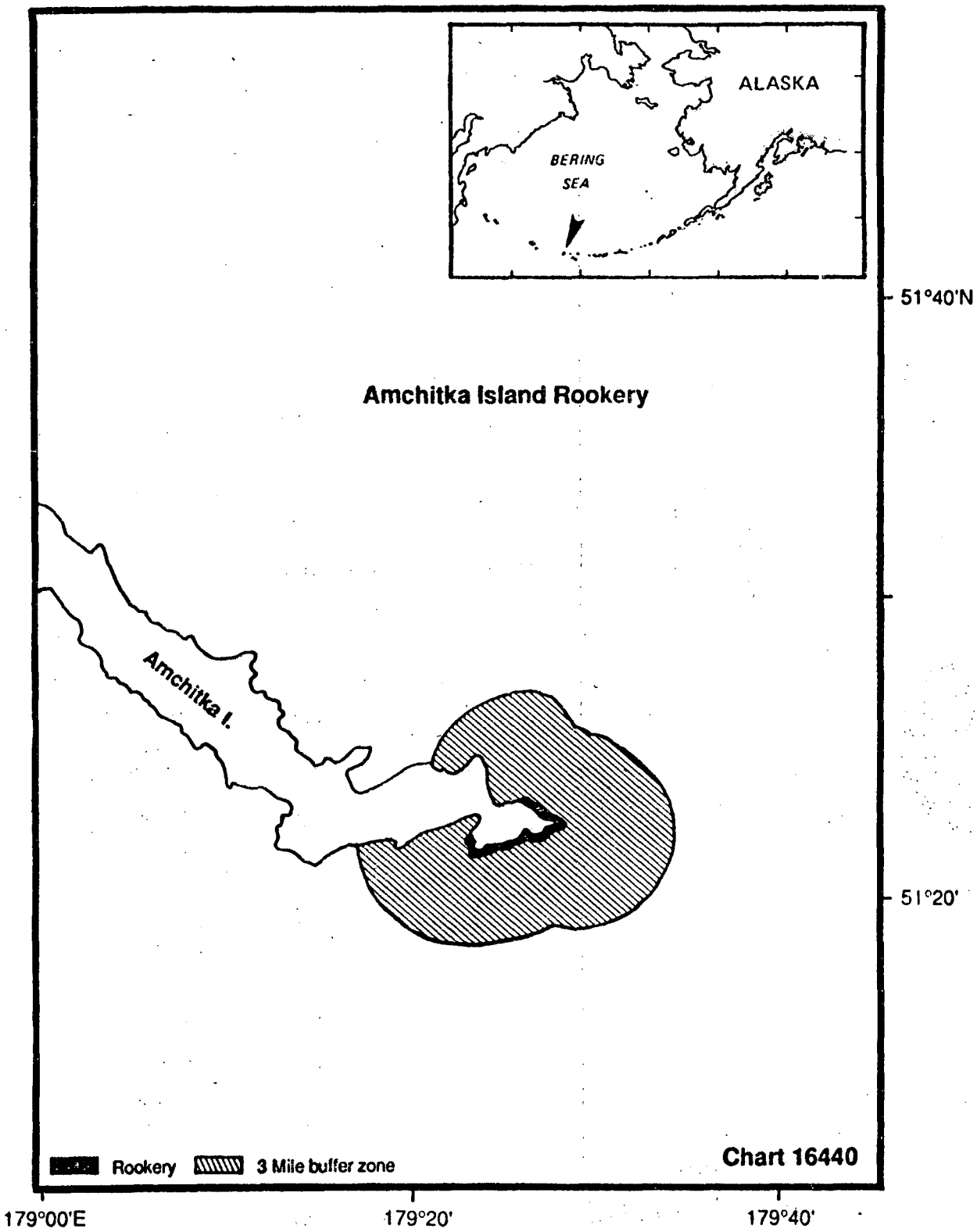

Bering Sea
ALASKA
BERING SEA
52°20'N
Kasatochi Island Rookery
Kasatochi I.
Atka I.
52°00'
Tagalak I.
Rookery
3 Mile buffer zone
Chart 16480
175°30'W
175°00'

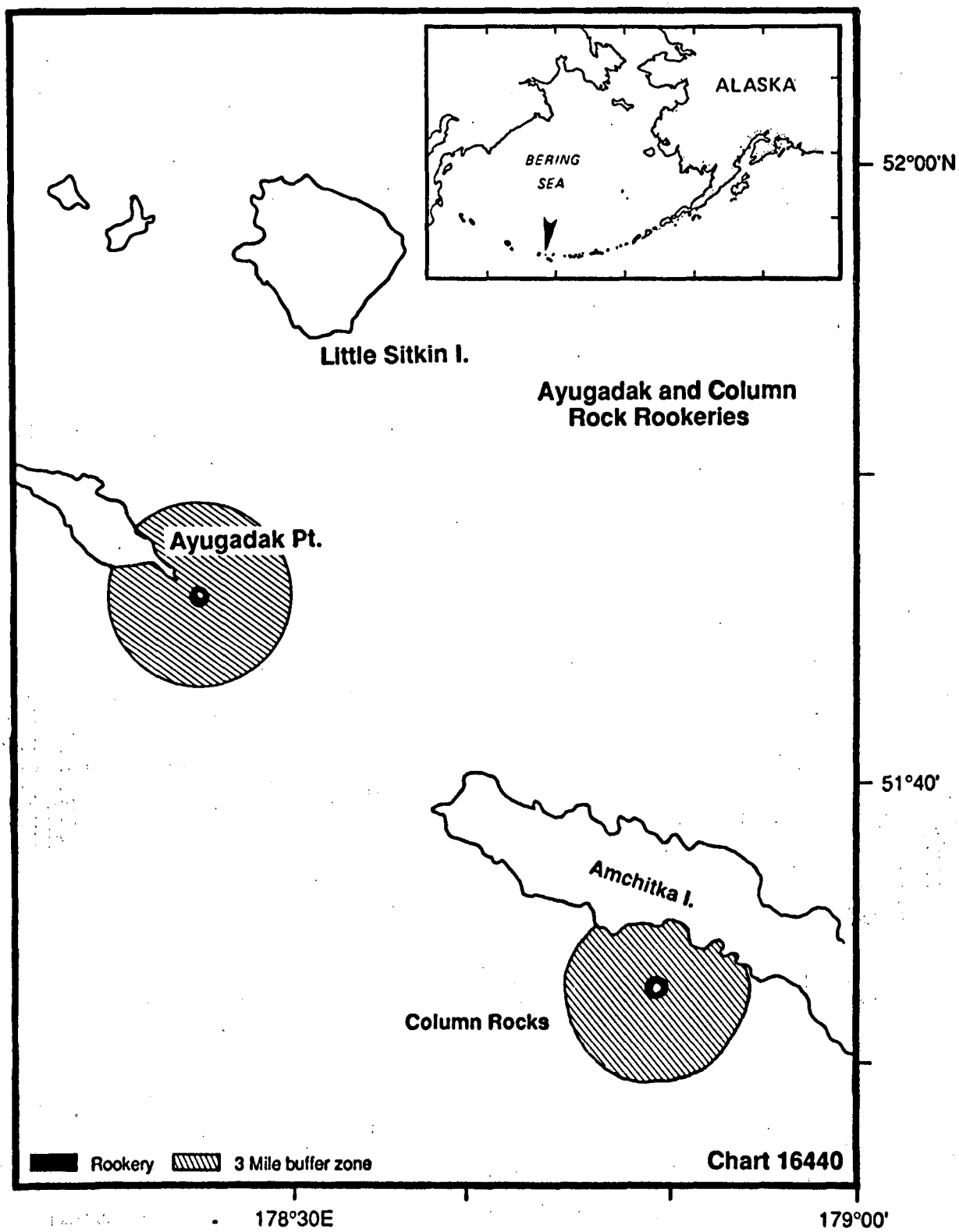

ALASKA
BERING SEA
Adak Island Rookery
52°00'N
Kanaga I.
Adak I.
51°40
Rookery
3 Mile buffer zone
Chart 16460
177°00'W
176°30'

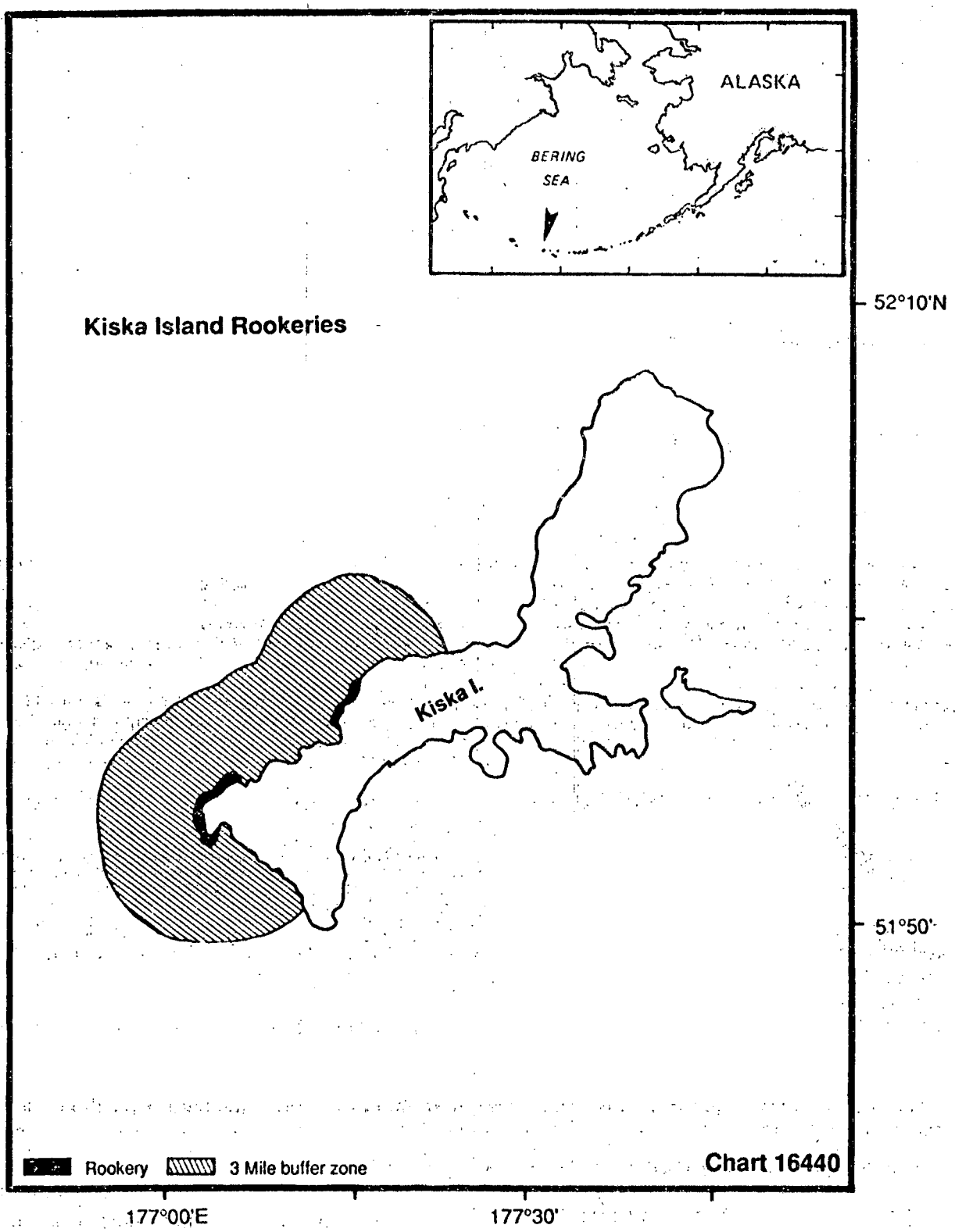

ALASKA
BERING SEA
51°50'N
Gareloi I.
Tag Island and Gramp Rock Rookeries
Skagul Pass
Ogliuga I.
Skagul I
Tag I.
Kavalga I.
51°30'
Gramp Rk.
Rookery
3 Mile buffer zone
Chart 16460
178°50'W
178°30'

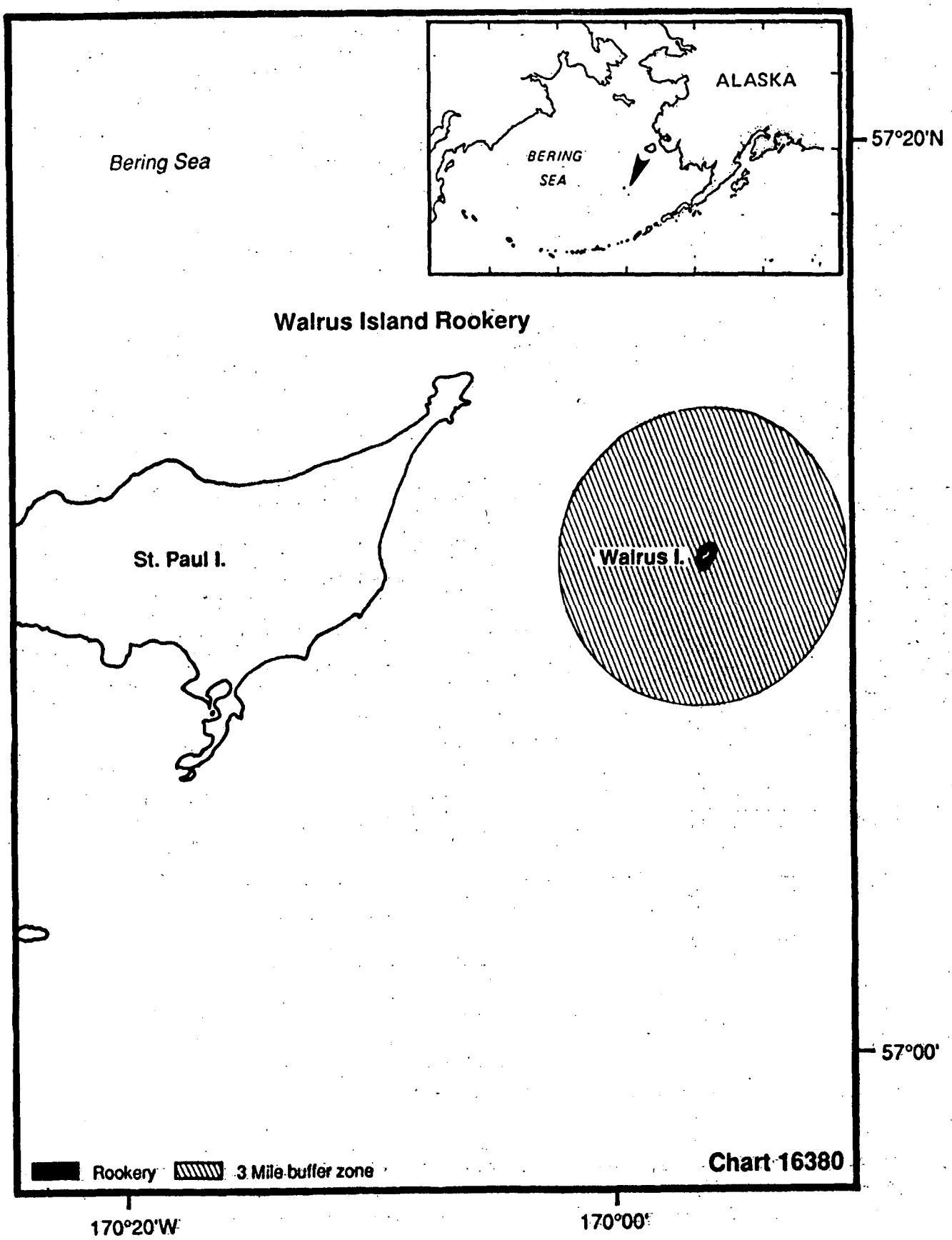

ALASKA
BERING SEA
51°40'N
Kavalga I.
Unalga I.
Ulak Island Rookery
Ulak I.
51°20'
Amatignak I.
Rookery
3 Mile buffer zone
Chart 16460
179°20'W
179°00'


ALASKA
BERING SEA
52°10'N
Semisopochnoi Island Rookeries
Semisopochnoi I.
51°50'
Rookery
3 Mile buffer zone
Chart 16460
179°30'W
180°00'


ALASKA
BERING SEA
51°40'N
Amchitka Island Rookery
Amchitka I.
51°20'
Rookery
3 Mile buffer zone
Chart 16440
179°00'E
179°20'
179°40'


ALASKA
BERING SEA
52°00'N
Little Sitkin I.
Ayugadak and Column Rock Rookeries
Ayugadak Pt.
51°40'
Amchitka I.
Column Rocks
Rookery
3 Mile buffer zone
Chart 16440
178°30E
179°00'


ALASKA
BERING SEA
Kiska Island Rookeries
52°10'N
Kiska I.
51°50'
Rookery
3 Mile buffer zone
Chart 16440
177°00'E
177°30'



BILLING CODE 3510-22-M

(4) *Quota.* If the Assistant Administrator determines and publishes notice that 675 Steller sea lions have been killed incidentally in the course of commercial fishing operations in Alaskan waters and adjacent areas of the U.S. Exclusive Economic Zone (EEZ) west of 141° W longitude during any calendar year, then it will be unlawful to kill any additional Steller sea lions in this area. In order to monitor this quota, the Director, Alaska Region, National Marine Fisheries Service, may require the placement of an observer on any fishing vessel. If data indicate that the quota is being approached, the Assistant Administrator will issue emergency rules to establish closed areas, allocate the remaining quota among fisheries, or take other action(s) to ensure that commercial fishing operations do not exceed the quota.

(b) *Exceptions*—(1) *Permits.* The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under paragraph (a) of this section in accordance with and subject to the provisions of 50 CFR part 222, subpart C—Endangered Fish or Wildlife Permits.

(2) *Official activities.* Paragraph (a) of this section does not prohibit or restrict a Federal, state or local government official, or his or her designee, who is acting in the course of official duties from:

(i) Taking a Steller sea lion in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance animals; or

(ii) Entering the buffer areas to perform activities that are necessary for national defense, or the performance of other legitimate governmental activities.

(3) *Subsistence takings by Alaska natives.* Paragraph (a)(1) of this section does not apply to the taking of Steller sea lions for subsistence purposes under section 10(e) of the Act.

(4) *Emergency situations.* Paragraph (a)(2) of this section does not apply to an emergency situation in which compliance with that provision presents a threat to the health, safety, or life of a person or presents a significant threat to the vessel or property.

(5) *Exemptions.* Paragraph (a)(2) of this section does not apply to any activity authorized by a prior written exemption from the Director, Alaska Region, National Marine Fisheries Service. Concurrently with the issuance of any exemption, the Assistant Administrator will publish notice of the exemption in the **Federal Register.** An exemption may be granted only if the activity will not have a significant adverse affect on Steller sea lions, the activity has been conducted historically or traditionally in the buffer zones, and there is no readily available and acceptable alternative to or site for the activity.

(c) *Penalties.* (1) Any person who violates this section or the Act is subject to the penalties specified in section 11 of the Act, and any other penalties provided by law.

(2) Any vessel used in violation of this section or the Act is subject to forfeiture under section 11(e)(4)(B) of the Act.

Date: July 13, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-17003 Filed 7-19-90; 8:45 am]

BILLING CODE 3510-22-M

federal register

Friday
July 20, 1990

Part V

Environmental Protection Agency

40 CFR Part 180

Pesticide Tolerances for Fluridone; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6F3444/R998; FRL-3710-9]

Pesticide Tolerances for Fluridone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide fluridone in crayfish. This regulation to establish the maximum permissible level for residues of fluridone in crayfish was requested by Elanco Products Co.

EFFECTIVE DATE: Effective on July 20, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP 6F3444/R998], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Acting Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1830.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of October 8, 1986 (51 FR 36063), which announced that Elanco Products Co., Lilly Corporate Center, Indianapolis, IN 46285, had submitted pesticide petition (PP) 6F3444 to EPA proposing that 40 CFR 180.420 be amended by establishing a tolerance for the herbicide fluridone (1-methyl-3-phenyl-5-[3-(trifluoromethyl)phenyl]-4(1*H*)-pyridinone) and its metabolite (1-methyl-3-(4-hydroxyphenyl)-5-[3-(trifluoromethyl)phenyl]-4(1*H*)-pyridinone) in the commodity edible crayfish at 0.5 part per million (ppm).

There were no comments received in response to the notice of filing.

On November 3, 1988, Elanco Products Co. requested a nonsubstantive amendment to the petition which identified the raw agricultural comodity as crayfish and the residues as combined residues (free and bound) of the herbicide fluridone (1-methyl-3-phenyl-5-[3-(trifluoromethyl)phenyl]-4(1*H*)-pyridinone) and its metabolite (1-methyl-3-(4-hydroxyphenyl)-5-[3-(trifluoromethyl)phenyl]-4(1*H*)-pyridinone).

The data submitted indicate that the identity of the combined residues in both fish and crayfish should be characterized as "free and bound." Therefore, this regulation also amends 40 CFR 180.420 to characterize the residues of fluridone as combined residues (free and bound) for fish and crayfish.

The data submitted in the petition and other relevant material have been evaluated. The data include a rat acute-oral median lethal dose (LD_{50}) of > 10,000 milligrams per kilogram (mg/kg); an Ames test, negative, at the level of test compound solubility (2,000 *ug*/plate); an Unscheduled DNA Snythesis Assay in rat hepatocytes, negative; a Sister Chromatid Exchange Assay in Chinese hamster bone marrow, negative; a rabbit teratology study with a teratogenic no-observed-effect level (NOEL) of 750 mg/kg/day and a NOEL for fetotoxicity of 125 mg/kg/day; a rat teratology study with a maternal NOEL of 100 mg/kg/day and a developmental NOEL of 300 mg/kg/day with no terata up to and including 1,000 mg/kg/day (highest dose); a three-generation rat reproduction study with a NOEL for reproductive effects of 650 ppm (35 mg/kg of body weight); a 2-year rat chronic feeding/oncogenicity study with a NOEL of 200 ppm (8 mg/kg/day) and no dose-related oncogenic response for any level up to and including the highest dose tested (2,000 ppm, 81 mg/kg/day); a 2-year mouse oncogenicity study with increased incidences of skin fibrosarcomas in females at 330 ppm (49 mg/kg/day, highest dose tested); and a 1-year dog feeding study with a NOEL of 75 mg/kg/day.

The Agency carried out a weight-of-the-evidence review of all relevant data and concluded that fluridone is in group E--no evidence of carcinogenicity for humans. The toxicology data that were reviewed in the weight-of-evidence review were described in a proposed rule on pesticide tolerances for fluridone (51 FR 6137; Feb. 20, 1986).

The published literature was screened for information on the *N*-methyl formamide (NMF), a photodegradate of fluridone. Based on a NOEL of 10 mg/kg/day for developmental toxicity of rabbits (decreased fetal weight) and a NOEL of 1 mg/kg/day for liver toxicity observed in clinical trials with NMF as an antitumor agent, both discussed in a published article by Merkel and Zeller (*Arzneim. -Forsch.*, 30(II):1557-1562, 1980), and the maximum residue that could occur in edible portions of crayfish (0.03 ppm) and assuming the "worst-case" exposure from ingesting 1.5 kg of crayfish, Margins of Safety (MOS) in crayfish were determined to be 13,333 and 1,562.5, respectively.

Based on the NOEL of 8.0 mg/kg/day in the rat chronic feeding/oncogenicity study and a hundredfold safety factor, the acceptable daily intake (ADI) has been set at 0.08 mg/kg/day with a maximum permissible intake of 4.8 mg/day for a 60-kg person. Published tolerances and the acceptable residue level for fluridone in potable water at 0.15 ppm result in a theoretical maximum residue contribution (TMRC) of 0.4112 mg/day in a 1.5-kg diet and utilize 8.57 percent of the ADI. The TMRC for established tolerances already includes residues that result from fish in the diet. Shellfish (including crayfish) are combined as one commodity in the EPA Tolerance Assessment System; therefore, establishing this tolerance will not change the percentage of ADI utilized.

There are no regulatory actions pending against the registration of fluridone. The metabolism of fluridone in plants and animals is adequately understood for purposes of the tolerance set forth below. An analytical method, high-pressure liquid chromatography, is available in the "Pesticide Analytical Manual," Vol. II, for enforcement purposes.

Based on the information cited above, the Agency has determined that establishing the tolerance for residues of the pesticide in or on crayfish and amending 40 CFR 180.420(a) by characterizing the residues of fluridone as combined residues (free and bound) for fish and crayfish will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant

economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Section 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 10, 1990.

Susan H. Wayland,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.420(a) is revised by adding crayfish and by identifying the combined residues as "free and bound" for both fish and crayfish, to read as follows:

§ 180.420 Fluridone; tolerances for residues.

(a) Tolerances are established for the combined residues (free and bound) of the herbicide fluridone (1-methyl-3-phenyl-5-[3-trifluoromethyl)phenyl]-4(1*H*)-5-[3-(trifluoromethyl)phenyl]-4(1*H*)-pyridinone) in fish and crayfish at 0.5 part per million.

* * * * *

[FR Doc. 90-17023 Filed 7-19-90; 8:45 am]

BILLING CODE 6560-50-F

federal register

Friday
July 20, 1990

Part VI

The President

Proclamation 6160—Captive Nations Week, 1990

Federal Register
Vol. 55, No. 140
Friday, July 20, 1990

Presidential Documents

Title 3—

The President

Proclamation 6160 of July 18, 1990

Captive Nations Week, 1990

By the President of the United States of America

A Proclamation

The end of communist domination in Eastern Europe and progress toward democratization and greater openness in the Soviet Union are signs of a new era. Ideals we Americans have long cherished and defended—ideals of individual liberty and self-government—are triumphing in nations that once bore the heavy yoke of totalitarianism. Human rights that were once brutally suppressed are gaining increasing respect, and political pluralism is replacing the tired dogmas of one-party rule—dogmas that have been thoroughly discredited time and again.

With vigilance and unfailing moral resolve, we have made great strides in our efforts to promote freedom and human rights around the world. Tragically, however, there remain countries where repressive ruling regimes continue to cling to ideologies that are inimical to the ideals of national sovereignty and individual liberty. In violation of international human rights agreements and fundamental standards of morality, these regimes continue to deny innocent men and women their inalienable rights, including freedom of speech, freedom of movement and assembly, freedom of the press, and the right to practice their religious beliefs without fear of persecution.

Each July, as we celebrate our Nation's Independence and give thanks for the blessings of liberty and self-government, we also recall our obligation to speak out for captive peoples around the world. During Captive Nations Week, we reaffirm our support for peaceful efforts to secure their right to liberty and self-determination.

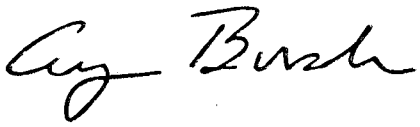
As more and more government leaders around the world now acknowledge, the God-given rights of individuals must be recognized in law and respected in practice. Protecting the rights and freedom to which all men are heirs is not only the duty of any legitimate government, but also the key to real and lasting peace among nations. That is one reason why, during this Captive Nations Week, we do well to recall the timeless words written by Thomas Jefferson shortly before his death in 1826 on the 50th anniversary of our Nation's Independence:

> All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God. These are grounds of hope for others. For ourselves, let the annual return of this day forever refresh our recollections of these rights, and an undiminished devotion to them. . . .

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning July 15, 1990, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities, and I urge them to reaffirm their devotion to the aspirations of all peoples for liberty, justice, and self-determination.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of July, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 90-17225
Filed 7-19-90; 11:16 am]
Billing code 3195-01-M

Reader Aids

Federal Register

Vol. 55, No. 140

Friday, July 20, 1990

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