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Briefing on How To Use the Federal Register
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WHO: The Office of the Federal Register.

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 55, 56, 59, and 70

[Docket No. [PY-90-001]

Increase in Fees and Charges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the charges for Federal voluntary egg products inspection and egg, poultry, and rabbit grading; as well as Federal mandatory egg products inspection overtime, holiday, and appeal services. These charges are increased to reflect higher costs associated with these programs due to the 3.6-percent increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

EFFECTIVE DATE: May 1, 1990.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, Chief, Standardization Branch, 202-447-3506.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been reviewed in accordance with Executive Order 12291 and Department Regulation 1512-1 and has been determined to be a "non-major" rule because it does not meet the criteria contained therein for major rules. It will not (i) result in an annual effect on the economy of $100 million or more; (ii) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (iii) have significant 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.

Effect on Small Entities

The Administrator of the Agricultural Marketing Service (AMS) has determined that this rule, will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because (i) the fees and charges merely reflect, on a cost-per-unit-graded/inspected basis, a minimal increase in the costs currently borne by those entities utilizing the services and (ii) competitive effects are offset under the major voluntary programs (resident shell egg and poultry grading) through administrative charges based on the volume of product handled; i.e., the cost to users increases in proportion to increased volume.

Background

Each fiscal year, the fees for services rendered by AMS to operators of official poultry, rabbit, shell egg, and egg products plants undergo a cost analysis to determine if they are adequate to recover the cost of providing the services. The fees are determined by the employees' salaries and fringe benefits, cost of supervision, travel, and other overhead and administrative costs.

The Agricultural Marketing Act of 1946, as amended, provides for the collection of fees approximately equal to the cost of providing voluntary egg products inspection and voluntary egg, poultry, and rabbit grading services. These fees were last increased effective June 1, 1989. The Egg Products Inspection Act requires that the Agency recover costs of overtime, holiday, and appeal inspection services. These fees were last increased effective May 1, 1987.

Federal employees' salaries increased by 3.6 percent beginning in January 1990. Also, the cost of health benefits increased by about 18 percent, Federal employee retirement fringe costs increased by about 12 percent, and salaries of federally licensed State employees increased by about 11 percent. Based on analysis of these increases, resident fees and charges will be increased about 10 percent.

Resident fees reflect Federal and State salaries, health benefits, and workers' compensation costs. Administrative service charges reflect the costs of supervision and other overhead and administrative expenses. These charges are assessed on each case of shell eggs and each pound of poultry handled in plants using resident grading service. In 1989, these rates were established at $0.027 per case of shell eggs and $0.00027 per pound of poultry. These rates are changed to $0.029 per case of shell eggs and $0.00029 per pound of poultry. Also, these charges were set at a minimum of $135 and maximum of $1,350 per billing period for each official plant. These amounts are changed to $145 and $1,450, respectively.

In like manner, based upon analysis of applicable cost increases, the hourly rate for nonresident voluntary grading and inspection service is increased from $24.12 to $27.28. The rate for such services performed on Saturdays, Sundays, or holidays is increased from $25.92 each to $27.36. The hourly rate for voluntary appeal gradings or inspections is increased from $20.28 to $23.20. The hourly rates for mandatory egg products inspection services is increased from $20.52 to $21.68 for overtime inspection, from $14.20 to $14.72 for holiday inspection, and from $20.28 to $23.20 for certain appeal inspections.

Administrative charges for the resident voluntary rabbit grading and voluntary egg products inspection programs and nonresident voluntary continuous poultry and egg grading programs will continue to be based on 25 percent of the grader's or inspector's total salary costs. The minimum charge per billing period for these programs is increased from $135 to $145 per official plant.

Based on analysis of costs to provide these services, a proposed rule to increase the fees for certain grading and inspection services for eggs, poultry, and rabbits was published in the Federal Register (55 FR 3963) on February 6, 1990. Comments on the proposed rule were solicited from interested parties until March 8, 1990. No comments were received. Therefore, the amendments are promulgated as proposed.

Pursuant to the provisions of 5 U.S.C. 553, good cause is found for making this rule effective less than 30 days after publication. Current revenue does not cover the costs of providing these services and the new fees should be made effective as soon as possible in

order to conform with normal monthly billing cycles. A 30-day comment period was provided for in the proposed rule, no comments were received, and provisions of this final rule are the same as those in the proposed rule. Accordingly, this rule is made effective May 1, 1990.

Information Collection Requirements and Recordkeeping

Information collection requirements and recordkeeping provisions contained in 7 CFR parts 55, 56, 59, and 70 have previously been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35, and 7 CFR part 55 has been assigned OMB No. 0581–0146; and 7 CFR part 56 has been assigned OMB No. 0581–0128; and 7 CFR part 59 has been assigned OMB No. 0581–0113; and 7 CFR part 70 has been assigned OMB No. 0581–0127.

List of Subjects

7 CFR Part 55

Eggs, Food grades and standards, Food labeling, Reporting and recordkeeping requirements, Voluntary inspection service.

7 CFR Part 56

Eggs, Food grades and standards, Food labeling, Reporting and recordkeeping requirements, Voluntary grading service.

7 CFR 59

Eggs, Exports, Food grades and standards, Food labeling, Imports, Mandatory inspection service, Polychlorinated biphenyls (PCB's), Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits, Reporting and recordkeeping requirements, Voluntary grading service.

For reasons set out in the preamble and under authority contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), and the Egg Products Inspection Act (21 U.S.C. 1031–1056), title 7, parts 55, 56, 59, and 70 of the Code of Federal Regulations, is amended as follows.

PART 55—VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING

1. The authority citation for part 55 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

2. Section 55.510 is amended by revising paragraphs (b) and (c) to read as follows:

§ 55.510 Fees and charges for services other than on a continuous resident basis.

* * * * *

(b) Fees for product inspection and sampling for laboratory analysis will be based on the time required to perform the services. The hourly charge shall be $27.28 and shall include the time actually required to perform the sampling and inspection, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $27.36 per hour. Information on legal holidays is available from the Supervisor.

* * * * *

3. Section 55.560 is amended by revising paragraph (a)(3) to read as follows:

§ 55.560 Charges for continuous inspection and grading service on a resident basis.

* * * * *

(a) * * *

(3) An administrative service charge equal to 25 percent of the grader's or inspector's total salary costs. A minimum charge of $145 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

4. The authority citation for part 56 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

5. Section 56.46 is amended by revising paragraphs (b) and (c) to read as follows:

§ 56.46 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $27.28 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $27.36 per hour. Information on legal holidays is available from the Supervisor.

6. Section 56.47 is revised to read as follows:

§ 56.47 Fees for appeal grading or review of a grader's decision.

The cost of an appeal grading or review of a grader's decision shall be borne by the appellant at an hourly rate of $23.20 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

(7) Section 56.52 is amended by revising paragraph (a)(4) to read as follows:

§ 56.52 Continuous grading performed on a resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $0.029, except that the minimum charge per billing period shall be $145 and the maximum charge shall be $1,450. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

8. Section 56.54 is amended by revising paragraph (a)(2) to read as follows:

§ 56.54 Charges for continuous grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $145 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

9. The authority citation for part 59 continues to read as follows:

Authority: Secs. 2–28 of the Egg Products Inspection Act (84 Stat. 1620–1635; 21 U.S.C. 1031–1056).

10. Section 59.126 is revised to read as follows:

§ 59.126 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly

assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant shall give reasonable advance notice to the inspector of any overtime service necessary and shall pay the Service for such overtime at an hourly rate of $21.68 to cover the cost thereof.

11. Section 59.128 is amended by revising paragraph (a) to read as follows:

§ 59.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant shall, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and shall pay the Service thereof at an hourly rate of $14.72 to cover the cost thereof.

* * * * *

12. Section 59.370 is amended by revising paragraph (b) to read as follows:

§ 59.370 Cost of appeals.

* * * * *

(b) The costs of an appeal shall be borne by the appellant at an hourly rate of $23.20, including travel time and expenses if the appeal was frivolous, including but not being limited to the following: The appeal inspection discloses that no material error was made in the original inspection, the condition of the product has undergone a material change since the original inspection, the original lot has changed in some manner, or the Act or these regulations have not been complied with.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES

13. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

14. Section 70.71 is amended by revising paragraphs (b) and (c) to read as follows:

§ 70.71 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $27.28 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $27.36 per hour. Information on legal holidays is available from the Supervisor.

15. Section 70.72 is revised to read as follows:

§ 70.72 Fees for appeal grading, laboratory analysis, or examination or review of a grader's decision.

The costs of an appeal grading, laboratory analysis, or examination or review of a grader's decision will be borne by the appellant at an hourly rate of $23.20 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, laboratory analysis, or examination or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

16. Section 70.76 is amended by revising paragraph (a)(2) to read as follows:

§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $145 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

17. Section 70.77 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00029, except that the minimum charge per billing period shall be $145 and the maximum charge shall be $1,450. The minimum charge also applies where an approved application is in effect and no product is handled.

(5) For rabbit grading: An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $145 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Done at Washington, DC on April 5, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90–8235 Filed 4–9–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1210

[WRPA Docket No. 1; FV–90–104 FR]

Watermelon Research and Promotion Plan; Rules and Regulations Thereunder

AGENCY: Agricultural Marketing Service (USDA).

ACTION: Final rule.

SUMMARY: This final rule establishes general rules and regulations under the Watermelon Research and Promotion Plan (Plan). The Plan is effective under the Watermelon Research and Promotion Act (Act). This action provides for an assessment of two cents per hundredweight on all watermelons produced for ultimate consumption as human food and an assessment of two cents per hundredweight on all watermelons first handled for ultimate consumption as human food. No assessments will be levied on watermelons grown by persons engaged in the growing of less than five acres of watermelons. This action was recommended by the National Watermelon Promotion Board, which is responsible for administration of the Plan.

EFFECTIVE DATE: Final rule is effective April 10, 1990.

FOR FURTHER INFORMATION CONTACT: Richard H. Mathews, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-South, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 447–4140.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Watermelon Research and Promotion Plan (Plan) (7 CFR part 1210). The Plan is effective under the Watermelon Research and Promotion Act (title XVI, subtitle C of Pub. L. 99–198, 7 U.S.C. 4901–4916), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and

Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Act and Plan provide that all producers (not including persons engaged in the growing of less than five acres of watermelons) and handlers of watermelons are subject to regulation under the Plan for watermelons produced in the contiguous 48 States. The Act and Plan provide that watermelon producers and handlers pay equal assessments for operating the program. The Act and Plan further provide that handlers are responsible for collecting and submitting both producer and handler assessments to the National Watermelon Promotion Board (Board), reporting their handling of watermelons, and for maintaining any records necessary to verify their reportings. Such records include documents evidencing or relating to the production of watermelons by the handler; documents evidencing or relating to the acquisition or receipt of watermelons by the handler from producers, handlers, or any other source, or accounting to such producers, handlers, or others for watermelons acquired or received by the handler on account, by consignment, for storage, by purchase, or in any other way; documents evidencing or relating to the sale or other disposition of watermelons by the handler; and documents evidencing or relating to the shipment or any other transfer of possession or control of watermelons by the handler.

The record of the public hearing conducted in Las Vegas, Nevada, on February 18 and 19, 1987, and Atlanta, Georgia, on February 24 and 25, 1987, indicates that most handlers subject to this rule would meet the Small Business Administration's (SBA) definition of small agricultural service firms (13 CFR 121.2). Small agricultural service firms are defined as those having annual receipts of less than $3,500,000. There may be as many as 300 such handlers of watermelon who will be subject to this rule. Small agricultural producers are defined by the SBA as having annual receipts of less than $500,000. Record evidence from the public hearing to promulgate the Plan indicates that watermelons are produced on almost 12,000 farms in the United States. The majority of these farms would meet the SBA's definition of small agricultural producers. As many as 5,000 of these 12,000 farms produce less than five acres of watermelons, and thus are exempt from the provisions of the Plan. The industry also includes a few large farms in excess of 400 acres.

These regulations are applicable to all watermelons domestically produced and handled in the contiguous 48 States. The Board, which is composed of producers, handlers, and a public member, recommended the methods contained in this final rule as the most effective and least burdensome way to carry out the program's intent. The Board reviewed provisions currently in effect under similar research and promotion programs for other agricultural commodities. The impact on the various industry segments resulting from the establishment of these rules and regulations was also considered. The Board considered current business practices used by the industry when recommending the reporting and recordkeeping requirements imposed upon producers and handlers covered under these regulations.

These rules assess producers and handlers an equal rate of two cents per hundredweight on watermelons produced and two cents per hundredweight on watermelons handled. The two cents per hundredweight assessment rate represents less than one percent of producer and handler income based on a seasonal average selling price of $6 per hundredweight of watermelons. Accordingly, this assessment rate will not impose a financial burden on large or small producers and handlers. Furthermore, persons who are required to pay assessments may request a refund of any assessment paid. It is estimated that the proposed assessment rate could generate $1,200,000 in funds before any refunds.

It is the Department's view that the impact of this action on producers and handlers will not be adverse. The anticipated costs to producers and handlers in implementing these regulations will be significantly offset when compared to the potential benefits of these regulations.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. chapter 35) and section 3504(h) of the PRA, the information collection and recordkeeping requirements contained in this subpart, and the handler reporting and refund application forms to be used by the Board under the information collection provisions have been approved by the OMB under OMB number 0581–0158. Approximately 300 handlers will be affected by the reporting and recordkeeping requirements of these rules and regulations.

Based on comparable research and promotion programs, it has been estimated that it takes an average of 45 minutes to complete a handler reporting form and an average of 15 minutes for a producer or handler to complete a refund application. There are an estimated 7,000 producers who could request refunds. Reporting forms and applications could be filed as frequently as on a monthly basis. The estimated annual burden is 1,863 hours. Handlers are required to retain handler reports and records to verify the reports for at least two years beyond the marketing year of their applicability.

Section 1647(b)(2) of the Act and § 1210.327(b) of the Plan authorize the Board to recommend to the Secretary such rules and regulations as are necessary to effectuate the terms and conditions of the Plan. As recommended by the Board, §§ 1210.500 through 1210.540 establish the general rules and regulations which govern the collection of assessements, procedures for applying for refunds, the application of late payment and interest charges on past due assessments, and the filing of reports and maintenance of records by handlers. Section 1210.500 incorporates terms defined in the Plan.

The Board consists of 29 members, including 14 producer members, 14 handler members and one public member, appointed by the Secretary. The Secretary appoints the producer and handler members from nominations submitted by producers and handlers voting in district nomination conventions. The Secretary appoints the public member from nominations submitted by the Board.

These rules provide that the public member, to be nominated by the producer and handler members of the Board, shall have no direct financial interest in the commercial production or marketing of watermelons except as a consumer and shall not be a director, stockholder, officer or employee of any firm so engaged. The Board shall nominate two individuals for this position on the Board. Voting for public member nominees shall be on the basis of one vote per Board member with election determined by a simple majority of those present and voting. Such election shall be held prior to

August 1, 1990, and every third August first thereafter. The Board may prescribe such additional qualifications, administrative rules and procedures for selection and voting for nominees as it deems necessary and the Secretary approves.

As provided for in § 1210.323 of the Plan, these rules provide that each person nominated for the position of public member on the Board shall qualify by filing a written acceptance with the Secretary of Agriculture within 14 calendar days of completion of the Board meeting at which public member nominees were selected.

The purpose of the Plan is to fund programs and projects relating to research, advertising, sales promotion, and market development to assist, improve, or promote the marketing, distribution and use of watermelons. Section 1210.507 of this rule provides that the Board, with the approval of the Secretary of Agriculture, may enter into contracts or make agreements with persons for the development and submission to it of programs or projects authorized by the Plan and for carrying out such programs or projects. Contractors shall be required to agree to comply with the provisions of this part. Subcontractors who enter into contracts or agreements with a Board contractor and who receive or otherwise utilize funds allocated by the Board shall also be subject to the provisions of this part. All records of contractors and subcontractors applicable to contracts entered into by the Board are subject to audit by the Board or its auditors and the Secretary of Agriculture. This provision is included in this rule to insure that the Board's contracts comply, and are not inconsistent with, the provisions of this part. This provision also provides adequate safeguards to insure that Board funds are used properly.

The Act and Plan provide that all U.S. Department of Agriculture (Department) costs associated with the conduct of Department duties under the Plan be reimbursed. These costs will be billed quarterly by the Department to the Board. The funds to cover such expenses will be paid from assessments collected.

Pursuant to § 1210.341 of the Plan, this rule sets the assessment rate for both producers and handlers at two cents per hundredweight. It provides that watermelons used for non-human food purposes are exempt from assessment.

Assessments will be levied on all non-exempt watermelons produced and handled for human consumption. Because watermelons are marketed in many different ways, § 1210.517 provides examples to aid in identification of first handlers who are handlers responsible for remitting producer and handler assessments to the Board. Section 1210.517 also provides that in the event of a handler's death, bankruptcy, receivership, or incapacity to act, the representative of the handler or the handler's estate shall be considered the handler of the watermelons.

The Board has recommended that handlers paying assessments to the Board report their handlings and remit the assessments immediately following the end of each month in which watermelons were handled. The provisions in § 1210.518 clarify how assessments are to be remitted to the Board.

Pursuant to § 1210.341 of the Plan, this rule provides that the assessment shall become due at the time the first handler handles the watermelons for non-exempt purposes.

No assessments shall be levied on watermelons grown by persons engaged in the growing of less than five acres of watermelons.

Pursuant to § 1210.341 of the Plan, this rule provides that the first handler is responsible for payment of both the producer's and the handler's assessment. The handler may collect the producer's assessment from the producer, or deduct the assessment from the proceeds paid to the producer.

Handlers shall remit the required producer and handler assessments directly to the Board not later than 20 days after the end of the month such assessments are due. Remittance shall be by check, draft, or money order payable to the National Watermelon Promotion Board. To avoid late payment charges the assessments must be mailed to the Board and postmarked within 20 days after the end of the month such assessments are due. Pursuant to § 1210.350 of the Plan, each handler shall file with the Board a report for each reporting period.

These regulations further provide that, in lieu of the monthly assessment and reporting requirements, the Board may permit handlers to make an advance payment of their total estimated assessments for the crop year. Handlers using such procedures shall provide a final annual report of actual handling and remit any unpaid assessments. Any overpayment of assessments will be returned to the handler after receipt by the Board of the final annual report. Handlers using such procedures shall, at the request of the Board to verify a producer's refund claim, provide a handling report on any and all producers for whom the handler has provided handling services but has not yet filed a handling report with the Board.

A late payment charge is established pursuant to § 1210.341(e) of the Plan in the amount of ten percent of the outstanding balance due the Board. The amount of the late payment charge recommended by the Board was determined to be in keeping with good business practices in that it would encourage handlers to pay in a timely manner assessments owed by the handlers as well as collected from producers. Ten percent while not considered excessive was considered to be substantive enough that it should serve as an effective deterrent. Further, this rate is consistent with late payment charges levied by similar research and promotion programs. The late payment charge will be applied to all assessments not received before the thirtieth day after the end of the month such assessments are due. The late payment charge will not be applied to any late payments postmarked within 20 days after the end of the month such assessments are due.

In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance, including any accrued interest, will be added to any accounts delinquent over 30 days after the twentieth day after the end of the month such assessments are due, and will continue monthly until the outstanding balance is paid to the Board. This provision is authorized by § 1210.341(f) of the Plan and is intended to insure that assessments are remitted to the Board in a timely manner. This rate is consistent with interest charges levied by similar research and promotion programs.

Section 1210.518 also provides for assessments to be collected through a cooperating agency such as a regional watermelon association or State watermelon board. To qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes.

The Board recommended the inclusion of actions that the Board may take when a handler fails to submit reports and remittances according to the provisions of §§ 1210.341 and 1210.350 of the Plan and § 1210.518 of these rules and regulations. These actions include audits of the handler's books and records to determine the amount owed the Board and establishment of escrow accounts, as necessary, for the deposit of producer and handler assessments and referral to the Secretary for appropriate enforcement action. These actions are

consistent with the Board's responsibility for effectuation, administration, and enforcement of the assessment and reporting requirements of the Act, Plan, and regulations issued thereunder.

Section 1210.520 sets forth the procedures to be used by producers and handlers to apply for a refund of assessments. Producers and handlers desiring a refund of assessments are required to submit an application form within 90 days from the date the assessment became payable and was paid pursuant to § 1210.518 of these regulations. In order to safeguard the refunding process, producers and handlers are required to submit evidence satisfactory to the Board that the assessments have been paid. Refunds will be issued by the Board within 60 days from the date a properly executed application for refund is received by the Board.

The provisions of §§ 1210.521 through 1210.540 which involve reports of disposition of exempted watermelons; retention period for records; availability of records; confidential books, records, and reports; and Paperwork Reduction Act assigned number, are generally included in research and promotion programs. All such provisions are incidental to, and not inconsistent with, the terms and conditions of the Act and Plan.

Based on available information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Notice of this action was published in the **Federal Register** on February 22, 1990 (55 FR 6261). Written comments were invited from interested persons until March 9, 1990. One comment was received from C.M. Leger, President, and Joe Marinaro, Compliance Sub-Committee Chairman, on behalf of the National Watermelon Promotion Board.

The Board believes that for the purpose of further identifying the first handler, it is necessary to delete the words "field run" from the example of first handler given at paragraph 1210.517(a)(5). The connotation of "field run" indicates watermelons that are not sized or graded and the Board believes that such watermelons are well identified in paragraphs 1210.517(a)(3) and 1210.517(a)(4). The Board, further, believes that with the words "field run" deleted, the connotation is much more explicit in identifying the first handler in the example given at paragraph 1210.517(a)(5).

Deletion of the words "field run" would broaden the scope of the example to include all watermelons of a producer's own production delivered by the producer to a handler who takes title to the watermelons. The example resulting from the suggested change is consistent with the intent of the Act and Plan.

For the reasons set forth herein, the words "field run" in paragraph 1210.517(a)(5) are deleted so as to make the example more explicit in identifying the first handler.

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**, because the 1990 crop year is about to begin and therefore these rules and regulations should be in place as soon as possible to carry out the program. Generally, the affected persons in the watermelon industry are aware of this program and have planned their operations accordingly. This rule is necessary to set the rate of assessment and set forth the procedures handlers must follow in collection and remittance of assessments and reporting to the Board and implements the provisions of the Plan governing the collection of assessments and issuance of refunds. The Plan was promulgated pursuant to a formal rulemaking procedure in which producers and handlers participated.

List of Subjects in 7 CFR Part 1210

Agricultural promotion, Agricultural research, Market development, Reporting and recordkeeping requirements, Watermelons.

For the reasons set forth in the preamble, chapter XI of title 7 is amended by adding a subpart to part 1210 to read as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916.

2. 7 CFR part 1210, is amended by adding subpart—Rules and Regulations (§§ 1210.500–1210.540), to read as follows:

Subpart—Rules and Regulations

Definitions

Sec.

Subpart—Rules and Regulations

Definitions

§ 1210.500 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in subpart—Watermelon Research and Promotion Plan.

General

§ 1210.501 [Reserved]

§ 1210.502 [Reserved]

§ 1210.503 Public member nominations and selection.

(a) The public member shall be nominated by the producer members and handler members of the Board. The public member shall have no direct financial interest in the commercial production or marketing of watermelons except as a consumer and shall not be a director, stockholder, officer or employee of any firm so engaged. The Board shall nominate two individuals for the public member position. Voting for public member nominees shall require a quorum of the Board and shall be on the basis of one vote per Board member. Election of nominees shall be on the basis of a simple majority of those present and voting. Such election shall be held prior to August 1, 1990, and every third August first thereafter. The Board may prescribe such additional qualifications, administrative rules and procedures for selection and voting for public member nominees as it deems necessary and the Secretary approves.

(b) Each person nominated for the position of public member on the Board shall qualify by filing a written acceptance with the Secretary within 14 calendar days of completion of the

Board meeting at which public member nominees were selected.

§ 1210.504 Contracts.

The Board, with the approval of the Secretary, may enter into contracts or make agreements with persons for the development and submission to it of programs or projects authorized by the Plan and for carrying out such programs or projects. Contractors shall agree to comply with the provisions of this part. Subcontractors who enter into contracts or agreements with a Board contractor and who receive or otherwise utilize funds allocated by the Board shall be subject to the provisions of this part. All records of contractors and subcontractors applicable to contracts entered into by the Board are subject to audit by the Secretary.

§ 1210.505 Department of Agriculture costs.

Pursuant to § 1210.340, the Board shall reimburse the Department of Agriculture for referendum and administrative costs incurred by the Department with respect to the Plan. The Board shall pay those costs incurred by the Department for the conduct of Department duties under the Plan as determined periodically by the Secretary. The Department will bill the Board quarterly and payment shall be due promptly after the billing of such costs. Funds to cover such expenses shall be paid from assessments collected pursuant to § 1210.341.

Assessments

§ 1210.515 Levy of assessments.

(a) An assessment of two cents per hundredweight shall be levied on all watermelons produced for ultimate consumption as human food and an assessment of two cents per hundredweight shall be levied on all watermelons first handled for ultimate consumption as human food.

(b) Watermelons used for non-human food purposes are exempt from assessment requirements but are subject to the safeguard provisions of § 1210.521.

§ 1210.516 [Reserved]

§ 1210.517 Determination of handler.

The producer and handler assessments on each lot of watermelons handled shall be paid by the handler. Unless otherwise provided in this section, the handler responsible for payment of assessments shall be the first handler of such watermelons. The first handler is the person who initially performs a handling function as heretofore defined. Such person may be a fresh shipper, processor, or other person who first places the watermelons in the current of commerce.

(a) The following examples are provided to aid in the identification of first handlers:

(1) Producer grades, packs, and sells watermelons of own production to a handler. In this instance, it is the handler, not the producer, who places the watermelons in the current of commerce. The handler is responsible for payment of the assessments.

(2) Producer packs and sells watermelons of that producer's own production from the field, roadside stand, or storage to a consumer, trucker, retail or wholesales outlet, or other buyer who is not a handler of watermelons. The producer places the watermelons in the current of commerce and is the first handler.

(3) Producer delivers field-run watermelons of own production to a handler for preparation for market and entry into the current of commerce. The handler, in this instance, is the first handler, regardless of whether the handler subsequently handles such watermelons for the account of the handler or for the account of the producer.

(4) Producer delivers field-run watermelons of own production to a handler for preparation for market and return to the producer for sale. The producer in this instance, is the first handler, except when the producer subsequently sells such watermelons to a handler.

(5) Producer delivers watermelons of own production to a handler who takes title to such watermelons. The handler who purchases such watermelons from the producer is the first handler.

(6) Producer supplies watermelons to a cooperative marketing association which sells or markets the watermelons and makes an accounting to the producer, or pays the proceeds of the sale to the producer. In this instance, the cooperative marketing association becomes the first handler upon physical delivery to such cooperative.

(7) Handler purchases watermelons from a producer's field for the purpose of preparing such watermelons for market or for transporting such watermelons to storage for subsequent handling. The handler who purchases such watermelons from the producer is the first handler.

(8) Broker receives watermelons from a producer and sells such watermelons in the Broker's company name. In this instance, the Broker is the first handler, regardless of whether the Broker took title to such watermelons.

(9) Broker, without taking title or possession of watermelons, sells such watermelons in the name of the producer. In this instance, the producer is the first handler.

(10) Processor utilizes watermelons of own production in the manufacture of rind pickles, frozen, dehydrated, extracted, or canned products for human consumption. In so handling watermelons the processor is the first handler.

(11) Processor purchases watermelons from the producer thereof. In this instance, the processor is the first handler even though the producer may have graded, packed, or otherwise handled such watermelons.

(b) In the event of a handler's death, bankruptcy, receivership, or incapacity to act, the representative of the handler or the handler's estate shall be considered the handler of the watermelons for the purpose of this subpart.

§ 1210.518 Payment of assessments.

(a) *Time of payment.* The assessment shall become due at the time the first handler handles the watermelons for non-exempt purposes.

(b) *Responsibility for payment.* The first handler is responsible for payment of both the producer's and the handler's assessment. The handler may collect the producer's assessment from the producer, or deduct such producer's assessment from the proceeds paid to the producer on whose watermelons the producer assessment is made. Any such collection or deduction of producer assessment shall be made not later than the time when the first handler handles the watermelons.

(c) *Payment direct to the Board.* (1) Except as provided in paragraph (e) of this section, each handler shall remit the required producer and handler assessments, pursuant to § 1210.341 of the Plan, directly to the Board not later than 20 days after the end of the month such assessments are due. Remittance shall be by check, draft, or money order payable to the National Watermelon Promotion Board, or NWPB, and shall be accompanied by a report, preferably on Board forms, pursuant to § 1210.350. To avoid late payment charges, the assessments must be mailed to the Board and postmarked within 20 days after the end of the month such assessments are due.

(2) Pursuant to § 1210.350 of the Plan, each handler shall file with the Board a report for each month that assessable watermelons were handled. All handler reports shall contain at least the following information:

(i) The handler's name, address, and telephone number;

(ii) Date of report (which is also the date of payment to the Board);

(iii) Period covered by the report;

(iv) Total quantity of watermelons handled during the reporting period, pursuant to § 1210.516;

(v) Date of last report remitting assessments to the Board; and

(vi) Listing of all persons for whom the handler handled watermelons, their addresses, hundredweight handled, and total assessments remitted for each producer. In lieu of such a list, the handler may substitute copies of settlement sheets given to each person or computer generated reports, provided such settlement sheets or computer reports contain all the information listed above.

(vii) Name, address, and hundredweight handled for each person claiming exemption for assessment.

(viii) If the handler handled watermelons for persons engaged in the growing of less than five acres of watermelons, the report shall indicate the name and address of such person and the quantity of watermelons handled for such person.

(3) The words "final report" shall be shown on the last report at the close of the handler's marketing season or at the end of each fiscal period if such handler markets assessable watermelons on a year-round basis.

(4) Prepayment of assessments.

(i) In lieu of the monthly assessment and reporting requirements of paragraph (b) of this section, the Board may permit handlers to make an advance payment of their total estimated assessments for the crop year to the Board prior to their actual determination of assessable watermelons. The Board shall not be obligated to pay interest on any advance payment.

(ii) Handlers using such procedures shall provide a final annual report of actual handling and remit any unpaid assessments not later than 20 days after the end of the last month of the designated handler's marketing season or at the end of each fiscal period if such handler markets assessable watermelons on a year-round basis.

(iii) Handlers using such procedures shall, after filing a final annual report, receive a reimbursement of any overpayment of assessments.

(iv) Handlers using such procedures shall, at the request of the Board to verify a producer's refund claim, provide the Board with a handling report on any and all producers for whom the handler has provided handling services but has not yet filed a handling report with the Board.

(v) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board on request.

(d) *Late payment charges and interest.* (1) A late payment charge shall be imposed on any handler who fails to make timely remittance to the Board of the total producer and handler assessments for which any such handler is liable. Such late payment shall be imposed on any assessments not received before the thirtieth day after the end of the month such assessments are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 20 days after the end of the month such assessments are due.

(2) In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance, including the late payment charge and any accrued interest, will be added to any accounts delinquent beyond 30 days after the twentieth day after the end of the month such assessments are due. Such interest will continue monthly until the outstanding balance is paid to the Board.

(e) *Payment through cooperating agency.* The Board may enter into agreements, subject to approval of the Secretary, authorizing other organizations, such as a regional watermelon association or State watermelon board, to collect assessments in its behalf. In any State or area in which the Board has entered into such an agreement, the designated handler shall pay the assessment to such agency in the time and manner, and with such identifying information as specified in such agreement. Such an agreement shall not provide any cooperating agency with authority to collect confidential information from handlers or producers. To qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes. If the Board requires further evidence of payment than provided by the cooperating agency, it may acquire such evidence from individual handlers. All such agreements are subject to the requirements of the Act, Plan, and all applicable rules and regulations under the Act and the Plan.

§ 1210.519 Failure to report and remit.

Any handler who fails to submit reports and remittances according to the provisions of § 1210.518 shall be subject to appropriate action by the Watermelon Board which may include one or more of the following actions:

(a) Audit of the handler's books and records to determine the amount owed the Watermelon Board.

(b) Establishment of an escrow account for the deposit of assessments collected. Frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Watermelon Board with the approval of the Secretary.

(c) Referral to the Secretary for appropriate enforcement action.

§ 1210.520 Refunds.

Each watermelon producer or handler against whose watermelons an assessment became payable and was paid pursuant to this subpart may obtain a refund of the assessment amount for any calendar month by following the procedures prescribed in this section.

(A) *Application form.* A producer or handler shall obtain a refund application from the Board by written request which shall bear the producer's or handler's signature. For partnerships, corporations, associations, or other business entities, a partner or an officer of the entity must sign the request and indicate his or her title.

(b) *Submission of refund application to the Board.* Any producer or handler requesting a refund shall mail an application on the prescribed form to the Board within 90 days from the date the assessment became payable and was paid pursuant to § 1210.518. The refund application shall show the following:

(1) Producer's name and address;

(2) Handler's or Handlers' name(s) and address(es);

(3) Number of hundredweight of watermelon on which refund is requested;

(4) Total amount to be refunded;

(5) Proof of payment as described below; and

(6) Producer's or handler's signature.

Where more than one producer or handler shared in the assessment payment, the refund application shall show, in addition to other required information, the names, addresses and proportionate shares of such producers or handlers and the signature of each. Separate refund requests must be made by the producer and the handler where refunds are requested by both on the same lot of watermelons, except when the producer and handler are the same person. Requests for refund of assessments paid may be in part or total.

(c) *Proof of payment of assessment.* Evidence of payment of assessments satisfactory to the Board, such as the receipt or a copy of the receipt given to the producer by the handler, or a copy of

the handler's report, shall accompany the producer's or handler's refund application. Evidence submitted with refund applications shall not be returned to the applicant.

(d) *Payment of refund.* Within 60 days from the date the properly executed application for refund is received by the Board, the Board shall make remittance to the applicant. For joint applications, the remittance shall be made payable jointly.

§ 1210.521 Reports of disposition of exempted watermelons.

The Board may require reports by handlers on the handling and disposition of exempted watermelons and/or on the handling of watermelons for persons engaged in growing less than five acres of watermelons. Authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

Records

§ 1210.530 Retention period for records.

Each handler required to make reports pursuant to this subpart shall maintain and retain for at least 2 years beyond the marketing year of their applicability:

(a) One copy of each report made to the Board; and

(b) Such records as are necessary to verify such reports.

§ 1210.531 Availability of records.

Each handler required to make reports pursuant to this subpart shall make available for inspection and copying by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

§ 1210.532 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and all information with respect to refunds of assessments made to individual producers and handlers shall be kept confidential in the manner and to the extent provided for in § 1210.352.

Miscellaneous

§ 1210.540 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in the part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0581–0158.

Signed at Washington, DC on April 5, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–8236 Filed 4–9–90; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–201–AD; Amdt. 39–6572]

Airworthiness Directives; Boeing Model 737–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737–300 series airplanes, which requires a one-time inspection of the engines' nacelle strut firewall duct assemblies for proper application of firewall sealant. This amendment is prompted by a manufacturer's production report that firewall sealant may not have been applied to all the mating surfaces of the engines' nacelle strut firewall door assemblies. This condition, if not corrected, could compromise the integrity of the engines' nacelle strut firewall seal.

EFFECTIVE DATE: May 14, 1990.

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

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Propulsion Branch, ANM–140S; telephone (206) 431–1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737 series airplanes, which requires a one-time inspection of the engines' nacalle strut firewall duct assemblies for proper application of firewall sealant, was published in the Federal Register on November 3, 1989 (54 FR 46400).

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

Two comments were received requesting that the compliance period be expressed "at the next engine removal" and that the proposed one year compliance period be withdrawn or at least extended to an interval of 8,000 to 10,000 flight hours. The commenters believe that the proposed AD would cause a severe economic hardship on the operators by requiring unscheduled engine removals. The FAA concurs. The FAA has determined that the compliance time can be increased to 8,000 flight hours without unduly impacting safety and has revised the final rule to reflect the extended interval.

A comment was received opposing the 10-day reporting requirement for both negative and positive findings. The commenter believes that reporting of findings should only be required in immediate adopted rules issued as interim actions. In the general case, the FAA does not concur, since the purpose of such reporting requirements is to ensure that the FAA is able to gather as much information as possible as to the extent and nature of what appears to be a manufacturer's quality control problem, especially in cases where this information may not be available through other established means. Such information is necessary to ensure that proper corrective action is implemented. However, in this specific case, due to the extension of the compliance time as noted above, and an FAA evaluation of the quality control problem which is already underway, the FAA has determined that this reporting requirement is unnecessary. The final rule has been revised to delete the reporting requirement.

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

There are approximately 50 Model 737–300 series airplanes of the affected design in the worldwide fleet. It is estimated that 20 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost

will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,600.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 737-300 series airplanes, listed in Boeing Service Bulletin 737-54-1028, dated August 17, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure the integrity of the engines' nacelle strut firewall seal, accomplish the following:

A. At the next engine removal or within 8,000 flight hours after the effective date of this AD, whichever occurs sooner, inspect the engines' nacelle strut door assemblies for proper application of firewall sealant in accordance with Boeing Service Bulletin 737-54-1028, dated August 17, 1989. The door assemblies are located between nacelle station 200.00 and 235.00 and attached to the underside of the strut and spar web at approximately nacelle waterline 132.00. If there are gaps, holes, or voids in the firewall sealant, apply sealant prior to further flight, in accordance with the previously described service bulletin.

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

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

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

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

This amendment becomes effective May 14, 1990.

Issued in Seattle, Washington, on March 30, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-8194 Filed 4-9-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-265-AD; Amdt. 39-6573]

Airworthiness Directives; Fairchild Industries, Inc., Model F-27 and FH-227 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Fairchild Industries, Inc., Model F-27 and FH-227 series airplanes, which currently requires a dye penetrant inspection to detect cracks in the wing outer panel upper surface stringer splice fittings, and repair, if necessary. This action (1) allows the blending of cracked aluminum fittings if cracks detected are within certain acceptable limits, (2) requires the installation of new steel fittings if the cracks found exceed the specified acceptable limits, (3) requires the eventual replacement of all aluminum fittings with the new steel fittings, and (4) eliminates the reporting requirement prescribed in the existing AD. This amendment is prompted by an analysis submitted by the manufacturer which provides a temporary repair by blending cracked fittings provided the cracks are within acceptable limits. This condition, if not corrected, could result in the inability of the airplane structure to carry required loads.

EFFECTIVE DATE: May 14, 1990.

ADDRESSES: The applicable service information may be obtained from Maryland Air Industries, Inc., Hagerstown, Maryland 21740. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Socias, Airframe Branch, ANE-172, New York Aircraft Certification Office; telephone (516) 791-6220. Mailing address: FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89-15-01, Amendment 39-6292 (54 FR 31804; August 2, 1989), applicable to all Fairchild Industries, Inc., Model F-27 and FH-227 series airplanes, which (1) allows the blending of cracked aluminum fittings if cracks detected are within certain acceptable limits, (2) requires the installation of new steel fittings if the cracks found exceed the specified acceptable limits, (3) requires the eventual replacement of all aluminum fittings with the new steel fittings, and (4) eliminates the reporting requirements prescribed in the existing AD, was published in the **Federal Register** on January 26, 1990 (55 FR 2669).

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

The sole commenter, Air Line Pilots Association, fully supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air

safety and the public interest require the adoption of the rule as proposed.

There are approximately 152 Fairchild Industries, Inc., Model F–27 and FH–227 series airplanes of the affected design in the worldwide fleet. It is estimated that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 200 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost to replace the existing aluminum fittings if $14,148 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $974,512.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 89–15–01, Amendment 39–6292 (54 FR 31804; August 2, 1989), with the following new airworthiness directive:

Fairchild Industries, Inc.: Applies to all Model F–27 and FH–227 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the wing due to undetected fatigue cracks, accomplish the following:

A. Within 25 hours time-in-service after August 21, 1989 (the effective date of AD 89–15–01, Amendment 39–6292), perform a dye penetrant inspection for cracks in the wing outer panel upper surface stringer splice fitting, in accordance with Fairchild Industries Service Bulletin F27–51–8, dated April 22, 1974 [reference paragraph 2A(6)(e), page 5; and Figure 14, page 24] or Fairchild Industries Service Bulletin FH227–51–4, dated January 17, 1979 [reference paragraph 2A(6)(e), page 5; and Figure 14, page 23], as appropriate, and Maryland Air Industries Alert Service Letters F27–681 and FH227–57–6, both dated June 29, 1989, as appropriate.

B. If cracks are found in the wing outer panel upper surface stringer splice fittings, prior to further flight, accomplish the following:

1. If cracks found are less than or equal to .100 inch on the Model F–27 series airplanes, or less than or equal to .075 inch on the Model FH–227 series airplanes, perform the blending operation in accordance with Maryland Air Industries Drawing No. D27–7723, dated July 27, 1989. Perform a dye penetrant inspection after the blending operation to ensure that all damaged material has been removed. Pay particular attention to the maximum torque value and gaps as shown on Maryland Industries Drawing D27–7723, dated July 27, 1989.

2. If cracks found are more than .100 inch on the Model F–27 series airplanes, or more than .075 inch on the Model FH–227 series airplanes, replace aluminum fittings with new steel fittings, in accordance with Maryland Air Industries Drawing No. 27–133008, dated July 28, 1989.

Note: For those airplanes that have removed and replaced the wing outer panel upper surface stringer splice fittings, with serviceable parts, in accordance with AD 89–15–01, Amendment 39–6292, accomplish the requirements of paragraph C., below. Included in this group of airplanes are those that were granted an alternate means of compliance to the requirement of replacement with serviceable parts.

C. Within one year time-in-service after the effective date of this AD, replace all aluminum fittings part number (P/N) 27–133008–21 with a new steel fitting, P/N 27–133008–23, in accordance with Maryland Air Industries Drawing No. 27–133008, dated July 28, 1989.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE–170, FAA New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE–170, FAA, New England Region.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Maryland Air Industries, Inc., Hagerstown, Maryland 21740. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York.

This amendment supersedes Amendment 39–6292, AD 89–15–01.

This amendment becomes effective May 14, 1990.

Issued in Seattle, Washington, on March 30, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–8193 Filed 4–9–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–191–AD; Amdt. 39–6570]

Airworthiness Directives; Fokker Model F–27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive [AD], applicable to all Fokker Model F–27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, which currently requires supplemental structural inspections, and repair or replacement, as necessary, to ensure continued airworthiness. This amendment revises the inspection program to add or revise significant structural items to inspect for fatigue cracks. This amendment is prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where fatigue damage is likely to occur. Fatigue cracks in these areas, if not detected and corrected, could result in a reduction of the structural integrity of these airplanes.

DATES: Effective May 14, 1990.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 89-07-11, Amendment 39-6168 (54 FR 11939; March 23, 1989), applicable to all Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, to revise the inspection program by adding or revising significant structural items to inspect for fatigue cracks, was published in the Federal Register on October 13, 1989 (54 FR 41988).

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

The commenter concurred with the intent of the AD; however, the commenter requested that part II of the Fokker Structural Inspection Program (SIP) document be added to the final rule. The commenter considered part II to be as important as part I, which has been incorporated into the existing AD. The commenter also pointed out that the Fokker SIP document has been revised since the issuance of the NPRM, and this latest revision should be addressed in the final rule. The FAA partially concurs. The existing AD does not refer to part II of the SIP since the FAA had previously determined that it contained merely normal routine maintenance procedures and was not intended to address a specific unsafe condition. The recently revised version of part II, however, does include additional inspections beyond those considered to be normal maintenance. To add the procedures of part II in this final rule would be beyond the scope of this rulemaking action. Therefore, the FAA may consider further rulemaking to revise this AD to include part II of the SIP. At that time, the public would be given the opportunity to comment on the proposal.

The commenter noted that certain sections of the Fokker SIP document which address life-limited components are a separate issue from the structural integrity of the airframe and, therefore, should not be included as a part of this AD. The commenter stated that to incorporate these sections would create an unnecessary burden by generating redundant inspection taskcards to control serialized components which are already tracked by other means. The commenter contended that whenever a change would be made through a Reliability Program or by a vendor, the result would be unnecessary, time-consuming revisions to the Maintenance Program. The FAA does not concur. These items are recommended by Fokker and approved by the Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, as part of the Structural Integrity Program. The FAA mandates these life limits for U.S. operators by means of an AD. Life limits in AD's supersede life limits established by any operator's or vendor's reliability program. The operator may have to adjust the taskcard or tracking method to reflect the latest AD action. However, the intent of this AD action is not to require redundant inspection taskcards for each mandatory inspection, but to ensure continued airworthiness of the affected fleet.

This commenter also requested that the rule be applicable only to those airplanes that *currently* require supplemental structural inspections. The commenter contended that operators with low time aircraft are required to institute this program immediately along with operators who have aircraft 20 years old. The commenter requested latitude for operators with "young fleets." The FAA does not agree. The FAA has determined that the Fokker SIP document has incorporated some latitude for younger fleets, in that all inspections required for 20-year-old aircraft are not required for low time aircraft. However, this is not to say that the younger fleets are completely exempt from all SIP inspections. There are some inspections that are immediately applicable to low time aircraft, just as there are some applicable to 20-year-old aircraft. Furthermore, additional latitude has been built into the compliance time of this AD, which is six months after the effective date of the AD.

While the proposed rule would allow up to six months for operators to incorporate the latest SIP revisions into their maintenance programs, it is the FAA's intent that operators continue to comply with the earlier SIP revisions currently referenced in the existing AD until the latest revisions are incorporated. Accordingly, the final rule has been revised to add a new paragraph A. to clarify this intent.

In addition, since this AD makes significant substantive changes to the existing AD, the FAA has determined that its adoption as a revision to the existing AD may tend to cause confusion; and that, for this reason, it should be adopted as a supersedure of the existing AD. Accordingly, the final rule has been changed to reflect that it supersedes, rather than revises, the existing AD.

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

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 33 airplanes of U.S. registry will be affected by this AD. Implementation of the inspections, repairs, or replacement specified in the revisions to the SIP document into an operator's maintenance program is estimated to require 50 manhours per airplane per year, at an average labor cost of $40 per manhour (approximately $2,000 per airplane). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $66,000 the first year and annually thereafter.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the

criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 89–07–11, Amendment 39–6168 (54 FR 11939; March 23, 1989), with the following new airworthiness directive:

Fokker: Applies to Model F–27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, all serial numbers, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure the structural integrity of these airplanes, accomplish the following:

A. Within six months after May 4, 1989 (the effective date of Amendment 39–6168, AD 89–07–11), incorporate a revision into the FAA-approved maintenance program that provides for inspection of the Significant Structural Items defined in Fokker Document No. 27438, revised February 1, 1987. The non-destructive inspection techniques referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to Fokker, in accordance with the instructions of the above document.

B. Within six months after the effective date of this amendment, incorporate into the FAA-approved maintenance inspection program the inspections, inspection intervals, repairs, or replacements defined in Fokker Structural Inspection Program (SIP) Document No. 27438, part I, including revisions up through August 15, 1988; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. Inspection results, where a crack is detected, must be reported to Fokker, in accordance with the instructions of the above document.

C. Cracked structure detected during the inspections required by paragraphs A. and B., above, must be repaired or replaced, prior to further flight, in accordance with instructions in Document No. 27438, including revisions up through August 15, 1988.

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

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

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

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

This amendment supersedes Amendment 39–6168, AD 89–07–11.

This amendment becomes effective May 14, 1990.

Issue in Seattle, Washington, on March 29, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–8192 Filed 4–9–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–AEA–21]

Establishment of Transition Area; Louisa, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice establishes a 700 foot Transition Area at Louisa, VA due to the installation of a Nondirectional Radio Beacon (NDB) by the Commonwealth of Virginia and the development of a Standard Instrument Approach Procedure (SIAP) predicated on this navigational aid. This action establishes that amount of controlled airspace to ensure segregation of the aircraft operating under instrument meteorological conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c. May 3, 1990.

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:

History

On December 5, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a 700 foot Transition Area at Louisa, VA to support the installation of a NDB and the development of a new SIAP based on this navigational aid (55 FR 1454). The proposed action would establish that amount of controlled airspace which is deemed necessary to contain arriving and departing aircraft at the Louisa County/Freemen Field Airport, Louisa, VA within controlled airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No written comments on this proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6F, January 1, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a 700 foot Transition Area at Louisa, VA to support the installation of a new NDB by the Commonwealth of Virginia, and the establishment of a new SIAP based on this navigational aid.

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

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

Adoption of the Amendment

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Louisa, VA [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the center (lat. 38°00'37"N., long. 77°58'04"W.) of the Louisa County/Freemen Field Airport, Louisa, VA; within 2 miles either side of a 266°(T) 272°(M) bearing extending from 1 mile west of the Louisa, VA, NDB (lat. 38°01'13"N., long. 77°51'34"W.) to the 5-mile radius area.

Issued in Jamaica, New York, on March 5, 1990.

Billy E. Commander,

Acting Manager, Air Traffic Division.

[FR Doc. 90-8195 Filed 4-9-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASO-4]

Designation of Transition Area, Huntingdon, TN; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: The intent of this action is to correct the longitude position of the Huntingdon NDB. Therefore, in Volume 54, page 21425, column 2 of the **Federal Register** dated Thursday, May 18, 1989, change the longitude ordinate of the Huntingdon NDB to read, "longitude 88°27'58" W."

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

Issued in East Point, Georgia on March 19, 1990.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 90-8196 Filed 4-9-90; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule revision.

SUMMARY: The Federal Trade Commission's Appliance Labeling Rule requires that the table in § 305.9, which sets forth the representative average unit energy costs for four residential energy sources, be revised periodically on the basis of updated information provided by the Department of Energy ("DOE").

This notice revises the table to incorporate the latest figures for average unit energy costs as published by DOE in the **Federal Register** on March 12, 1990.

EFFECTIVE DATE: The revised Table 1 is effective April 10, 1990. The mandatory dates for using these revised DOE cost figures are detailed below.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035 Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Federal Trade Commission issued a final Appliance Labeling Rule (44 FR 66466) in response to a directive in section 324 of the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. 6201 (1975).[1] The rule requires the disclosure of energy efficiency or cost information on labels and in retail sales catalogs for eight categories of appliances, and mandates that these energy costs or energy efficiency ratings be based on standardized test procedures developed by DOE. The cost information obtained by following the test procedures is derived by using the representative average unit energy costs provided by DOE. Table 1 in § 305.9 of the rule sets forth the representative average unit energy costs to be used for all requirements of the rule. As stated in § 305.9(b), the Table is intended to be revised periodically on the basis of updated information provided by DOE.

On March 12, 1990, DOE published the most recent figures for representative average unit energy costs (55 FR 9184). Accordingly, Table 1 is revised to reflect these latest cost figures as set forth below.

The dates when use of the figures in revised Table 1 becomes mandatory in calculating cost disclosures for use in reporting, labeling and advertising products covered by the Commission's rule and/or EPCA are as follows:

For 1990 Submissions of Data Under § 305.8 of the Commission's Rule

The new cost figures must be used in all 1990 cost submissions except the submissions for clothes washers, which were due March 1, 1990.

For Labeling and Advertising of Products Covered by the Commission's Rule

Using 1990 submissions of estimated annual costs of operation based on the 1990 DOE cost figures, the staff will determine whether to publish new ranges. Any products for which new ranges are published must be labeled with estimated annual cost figures calculated using the 1990 DOE cost figures. If such new ranges are published, the effective date for labeling new products will be ninety days after publication of the ranges in the **Federal Register**. Products that have been labeled prior to the effective date of any range modification need not be relabeled. Advertising for such products will also have to be based on the new costs and ranges beginning ninety days after publication of the new ranges in the **Federal Register**.

Energy Usage Representations Respecting Products Covered by EPCA but not by the Commission's Rule

Manufacturers of products covered by section 323(c) of EPCA, but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, pool heaters and space heaters) must use the 1990 representative average unit costs for energy in all representations effective July 9, 1990.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

[1] Since its promulgation, the rule has been amended twice to include new product categories—central air conditioners (52 FR 46888, Dec. 10, 1987) and fluorescent lamp ballasts (54 FR 1182, Jan. 12, 1989).

PART 305—[AMENDED]

Accordingly, 16 CFR part 305 is amended as follows:

1. The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 96–619) (1978), the National Appliance Energy Conservation Act (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100–357) (1988), 42 U.S.C. 6294; section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. Section 305.9(a) is amended by revising Table 1 to read as follows:

§ 305.9 Representative average unit energy costs.

(a) Table 1, below, contains the representative unit energy costs to be utilized for all requirements of this part.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FOUR RESIDENTIAL ENERGY SOURCES (1990)

Type of energy	In common terms	As required by DOE test procedure	Dollars per million Btu [1]
Electricity	7.88¢/kWh [2, 3]	$0.0788/kWh	$23.09
Natural gas	56.35¢/therm [4] or $5.81/MCF [5, 6]	0.00000563/Btu	5.64
No. 2 heating oil	$0.88/gallon [7]	0.00000634/Btu	6.35
Propane	$0.76/gallon [8]	0.00000832/Btu	8.32

[1] Btu stands for British thermal unit.
[2] kWh stands for kilowatt hour.
[3] 1 kWh=3,412 Btu.
[4] 1 therm=100,000 Btu.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,029 Btu.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,333 Btu.

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 90–8252 Filed 4–9–90; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Technical Revisions

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This makes corrections in 32 CFR part 199 (DoD 6010.8–R), the regulation that governs CHAMPUS, by: (1) Reinserting paragraphs in § 199.4(b)(1) which were erroneously eliminated by a previous amendment; (2) reinserting a comma in § 199.6(c)(3)(iv) that was erroneously replaced with an "or" in a previous revision; and (3) revising the entire § 199.14 correcting paragraph designations and cross references. These corrections are necessary for administration of CHAMPUS.

EFFECTIVE DATE: The corrections in §§ 199.4 and 199.6 are effective retroactive to March 10, 1986. The revision of § 199.14 is effective April 10, 1990.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Tariq Shahid, Office of Program Development, OCHAMPUS, telephone (303) 361–3587.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniform Services (CHAMPUS)," as part 199 of this title. The 32 CFR part 199 (DoD 6010.8–R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 42008).

I. Section 199.4

On April 22, 1988, we published Amendment No. 9 to the DoD 6010.8–R (32 CFR part 199) on birthday centers (53 FR 13258). This amendment erroneously eliminated paragraphs (i) and (v) in § 199.4(b)(1) in the CFR. However, these paragraphs were not deleted in the DoD 6010.8–R. Accordingly, this final rule revises § 199.4(b)(1) by reinserting its previous paragraphs (i) through (v).

II. Section 199.6

In the March 10, 1986, reissuance of the 32 CFR part 199 (published on July 1, 1986 (51 FR 42008)), we erroneously replaced a comma with an "or" in § 199.6(c)(3)(iv)(A)(*4*)(*i*). This final rule corrects this error by replacing "or" with the previous comma.

III. Section 199.14

Recently, we discovered several errors in paragraph designations and cross references in § 199.14. These errors resulted due to several amendments which were made to §199.14 during the past year. In order to correct these errors, this final rule is revising § 199.14 in its entirety.

It must be noted that this final rule makes no substantive changes. It only involves an established body of regulations. The publication of this final rule is being made without use of the proposed rulemaking process. The proposed rulemaking process was not used because the issuance of this final rule reissues an existing rule which previously has been the subject of notice, regulatory procedures, and public comment. This final rule makes only technical revisions and corrections.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, and Military Personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by revising § 199.4(b)(1) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(b) * * *

(1) *General.* Services and supplies provided by an institutional provider authorized as set forth in § 199.6 may be cost-shared only when such services or supplies: are otherwise authorized by this part; are medically necessary; are ordered, directed, prescribed, or delivered by an OCHAMPUS-authorized individual professional provider as set forth in § 199.6 or by an employee of the authorized institutional provider who is otherwise eligible to be a CHAMPUS authorized individual professional provider; are delivered in accordance with generally accepted norms for clinical practice in the United States; meet established quality standards; and comply with applicable definitions, conditions, limitations, exceptions, or exclusions as otherwise set forth in this part.

(i) *Billing practices.* To be considered for benefits under § 199.4(b), covered services and supplies must be provided and billed for by a hospital or other authorized institutional provider. Such billings must be fully itemized and sufficiently descriptive to permit CHAMPUS to determine whether benefits are authorized by this part. In the case of continuous care, claims shall be submitted to the appropriate CHAMPUS fiscal intermediary at least every 30 days either by the beneficiary or sponsor or, on a participating basis, directly by the facility on behalf of the beneficiary (refer to § 199.7).

(ii) *Successive inpatient admissions.* Successive inpatient admissions shall be deemed one inpatient confinement for the purpose of computing the active duty dependent's share of the inpatient institutional charges, provided not more than 60 days have elapsed between the successive admissions, except that successive inpatient admissions related to a single maternity episode shall be considered one confinement, regardless of the number of days between admissions. For the purpose of applying benefits, successive admissions will be determined separately for maternity admissions and admissions related to an accidental injury (refer to § 199.4(f)).

(iii) *Related services and supplies.* Covered services and supplies must be rendered in connection with and related directly to a covered diagnosis or definitive set of symptoms requiring otherwise authorized medically necessary treatment.

(iv) *Inpatient, appropriate level required.* For purposes of inpatient care, the level of institutional care for which Basic Program benefits may be extended must be at the appropriate level required to provide the medically necessary treatment. If an appropriate lower level care facility is adequate, but is not available in the general locality, benefits may be continued in the higher level care facility, but CHAMPUS institutional benefit payments shall be limited to the allowable cost that would have been incurred in the appropriate lower level care facility, as determined by the Director, OCHAMPUS, or a designee. If it is determined that the institutional care can be provided reasonably in the home setting, no CHAMPUS institutional benefits are payable.

(v) *General or special education not covered.* Services and supplies related to the provision of either regular or special education generally are not covered. Such exclusion applies whether a separate charge is made for education or whether it is included as a part of an overall combined daily charge of an institution. In the latter instance, that portion of the overall combined daily charge related to education must be determined, based on the allowable costs of the educational component, and deleted from the institution's charges before CHAMPUS benefits can be extended. The only exception is when appropriate education is not available from or not payable by the cognizant public entity. Each case must be referred to the Director, OCHAMPUS, or a designee, for review and a determination of the applicability of CHAMPUS benefits.

* * * * *

3. Section 199.6 is amended by revising § 199.6(c)(3)(iv)(A)(*4*)(*i*) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(c) * * *
(3) * * *
(iv) * * *
(A) * * *
(*4*) * * *

(*i*) Recognized graduate professional education with the minimum of an earned master's degree from an accredited educational institution in an appropriate behavioral science field, mental health discipline.

* * * * *

4. Section 199.14 is revised to read as follows:

§ 199.14 Provider reimbursement methods.

(a) *Hospitals.* The CHAMPUS-determined allowable cost for reimbursement of a hospital shall be determined on the basis of one of the following methodologies.

(1) *CHAMPUS Diagnosis Related Group (DRG)-based payment system.* Under the CHAMPUS DRG-based payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system is made on the basis of prospectively-determined rates and applied on a per discharge basis using DRGs. Payments under this system will include a differentiation for urban (using large urban and other urban areas) and rural hospitals and an adjustment for area wage differences and indirect medical education costs. Additional payments will be made for capital costs, direct medical education costs, and outlier cases.

(i) *General.*

(A) *DRGs used.* The CHAMPUS DRG-based payment system will use the same DRGs used in the most recently available grouper for the Medicare Prospective Payment System, except as necessary to recognize distinct characteristics of CHAMPUS beneficiaries and as described in instructions issued by the Director, OCHAMPUS.

(B) *Assignment of discharges to DRGs.*

(*1*) The classification of a particular discharge shall be based on the patient's age, sex, principal diagnosis (that is, the diagnosis established, after study, to be chiefly responsible for causing the patient's admission to the hospital), secondary diagnoses, procedures performed and discharge status. In addition, for neonatal cases (other than normal newborns) the classification shall also account for birthweight, surgery and the presence of multiple, major and other neonatal problems, and shall incorporate annual updates to these classification features.

(*2*) Each discharge shall be assigned to only one DRG regardless of the number of conditions treated or services furnished during the patient's stay.

(C) *Basis of payment.*

(*1*) *Hospital billing.* Under the CHAMPUS DRG-based payment system, hospitals are required to submit claims (including itemized charges) in accordance with paragraph (b) of § 199.7. The CHAMPUS fiscal intermediary will assign the appropriate DRG to the claim based on the information contained on the claim.

(*2*) *Payment on a per discharge basis.* Under the CHAMPUS DRG-based payment system, hospitals are paid a predetermined amount per discharge for inpatient hospital services furnished to CHAMPUS beneficiaries.

(*3*) *Claims priced as of date of admission.* Except for interim claims submitted for qualifying outlier cases, all claims reimbursed under the CHAMPUS DRG-based payment system are to be priced as of the date of

admission, regardless of when the claim is submitted.

(4) *Payment in full.* The DRG-based amount paid for inpatient hospital services is the total CHAMPUS payment for the inpatient operating costs (as described in paragraph (a)(1)(i)(C)(5) of this section) incurred in furnishing services covered by the CHAMPUS. The full prospective payment amount is payable for each stay during which there is at least one covered day of care, except as provided in paragraph (a)(1)(iii)(E)(1)(i)(A) of this section.

(5) *Inpatient operating costs.* The CHAMPUS DRG-based payment system provides a payment amount for inpatient operating costs, including:

(i) Operating costs for routine services, such as the costs of room, board, and routine nursing services;

(ii) Operating costs for ancillary services, such as hospital radiology and laboratory services (other than physicians' services) furnished to hospital inpatients;

(iii) Special care unit operating costs; and

(iv) Malpractice insurance costs related to services furnished to inpatients.

(6) *Discharges and transfers.*

(i) *Discharges.* A hospital inpatient is discharged when:

(A) The patient is formally released from the hospital (release of the patient to another hospital as described in paragraph (a)(1)(i)(C)(6)(ii) of this section, or a leave of absence from the hospital, will not be recognized as a discharge for the purpose of determining payment under the CHAMPUS DRG-based payment system);

(B) The patient dies in the hospital; or

(C) The patient is transferred from the care of a hospital included under the CHAMPUS DRG-based payment system to a hospital or unit that is excluded from the prospective payment system.

(ii) *Transfers.* Except as provided under paragraph (a)(1)(i)(C)(6)(i) of this section, a discharge of a hospital inpatient is not counted for purposes of the CHAMPUS DRG-based payment system when the patient is transferred:

(A) From one inpatient area or unit of the hospital to another area or unit of the same hospital;

(B) From the care of a hospital included under the CHAMPUS DRG-based payment system to the care of another hospital paid under this system;

(C) From the care of a hospital included under the CHAMPUS DRG-based payment system to the care of another hospital that is excluded from the CHAMPUS DRG-based payment system because of participation in a statewide cost control program which is exempt from the CHAMPUS DRG-based payment system under paragraph (a)(1)(ii)(A) of this section; or

(D) From the care of a hospital included under the CHAMPUS DRG-based payment system to the care of a uniformed services treatment facility.

(iii) *Payment in full to the discharging hospital.* The hospital discharging an inpatient shall be paid in full under the CHAMPUS DRG-based payment system.

(iv) *Payment to a hospital transferring an inpatient to another hospital.* If a hospital subject to the CHAMPUS DRG-based payment system transfers an inpatient to another such hospital, the transferring hospital shall be paid a per diem rate (except that in neonatal cases, other than normal newborns, the hospital will be paid at 125 percent of that per diem rate), as determined under instructions issued by OCHAMPUS, for each day of the patient's stay in that hospital, not to exceed the DRG-based payment that would have been paid if the patient had been discharged to another setting. However, if a discharge is classified into DRG No. 456 (Burns, transferred to another acute care facility) or DRG 601 (neonate, transferred less than or equal to 4 days old), the transferring hospital shall be paid in full.

(v) *Additional payments to transferring hospitals.* A transferring hospital may qualify for an additional payment for extraordinary cases that meet the criteria for long-stay or cost outliers.

(ii) *Applicability of the DRG system.*

(A) *Areas affected.* The CHAMPUS DRG-based payment system shall apply to hospitals' services in the fifty states, the District of Columbia, and Puerto Rico, except that any state which has implemented a separate DRG-based payment system or similar payment system in order to control costs and is exempt from the Medicare Prospective Payment System may be exempt from the CHAMPUS DRG-based payment system if it requests exemption in writing, and provided payment under such system does not exceed payment which would otherwise be made under the CHAMPUS DRG-based payment system.

(B) *Services subject to the DRG-based payment system.* All normally covered inpatient hospital services furnished to CHAMPUS beneficiaries by hospitals are subject to the CHAMPUS DRG-based payment system.

(C) *Services exempt from the DRG-based payment system.* The following hospital services, even when provided in a hospital subject to the CHAMPUS DRG-based payment system, are exempt from the CHAMPUS DRG-based payment system. The services in paragraphs (a)(1)(ii)(C)(1) through (a)(1)(ii)(C)(4) and (a)(1)(ii)(C)(7) through (a)(1)(ii)(C)(9) of this section shall be reimbursed under the procedures in paragraph (a)(3) of this section, and the services in paragraphs (a)(1)(ii)(C)(5) and (a)(1)(ii)(C)(6) of this section shall be reimbursed under the procedures in paragraph (g) of this section.

(1) Services provided by hospitals exempt from the DRG-based payment system.

(2) All services related to kidney acquisition by Rental Transplantation Centers.

(3) All services related to a heart transplantation which would otherwise be paid under DRG 103.

(4) All services related to liver transplantation when the transplant is performed in a CHAMPUS-authorized liver transplantation center.

(5) All professional services provided by hospital-based physicians.

(6) All services provided by nurse anesthetists.

(7) All services related to discharges involving pediatric bone marrow transplants (patient under 18 at admission).

(8) All services related to discharges involving children who have been determined to be HIV seropositive (patient under 18 at admission).

(9) All services related to discharges involving pediatric cystic fibrosis (patient under 18 at admission).

(D) *Hospitals subject to the CHAMPUS DRG-based payment system.* All hospitals within the fifty states, the District of Columbia, and Puerto Rico which are certified to provide services to CHAMPUS beneficiaries are subject to the DRG-based payment system except for the following hospitals or hospital units which are exempt.

(1) *Psychiatric hospitals.* A psychiatric hospital which is exempt from the Medicare Prospective Payment System is also exempt from the CHAMPUS DRG-based payment system. In order for a psychiatric hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in 42 CFR 412.23.

(2) *Rehabilitation hospitals.* A rehabilitation hospital which is exempt from the Medicare Prospective Payment System is also exempt from the

CHAMPUS DRG-based payment system. In order for a rehabilitation hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in 42 CFR 412.23.

(3) *Psychiatric and rehabilitation units (distinct parts).* A psychiatric or rehabilitation unit which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a distinct unit which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in 42 CFR 412.23.

(4) *Long-term hospitals.* A long-term hospital which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a long-term hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must have an average length of inpatient stay greater than 25 days:

(*i*) As computed by dividing the number of total inpatient days (less leave or pass days) by the total number of discharges for the hospital's most recent fiscal year; or

(*ii*) As computed by the same method for the immediately preceding six-month period, if a change in the hospital's average length of stay is indicated.

(5) *Sole community hospitals.* Any hospital which has qualified for special treatment under the Medicare prospective payment system as a sole community hospital and has not given up that classification is exempt from the CHAMPUS DRG-based payment system. (See subpart G of 42 CFR part 412.)

(6) *Christian Science sanitoriums.* All Christian Science sanitoriums (as defined in paragraph (b)(4)(viii) of § 199.6) are exempt from the CHAMPUS DRG-based payment system.

(7) *Cancer hospitals.* Any hospital which qualifies as a cancer hospital under the Medicare standards and has elected to be exempt from the Medicare prospective payment system is exempt from the CHAMPUS DRG-based payment system. (See 42 CFR 412.94.)

(8) *Hospitals outside the 50 states, the District of Columbia, and Puerto Rico.* A hospital is excluded from the CHAMPUS DRG-based payment system if it is not located in one of the fifty States, the District of Colubmia, or Puerto Rico.

(E) *Hospitals which do not participate in Medicare.* It is not required that a hospital be a Medicare-participating provider in order to be an authorized CHAMPUS provider. However, any hospital which is subject to the CHAMPUS DRG-based payment system and which otherwise meets CHAMPUS requirements but which is not a Medicare-participating provider (having completed a form HCFA–1514, Hospital Request for Certification in the Medicare/Medicaid Program and a form HCFA–1561, Health Insurance Benefit Agreement) must complete a participation agreement with OCHAMPUS. By completing the participation agreement, the hospital agrees to participate on all CHAMPUS inpatient claims and to accept the CHAMPUS-determined allowable amount as payment in full for these claims. Any hospital which does not participate in Medicare and does not complete a participation agreement with OCHAMPUS will not be authorized to provide services to CHAMPUS beneficiaries.

(iii) *Determination of payment amounts.* The actual payment for an individual claim under the CHAMPUS DRG-based payment system is calculated by multiplying the appropriate adjusted standardized amount (adjusted to account for area wage differences using the wage indexes used in the Medicare program) by a weighting factor specific to each DRG.

(A) *Calculation of DRG weights.*

(1) *Grouping of charges.* All discharge records in the database shall be grouped by DRG.

(2) *Remove DRGs 469 and 470.* Records from DRGs 469 and 470 shall be removed from the database.

(3) *Indirect medical education standardization.* To standardize the charges for the cost effects of indirect medical education factors, each teaching hospital's charges will be divided by 1.0 plus the following ratio on a hospital-specific basis:

$$1.43\times\left[\left(1.0+\frac{\text{number of interns}+\text{residents}}{\text{number of beds}}\right).5795-1.0\right]$$

(4) *Wage level standardization.* To standardize the charge records for area wage differences, each charge record will be divided into labor-related and nonlabor-related portions, and the labor-related portion shall be divided by the most recently available Medicare wage index for the area. The labor-related and nonlabor-related portions will then be added together.

(5) *Elimination of statistical outliers.* All unusually high or low charges shall be removed from the database.

(6) *Calculation of DRG average charge.* After the standardization for indirect medical education, and area wage differences, an average charge for each DRG shall be computed by summing charges in a DRG and dividing that sum by the number of records in the DRG.

(7) *Calculation of national average charge per discharge.* A national average charge per discharge shall be calculated by summing all charges and dividing that sum by the total number of records from all DRG categories.

(8) *DRG relative weights.* DRG relative weights shall be calculated for each DRG category by dividing each DRG average charge by the national average charge.

(B) *Empty and low-volume DRGs.* The Medicare weight shall be used for any DRG with less than ten (10) occurrences in the CHAMPUS database. The short-stay thresholds shall be set at one day for these DRGs and the long-stay thresholds shall be set at the FY 87 Medicare thresholds.

(C) *Updating DRG weights.* The CHAMPUS DRG weights shall be updated or adjusted as follows:

(1) DRG weights shall be recalculated annually using CHAMPUS charge data and the methodology described in paragraph (a)(1)(iii)(A) of this section.

(2) When a new DRG is created, CHAMPUS will, if practical, calculate a weight for it using an appropriate charge

sample (if available) and the methodology described in paragraph (a)(1)(iii)(A) of this section.

(3) In the case of any other change under Medicare to an existing DRG weight (such as in connection with technology changes), CHAMPUS shall adjust its weight for that DRG in a manner comparable to the change made by Medicare.

(D) *Calculation of the adjusted standardized amounts.* The following procedures shall be followed in calculating the CHAMPUS adjusted standardized amounts.

(1) *Differentiate large urban, other urban, and rural charges.* All charges in the database shall be sorted into large urban, other urban, and rural groups (using the same definitions for these categories used in the Medicare program). The following procedures will be applied to each group.

(2) *Indirect medical education standardization.* To standardize the charges for the cost effects of indirect medical education factors, each teaching hospital's charges will be divided by 1.0 plus the following ratio on a hospital-specific basis:

$$1.43 \times \left[\left(1.0 + \frac{\text{number of interns + residents}}{\text{number of beds}}\right).5795 - 1.0\right]$$

(3) *Wage level standardization.* To standardize the charge records for area wage differnces, each charge record will be divided into labor-related and nonlabor-related portions, and the labor-related portion shall be divided by the most recently available Medicare wage index for the area. The labor-related and nonlabor-related portions will then be added together.

(4) *Apply the cost to charge ratio.* Each charge is to be reduced to a representative cost by using the Medicare cost to charge ratio. This amount shall be increased by 1 percentage point in order to reimburse hospitals for bad debt expenses attributable to CHAMPUS beneficiaries.

(5) *Preliminary base year standardized amount.* A preliminary base year standardized amount shall be calculated by summing all costs in the database applicable to the large urban, other urban, or rural group and dividing by the total number of discharges in the respective group.

(6) *Update for inflation.* The preliminary base year standardized amounts shall be updated using an annual update factor equal to 1.07 to produce fiscal year 1988 preliminary standardized amounts. Therefore, any development of a new standardized amount will use an inflation factor equal to the hospital market basket index used by the Health Care Financing Administration in their Prospective Payment System.

(7) The preliminary standardized amounts, updated for inflation, shall be divided by a system standardization factor so that total DRG outlays, given the database distribution across hospitals and diagnosis, are equal to the total charges reduced to costs.

(8) *Labor and nonlabor portions of the adjusted standardized amounts.* The adjusted standardized amounts shall be divided into labor and nonlabor portions in accordance with the Medicare division of labor and nonlabor portions.

(E) *Adjustments to the DRG-based payments amounts.* The following adjustments to the DRG-based amounts (the weight multiplied by the adjusted standardized amount) will be made.

(1) *Outliers.* The DRG-based payment to a hospital shall be adjusted for atypical cases. These outliers are those cases that have either an unusually short length-of-stay or extremely long length-of-stay or that involve extraordinarily high costs when compared to most discharges classified in the same DRG. Cases which qualify as both a length-of-stay outlier and a cost outlier shall be paid at the rate which results in the greater payment.

(*i*) *Length-of-stay outliers.* Length-of-stay outliers shall be identified and paid by the fiscal intermediary when the claims are processed.

(*A*) *Short-stay outliers.* Any discharge with a length-of-stay (LOS) less than 1.94 standard deviations from the DRG's geometric LOS shall be classified as a short-stay outlier. Short-stay outliers shall be reimbursed at 200 percent of the per diem rate for the DRG for each covered day of the hospital stay, not to exceed the DRG amount. The per diem rate shall equal the DRG amount divided by the geometric mean length-of-stay for the DRG.

(*B*) *Long-stay outliers.* Any discharge which has a length-of-stay (LOS) exceeding the lesser of 3.00 standard deviations or 24 days (1.94 standard deviations or 17 days for neonate services and for services in children's hospitals) from the DRG's geometric mean LOS shall be classified as a long-stay outlier. Long-stay outliers shall be reimbursed the DRG-based amount plus 60 percent (90 percent for DRG's related to burn cases) of the per diem rate for the DRG for each covered day of care beyond the long-stay outlier cutoff. The per diem rate shall equal the DRG amount divided by the geometric mean LOS for the DRG.

(*ii*) *Cost outliers.* Any discharge which has standardized costs that exceed a threshold of the greater of two times the DRG-based amount or $28,000 ($13,500 for neonate services and for services in children's hospitals) shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by the factor described in § 199.14(a)(1)(iii)(D)(4) and adjusting this amount for indirect medical education costs. Cost outliers shall be reimbursed the DRG-based amount plus 75 percent (90 percent for DRG's related to burn cases and 80 percent for neonatal services and for services in children's hospitals) of all costs exceeding the threshold. Additional payment for cost outliers shall be made only upon request by the hospital. Notwithstanding the threshold amount stated in the first sentence of this paragraph and the marginal payment percentage stated in the third sentence of this paragraph, for all discharges to patients admitted prior to November 21, 1988, a threshold amount of $13,500 (rather than $28,000) shall apply and (except for burn cases, neonatal services and services in children's hospitals) a marginal payment percentage of 60 percent (rather than 75 percent) shall apply.

(2) *Wage adjustment.* CHAMPUS will adjust the labor portion of the standardized amounts according to the hospital's area wage index.

(3) *Indirect medical education adjustment.* The wage adjusted DRG payment will also be multiplied by 1.0 plus the hospital's indirect medical education ratio.

(4) *Children's hospital differential.* With respect to claims from children's hospitals, the appropriate adjusted standardized amount shall also be

adjusted by a children's hospital differential.

(*i*) *Qualifying children's hospitals.* Hospitals qualifying for the children's hospital differential are hospitals that are exempt from the Medicare Prospective Payment System, or, in the case of hospitals that do not participate in Medicare, that meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in 42 CFR 412.23.

(*ii*) *Calculation of differential.* The differential shall be equal to the difference between a specially calculated children's hospital adjusted standardized amount and the adjusted standardized amount for fiscal year 1988. The specially calculated children's hospital adjusted standardized amount shall be calculated in the same manner as set forth in § 199.14(a)(1)(iii)(D), except that:

(*A*) The base period shall be fiscal year 1988 and shall represent total estimated charges for discharges that occurred during fiscal year 1988.

(*B*) No cost to charge ratio shall be applied.

(*C*) Capital costs and direct medical education costs will be included in the calculation.

(*D*) The factor used to update the database for inflation to produce the fiscal year 1988 base period amount shall be the applicable Medicare inpatient hospital market basket rate.

(*iii*) *Transition rule.* Until March 1, 1992, separate differentials shall be used for each higher volume children's hospital (individually) and for all other children's hospitals (in the aggregate). For this purpose, a higher volume hospital is a hospital that had 50 or more CHAMPUS discharges in fiscal year 1988.

(*iv*) *Hold harmless provision.* At such time as the weights initially assigned to neonatal DRGs are recalibrated based on sufficient volume of CHAMPUS claims records, children's hospital differentials shall be recalculated and appropriate retrospective and prospective adjustments shall be made. To the extent practicable, the recalculation shall also include reestimated values of other factors (including but not limited to direct education and capital costs and indirect education factors) for which more accurate data became available.

(*v*) *No update for inflation.* The children's hospital differential, calculated (and later recalculated under the hold harmless provision) for the base period of fiscal year 1988, shall not be updated for subsequent fiscal years.

(*vi*) *Administrative corrections.* In connection with determinations pursuant to paragraph (a)(1)(iii)(E)(*4*)(*iii*) of this section, any children's hospital that believes OCHAMPUS erroneously failed to classify the hospital as a high volume hospital or incorrectly calculated (in the case of a high volume hospital) the hospital's differential may obtain administrative corrections by submitting appropriate documentation to the Director, OCHAMPUS (or a designee).

(F) *Updating the adjusted standardized amounts.* Beginning in FY 1989, the adjusted standardized amounts will be updated by the Medicare annual update factor, unless the adjusted standardized amounts are recalculated.

(G) *Annual cost pass-throughs.*

(*1*) *Capital costs.* When requested in writing by a hospital, CHAMPUS shall reimburse the hospital its share of actual capital costs as reported annually to the CHAMPUS fiscal intermediary. Payment for capital costs shall be made annually based on the ratio of CHAMPUS inpatient days for those beneficiaries subject to the CHAMPUS DRG-based payment system to total inpatient days applied to the hospital's total allowable capital costs. Reductions in payments for capital costs which are required under Medicare shall also be applied to payments for capital costs under CHAMPUS.

(*i*) *Costs included as capital costs.* Allowable capital costs are those specified in Medicare Regulation § 413.130, as modified by § 412.72.

(*ii*) *Services, facilities, or supplies provided by supplying organizations.* If services, facilities, or supplies are provided to the hospital by a supplying organization related to the hospital within the meaning of Medicare Regulation §413.17, then the hospital must include in its capital-related costs, the capital-related costs of the supplying organization. However, if the supplying organization is not related to the provider within the meaning of § 413.17, no part of the change to the provider may be considered a capital-related cost unless the services, facilities, or supplies are capital-related in nature and:

(*A*) The capital-related equipment is leased or rented by the provider;

(*B*) The capital-related equipment is located on the provider's premises; and

(*C*) The capital-related portion of the charge is separately specified in the charge to the provider.

(*2*) *Direct medical education costs.* When requested in writing by a hospital, CHAMPUS shall reimburse the hospital its actual direct medical education costs as reported annually to the CHAMPUS fiscal intermediary. Such teaching costs must be for a teaching program approved under Medicare Regulation § 413.85. Payment for direct medical education costs shall be made annually based on the ratio of CHAMPUS inpatient days for those benficiaries subject to the CHAMPUS DRG-based payment system to total inpatient days applied to the hospital's total allowable direct medical education costs. Allowable direct medical education costs are those specified in Medicare Regulation § 413.85.

(*3*) *Information necessary for payment of capital and direct medical education costs.* All hospitals subject to the CHAMPUS DRG-based payment system, except for children's hospitals, may be reimbursed for allowed capital and direct medical education costs by submitting a request to the CHAMPUS contractor. Such request shall cover the one-year period corresponding to the hospital's Medicare cost-reporting period. The first such request may cover a period of less than a full year—from the effective date of the CHAMPUS DRG-based payment system to the end of the hospital's Medicare cost-reporting period. All costs reported to the CHAMPUS contractor must correspond to the costs reported on the hospital's Medicare cost report. In the case of children's hospitals that request reimbursement under this clause for capital and/or direct medical education costs, the hospital must submit appropriate base period cost information, as determined by the Director, OCHAMPUS (or designee). (If these costs change as a result of a subsequent audit by Medicare, the revised costs are to be reported to the hospital's CHAMPUS contractor within 30 days of the date the hospital is notified of the change.) The request must be signed by the hospital official responsible for verifying the amounts and shall contain the following information.

(*i*) The hospital's name.

(*ii*) The hospital's address.

(*iii*) The hospital's CHAMPUS provider number.

(*iv*) The hospital's Medicare provider number.

(*v*) The period covered—this must correspond to the hospital's Medicare cost-reporting period.

(*vi*) Total inpatient days provided to all patients in units subject to DRG-based payment.

(*vii*) Total allowed CHAMPUS inpatient days provided in units subject to DRG-based payment.

(*viii*) Total allowable capital costs.

(*xi*) Total allowable direct medical education costs.

(*x*) Total full-time equivalents for:

(*A*) Residents.

(*B*) Interns.

(*xi*) Total inpatient beds as of the end of the cost-reporting period. If this has changed during the reporting period, an explanation of the change must be provided.

(*xii*) Title of official signing the report.

(*xiii*) Reporting date.

(*xiv*) The report shall contain a certification statement that any changes to the items in paragraphs (a)(1)(iii)(G)(*3*)(*vi*), (*vii*), (*viii*), (*ix*), or (*x*), which are a result of an audit of the hospital's Medicare cost-report, shall be reported to CHAMPUS within thirty (30) days of the date the hospital is notified of the change.

(2) *CHAMPUS mental health per diem payment system.* The CHAMPUS mental health per diem payment system shall be used to reimburse for inpatient mental health hospital care in specialty psychiatric hospitals and units. Payment is made on the basis of prospectively determined rates and paid on a per diem basis. The system uses two sets of per diems. One set of per diems applies to hospitals and units that have a relatively higher number of CHAMPUS discharges. For these hospitals and units, the system uses hospital-specific per diem rates. The other set of per diems applies to hospitals and units with a relatively lower number of CHAMPUS discharges. For these hospitals and units, the system uses regional per diems, and further provides for adjustments for area wage differences and indirect medical education costs and additional pass-through payments for direct medical education costs.

(i) *Applicability of the mental health per diem payment system.*

(A) *Hospitals and units covered.* The CHAMPUS mental health per diem payment system applies to services covered (see paragraph (a)(2)(i)(B) of this section) that are provided in Medicare prospective payment system (PPS) exempt psychiatric specialty hospitals and all Medicare PPS exempt psychiatric specialty units of other hospitals. In addition, any psychiatric hospital that does not participate in Medicare, or any other hospital that has a psychiatric specialty unit that has not been so designated for exemption from the Medicare prospective payment system because the hospital does not participate in Medicare, may be designated as a psychiatric hospital or psychiatric specialty unit for purposes of the CHAMPUS mental health per diem payment system upon demonstrating that it meets the same criteria (as determined by the Director, OCHAMPUS) as required for the Medicare exemption. The CHAMPUS mental health per diem payment system does not apply to mental health services provided in other hospitals.

(B) *Services covered.* Unless specifically exempted, all covered hospitals' and units' inpatient claims which are classified into a mental health DRG (DRG categories 425–432, but not DRG 424) or an alcohol/drug abuse DRG (DRG categories 433–437) shall be subject to the mental health per diem payment system.

(ii) *Hospital-specific per diems for higher volume hospitals and units.* This paragraph describes the per diem payment amounts for hospitals and units with a higher volume of CHAMPUS discharges.

(A) *Per diem amount.* A hospital-specific per diem amount shall be calculated for each hospital and unit with a higher volume of CHAMPUS discharges. The base period per diem amount shall be equal to the hospital's average daily charge in the base period. The base period amount, however, may not exceed the cap described in paragraph (a)(2)(ii)(B) of this section. The base period amount shall be updated in accordance with paragraph (a)(2)(iv) of this section.

(B) *Cap.* The base period per diem amount may not exceed the eightieth percentile of the average daily charge weighted for all discharges throughout the United States from all higher volume hospitals.

(C) *Review of per diem.* Any hospital or unit which believes OCHAMPUS calculated a hospital-specific per diem which differs by more than $5.00 from that calculated by the hospital or unit may apply to the Director, OCHAMPUS, or a designee, for a recalculation. The burden of proof shall be on the hospital.

(iii) *Regional per diems for lower volume hospitals and units.* This paragraph describes the per diem amounts for hospitals and units with a lower volume of CHAMPUS discharges.

(A) *Per diem amounts.* Hospitals and units with a lower volume of CHAMPUS patients shall be paid on the basis of a regional per diem amount, adjusted for area wages and indirect medical education. Base period regional per diems shall be calculated based upon all CHAMPUS lower volume hospitals' claims paid during the base period. Each regional per diem amount shall be the quotient of all covered charges divided by all covered days of care, reported on all CHAMPUS claims from lower volume hospitals in the region paid during the base period, after having standardized for indirect medical education costs and area wage indexes and subtracted direct medical education costs. Regional per diem amounts are adjusted in accordance with paragraph (a)(2)(iii)(C) of this section. Additional pass-through payments to lower volume hospitals are made in accordance with paragraph (a)(2)(iii)(D) of this section. The regions shall be the same as the Federal census regions.

(B) *Review of per diem amount.* Any hospital that believes the regional per diem amount applicable to that hospital has been erroneously calculated by OCHAMPUS by more than $5.00 may submit to the Director, OCHAMPUS, or a designee, evidence supporting a different regional per diem. The burden of proof shall be on the hosptial.

(C) *Adjustments to regional per diems.* Two adjustments shall be made to the regional per diem rates.

(*1*) *Area wage index.* The same area wage indexes used for the CHAMPUS DRG-based payment system (see paragraph (a)(1)(iii)(E)(*2*) of this section) shall be applied to the wage portion of the applicable regional per diem rate for each day of the admission. The wage portion shall be the same as that used for the CHAMPUS DRG-based payment system.

(*2*) *Indirect medical education.* The indirect medical education adjustment factors shall be calculated for teaching hospitals in the same manner as is used in the CHAMPUS DRG-based payment system (see paragraph (a)(1)(iii)(E)(*3*) of this section) and applied to the applicable regional per diem rate for each day of the admission.

(D) *Annual cost pass-through for direct medical education.* In addition to payments made to lower volume hospitals under paragraph (a)(2)(iii) of this section, CHAMPUS shall annually reimburse hospitals for actual direct medical education costs associated with services to CHAMPUS beneficiaries. This reimbursement shall be done pursuant to the same procedures as are applicable to the CHAMPUS DRG-based payment system (see paragraph (a)(1)(iii)(G) of this section).

(iv) *Base period and update factors.*

(A) *Base period.* The base period for calculating the hospital-specific and regional per diems, as described in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section, is Federal fiscal year 1988. Base period calculations shall be based on actual claims paid during the period July 1, 1987 through May 31, 1988, trended forward to represent the 12-month period ending September 30, 1988 on the basis of the Medicare inpatient hospital market basket rate.

(B) *Alternative hospital-specific data base.* Upon application of a higher

volume hospital or unit to the Director, OCHAMPUS, or a designee, the hospital or unit may have its hospital-specific base period calculations based on claims with a date of discharge (rather than date of payment) between July 1, 1987 through May 31, 1988 if it has generally experienced unusual delays in claims payments and if the use of such an alternative data base would result in a difference in the per diem amount of at least $5.00. For this purpose, the unusual delays means that the hospital's or unit's average time period between date of discharge and date of payment is more than two standard deviations longer than the national average.

(C) *Update factors.* The hospital-specific per diems and the regional per diems calculated for the base period pursuant to paragraphs (a)(2)(ii) and (a)(2)(iii) of this section shall be in effect for Federal fiscal year 1989; there will be no additional update for fiscal year 1989. For subsequent Federal fiscal years, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system. Hospitals and units with hospital-specific rates will be notified of their respective rates prior to the beginning of each Federal fiscal year. New hospitals shall be notified at such time as the hospital rate is determined. The actual amounts of each regional per diem that will apply in any Federal fiscal year shall be published in the Federal Register prior to the start of that fiscal year.

(v) *Higher volume hospitals.* This paragraph describes the classification of and other provisions pertinent to hospitals with a higher volume of CHAMPUS patients.

(A) *In general.* Any hospital or unit that had an annual rate of 25 or more CHAMPUS discharges of CHAMPUS patients during the period July 1, 1987 through May 31, 1988 shall be considered a higher volume hospital has 25 or more CHAMPUS discharges, that hospital shall be considered to be a higher volume hospital during Federal fiscal year 1989 and all subsequent fiscal years. All other hospitals and units covered by the CHAMPUS mental health per diem payment system shall be considered lower volume hospitals.

(B) *Hospitals that subsequently become higher volume hospitals.* In any Federal fiscal year in which a hospital, including a new hospital (see paragraph (a)(2)(v)(C) of this section), not previously classified as a higher volume hospital has 25 or more CHAMPUS discharges, that hospital shall be considered to be a higher volume hospital during the next Federal fiscal year and all subsequent fiscal years. The hospital specific per diem amount shall be calculated in accordance with the provisions of paragraph (a)(2)(ii) of this section, except that the base period average daily charge shall be deemed to be the hospital's average daily charge in the year in which the hospital had 25 or more discharges, adjusted by the percentage change in average daily charges for all higher volume hospitals and units between the year in which the hospital had 25 or more CHAMPUS discharges and the base period. The base period amount, however, may not exceed the cap described in paragraph (a)(2)(ii)(B) of this section.

(C) *Special retrospective payment provision for new hospitals.* For purposes of this paragraph, a new hospital is a hospital that qualifies for the Medicare exemption from the rate of increase ceiling applicable to new hospitals which are PPS-exempt psychiatric hospitals. Any new hospital that becomes a higher volume hospital, in addition to qualifying prospectively as a higher volume hospital for purposes of paragraph (a)(2)(v)(B) of this section, may additionally, upon application to the Director, OCHAMPUS, receive a retrospective adjustment. The retrospective adjustment shall be calculated so that the hospital receives the same government share payments it would have received had it been designated a higher volume hospital for the federal fiscal year in which it first had 25 or more CHAMPUS discharges and the preceding fiscal year (if it had any CHAMPUS patients during the preceding fiscal year). Such new hospitals must agree not to bill CHAMPUS beneficiaries for any additional costs beyond that determined initially.

(D) *Review of classification.* Any hospital or unit which OCHAMPUS erroneously fails to classify as a higher volume hospital may apply to the Director, OCHAMPUS, or a designee, for such a classification. The hospital shall have the burden of proof.

(vi) *Payment for hospital based professional services.* Lower volume hospitals and units may not bill separately for hospital based professional mental health services; payment for those services is included in the per diems. Higher volume hospitals and units, whether they billed CHAMPUS separately for hospital based professional mental health services or included those services in the hospital's billing to CHAMPUS, shall continue the practice in effect during the period July 1, 1987 to May 31, 1988 (or other data base period used for calculating the hospital's or unit's per diem), except that any such hospital or unit may change its prior practice (and obtain an appropriate revision in its per diem) by providing to OCHAMPUS notice in accordance with procedures established by the Director, OCHAMPUS, or a designee.

(vii) *Leave days.* CHAMPUS shall not pay for days where the patient is absent on leave from the specialty psychiatric hospital or unit. The hospital must identify these days when claiming reimbursement. CHAMPUS shall not count a patients's leave of absence as a discharge in determining whether a facility should be classified as a higher volume hospital pursuant to paragraph (a)(2)(v) of this section.

(viii) *Exemptions from the CHAMPUS mental health per diem payment system.* The following providers and procedures are exempt from the CHAMPUS mental health per diem payment system.

(A) *Non-specialty providers.* Providers of inpatient care which are not either psychiatric hospitals or psychiatric specialty units as described in paragraph (a)(2)(i)(A) of this section are exempt from the CHAMPUS mental health per diem payment system. Such providers should refer to paragraph (a)(1) of this section for provisions pertinent to the CHAMPUS DRG-based payment system.

(B) *DRG 424.* Admissions for operating room procedures involving a principal diagnosis of mental illness (services which group into DRG 424) are exempt from the per diem payment system. They will be reimbursed pursuant to the provisions of paragraph (a)(3) of this section.

(C) *Non-mental health services.* Admissions for non-mental health procedures in specialty psychiatric hospitals and units are exempt from the per diem payment system. They will be reimbursed pursuant to the provisions of paragraph (a)(3) of this section.

(D) *Sole community hospitals.* Any hospital which has qualified for special treatment under the Medicare prospective payment system as a sole community hospital and has not given up that classification is exempt.

(E) *Hospitals outside the U.S.* A hospital is exempt if it is not located in one of the 50 states, the District of Columbia or Puerto Rico.

(3) *Billed charges and set rates.* The allowable costs for authorized care in all hospitals not subject to the CHAMPUS DRG-based payment system or the CHAMPUS mental health per diem payment system shall be determined on the basis of billed charges or set rates. Under this procedure the allowable costs may not exceed the lower of:

(i) The actual charge for such service made to the general public; or

(ii) The allowed charge applicable to the policyholders or subscribers of the CHAMPUS fiscal intermediary for comparable services under comparable circumstances, when extended to CHAMPUS beneficiaries by consent or agreement; or

(iii) The allowed charge applicable to the citizens of the community or state as established by local or state regulatory authority, excluding title XIX of the Social Security Act or other welfare program, when extended to CHAMPUS beneficiaries by consent or agreement.

(4) *CHAMPUS discount rates.* The CHAMPUS-determined allowable cost for authorized care in any hospital may be based on discount rates established under paragraph (i) of this section.

(b) *Skilled Nursing Facilities (SNFs).* The CHAMPUS-determined allowable cost for reimbursement of a SNF shall be determined on the same basis as for hospitals which are not subject to the CHAMPUS DRG-based payment system.

(c) *Reimbursement for Other Than Hospitals and SNFs.* The Director, OCHAMPUS, or a designee, shall establish such other methods of determining allowable cost or charge reimbursement for those institutions, other than hospitals and SNFs, as may be required.

(d) *Reimbursement of Freestanding Ambulatory Surgical Centers.* Authorized care furnished by freestanding ambulatory surgical centers shall be reimbursed on the basis of the CHAMPUS-determined reasonable cost.

(e) *Reimbursement of Birthing Centers.*

(1) Reimbursement for maternity care and childbirth services furnished by an authorized birthing center shall be limited to the lower of the CHAMPUS established all-inclusive rate or the center's most-favored all-inclusive rate.

(2) The all-inclusive rate shall include the following to the extent that they are usually associated with a normal pregnancy and childbirth: Laboratory studies, prenatal management, labor management, delivery, post-partum management, newborn care, birth assistant, certified nurse-midwife professional services, physician professional services, and the use of the facility.

(3) The CHAMPUS established all-inclusive rate is equal to the sum of the CHAMPUS area prevailing professional charge for total obstetrical care for a normal pregnancy and delivery and the sum of the average CHAMPUS allowable institutional charges for supplies, laboratory, and delivery room for a hospital inpatient normal delivery. The CHAMPUS established all-inclusive rate areas will coincide with those established for prevailing professional charges and will be updated concurrently with the CHAMPUS area prevailing professional charge database.

(4) Extraordinary maternity care services, when otherwise authorized, may be reimbursed at the lesser of the billed charge or the CHAMPUS allowable charge.

(5) Reimbursement for an incomplete course of care will be limited to claims for professional services and tests where the beneficiary has been screened but rejected for admission into the birthing center program, or where the woman has been admitted but is discharged from the birthing center program prior to delivery, adjudicated as individual professional services and items.

(6) The beneficiary's share of the total reimbursement to a birthing center is limited to the cost-share amount plus the amount billed for non-covered services and supplies.

(f) *Reimbursement of Residential Treatment Centers.* The CHAMPUS rate is the per diem rate that CHAMPUS will authorize for all mental health services rendered to a patient and the patient's family as part of the total treatment plan submitted by a CHAMPUS-approved RTC, and approved by the Director, OCHAMPUS, or designee.

(1) The all-inclusive per diem rate for RTCs operating or participating in CHAMPUS during the base period of July 1, 1987, through June 30, 1988, will be the lowest of the following conditions:

(i) The CHAMPUS rate paid to the RTC for all-inclusive services as of June 30, 1988, adjusted by the Consumer Price Index—Urban (CPI–U) for medical care as determined applicable by the Director, OCHAMPUS, or designee; or

(ii) The per diem rate accepted by the RTC from any other agency or organization (public or private) that is high enough to cover one-third of the total patient days during the 12-month period ending June 30, 1988, adjusted by the CPI–U; or

Note: The per diem rate accepted by the RTC from any other agency or organization includes the rates accepted from entities such as Government contractors in CHAMPUS demonstration projects.

(iii) An OCHAMPUS determined capped per diem amount not to exceed the 80th percentile of all established CHAMPUS RTC rates nationally, weighted by total CHAMPUS days provided at each rate during the base period discussed in paragraph (f)(1) of this section.

(2) The all-inclusive per diem rates for RTCs which began operation after June 30, 1988, or began operaton before July 1, 1988, but had less than 6 months of operation by June 30, 1988, will be calculated based on the lower of the per diem rate accepted by the RTC that is high enough to cover one-third of the total patient days during its first 6 to 12 consecutive months of operation, or the CHAMPUS determined capped amount. Rates for RTCs beginning operation prior to July 1, 1988, will be adjusted by an appropriate CPI–U inflation factor for the period ending June 30, 1988. A period of less than 12 months will be used only when the RTC has been in operation for less than 12 months. Once a full 12 months is available, the rate will be recalculated.

(3) The first three days of each approved therapeutic absence will be allowed at 100 percent of the CHAMPUS determined all-inclusive per diem rate. Beginning with day four, reimbursement will be at 75 percent of that rate.

(4) All educational costs, whether they include routine education or special education costs, are excluded from reimbursement except when appropriate education is not available from, or not payable by, a cognizant public entity.

(i) The RTC shall exclude educational costs from its daily costs.

(ii) The RTC's accounting system must be adequate to assure CHAMPUS is not billed for educational costs.

(iii) The RTC may request payment of educational costs on an individual case basis from the Director, OCHAMPUS, or designee, when appropriate education is not available from, or not payable by, a cognizant public entity. To qualify for reimbursement of educational costs in individual cases, the RTC shall comply with the application procedures established by the Director, OCHAMPUS, or designee, including, but not limited to, the following:

(A) As part of its admission procedures, the RTC must counsel and assist the beneficiary and the beneficiary's family in the necessary procedures for assuring their rights to a free and appropriate public education.

(B) The RTC must document any reasons why an individual beneficiary cannot attend public educational facilities and, in such a case, why alternative educational arrangements have not been provided by the cognizant public entity.

(C) If reimbursement of educational costs is approved for an individual beneficiary by the Director, OCHAMPUS, or designee, such educational costs shall be shown separately from the RTC's daily costs on

the CHAMPUS claim. The amount paid shall not exceed the RTC's most-favorable rate to any other patient, agency, or organization for special or general educational services whichever is appropriate.

(D) If the RTC fails to request CHAMPUS approval of the educational costs on an individual case, the RTC agrees not to bill the beneficiary or the beneficiary's family for any amounts disallowed by CHAMPUS. Requests for payment of educational costs must be referred to the Director, OCHAMPUS, or designee for review and a determination of the applicability of CHAMPUS benefits.

(5) Any future adjustments to the RTC rates will be limited to annual changes in the CPI–U for medical care, at the discretion of the Director, OCHAMPUS or designee.

(g) *Reimbursement of Individual Health-Care Professionals and Other Non-Insitutional Health-Care Providers.* The CHAMPUS-determined reasonable charge (the amount allowed by CHAMPUS) for the services of an individual health-care professional or other non-institutional health-care provider (even if employed by or under contract to an institutional provider) shall be determined by one of the following methodolgies, that is, whichever is in effect in the specific geographic location at the time covered services and supplies are provided to a CHAMPUS beneficiary.

(1) *Allowable charge method.* The allowable charge method is the preferred and primary method for reimbursement of individual health-care professionals and other non-institutional health-care providers.

(i) The allowable charge for authorized care shall be the lowest of the amounts identified in paragraphs (g)(1)(i)(A), (g)(1)(i)(B), and (g)(1)(i)(C) of this section:

(A) The billed charge for the service.

(B) The prevailing charge level that does not exceed the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the base period.

Note: Public Law 97–86 provides that prevailing charges are to be determined at the 90th percentile. However, DoD Appropriation Acts have limited this to the 80th percentile. Prevailing charges shall continue to be calculated in accordance with any limitations set forth in the DoD Appropriation Acts, as implemented in instructions issued by the Director, OCHAMUS.

(*1*) The 80th percentile of charges shall be determined on the basis of statistical data and methodology acceptable to the Director, OCHAMPUS, or a designee.

(*2*) The base period shall be a period of 12 calendar months and shall be adjusted at least once a year, unless the Director, OCHAMPUS, determines that a different period for adjustment is appropriate and publishes a notice to that effect in the **Federal Register**. Prior to publishing the final notice, a notice of intent shall have been published, which allowed a 30-day period for public comment on the proposed action.

(C) For charges from physicians and other individual professional providers, the fiscal year 1988 prevailing charges adjusted by the Medicare Economic Index (MEI), as the MEI is applied to Medicare prevailing charge levels.

(*1*) In any year in which the Medicare program applies a different MEI to primary care services, CHAMPUS will include maternity care and delivery services and well baby care services as primary care for the purposes of applying the MEI.

(*2*) The Director, OCHAMPUS, shall issue procedural instructions to apply the MEI under CHAMPUS.

(ii) A charge that exceeds the prevailing charge can be determined to be allowable only when unusual circumstances or medical complications justify the higher charge. The allowable charge may not exceed the billed charge under any circumstances.

(2) *All-inclusive rate.* Claims from individual health-care professional providers for services rendered to CHAMPUS beneficiaries residing in an RTC that is either being reimbursed on an all-inclusive per diem rate, or is billing an all-inclusive per diem rate, shall be denied; with the exception of independent health-care professionals providing geographically distant family therapy to a family member residing a minimum of 250 miles from the RTC or covered medical services related to a nonmental health condition rendered outside the RTC. Reimbursement for individual professional services is included in the rate paid the institutional provider.

(3) *Alternative method.* The Director, OCHAMPUS, or a designee, may, subject to the approval of the ASD(HA), establish an alternative method of reimbursement designed to produce reasonable control over health care costs and to ensure a high level of acceptance of the CHAMPUS-determined charge by the individual health-care professionals or other noninstitutional health-care providers furnishing services and supplies to CHAMPUS beneficiaries. Alternative methods may not result in reimbursement greater than the allowable charge method above.

(h) *Reimbursement Under the Military-Civilian Health Services Partnership Program.* The military-Civilian Health Services Partnership Program, as authorized by section 1096, chapter 55, title 10, provides for the sharing of staff, equipment, and resources between the civilian and military health care system in order to achieve more effective, efficient, or economical health care for authorized beneficiaries. Military treatment facility commanders, based upon the authority provided by their respective Surgeons General of the military departments, are responsible for entering into individual partnership agreements only when they have determined specifically that use of the Partnership Program is more economical overall to the Government than referring the need for health care services to the civilian community under the normal operation of the CHAMPUS Program. (See paragraph (p) of § 199.1 for general requirements of the Partnership Program.)

(1) *Reimbursement of institutional health care providers.* Reimbursement of institutional health care providers under the Partnership Program shall be on the same basis as non-Partnership providers.

(2) *Reimbursement of individual health-care professionals and other non-institutional health care providers.* Reimbursement of individual health care professionals and other non-institutional health care providers shall be on the same basis as non-Partnership providers as detailed in paragraph (g) of this section.

(i) *Accommodation of Discounts Under Provider Reimbursement Methods.*

(1) *General rule.* The Director, OCHAMPUS (or designee) has authority to reimburse a provider at an amount below the amount usually paid pursuant to this section when, under a program approved by the Director, the provider has agreed to the lower amount.

(2) *Special applications.* The following are examples of applications of the general rule; they are not all inclusive.

(i) In the case and individual health care professionals and other non-institutional providers, if the discounted fee is below the provider's normal billed charge and the prevailing charge level (see paragraph (g) of this section), the discounted fee shall be the provider's actual billed charge and the CHAMPUS allowable charge.

(ii) In the case of institutional providers normally paid on the basis of a pre-set amount (such as DRG-based amount under paragraph (a)(1) of this section or per-diem amount under

paragraph (a)(2) of this section), if the discount rate is lower than the pre-set rate, the discounted rate shall be the CHAMPUS-determined allowable cost. This is an exception to the usual rule that the pre-set rate is paid regardless of the institutional provider's billed charges or other factors.

(3) *Procedures.*

(i) This paragraph applies only when both the provider and the Director have agreed to the discounted payment rate. The Director's agreement may be in the context of approval of a program that allows for such discounts.

(ii) The Director of OCHAMPUS may establish uniform terms, conditions and limitations for this payment method in order to avoid administrative complexity.

(j) *Outside the United States.* The Director, OCHAMPUS, or a designee, shall determine the appropriate reimbursement method or methods to be used in the extension of CHAMPUS benefits for otherwise covered medical services or supplies provided by hospitals or other institutional providers, physicians or other individual professional providers, or other providers outside the United States.

(k) *Implementing Instructions.* The Director, OCHAMPUS, or a designee, shall issue CHAMPUS policies, instructions, procedures, and guidelines, as may be necessary to implement the intent of this section.

Dated: April 4, 1990.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1-89-111]

Drawbridge Operation Regulations; Piscataqua River, Maine/New Hampshire

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Maine-New Hampshire Interstate Bridge Authority (M-NHIBA), the Coast Guard is changing the regulations governing the Memorial (US 1) and Sarah M. Long (Route 1 Bypass) drawbridges over Piscataqua River, at miles 3.5 and 4.0, respectively, between Kittery, Maine and Portsmouth, New Hampshire. The regulations permit the number of openings for commercial vessels less than 100 gross tons and recreational vessels to be limited between 7 a.m. and 7 p.m., from 15 May through 31 October, to half-hour intervals; the Memorial (US 1) bridge on the hour and half-hour and the Sarah M. Long (Route 1 Bypass) bridge at 15 minutes before and 15 minutes after the hour. This change is being made because periods of peak vehicular traffic have increased. This action will accommodate the needs of vehicular traffic, and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on 15 May 1990.

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

SUPPLEMENTARY INFORMATION: On September 28, 1989, the Coast Guard published a Notice of Proposed Rulemaking and Public Hearing (54 FR 29798) concerning this amendment. In addition, the Coast Guard published a Temporary Final Rule (54 FR 39731) for the periods 15 September-31 October 1989. In each instance, the Commander, First Coast Guard District, also published these proposals as Public Notices 1-700 and 1-699 dated September 19, 1989, respectively. In each of the notices, interested persons were given until 17 November 1989 to submit comments.

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

Discussion of Comments: The Public Hearing held in City Hall Complex Portsmouth, New Hampshire on October 18, 1989, had 29 attendees with 12 speakers. The speakers included five comments favoring, and three opposing the proposed regulation and four supporting exemptions for ferry service. In addition, written comments to the public notice included one opposing and two supporting exemption for the ferry service. Additionally, several of the hearing speakers provided written comment in response to the public notice. Therefore, the comments are addressed in general groupings. The opposing comments in writing and at the hearing were from sailboat owners and mariners which expressed safety concerns since the Piscataqua River has one of the strongest tidal currents on the East Coast. Additionally, experienced pilots and yachtsmen know that even short delays in bridge openings can significantly increase the risk to a vessel, particularly in adverse weather conditions or when more than one vessel is waiting. The regulations take into account these concerns by providing a marine radio, clearance gauges, opening for vessels in distress, and latitutde for the drawtender to open under adverse weather or unusual situations. The latter is provided by the use of terminology of "need not". The sail boaters also proposed that the Sarah M. Long bridge open on signal all the time and the Memorial bridge open on the hour and half-hour only on weekends and holidays. The provision to keep the small draw of the Sarah M. Long bridge open during the restriction period minimizes impact on recreational vessels since the draw provides a horizontal clearance of 70 feet and a vertical clearance of 36 feet, at mean high water. Two written and four hearing commentors spoke in favor of exempting the ferry service which transports food, water, supplies and passengers to Star and Appledore Islands. In examining the logs and schedule, it was noted that this vessel only transit the Memorial bridge between mid-June and September and sails from its Portsmouth, New Hampshire, berth at 11 a.m. and 2 p.m. daily. The regulations were modified to permit the ferry's inbound trips to be exempt from the opening schedule so it could arrive at the Portsmouth dock in time to discharge its cargo and sail on schedule. The chief master for the fishing company also spoke regarding exemption of the fishing vessels because of their lack of maneuverability, have perishable cargo, limited hours of operations and the fact that they are just under the 100 gross ton limit. The regulations exempt fishing vessels on inbound trips to processing facility from the restrictions. The Chamber of Commerce, New Hampshire Department of Transportation (NHDOT), New Hampshire State Port Authority spoke for the regulations noting the almost doubling of openings during the past 10 years and the traffic tie up in downtown Portsmouth. On November 30, 1989, NHDOT submitted copies of bridge logs for the Long and Memorial bridges for the period beginning September 25 through October 31, 1989. It should be noted that during this period a authorized bridge closure was granted for submarine cable replacement at the Sarah M. Long bridge from 5 a.m. to 9 p.m., each day, from September 28 through October 3, 1989. No requests for recreational openings for the Sarah M. Long bridge occurred during the closure period. In general, the information provided by NHDOT indicated that during the temporary regulation period all recreational vessels complied with the hour and half-hour restriction. The

remark section of the bridge logs revealed that north and south bound recreational traffic transited through the draws on the same lift reducing the amount of lifts. No indication of any accidents or declared emergencies were recorded during the proposed regulation period. In addition, the ferry service, which expressed a need to be exempted from the proposed regulation, transited through the draw of the Memorial "on demand" inbound and outbound at 11 a.m. and 2 p.m.

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 of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The regulation will not prevent the passage of vessels but just require scheduling of the movement of recreational and small commercial vessels to reduce bridge openings and to permit both vehicular and marine traffic to transit the bridge.

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 proposed 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 117.531 is revised and § 117.700 is added under the undesignated heading New Hampshire to read as follows:

Maine

§ 117.531 Piscataqua River

(a) The following requirements apply to all bridges across the Piscataqua River:

(1) Public vessels of the United States, state and local vessels used for public safety, vessels in distress, commercial vessels over 100 gross tons, inbound ferry service vessels and inbound commercial fishing vessels shall be passed through the draws of each bridge as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts of a whistle, horn or a radio request.

(2) The owners of these bridges shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 18 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw shall not exceed five minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping.

(4) Except as provided in paragraphs (b) through (c) of this section the draws shall open on signal.

(b) The draw of the Memorial (US 1) bridge, mile 3.5, shall open on signal; except that from 15 May through 31 October, from 7 a.m. to 7 p.m., the draw need be opened only on the hour and half hour for recreational vessels and commercial vessels less than 100 gross tons except as provided in (a)(1).

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

(1) The main ship channel draw shall open on signal; except that from 15 May through 31 October, from 7 a.m. to 7 p.m., the draw need be opened only at quarter of and quarter after the hour for recreational vessels and commercial vessels less than 100 gross tons except as provided in (a)(1).

(2) The secondary recreation draw shall be left in the fully open position from 15 May through 31 October except for the crossing of a train in accordance with (a)(3) above.

New Hampshire

§ 117.700 Piscataqua River.

(a) The following requirements apply to all bridges across the Piscataqua River:

(1) Public vessels of the United States, state and local vessels used for public safety, vessels in distress, commercial vessels over 100 gross tons, inbound ferry service vessels and inbound commercial fishing vessels shall be passed through the draws of each bridge as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts of a whistle, horn or a radio request.

(2) The owners of these bridges shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 18 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw shall not exceed five minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping.

(4) Except as provided in paragraphs (b) through (c) of this section the draws shall open on signal.

(b) The draw of the Memorial (US 1) bridge, mile 3.5, shall open on signal; except that from 15 May through 31 October, from 7 a.m. to 7 p.m., the draw need be opened only on the hour and half hour for recreational vessels and commercial vessels less than 100 gross tons except as provided in (a)(1).

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

(1) The main ship channel draw shall open on signal; except that from 15 May through 31 October, from 7 a.m. to 7 p.m., the draw need be opened only at quarter of and quarter after the hour for recreational vessels and commercial vessels less than 100 gross tons except as provided in (a)(1).

(2) The secondary recreation draw shall be left in the fully open position from 15 May through 31 October except for the crossing of a train in accordance with (a)(3) above.

Dated: March 30, 1990.

R.I. Rybacki.

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

[FR Doc. 90–8182 Filed 4–9–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3 and 52

[Federal Acquisition Circular 84-55]

Federal Acquisition Regulation (FAR); Anti-Lobbying

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule (extension of comment period).

SUMMARY: Federal Acquisition Circular (FAC) 84-55 was published in the Federal Register as an interim rule for public comment on January 30, 1990 (55 FR 3190). The original date for submission of comments was April 2, 1990. The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have decided to extend the period for public comment on FAR coverage for Anti-Lobbying to April 27, 1990, to accommodate the requests of interested parties, and to coincide with the comment period ending April 27, 1990, for the nonprocurement common rule published in the Federal Register on February 26, 1990 (55 FR 6736), applicable to all transactions other than those covered by the FAR.

DATES: *Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before April 27, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAC 84-55 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 84-55.

Dated: April 5, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 90-8240 Filed 4-9-90; 8:45 am]

BILLING CODE 6820-34-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 501

[Acquisition Circular AC-90-1]

Acquisition Regulation: Contracting Authority Delegation; Purchases Not Exceeding $500 and Telephone Service Requests

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), chapter 5 (APD 2800.12A), is temporarily amended by amending sections 501.602-1, 501.603-3 and 501.603-70 to revise the requirements for delegating contracting authority related to purchases that do not exceed $500 and to the issuance of telephone service requests. The intended effect is to provide guidance to GSA contracting activities pending a revision to the GSAR.

DATES: *Effective date:* April 1, 1990.

Expiration date: March 31, 1991.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy (VP), (202) 566-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the Federal Register for public comment because it relates to internal operating procedures of the agency and has no impact outside of GSA.

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 amends. The GSAR to provide internal operating procedures. The rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Part 501

Government procurement.

1. The authority citation for 48 CFR part 501 continues to read as follows:

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

2. 48 CFR part 501 is amended by the following Acquisition Circular:

General Services Administration Acquisition Regulation Acquisition Circular No. AC-90-1

To: All GSA contracting activities.

Subject: Delegation of contracting authority.

March 30, 1990

1. *Purpose.* This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR) chapter 5 (APD 2800.12A) to revise the requirements for delegating contracting authority related to purchases that do not exceed $500 and to the issuance of requests for telephone services.

2. *Background.* Since the GSAR was revised in July 1989 several GSA contracting activities have requested clarification and/or revision of the requirement regarding the delegation of contracting authority. Specifically, suggestions for revision of the requirement for delegation of authority for purchases that do not exceed $500 and for the issuance of telephone service requests to regulated/public utility common carriers have been received. Additionally, clarification has been requested regarding the need for contracting officer authority in order to: (a) use the Government telephone systems for commercial long distance and local service and/or approve payments for such services or (b) use the Federal Supply Service (FSS) nationwide contract for express small package transportation services and/or approve payments for such services. This Acquisition Circular temporarily amends the GSAR to address these suggestions and to provide clarification regarding issues raised by GSA contracting activities pending a permanent change to the regulation.

3. *Effective date.* April 1, 1990.

4. *Expiration date.* This Acquisition Circular expires March 31, 1991, unless canceled earlier.

5. *Reference to regulation.* Sections 501.602-1, 501.603-3 and 501.603-70 of the General Services Administration Acquisition Regulation.

6. *Explanation of changes.*

a. Section 501.602-1 is amended to revise paragraph (i) and to add paragraph (k), (l) and (m) to read as follows:

501.602-1 Authority.

Contracting authority is not required for:

* * * * *

(i) Signing memorandums of Agreement with other Federal agencies (see ADM 5400.12A and PBS 5400.5B),

* * * * *

(k) Using the Government telephone systems for commercial long distance and local service and/or approving payments for such services;

(l) Using the Federal Supply Service (FSS) nationwide contract for express small package transportation services and/or approving payments for such services; and

(m) Submitting a Standard Form 145, Telephone Service Request, to the Information Resource Management Service.

b. Section 501.603–3 is amended to revise paragraph (a) to read as follows:

501.603–3 Appointment.

(a) Heads of contracting activities (HCAs) or designee(s) (division director or higher level official) may delegate authority to: (1) make purchases not to exceed $500 by memorandum to employees, and (2) issue Standard Form 145, Telephone Service Request (TSR), for tariff services on, or in conjunction with, existing telephone systems to regulated local exchange telephone companies by memorandum to IRMS employees. Requests for delegation of contracting authority may be made by memorandum and must include the candidate's name, title, and organizational location; a brief explanation of the need for authority; a brief description of the individual's qualifications; and a certification that the candidate has received the training required by 501.603–70(h)(1)(i) or (x) as applicable.

* * * * *

c. Section 501.603–70 is amended to revise the definition of "Appointing official" in paragraph (c), revise paragraph (d) (2) and (4) to reflect the expanded authority of the HCAs to delegate authority to IRMS employees to issue TSRs, revise paragraph (f) to add another warrant level, to add paragraph (h)(1)(x) in paragraph (h) to specify the training requirements for IRMS telecommunications personnel, and to revise paragraph (h)(6) in to add a reference to a telephone service warrant to read as follows:

501.603–70 Contracting officer warrant program (COWP).

* * * * *

(c) *Definitions.*

"Appointing official" means the Associate Administrator for Acquisition Policy or the head of the contracting activity (HCA) or designee(s).

* * * * *

(d) *Responsibilities.*

(1) * * *

(2) *Heads of contracting activities.* The heads of contracting activities (HCAs) (see 502.1) or designee(s) are responsible for delegating authority to make purchases not to exceed $500 and to issue Standard Form 145, Telephone Service Request (TSR), for tariff services on or in conjunction with existing telephone systems to regulated local exchange telephone companies. HCAs are also responsible for conducting effective and efficient acquisition programs. HCAs must establish training plans for contracting personnel and budget for funds to implement such plans; monitor the performance of contracting officers; and establish controls to ensure compliance with applicable laws, regulations, procedures and the dictates of management practice. Central Office HCAs shall designate an official to serve as Chairman of the COWP board.

(3) * * *

(4) *Regional Acquisition Management Staff (RAMS).* The RAMS shall assist the HCA in the administration of the COWP, issue procedures for the operation of the program at the regional level, recommend program changes when necessary, analyze proposed regional courses and training material and recommend them for fulfilling the requirements of the COWP, maintain detailed training records for each contracting officer (except contracting officers with $500 or telephone service level warrants), and ensure that appropriate forms required by the Office of Finance are provided to the Office of Finance.

* * * * *

(f) *Warrant levels.*

* * * * *

Telephone Services—Unlimited authority to issue Standard (IRMS employees only) Form 145, Telephone Service Request (TSR), for tariff services on, or in conjunction with, existing telephone systems to regulated local exchange telephone companies.

* * * * *

(h) *Training requirements*—(1) *Mandatory training to qualify for appointment.*

* * * * *

(x) *IRMS telecommunications personnel.* Individuals nominated to issue TSRs for tariff services on, or in conjunction with, existing telephone systems to regulated local exchange telephone companies must receive on-the-job orientation or formal training on the proper procedures for issuing TSRs and on the responsibilities and obligations of contracting officers.

* * * * *

(6) *Mandatory training to retain contracting officer designation.* As a condition of continuing designation, all contracting officers, except those with a $500 or telephone service level warrant or those on interim appointments, must complete 16 hours (for basic level warrants) or 40 hours (for intermediate or unlimited level warrants) of formal acquisition training every 3 years in order to maintain competency.

Richard B. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 90–8127 Filed 4–9–90; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 55, No. 69
Tuesday, April 10, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Uses for Ombudsmen by Federal Agencies

AGENCY: Administrative Conference of the United States.

ACTION: Proposed recommendation and request for comments; notice of public meeting.

SUMMARY: The Administrative Conference's Committee on Administration is considering a proposed recommendation dealing with potential uses for ombudsmen by federal agencies. The proposal is based in large part on a consultant's report to the Conference by consultants David Anderson and Diane Stockton. It encourages greater use of these entities by federal agencies. The proposal will be discussed at the Committee's April 27 meeting, described below.

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Committee on Administration of the Administrative Conference of the United States. The Committee has scheduled this meeting to discuss the proposed recommendation on the use of ombudsmen. A copy of the draft recommendation is set forth below. The consultant report is available from the Conference.

DATES: The meeting will be held on April 27, 1990, 10:00 a.m. Comments should be submitted by April 23, 1990.

ADDRESSES: Meeting location: Administrative Conference Library, 2120 L Street, NW., Suite 500. Send comments to Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500 (202) 254–7020.

SUPPLEMENTATY INFORMATION:

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contract person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Proposed Recommendation

The Ombudsman in Federal Agencies

The ombudsman is an institution frequently used in other countries, and increasingly used in this country, as the office of last resort to inquire into citizen grievances about administrative acts or failures to act and, in suitable cases, to criticize or make recommendations concerning future official conduct. Typically, an ombudsman investigates selected complaints and issues nonbinding reports, with recommendations if corrections are needed. In cases involving the agencies of the government, an ombudsman may deal with complaints arising from maladministration, abusive or indifferent treatment, tardiness, unresponsiveness and the like.[1] To succeed an ombudsman must have influence with, and the confidence of, top levels of an agency, be independent, and be able to conduct meaningful investigations into a complaint without being thwarted by the agency staff whose work is being examined. The most successful occupants of that office have generally been persons of high rank and status with direct access to the highest level of authority.

The experiences of several federal agencies show that an effective ombudsman can materially improve citizen satisfaction with the workings of the government, and, in the process, increase the disposition toward voluntary compliance and cooperation with the government, reduce the occasions for litigation, and provide agency decisionmakers with the information needed to identify and treat problem areas. Agencies that have employed an ombudsman with success in various programs include the Department of Health and Human Service, the Internal Revenue Service, and the Army Materiel Command.

The Conference urges the President and Congress to support the creation of an effective ombudsman in those federal agencies with significant interaction with the public. The Conference believes that these agencies would benefit from establishing an office of ombudsman either on an agency-wide basis or to assist in the administration of particular programs.

Recommendations

A. Ombudsman Legislation.

(1) Federal agencies that adminster programs with major responsibilities involving significant interactions with members of the general public are likely to benefit from establishing an ombudsman service. Examples of such programs include the following: licensing, revenue collection, procurement, award and distribution of welfare, pension, or disability benefits, oversight of public lands, and administration of detention facilities, public assistance programs, immigration programs, or subsidy or grant programs.

(2) In cases where agencies with significant interaction with the public seek legislation to provide funds or other statutory underpinnings for an ombudsman, the legislation should conform generally to the guidelines set forth in paragraph B, below, and should be prepared in consultation with affected members of the public or their representatives and the Administrative Conference.

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[1] An ombudsman may be appointed by the legislature or by the executive, with or without a fixed tenure, and with a variety of possible powers, missions, and available resources. While there is no universally accepted notion of what an ombudsman should do, the Model Ombudsman Statute states that the ombudsman "should address himself particularly to an administrative act that might be

1. contrary to law or regulation;
2. unreasonable, unfair, oppressive, or inconsistent with the general course of an administrative agency's functioning;
3. mistaken in law or arbitrary in ascertainments of FAct;
4. improper in motivation or based on irrelevant considerations;
5. unclear or inadequatley explained when reasons should have been revealed;
6. inefficiently performed; or
7. otherwise objectionable. . . ."

B. Guidelines for Legislation.

(1) *Powers, duties.* (a) Ombudsman legislation should set out the functions to be performed by the ombudsman and confer the powers needed to enable the ombudsman to (i) hear complaints, (ii) conduct investigations, (iii) recommend solutions in individual cases and make recommendations for administrative and regulatory adjustments to deal with chronic problems and other systemic difficulties, and (iv) speak for the public within the agency on procedures, forms, and similar issues affecting the nature and delivery of services.

(b) The legislation should require the ombudsman to submit periodic reports to the agency head and to the relevant committees of Congress summarizing the grievances considered, investigations completed, recommendations for action, improvement in agency operations, or statutory changes, agency response, and any other matters the ombudsman believes should be brought to the attention lof the agency head, Congress or the public.

(2) *Qualifications, term.* The legislation should set forth the qualifications required for the position of ombudsman, the tenure of office, salary, safeguards protecting the independence and neutrality of the ombudsman, and means for assuring access to the ombudsman. The Conference recommends that the ombudsman be a respected, senior person known for his or her judgment, probity, and persuasiveness; and the ombudsman's salary should be commensurate with that of the agency general counsel. Congress should consider whether, in any particular agency or program, circumstances require that the ombudsman be appointed for a fixed term and removable only for cause.

(3) *Confidentiality.* The legislation should protect communications to or from the ombudsman in connection with any investigation (other than reports intended to be made public), as well as the ombudsman's notes, memoranda and recollections, and documents provided in confidence to the ombudsman. The legislation should provide protection consistent with that recommended by Administrative Conference Recommendations 89–11, *Encouraging Settlements by Protecting Mediator Confidentiality*, 1 CFR 305.89–11.[2]

[2] As a practical matter, confidentiality guarantees in pending legislation—the Administrative Dispute Resolution Act, S. 971 and H.R. 2497 (101st Congress 1st Session)—would likely protect communications in ombudsman proceedings.

(4) *Judicial review, liability.* The legislation should provide that (i) no proceeding, report, or other action of the ombudsman shall be reviewable in any court, and (ii) no civil action shall lie against the ombudsman for any action, failure to act, or statement made, in discharging the ombudsman's responsibilities.

(5) *Access to agency records.* The legislation should authorize the ombudsman to request agency officials to provide information (in person or in writing) or records the ombudsman deems necessary for the discharge of its responsibilities; and should require that such information be supplied to the extent permitted by law.

C. Creation of Agency Ombudsmen.

(1) Whether or not legislation is enacted, each federal agency that performs one or more of the functions identified in Paragraph A.1, above, should consider setting up an agency-wide or program-specific ombudsman as a means of gaining experience with the concept and improving service to the public.

(2) Agencies should generally follow the guidelines in paragraph B in establishing an agency ombudsman.

(3) An agency, when establishing an ombudsman, should explicitly state that as a matter of policy it will not seek to discover or otherwise force disclosure of an ombudsman's notes, memoranda or recollections or of documents provided to the ombudsman in confidence.

D. Procedural Issues.

(1) Before announcing a conclusion or recommendation that criticizes an agency or any person, the ombudsman should ordinarily consult with that agency or person.

(2) When publishing a report or opinion adverse to an agency or person, the ombudsman should ordinarily include the substance of any statement of the agency or official regarding the complaint or the ombudsman's report or recommendations.

(3) An agency with an ombudsman should take effective steps to ensure that persons who deal with the agency are aware of the existence, purpose, and availability of the ombudsman service. These steps could include active campaigns to inform the public of the service through mailings to persons with whom the agency deals, press briefings and releases, posters in agency offices used by the public, printed and video materials, and the like.

Dated: April 5, 1990.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 90–8225 Filed 4–9–90; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 52

[CS–89–010]

RIN 0581–AA19

Citrus Juices and Certain Citrus Products: Fee Revision for Analyses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule.

SUMMARY: This proposed rule would increase the fee charged by the Department for laboratory analysis of citrus juice and certain other citrus products performed by the newly formed Commodities Scientific Support Division of the Agricultural Marketing Service. The purpose of the proposed fee increase is to recover increased costs of providing such laboratory services. The "Definition" section of the regulations would be amended by adding a definition for the Commodities Scientific Support Division (CSSD). The proposed rule would also amend the title of the section concerning laboratory testing and analysis to more accurately reflect the types of services provided.

DATES: Comments must be received on or before May 10, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Division Director, Commodities Scientific Support Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 3064 South Building, Washington, DC 20090–6456. Comments should note the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Division Director during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dr. Craig A. Reed, Commodities Scientific Support Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 3064 South Building, Washington, DC 20090–6456, Telephone (202) 447–5231.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has

been determined to be a "non-major" rule under criteria contained therein. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices to consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will not result in significant adverse effects on competition, employment, investments, productivity, innovations, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a rule on small entities. The Administrator, Agricultural Marketing Service (AMS), has determined that this proposed action will not have a significant economic impact on a substantial number of small entities. The proposed rule reflects only those fee increases needed to recover the cost of laboratory services provided by the Commodities Scientific Support Division (CSSD) in the analysis of citrus juice and certain other citrus products. CSSD was established on January 15, 1989, by the AMS Administrator to consolidate the analytical laboratory testing services of AMS under one Division. Furthermore, the use of these services is voluntary. This action reflects a fee increase needed to recover the cost of services rendered in accordance with the Agricultural Marketing Act of 1946 (AMA). The AMA authorizes voluntary official inspection, grading, and certification, on a user fee basis, of processed food products, including processed fruits, vegetables, and processed products made from these. The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the cost of services rendered.

Laboratory analyses by AMS of citrus juice and other citrus products are currently being done only in Florida. Such products produced in Florida are required to meet certain standards through laboratory analyses in order to satisfy the Florida Citrus Code. This proposal would amend § 52.47 of the regulations by increasing fees to be paid to AMS for laboratory services rendered by CSSD to the Florida citrus industry to reflect the costs currently associated with the progam. The title of the section would also be amended by inserting the word "microbiological" in lieu of "micro". In addition, § 52.2, "Definitions", would be amended by adding a definition of the term "Commodities Scientific Support Division."

AMS regularly reviews its programs to determine if fees are adequate to cover costs. Since the last fee change June 5, 1986, (51 FR 20438), program operating costs have increased. Major contributing factors have been increased costs for reagents and instrumentation required for the more complex analyses performed by CSSD. There have also been four salary increases for Federal employees—a 3 percent pay increase effective January 1, 1987, a 2 percent pay increase effective January 1, 1988, a 4.1 percent pay increase effective January 1, 1989, and a 3.6 percent pay increase effective January 1, 1990.

Employee salary and fringe benefits are major program costs that account for approximately 85 percent of the total operating budget. In fiscal year 1990, the following increases in program operating expenses are projected:

(1) A Government-wide salary increase of 3.6 percent effective January 1, 1990; (2) a 28.3 percent increase in the Agency's contribution to the Federal Employees Health Benefits Program (applicable to all Government agencies) effective January 1, 1990; (3) a 10 percent Government-wide increase in travel entitlements effective in October 1988; and (4) a projected inflationary cost increase of 4.0 percent for fisal year 1990 (this includes increased instrument and reagent costs). The Agency has determined that due to the aforementioned increases in program operating costs, citrus juice and citrus product laboratory testing programs performed by CSSD will incur over a $113,000 loss in fiscal year 1990 if the hourly laboratory fee is not raised.

Based on the Agency's analysis of increased costs since 1986, it is proposed, that in order to cover the cost of services rendered, the fees charged for microbiological, chemical, and certain other special laboratory analyses performed by the CSSD on citrus juice and certain other citrus products be increased from $25 per hour to $29 per hour. The current $25 per hour fee for other services charged in accordance with § 52.47 would not be changed by this action. Accordingly, a new paragraph (b) would be added to § 52.47 to reflect the proposed fee increase, and the current paragraph in § 52.47 would be designated as paragraph (a) with conforming changes made for clarity.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements and vegetables.

For the reasons set out in the preamble, it is proposed that 7 CFR part 52 be amended as follows:

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

1. The authority citation for 7 CFR part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended: (7 U.S.C. 1622, 1624).

§ 52.2 [Amended]

2. Section 52.2 would be revised by adding a definition after "Class" as follows:

* * * * *

Commodities Scientific Support Division (CSSD). A Division of the Agricultural Marketing Service (AMS) which performs analytical laboratory testing services for AMS.

* * * * *

3. Section 52.47 would be revised to read as follows:

§ 52.47 Fees to be charged for microbiological, chemical and certain other special analyses.

(a) Unless otherwise provided in paragraph (b) of this section fees charged for micro, chemical and certain other special analyses made at the request of the applicant, or because of additional specification requirements, and other applicable services, shall be at the rate of $25.00 per hour. Other applicable services include, but are not restricted to, grading unofficial samples, providing copies of score sheets and additional copies of certificates.

(b) Fees charged for microbiological, chemical and certain other special laboratory analyses performed by Commodities Scientific Support Division on citrus juice and certain other citrus products, requested by the applicant, or because of additional specification requirements and other applicable services, shall be at the rate of $29 per hour. Other applicable services include, but are not restricted to, analyzing unofficial samples, and providing original and additional copies of certificates.

Done at Washington, DC April 5, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90–8237 Filed 4–9–90; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Doc. No. R-0689]

Truth in Lending; Intent to Make Determination of Effect on State Law; Wisconsin

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent to make preemption determination.

SUMMARY: The Board is publishing for comment a proposed determination as to the consistency with the Truth in Lending Act and Regulation Z of certain provisions in the law of Wisconsin. Those provisions deal with disclosures for home equity plans and the right of a nonapplicant spouse to terminate a plan and a creditor to accelerate the outstanding balance. The Board is proposing to preempt some of the state provisions.

DATES: Comments must be received on or before June 8, 1990.

ADDRESSES: Comments should refer to Docket No. R-0689 and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room B-1122 of the Eccles Building between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-3667. For the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: (1) *General.* The Board has received a request for a determination that certain provisions of Wisconsin law are inconsistent with the Truth in Lending Act and Regulation Z and therefore preempted. Section 111(a)(1) of the Truth in Lending Act authorizes the Board to determine whether an inconsistency exists between chapters 1, 2, and 3 of the federal act or the implementing provisions of the regulation and state laws.

Section 226.28(a)(1) of Regulation Z, which implements section 111(a)(1) of the Truth in Lending Act, provides that state requirements are inconsistent with, and therefore preempted by, the federal provisions if the state law requires a creditor to make disclosures or take actions that contradict the requirements of federal law. A state law is contradictory, and therefore preempted, if it significantly impedes the operation of the federal law or interferes with the purposes of the federal law. Under § 226.28(a)(1), a state law is contradictory, for example, if it requires the use of the same term for a different amount or a different meaning than the federal law, or if it requires the use of a different term than the federal law to describe the same item.

The procedure for requesting a determination and the general procedures followed in making a determination are contained in appendix A to 12 CFR part 226. These proposed preemption determinations are 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 265.2(h)(3)).

In previous preemption determinations (48 FVR 4454, February 1, 1983) the Board developed principles to be applied in making preemption determinations. These principles require that preemption should occur only in those transactions in which an actual inconsistency exists between the state and federal laws. In addition, a state law is not inconsistent merely because it requires more information than federal law or requires disclosure in transactions where federal law requires none.

Preemption determinations are generally limited to those provisions of state law identified in the request for a determination. At the Board's discretion, however, other state provisions that may be affected by the federal law also will be addressed.

(2) *Discussion of specific request and proposed determination.* The Board has been asked to determine whether specific provisions of the Wisconsin Statutes regarding disclosures for open-end credit plans and the ability of a nonapplicant spouse to terminate an open-end credit plan are inconsistent with amendments to Regulation Z (12 CFR § 226.5b) that regulate disclosure and substantive provisions of open-end credit plans secured by a consumer's dwelling. The requesting party asks whether provisions of Wisconsin Statutes § 422.308, requiring certain disclosures to be given in a certain manner for open-end credit plans, including home equity plans, are preempted by § 226.5b (a) and (d) of Regulation Z. The requesting party also questions whether Wisconsin Statutes § 766.565(5), part of Wisonsin's Marital Property Act, is preempted by § 226.5b(f)(3) of Regulation Z.

Content and Form of Disclosures Under Wisconsin Statutes Section 422.308 and Section 226.5b (a) and (d) of Regulation Z

The requesting party asks for a determination as to possible inconsistency between the state and federal requirements for early disclosures of home equity plans. Wisconsin Statutes § 422.308(1) requires the following disclosures to be set forth in every application for an open-end credit plan: (1) The annual percentage rate (APR); that the loan contains a variable rate feature, if applicable, and the circumstances under which the rate may increase; any limitations on the increase and the effects of the increase; (2) when the finance charge begins to accrue; (3) the amount of any annual fee charged; and (4) the type and amount of any other fees or charges. Under Wisconsin Statutes § 422.308(2), these disclosures must be given prior to opening an open-end credit plan in cases where an application is not required.

Section 226.5b(d) of Regulation Z requires certain disclosures to be given at the time an application is provided to a consumer. These disclosures include, among other items, the APR for fixed-rate plans and a statement that the rate does not include costs other than interest, fees imposed under the plan, and certain disclosures for variable-rate plans. The variable rate disclosures include the fact that the APR may vary, how the APR is determined, a statement that the APR does not include costs other than interest, how often the APR will change, and any limitations on such changes. There is no required disclosure about when the finance charge begins to accrue.

There appears to be a possible inconsistency between the state and federal disclosure requirements with regard to disclosure of the APR. State law does not define "annual percentage rate," but it does define "finance charge" in Wisconsin Statutes § 421.301(20) to include charges other than interest. There appears to be nothing in Wisconsin law that directly states that creditors must base their APR disclosure, particularly the APR disclosed at application, on this

definition of finance charge. If, however, the APR under state law is analogous to that under federal law and is derived from the finance charge, an assumption can be made that state law could require a creditor to include noninterest finance charges in the APR disclosed at application. While the definition of "finance charge" under federal law also includes charges other than interest, the APR creditors are required to state in the disclosures given at application for home equity plans clearly does not include costs other than interest. (In fact, § 226.5b(d)(6) and (d)(12)(ii) of Regulation Z requires an explicit statement that the disclosed APR does not include costs other than interest.)

A contradiction between state and federal law may be unlikely since, other than the state law's definition of "finance charge," there is nothing to suggest that the APR disclosed under Wisconsin law at the application stage includes noninterest finance charges. The Board, however, proposes to determine that in cases where the amount of the APR disclosed to consumers under state law differs from the amount that would be disclosed under federal law, the state disclosure is preempted, since in those cases the state law requires the use of the same term as the federal law to represent a different amount than the federal law.

The Board proposes to determine that the remaining state disclosures do not contradict federal law and are not preempted since a creditor can comply with both the state and federal provisions. The additional state disclosure about when the finance charge begins to accrue is not contradictory because the requirement of additional or different information is not by itself inconsistent with federal law.

The requesting party also questioned whether the provision under Wisconsin Statutes § 422.308(1) requiring that disclosures be set forth on the application for open-end credit contradicts § 226.5b(a)(1) of Regulation Z, which permits early disclosures for home equity plans to be provided on the application form or a separate form. Since a creditor can comply with both the state and federal provisions, the Board proposes to determine that this provision of state law is not preempted.

Wisconsin Statutes Section 766.565(5) and Section 226.5b(f) of Regulation Z

The requesting party also asked the Board to determine whether Wisconsin Statutes § 766.565(5) conflicts with, and is therefore preempted by, § 226.5b(f)(3) of Regulation Z. Under the state law, the spouse of a consumer who opens an open-end credit plan may terminate the plan by giving written notice to the creditor. Creditors, in turn, are permitted to include in their open-end credit agreements a provision authorizing them to declare the account balance due and payable upon receiving this notice.

Although the requesting party has asked for a determination as to possible inconsistency between the state law and § 226.5b(f)(3) of the federal law (which restricts changes in terms once a home equity plan is established), the Board believes that the more appropriate question is whether the state law is inconsistent with § 226.5b(f)(2) of Regulation Z. That section limits the circumstances under which a creditor may terminate a home equity plan and accelerate the outstanding balance to cases where the consumer has committed fraud or made a material misrepresentation in connection with the plan, has not met the repayment terms of the plan, or has acted or failed to act such that the creditor's security for the plan has been adversely affected. A creditor also may terminate a home equity plan in response to a request by the consumer. Section 226.2(a)(11) of the federal regulation defines "consumer" as a natural person to whom consumer credit is offered or extended.

A strict application of the federal preemption standards to the state law suggests that the state provision is inconsistent with the federal law. Permitting one who is not the consumer to terminate a home equity plan and a creditor to accelerate the outstanding balance upon notice of such termination is clearly inconsistent with the purpose of the federal law, which is to strictly limit the circumstances under which a creditor may terminate a plan and accelerate the outstanding balance without the consumer's agreement.

It appears, however, in this case, that the state of Wisconsin has declared a strong interest in protecting certain marital property rights by effectively deeming a non-obligor spouse to be a "consumer" specifically for purposes of terminating an open-end credit plan. Therefore, while an inconsistency exists between the state and federal laws, it appears that a valid basis exists for not preempting this aspect of the Wisconsin law since the state itself in effect has elevated the spouse to the status of a "consumer" in such instances. In addition, the person exercising the right to terminate a plan has an ownership interest in the property that secures the plan and the state has recognized that person's right to limit the availability of his or her interest in the property for debts incurred under the home equity plan by the obligor. Moreover, deeming the non-incurring spouse who has an ownership interest in the property that secures the plan to be a "consumer" (and thus able to terminate a plan) already has some basis in Regulation Z. The regulation broadens the definition of "consumer," for purposes of the right of rescission under §§ 226.15 and 226.23, to include a natural person whose ownership interest in property will be subject to a security interest, even if that person is not an obligor on the credit transaction.

A similar basis, however, does not exist for permitting a creditor to interfere with the operation of the federal scheme by accelerating the outstanding balance in such cases. While a strong argument can be made that the non-incurring spouse is a "consumer" for purposes of § 226.5b and thus able to terminate a home equity plan, a creditor still only may accelerate the outstanding balance in the limited circumstances described in §226.5b(f)(2) of the regulation.

A weighing of these two alternatives suggests that the provision under Wisconsin Statutes § 766.565(5) that permits a non-obligor spouse to terminate a home equity plan should not be preempted. The Board proposes to determine, however, that the provsion permitting a creditor to accelerate the outstanding balance in such cases is inconsistent with the purpose of the federal law and is therefore preempted.

(3) *Comment requested.* The Board requests comment on the inconsistency with the federal law of the provisions in the Wisconsin statutes discussed above. After the close of the comment period and analysis of the comments received, notice of final action on the proposal will be published in the **Federal Register**.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Rate limitations, Truth in Lending.

Board of Governors of the Federal Reserve System, April 4, 1990.

William W. Wiles,

Secretary of the Board

[FR Doc. 90-8209 Filed 4-9-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-38-AD]

Airworthiness Directives; Aerospatiale Caravelle SE 210 Model III and VIR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Aerospatiale Caravelle SE 210 Model III and VIR series airplanes, which would require repetitive X-ray inspections to detect cracks in the wing spar box lower skin panels between Ribs 42 and 43, followed by an ultrasonic inspection to evaluate the extent of damage, and repair, if necessary. This proposal is prompted by fatigue testing by the manufacturer during which the wing spar box ruptured between Ribs 42 and 43. This condition, if not corrected, could result in reduced structural integrity of the wings.

DATES: Comments must be received no later than May 29, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-38-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-38-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Aerospatiale Caravelle SE 210 Model III and VIR series airplanes. Analysis of a fatigue test conducted by the manufacturer indicated that the wing spar box had ruptured between Ribs 42 and 43 at the first fastener securing the internal scalloped doubler to the stiffeners. This condition, if not corrected, could lead to reduced structural integrity of the wings.

Aerospatiale has issued Sud-Service Service Bulletin 57-67, dated July 31, 1986, which describes procedures for repetitive x-ray inspections to detect cracks in the wing spar box lower skin panels between Ribs 42 and 43; followed by an ultrasonic inspection to evaluate the extent of damage, and repair, if necessary. The DGAC has classified this service bulletin as mandatory and has issued Airworthiness Directive 86-96-62(B) addressing this subject.

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

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive X-ray inspections to detect cracks in the wing spar box lower skin panels between Ribs 42 and 43; followed by an ultrasonic inspection to evaluate the extent of damage and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 5 airplanes of U.S. registry would be affected by this AD, that it would take approximatley 168 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $33,600.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Aerospatiale (Formerly Sud-Service/Sud Aviation): Applies to all Caravelle SE 210 Model III and VIR series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To identify and repair fatigue cracks in the wing spar box, which could result in reduced structural integrity of the wings, accomplish the following:

A. Perform an initial X-ray inspection on the left and right wing lower surface stiffeners located at the ends of the internal and external scalloped doublers between the rear and center spars of Ribs 42 and 43 (defined in the service bulletin as the "critical zone"), in accordance with Sud-Service Service Bulletin 57–67, dated July 31, 1986, prior to the accumulation of 40,000 landings or within 1,000 landings after the effective date of this AD, whichever occurs later.

B. If no cracks are found as a result of the X-ray inspection required by paragraph A., above, repeat the inspection at intervals not to exceed 2,500 landings.

C. If cracks are suspected as a result of the X-ray inspection required by paragraph A., above, evaluate the extent of the damage by performing a ultrasonic inspection on the left and right wing lower surface stiffeners located at the ends of the internal and external scalloped doublers at the rear spar of Rib 43 (defined in the service bulletin as the "critical zone"), in accordance with Sud-Service Service Bulletin 57–67, dated July 31, 1986.

1. If no cracks are found, repeat the X-ray inspection required by paragraph A., above, at intervals not to exceed 2,500 landings.

2. If cracks are found, accomplish the requirements of paragraph D., below.

D. If cracks are found, prior to further flight, perform an X-ray inspection of the expanded area to include splices at Ribs 45, 47, 50, and 51 (defined in the service bulletin as Zones B, C, D, E, F, and G), and the lower surface stiffeners between the front and center spars and between Ribs 42 and 43 (defined in the service bulletin as Zone A), in accordance with Sud-Service Service Bulletin 57–67, dated July 31, 1986. Repair cracks prior to further flight, as follows:

1. If the cracks found are less than 8 mm in length, repair in accordance with Sud-Service Service Bulletin 57–67, dated July 31, 1986. Repeat the X-ray inspection required by paragraph A., above, at intervals not to exceed 2,500 landings.

2. If the cracks found are equal to or greater than 8 mm in length, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region. Repeat the X-ray inspection required by paragraph A., above, at intervals approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

3. If no cracks are found, repeat the X-ray inspection required by paragraph A., above, at intervals not to exceed 5,000 landings.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 30, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–8197 Filed 4–9–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 90–ASW–6]

Proposed Alteration of VOR Federal Airway V–212; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of VOR Federal Airway V–212 by adding a dogleg to the north between Navasota, TX, and Lufkin, TX. The airway change would improve the flow of traffic in the Houston, TX, terminal area. This action reduces delays and controller workload.

DATES: Comments must be received on or before May 21, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 90–ASW–6, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, 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. 90–ASW–6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability Of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of V-212 by adding a dogleg to the airway between Navasota, TX, and Lufkin, TX. This change would improve traffic flow in the Houston terminal area, thereby reducing delays. This action would also reduce controller workload. Section 71.123 of part 71 of the Federal Aviation Regulations was 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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Proposed Amendment

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

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

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-212 [Amended]

By removing the words "Lufkin, TX;" and substituting the words "INT Navasota 039°T(031°M) and Lufkin, TX, 264°T(238°M) radials; Lufkin;".

Issued in Washington, DC, on March 29, 1990.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-8198 Filed 4-9-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-AEA-04]

Proposed Alteration of Transition Area; Marion, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA is proposing to cancel the NDB-A Standard Instrument Approach Procedure (SIAP) to the Mount Empire Airport, Marion/Wytheville, VA, due to the development of a new NDB Runway 26 SIAP and the installation of a new Localizer (LOC) at the airport to support a new LOC Runway 26 SAIP. Due to the reorganization of air traffic control procedures in this area, the FAA finds that the amount of controlled airspace at Marion, VA, is excessive and is proposing to reduce the 700 foot Transition Area to that amount of airspace which is actually required to segregate aircraft operating under instrument meteorological conditions from those aircraft operating under visual flight rules in controlled airspace.

DATES: Comments must be received on or before May 21, 1990.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, System Management Branch, AEA-530, Docket No. 90-AEA-04, 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. 90-AEA-04". 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 an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to reduce the 700 foot Transition Area established at Marion, VA, to that amount of controlled airspace which is actually required by the FAA to contain

arriving and departing aircraft operating on an instrument flight plan at the Mount Empire Airport, Marion/Wytheville, VA. § 71.181 of part 71 of the Federal Aviation Regulations was 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 significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

The Proposed Amendment

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Marion, VA [Revised]

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the center of Mountain Empire Airport, Marion/Wytheville, VA (lat. 36°53'41"N. long. 81°21'00"W.).

Issued in Jamaica, New York, on March 14, 1990.

Billy E. Commander,

Acting Manager, Air Traffic Division.

[FR Doc. 90-8199 Filed 4-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 90-AAL-2]

Proposed Establishment of VOR Federal Airways and Jet Routes; Arkansas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish new VOR Federal Airways V-500 and V-525 and new Jet Routes J-237 and J-238 located in the state of Alaska between Shemya, AK, and Adak, AK. The establishment of these airways and routes is necessary to improve the flow of increasing traffic between Amchitka, AK, and Adak, AK, and increase the efficiency of air traffic to Shemya, AK, by providing a more precise means of navigation. This action would ehance safety, improve traffic flow, and reduce controller workload.

DATES: Comments must be received on or before May 22, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL-500, Docket No. 90-AAL-2, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

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 proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposals. 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. 90-AAL-2." 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 proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposals

The FAA is considering amendments to parts 71 and 75 of the Federal Aviation Regulations (14 CFR parts 71 and 75) to establish new VOR Federal Airways V-500 and V-525 and new Jet Routes J-237 and J-238 located in the state of Alaska between Shemya, AK, and Adak, AK. These airways and routes would improve the flow of increasing traffic between Amchitka, AK, and Adak, AK, and increase the efficiency of air traffic to Shemya, AK, by providing a more precise means of navigation. The commissioning of the Amchitka VORTAC and the designation of the Amchitka Island, Control Zone, has led to a steady increase in traffic between Amchitka, AK, and Adak, AK. Due to the limitations of radar and communication coverage in this area, the need for primary and alternate navigable airspace is essential. This action would enhance safety, improve traffic flow, and reduce controller workload. Sections 71.125 and 75.100 of

parts 71 and 75 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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR federal airways and Jet routes.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend parts 71 and 75 of the Federal Aviation Regulations (14 CFR parts 71 and 75) 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 a 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.

§ 71.125 [Amended]

2. Section 71.125 is amended as follows:

V-500 [New]

From Shemya, AK; Amchitka, AK; to Adak, AK, NDB.

V-525 [New]

From Amchitka, AK, INT Amchitka 062°T(056°M) and Adak, AK, 275°T(267°M) radials; to Adak, AK, NDB.

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

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

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

§ 75.100 [Amended]

4. Section 75.100 is amended as follows:

J-237 [New]

From Shemya, AK; Amchitka, AK; to Adak, AK, NDB.

J-238 [New]

From Amchitka, AK, INT Amchitka 062°T(056°M) and Adak, AK, 275°T(267°M) radials; to Adak, AK, NDB.

Issued in Washington, DC, on March 28, 1990.

Jerry W. Ball,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 90-8200 Filed 4-9-90; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 155

Proposed Rule Concerning Restriction on Dual Trading by Floor Brokers

AGENCY: Community Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On January 11, 1990, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** proposed Regulation 155.5. 55 FR 1047 (January 11, 1990). The original comment period expires on April 11, 1990. The Commission has determined to extend the comment period for an additional 90 days.

DATES: Notice is hereby given that all comments on proposed Regulation 155.5 must be submitted by July 9, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: Michael B. Sundel, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: Proposed Regulation 155.5 would prohibit a floor broker from (i) trading or placing an order for a futures or option contract for his own account, any account for which he was the controlling person, or any account with respect to which he shared in profits and/or losses and (ii) holding or executing an order for a futures or option contract in the same commodity for a customer, during the same trading session, except pursuant to contract market rules. Proposed Regulation 155.5 would be phased in on a provisional basis during a 12-month Dual Trading Pilot Program. The notice of proposed rulemaking provides for a 90-day comment period, and poses both specific and general questions about the proposed regulation. The comment period expires on April 11, 1990.

The Commission has received written requests from certain futures exchanges requesting that the Commission extend the comment period for at least 60 days so that they can address the issues raised in the notice of proposed rulemaking.[1] These exchanges stated that such an extension would enable them fully to evaluate the Commission's Dual Trading Study[2] and to analyze the proposed regulation's potential effects on their markets. Specifically, the exchanges stated that they currently are undertaking their own reviews of dual trading data and that additional time was necessary to develop empirical analyses.

The Commission appreciates the exchanges' desire to examine thoroughly the complex issues raised by the proposed dual trading restriction. In addition, the Commission believes that the original 90-day comment period may not provide sufficient time for other members of the public to complete their analyses of the proposed regulation. Therefore, in order to ensure that all interested parties have an opportunity to submit meaningful comments, the Commission has determined to extend the comment period for an additional 90 days.

The Commission reiterates that the primary purpose of proposed Regulation 155.5 is to protect public customers. In light of this purpose, the Commission stresses its strong interest in receiving comments about the proposed dual trading restriction from non-member users of the futures markets. Specifically, the Commission requests comments regarding whether the

[1] The Coffee, Sugar & Cocoa Exchange, Inc., the Minneapolis Grain Exchange, the New York Mercantile Exchange, the Commodity Exchange, Inc., and the Chicago Mercantile Exchange, by letters dated, respectively, March 15, March 16, March 16, March 19, and March 21, 1990, requested that Commission extend the comment period for an additional 60 days. The Kansas City Board of Trade and the Chicago Board of Trade, by letters dated, respectively, March 16 and March 21, 1990, requested that the Commission extend the comment period for an additional 90 days.

[2] Division of Economic Analysis, Economic Analysis of Dual Trading in Commodity Exchanges (November 1989).

proposed dual trading restriction would provide an appropriate level of protection for public customers.

Issued in Washington, DC, on April 3, 1990.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-8053 Filed 4-9-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-78-87]

RIN 1545-AK94

Consolidated Return Regulations; Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of rescheduling of public hearing; time for submission of written comments; requests to speak at public hearing.

SUMMARY: In response to taxpayer requests, the Internal Revenue Service is accelerating the date of a previously scheduled public hearing on proposed regulations implementing special rules relating to disallowance of loss on dispositions of stock of a subsidiary by an affiliated group filing consolidated returns.

DATES: The public hearing is rescheduled to begin at 10 a.m., Tuesday, June 26, 1990, and continue, if necessary, at the same time on Wednesday, June 27, 1990. Written comments and requests to speak (with outlines of oral comments) must be received by June 12, 1990.

ADDRESSES: Comments and requests to speak (with outlines of oral comments) may be sent to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (CO-78-87), Washington, DC 20044. In the alternative, comments and requests to speak (with outlines) may be hand-delivered to: Internal Revenue Service, Attention: CC:CORP:T:R (CO 78-87), Room 4429, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: By a notice appearing in the **Federal Register** for Wednesday, March 14, 1990 (55 FR 9464), it was announced that a public hearing on proposed regulations would be held on October 16 and 17, 1990, at 10 a.m. in the I.R.S. Auditorium with the outlines of oral comments to be received by October 2, 1990. The proposed and temporary regulations were also published on that date at pages 9463 and 9426, respectively. The proposed regulations (as corrected by a notice published in the **Federal Register** for Friday, March 16, 1990 (55 FR 9920) requested comments be submitted by September 14, 1990.

The date and time for the public hearing has been rescheduled for 10 a.m., June 26 and 27, 1990, with the comments and requests to speak (with outlines of oral comments) to be delivered by June 12, 1990.

All other details with respect to the previously published documents remain the same.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-8275 Filed 4-9-90; 8:45 am]

BILLING CODE 4330-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3753-9]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a dredged material disposal site located offshore of the mouth of the Chetco River, Oregon, for the disposal of dredged material removed from the federal navigation project at the Chetco River, Oregon, and for materials dredged during other actions authorized by, and in accordance with, section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA). This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable, adverse environmental impacts do not occur.

DATES: Comments must be received on or before May 25, 1990.

ADDRESSES: Comments on this proposed rule should be sent to: John Malek, Ocean Dumping Coordinator, Region 10, WD-138.

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street Southwest, Washington, DC.

EPA Region 10, 1200 Sixth Avenue, Seattle, Washington.

U.S. Army Corps of Engineers, North Pacific Division, U.S. Customs House, 220 Northwest Eighth, Portland, Oregon.

U.S. Army Corps of Engineers, Portland District, 319 Southwest Pine, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John Malek, 206/442-1286.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in part 228. A list of "Approved and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was last updated on February 2, 1990 (55 FR 3688 *et seq.*). That list established this site as an interim site. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (NEPA) requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into agency decision-making processes careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's

in connection with ocean dumping site designations such as this. 39 FR 16186 (May 7, 1974).

EPA has prepared a draft EIS entitled "Chetco, Oregon, Dredged Material Disposal Site Designation." As a separate but concurrent action, a notice of availability of the draft EIS for public review and comment has been published in the **Federal Register**. It is planned that the public review periods for the draft EIS and this proposed rule overlap. However, comments will be accepted on either the draft EIS or proposed rule until the end of the latest 45-day period. Comments will be responded to in the final EIS and rule. Anyone desiring a copy of the EIS may obtain one from the address given above.

The action discussed in the draft EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally-acceptable location for ocean disposal of dredged material. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The draft EIS provides documentation to support final designation of an ocean dredged material disposal site (ODMDS) for continuing use to be located in the Pacific Ocean off the mouth of the Chetco River, Oregon. The preferred ODMDS for final designation is the existing interim site located one mile south of the mouth of the Chetco River. Site designation studies were conducted by the Portland District, Corps of Engineers, in consultation with EPA, Region 10. The ODMDS site proposed for designation is located in the area best suited for dredged material disposal in terms of environmental and navigational safety factors. No significant or long-term adverse environmental effects are predicted to result from the designation. The designated ODMDS would continue to receive sediments dredged by the Corps of Engineers to maintain the federally authorized navigation project at the Chetco River, Oregon, and for disposal of materials dredged during other actions authorized in accordance with section 103 of the MPRSA. Before any disposal may occur, a specific evaluation by the Corps must be made using EPA's ocean dumping criteria. EPA makes an independent evaluation of the proposal and has the right to disapprove the actual disposal.

The study and final designation process are being conducted in accordance with the MPRSA, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Proposed Site Description

The proposed site is located approximately 1 mile offshore of the Chetco River entrance and occupies an area of about 74 acres (0.09 square nautical miles). Water depths within the area average 21 meters. The coordinates of the site are as follows:

42°01'56" N., 124°16'33" W.
42°01'56" N., 124°16'09" W.
42°01'38" N., 124°16'09" W.
and 42°01'38" N., 124°16'33" W.

If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The proposed site, as discussed below under the eleven specific factors, is acceptable under the five general criteria, except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the draft EIS, that a site off the Continental Shelf is not feasible and that no environmental benefits would be obtained by selecting such a site instead of that proposed in this action. Historical use at the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. To date, approximately 750,000 cubic yards of material have been disposed at the interim site.

The characteristics of the proposed site are reviewed below in terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography, and distance from coast.* 40 CFR 228.6(a) (1). The site lies in 50 to 70 feet (15-21 m) of water, approximately 1.0 nautical mile offshore of the entrance to the Chetco River. Coordinates are:

42°01'56" N., 124°16'33" W.
42°01'56" N., 124°16'09" W.
42°01'38" N., 124°16'09" W.
and 42°01'38" N., 124°16'33" W.

The site's center line is on a 270 degree azimuth from the mouth of the Chetco River. Bottom topography within the site is varied.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult and juvenile phases.* 40 CFR 228.6(a) (2). Aquatic resources of the site and vicinity are described in detail in appendix A of the draft EIS. The existing disposal site is located in the nearshore area and many nearshore pelagic organisms occur in the water column over the site. These include zooplankton (copepods, euphausiids, pteropods, and chaetognaths) and meroplankton (fish, crab and other invertebrate larvae). These organisms generally display seasonal changes in abundance. Since they are present over most of the coast, those from Chetco are not critical to the overall coastal population. Based on evidence from previous zooplankton and larval fish studies, it appears that there will be no impacts to organisms in the water column. The site is also adjacent to neritic reefs and haystack rocks. These reefs are unusual features along the coast and support a variety of aquatic organisms, including bull kelp (*Nerocystis lutkeana*) and its associated fish and invertebrate community. Recently, the Oregon Department of Fish and Wildlife (ODFW) has identified a squid spawning area offshore of the disposal site.

Based on the analysis of benthic samples collected from the Chetco disposal site and the adjacent areas to the north and south, the disposal site contains a benthic fauna characteristic of nearshore, sandy, wave-influenced regions common along the coasts of the Pacific Northwest. The abundance and density of the infaunal community was found to be low at the disposal site, typical of shallow, nearshore, high energy habitats. The fauna is dominated by polychaete annelids (marine worms), small crustaceans (amphipods and cumaceans), molluscs (clams and snails), and echinoderms (sand dollars). The particular species identified from the disposal site are adapted to high energy environments and are able to withstand large sediment fluxes.

The disposal site is in an area where concentrations of common murres, gulls

and other marine foraging species occur. Large concentrations have been observed shoreward of the interim site extending to and within the confines of the jetties. Concentrations undoubtedly occur at the site periodically. Concentrations of shorebirds, gulls, waterfowl, and other species occur in the Chetco estuary or on adjacent beaches.

Portland District requested an endangered species listing for the site from U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS). The brown pelican and the gray whale were the only species which were listed. Based on previous biological assessments conducted along the Oregon coast regarding impacts to the brown pelican and the gray whale, no impact to either species is anticipated from the project.

In summary, the proposed ODMDS contains living resources that could be affected by disposal activities. Evaluation of past disposal activities do not indicate that unacceptable adverse effects to these resources have occurred. There is no evidence that past disposal has seriously impacted the resources in proximity to the interim site. Accordingly, this site is considered an acceptable site for final ODMDS designation.

3. *Location in relation to beaches and other amenity areas.* 40 CFR 228.6(a)(3). Due to depth of disposal operations and the presence of the south reef, there is little possibility of beach nourishment by natural onshore movement of dredged material from the existing site. Summer wave conditions may transport some sediment from the site shoreward and south, but the limiting depth for this movement is probably −40 to −50 feet (12–15m) mean lower low water. The majority of disposal material is deeper than 50 feet, so shoreward transport of dredged material is unlikely.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* 40 CFR 228.6(a)(4). The proposed disposal site will continue to receive dredged materials transported by either government or private contractor hopper dredges. The current dredges available for use at Chetco have hopper capacities from 800 to 4,000 cubic yards. This would be the range in volumes of dredged material disposed of in any one dredging/disposal cycle. The approximately 48,000 cubic yards estimated to be removed annually from the Chetco project can be placed at the site in one dredging season by any combination of private and government plants. The dredges would be under power and moving while disposing. This allows the ship to maintain steerage.

The material dredged consists of medium to fine grain marine sands and coarser materials, including gravels and cobbles (appendix C of the draft EIS provides detailed grain size information for the disposal area and the dredged area). These materials are predominant throughout the entire project length, RM 0 to 2.8. The materials are very similar to bottom materials at the interim disposal site and the entire nearshore area. All sediments destined for ocean disposal are subject to specific evaluation, including independent review by EPA. Past sediments discharged at the interim site have typically met the exclusion criteria (40 CFR 227.13(b)).

5. *Feasibility of surveillance and monitoring.* 40 CFR 228.6(a)(5). The proximity of the interim disposal site to shore facilities creates an ideal situation for shore-based monitoring of disposal activities. There is, routinely, a Coast Guard vessel patrolling entrance and nearshore areas, so surveillance can also be accomplished by surface vessel.

Following formal designation of an ODMDS for Chetco, EPA and the Corps will develop a site management plan which will address the need for post-disposal monitoring. Several research groups are available in the area to perform any required work. The work could be performed from small surface research vessels at a reasonable cost.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction, and velocity.* 40 CFR 228.6(a)(6). The sediments dredged from the Chetco River entrance are predominantly marine sands and fluvial gravels. These are generally similar to sediments at the disposal site. Under winter wave conditions common to this part of the Pacific Coast, the sand component is highly mobile to a depth of 90–120 feet 27–37m). Summer wave conditions commonly mobilize sands to a depth of 40–60 feet (12–18 m). Studies at Coos Bay show wave-generated currents can move this size sediment over 60 percent of the time during summer and winter and over 50 percent of the time during spring and fall. While waves are responsible for resuspending bottom sediments, including dredged materials, it is the long-term mean current that determines the extent and direction of dispersal. While some winter storms would move gravels at the disposal site, these coarse sediments do not migrate very far away from the site and probably stay in the general area where they have been disposed.

The nearshore mean circulation is alongshore, closely paralleling the bathymetric contours, with a lesser onshore-offshore component. Circulation patterns are variable with season and weather conditions. In winter, the general shelf circulation is to the north, although short periods of southerly flow occur. Coos Bay studies suggest that offshore flow is more common in winter. This would indicate a tendency for sediment in the disposal site to move north and west under winter circulation conditions. During the remainder of the year, flow is southerly with lower current velocities than in winter. Periodic changes in summer wind direction lead to episodes of upwelling in which near-shore ocean water transport causes a compensating near-bottom onshore flow. These upwelling events occur between April and July and continue for several days at at time. Near-bottom flow in the vicinity of the disposal site during summer should be generally southerly with onshore/offshore flow varying due to local wind conditions.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* 40 CFR 228.6(a)(7). Appendix B of the EIS gives annual volumes of materials disposed for the last 10 years. On the average 48,000 cubic yards have been annually disposed. Future volumes are expected to be similar, although probably showing some increase as other disposal options are exhausted.

Sidescan sonar of the disposal site and adjacent areas shows an area of coarse sand/gravel covering about half of the site and extending north and west of the site up to 1200 feet (31 m), both offshore and toward the river entrance. This is most likely an accumulation of the coarser dredged material fractions that have remained in the same general area since disposal. There are no bathymetric anomalies associated with this deposit (no mounding). The feature will persist as long as coarse sediments are disposed in this area. This has not caused adverse impacts on habitat, however, since the overall area is characterized by a wide range of bottom types.

No biological information has been found to exist regarding the interim site prior to any disposal having occurred. It is expected that no significant impacts to the interim site have occurred beyond the yearly, site-specific effects of disposal. Oregon Department of Fish and Wildlife biologists have recommended that the site be left at its present location.

No pre- or post-disposal water or sediment quality monitoring has been performed. Sediments disposed in the past have been physically similar to the sample collected in close proximity to the disposal site, and have met the exclusion criteria. Elutriate analysis performed in the past show minimal contaminant releases during this simulated disposal operation with receiving water from the interim disposal site.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.* 40 CFR 228.6(a)(8). The draft EIS identified no legitimate uses of the ocean that would be interfered with as a result of designation of an ODMDS or its use. The following paragraphs summarize conclusions:

Commercial Fishing: Two active commercial fisheries occur in the inshore area, salmon trolling and Dungeness crab fishing. The length of the salmon fishing season varies each year depending upon the established quota; however, it normally extends from July to September. During this period, the potential exists for conflicts between the dredge and fishing boats. The Coast Guard and ODFW indicated that they were unaware that this had ever been a problem. The Dungeness crab season is from December 1 to August 15 each year; however, most of the fishing is done prior to June and usually ends early because of the increase in soft shell crab in the catch which are not marketable. As a result, most crab fishing occurs outside of the normal dredging season and it is unlikely that a conflict would result. ODFW has identified a potential squid fishery offshore from the existing site. No fishery exists at present, but stocks may be sufficient to support a fishery if a market develops. There are no existing commercial fish or shellfish aquaculture operations that would be impacted by continued use of the existing disposal site.

Recreational Fishing: Recreational fishing opportunities are extensive and varied in the Chetco area. The small boat harbor is used extensively in the summer by recreational fishermen. Private party and charter boat recreational fishing of both salmon and rock and reef fish occur. The salmon fishing season coincides with the commercial season and extends from early summer until the quota for the area is reached. Recreational fishing boats have a potential for conflicting with dredging operations; however, none have been reported to date. It is unlikely that any significant conflict will develop in the near future.

Offshore Mining Operations: All considerations for offshore mining and oil/gas leases are in the development stages. The disposal site is not expected to interfere with any of the proposed operations, as most exploration programs are scheduled for the outer continental shelf.

Navigation: No conflicts with commercial navigation traffic have been reported and none are expected, due to the light traffic in the Chetco River area. This situation is not expected to change substantially. Rock pinnacles that are navigation hazards occur nearshore and south of the ODMDS. Avoidance of these submerged and emergent pinnacles by navigation traffic and the dredges was considered during final positioning of the ODMDS.

Scientific: There are no identified scientific study locations that could be impacted by the disposal site.

Coastal Zone Management: In reviewing proposed ODMDS for consistency with the Coast Zone Management (CZM) plan, they are evaluated against Oregon's Statewide Goal 19 (Ocean Resources). Local comprehensive land use plans for the Chetco area have been approved by the State of Oregon. These plans discuss ocean disposal and recognize the need to provide for suitable offshore sites for disposal of dredge materials. The requirements of the ocean dumping regulations are broad enough to meet the needs of Goal 19. Therefore, the designation of this site for ocean disposal of dredged material following the ocean dumping regulations would be consistent with Goal 19 and the State of Oregon's Coastal Zone Management Plan.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment of baseline surveys:* 40 CFR 228.6(a)(9). Water quality off the mouth of the Chetco River is considered excellent, typical of unpolluted seawater along the Pacific Northwest coast. Water and sediment quality analyses conducted at several Oregon ODMDS are discussed in appendix C of the draft EIS. These studies have not shown adverse water quality impacts from ocean disposal of entrance shoal sands. The ecology of the area is discussed in appendix A in the draft EIS. The offshore area within and adjacent to the ODMDS is a typical northwest Pacific mobile sand community, shifting to the north and southeast to a neritic reef system. The sand communities are ubiquitous to nearshore ocean habitats off Oregon. The site is sufficiently removed from rock and kelp habitats so that they would not be impacted by ocean disposal. Designation and use of the proposed ODMDS is not expected to have significant ecological consequences.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* 40 CFR 228.6(a)(10). It is highly unlikely that any nuisance species could be established at the disposal site as a result of dredging and disposal activities.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* 40 CFR 228.6(a)(11). Neritic reefs, common off the southern Oregon coast, comprise a unique ecological feature. They support a wide variety of invertebrates and fish species unique to rocky areas, as well as bull kelp communities. These areas are sheltered from wave action and, when receiving nutrients from both the ocean and the estuaries, are unusually productive. The ODMDS is removed from these areas.

A cultural resource literature search of the Chetco River study area did not document any wrecked vessels in the project area. This is consistent with the fact that the Chetco River historically has not been a major shipping point on the coast. Most export commodities, especially timber products, have been transported by rail and barge rather than by lumber schooner or ship. Wrecks could have occurred in the area that have not yet been discovered. However, based on previous investigations in other Oregon coastal settings (Yaquina Bay, Coquille, Columbia River Mouth), beaches, surf zones, neritic reefs, and shallow waters are the most likely areas for shipwreck occurrence. The ODMDS is removed from these areas. Also, there were no indications of wrecks from the side scan sonar survey completed during geophysical investigations.

No cultural resources impacts are expected to result from designation of the Chetco ODMDS. Existing information, along with supplementary side scan sonar data, has been reviewed by the Oregon State Historic Preservation Officer (SHPO). The SHPO letter of concurrence is included in the draft EIS.

E. Proposed Action

The draft EIS concludes that the proposed site may be appropriately designated for use. The proposed site is compatible with the general criteria and specific factors used for site evaluation.

The designation of the Chetco River ODMDS as an EPA approved Ocean Dumping Site is being published as proposed rulemaking. Management of this site will be delegated to the Regional Administrator of EPA Region 10.

It should be emphasized that, if an ocean dumping site is designated, such a designation does not constitute or imply EPA's approval of actual disposal of material at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rights which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Robert S. Burd,

Acting Regional Administrator for Region 10.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing the entry for "Chetco River Entrance" from the Dredged Material Site listing in paragraph (a)(3) and by adding paragraph (b)(85) to read as follows:

§ 228.12 Delegation of management authority for interim ocean sites.

* * * * *

(b) * * *

(85) Chetco River—Region 10.

Location: 42°01'56" N., 124°16'33" W.; 42°01'56" N., 124°16'09" W.; 42°01'38" N., 124°16'09" W.; and 42°01'38" N., 124°16'33" W.

Size: .09 square nautical miles.

Depth: 21 meters (average).

Primary Use: Dredged material.

Period of Use: Continuing use.

Restrictions: Disposal shall be limited to dredged material determined to be suitable for unconfined disposal from the Chetco Estuary and River and adjacent areas.

[FR Doc. 90-8253 Filed 4-9-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 510, 580 and 582

[Docket No. 90-11]

Anti-Rebating Certification Tariff Cancellation and Rejection and License Suspension

AGENCY: Federal Maritime Commission.

ACTION: Proposed Rule.

SUMMARY: Since imposing an anti-rebating certification requirement on common carriers and ocean freight forwarders under the Shipping Act of 1984, the Commission has experienced chronic non-compliance with these requirements. Therefore, the Commission proposes to amend its anti-rebating certification and tariff regulations to provide for summary cancellation and rejection of tariffs of common carriers that do not file required anti-rebating certifications and do not publish tariff notices of such filings. The Commission also proposes to amend its anti-rebating certification and freight forwarder regulations to provide for suspension of licenses of ocean freight forwarders that do not file required anti-rebating certifications.

DATES: Comments due May 25, 1990.

ADDRESSES: Comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Acting Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 25073, (202) 523-5796.

SUPPLEMENTARY INFORMATION:

I. Tariff Cancellation

Section 15 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1714, mandates that the Commission require the Chief Executive Officer ("CEO") of each common carrier to file with the Commission a written anti-rebating certification ("ARC") under oath. Part 582 of the Commission's rules, 46 CFR part 582, implements section 15 of the 1984 Act by establishing the content of ARCs and procedures governing their filing. Under part 582, the CEO of a common carrier in the foreign commerce of the United States must file an ARC with the Commission on or before December 31 of each year. Section 15 of the 1984 Act also provides that whoever fails to file a required ARC is liable to the United States for a civil penalty of not more than $5,000 for each day the violation continues.

In the past, there was substantial non-compliance with ARC requirements. The Commission's two previous attempts to enforce those requirements in formal proceedings [1] proved to be costly, cumbersome and inefficient. More important, those efforts failed to achieve the intended goal of future compliance.

Those proceedings, which involved 367 non-vessel operating common carriers ("NVOCC") that had not filed anti-rebating certifications for 1984, demonstrate that formal proceedings against large numbers of respondents for not filing ARCs are inefficient, putting severe demands on the Commission's resources without providing countervailing regulatory benefits or impact. Even after these well publicized formal proceedings, the following year 312 common carriers (80 vessel operators and 232 NVOCC's) did not file proper ARC's. This occurred despite the fact that the Commission's staff sent written notices to all regulated common carriers on November 14, 1986.

[1] Order to Show Cause, Docket No. 85-5, *Failure of Non-Vessel Operating Common Carriers in the Foreign Commerce of the United States to Comply with the Anti-Rebate Certification Filing Requirement of Section 15(b) of the Shipping Act of 1984*, 23 SRR 606 (1985); and Order to Show Cause, *Cancellation of Tariffs or Assessment of Penalties Against Non-Vessel Operating Common Carriers in the Foreign Commerce of the United States*, Docket No. 86-1 (January 2, 1986). Docket No. 86-1 permitted, but did not require, consideration of penalties.

reminding them of their ARC filing obligations. Similar patterns of noncompliance were evident in 1988 and 1989.

Dockets Nos. 85–5 and 86–1 highlighted some of the problems inherent in enforcement actions for violations of ARC filing requirements, as follows:

1. This kind of violation does not lend itself to informal compromise procedures under part 505 of the Commission's regulations, 46 CFR part 505. The failure to comply with the Commission's ARC regulations appears to be based on economic factors. Many of the common carriers that ignore the ARC regulations are entities with limited financial resources. The same considerations which cause them to ignore the ARC regulations are likely to result in failures to respond to informal enforcement procedures (demands for payment of civil penalties) and concomitant formal enforcement procedures (orders of investigation including civil penalty assessments). The Commission, therefore, expects that it would have to seek court enforcement of civil penalties assessed against such carriers even though the amounts of those penalties would be small. Such court enforcement would have to be pursued through the Department of Justice ("DOJ") and would be subject to DOJ's prosecutorial discretion.

2. A number of the carriers that did respond to Commission orders and notices and thereafter participated in these proceedings were small business entities whose principals represented themselves without legal counsel. Because these principals were unfamiliar with Commission procedures, the Commission was confronted with improper and unresponsive pleadings resulting in expenditure of additional time and resources.

3. Efficiency will not be enhanced by grouping certain of the respondents together in a single proceeding. There is a minimal saving of time and resources because consideration of penalties requires separate evaluation of the particular mitigating factors applicable to each individual respondent. See section 13(c) of the 1984 Act, 46 U.S.C. app. 1712(c).

Based on the foregoing, an alternative to assessment of civil penalties against large numbers of respondents is necessary for the Commission to achieve the purposes of the tariff and ARC provisions of the 1984 Act. Ample authority exists for the Commission to impose alternative sanctions, e.g., tariff rejection or cancellation.

Section 10(b) of the 1984 Act, 46 U.S.C. app. 1709(b), prohibits common carriers from rebating or otherwise allowing any person to obtain transportation except in accordance with the rates and practices published in their tariffs. Section 8 of the 1984 Act, 46 U.S.C. app. 1717, requires that tariffs be filed with the Commission, be kept open to public inspection, and show all the carrier's rates, charges, classifications, rules and practices. Section 15 of the 1984 Act creates a separate and additional requirement that under oath, common carriers must certify their company's prohibition against providing transportation except in accordance with the rates and charges set forth in its tariffs.

To implement section 15 of the 1984 Act, the Commission promulgated regulations under section 17 of the Act, 46 U.S.C. app. 1716. Those regulations:

(1) Prescribe specific language for anti-rebating certifications which are to be filed on or before December 31 of each year [2]; and

(2) Require that each common carrier's tariffs contain an anti-rebating provision, to be effective upon filing, which: (a) Attests to the carrier's anti-rebating policy; and (b) Confirms that a certification of that policy has been filed with the Commission in accordance with the 1984 Act and 46 CFR part 582.[3]

The 1984 Act makes an ARC an integral part of a carrier's rates and practices. It is a separate and essential holding out, by certification and tariff publication, that the rates contained in the tariff will be the rates charged. Consequently, a carrier's failure to have on file with the Commission a current ARC constitutes a refusal to certify that the carrier's published rates are the only rates it charges. Under such circumstances the tariff notice required to be in the tariff by 46 CFR 580.5(c)(2)(ii) becomes inaccurate and the published tariff rates are misleading in that they amount to an inaccurate representation of what rates *actually* may be charged and collected. The Commission has recognized that tariffs which mislead the public with meaningless offers should be cancelled, *Ghezzi Trucking Inc.—Cancellation of Inactive Tariff*, 13 F.M.C. 253, 255 (1969), and routinely cancels inactive tariffs. Likewise, the Commission believes it can cancel tariffs rendered misleading by a carrier's refusal to certify that its tariff rates are the only rates it will charge.

II. License Suspension

Section 15 of the 1984 Act authorizes the Commission to require an ocean freight forwarder to file with the Commission a written ARC under oath. Because of the unique function of ocean freight forwarders in the transportation chain and their consequent potential for facilitating freight rate concessions, the Commission's rules, at 46 CFR 510.25, require licensed ocean freight forwarders to file ARCs on or before December 31 of each year. Part 582 of the rules establishes the content of such ARCs and the procedures governing their filing. Notwithstanding the fact that a forwarder who fails to file an ARC required by the Commission is liable to the United States for a civil penalty of not more than $5,000 for each day the violation continues, at least 143 forwarders did not file ARC's by December 31, 1988, for calendar year 1989.

For the same reasons that the Commission's enforcement efforts failed to achieve desired results with regard to common carriers, they were unsuccessful with regard to ocean freight forwarders. The Commission believes civil penalty actions and formal proceedings against freight forwarders similarly would be protracted, cumbersome and ineffective. Accordingly, as with common carriers, an alternative to collection of civil penalties from large numbers of respondents is necessary for the Commission to achieve compliance by ocean freight forwarders with the ARC provisions of the 1984 Act.

Section 19(a) of the 1984 Act, 46 U.S.C. app. 1718(a), requires that any person who acts as an ocean freight forwarder must hold a license issued by the Commission. Section 15 of the 1984 Act authorizes the Commission to create a separate and additional requirement that ocean freight forwarders, under oath, certify their company's prohibition against the payment, solicitation of receipt of any rebate that is unlawful under the 1984 Act. Section 19(b) of the 1984 Act, 46 U.S.C. app. 1718(b), provides that the Commission shall suspend or revoke a license after notice and hearing if an ocean freight forwarder willfully fails to comply with a provision of the 1984 Act or a Commission regulation.[4]

The Commission's regulations presently:

(1) Require that every licensed ocean freight forwarder must file an anti-rebating certification on or before December 31 of each year [5]; and

[2] 46 CFR part 582.

[3] 46 CFR 580.5(c)(2)(ii).

[4] See also, 46 CFR 510.16(a)(1).

[5] 46 CFR 510.25.

(2) Prescribe specific language for anti-rebating certifications in accordance with the 1984 Act.[6]

Refusal by a licensed ocean freight forwarder to file an ARC attesting to its policy against participation in unlawful rebating appears to be a willful violation of the Commission's regulations which warrants suspension of an ocean freight forwarder's license until such time as a proper ARC is filed. Under section 19, an ocean freight forwarder's license can be suspended or revoked only after notice and hearing. However, a respondent is entitled to an oral evidentiary hearing only to the extent there are disputes of material facts.[7] In a failure to file an ARC situation, the only potential factual issue would involve a respondent's defense that the Commission's records are incorrect, and the respondent did, in fact, file an ARC. So long as respondents are provided adequate notice and opportunity to demonstrate that, in fact, an ARC was filed, statutory and due process rights are protected.

III. Proposed Rule

Based on the foregoing, the Commission is proposing a rule to supplement its ARC requirements ("Proposed Rule"). Parts 580 and 582 of the Commission's rules are proposed to be amended by adding a provision to establish that the tariffs of those common carriers that do not comply with the Commissions's Anti-Rebating Certification requirements will be canceled or, in the case of new non-conforming tariffs, rejected. In the event a common carrier's rates are published in one or more conference tariffs, the name of that common carrier would be stricken from the list of carriers participating in those conference tariffs.

Procedurally, under the proposed rule common carriers who fail to file an ARC would be notified by **Federal Register** publication and by letter that:

(1) Commission records indicate that no ARC was filed by the carrier; and

(2) The carrier's tariff(s) is cancelled effective 30 days from the publication of **Federal Register** notice unless the carrier demonstrates to the Commission or its delegate that it has filed an ARC.[8]

This procedure should avoid inadvertent cancellation of tariffs in the event of administrative or clerical error by the Commission.

The Commission also proposes to amend 46 CFR 510.16(a) and part 582 of its rules by adding provisions establishing that any ocean freight forwarder whose ARC was not received by the Commission as required by 46 CFR 510.25 and part 582, will be notified by **Federal Register** publication and letter that it has 30 days to establish that it has filed the required ARC. If within 30 days from publication of such notice in the **Federal Register**, the ocean freight forwarder does not establish that it has filed an ARC, its license will be suspended until such time as the Commission receives such filing.

The Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

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

(2) A major increase in costs or prices for consumers individual industries, Federal, State or local government agencies, or geographical regions; or investment productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small government organizations.

The Paperwork Reduction Act, 44 U.S.C. 3501–3520, as amended, does not apply to this Notice of Proposed Rulemaking because the proposed amendments to part 582 of title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

List of subjects in 46 CFR Parts 510, 580 and 582

Anti-Rebate certification, Common carriers, Freight forwarders, Licenses, Tariffs.

Therefore, pursuant to 5 U.S.C. 553 and sections 8, 10, 15, 17 and 19 of the Shipping Act of 1984, 46 U.S.C. app. 1707, 1709, 1714, 1716 and 1718, the Federal Maritime Commission proposes to amend parts 510, 580 and 582 of title 46 of the Code of Federal Regulations as follows:

PART 510—[AMENDED]

1. The authority citation to part 510 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716 and 1718.

2. Section 510.16 is amended by removing "or" from the last line of paragraph (a)(4), adding "; or " at the end of paragraph (a)(5), and adding a new paragraph (a)(6) to read as follows:

§ 510.16 Revocation or suspension of license.

(a) * * *

(6) Failure to file an annual anti-rebating certification as required by § 510.25 and part 582 of this chapter. Any licensed freighter forwarder who fails to file an annual anti-rebating certification shall be notified and advised that if within thirty (30) days the licensee does not establish that the required anti-rebating certification has been filed, its license shall be suspended until such time as it is reinstated by the Commission after an anti-rebating certification is filed. Any application for a freight forwarder license that does not include an anti-rebating certification filed in accordance with § 510.25 and part 582 of this chapter shall be rejected.

* * * * *

PART 580—[AMENDED]

3. The authority citation to Part 580 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1712, 1714–1716 and 1718.

4. Section 580.5 is amended by adding the following at the end of paragraph (c)(2)(ii)(B):

§ 580.5 Tariff contents.

(c) * * *

(2) * * *

(ii) * * *

(B) * * * Failure of a common carrier to file an anti-rebating certification with initial tariffs and publish notice of that certification in its tariffs as required by this part and part 582 of this chapter shall result in rejection of that carrier's tariff. Additionally, failure of a common carrier to file an annual anti-rebating certification and publish notice of that certification in its tariffs as required by this part and part 582 of this chapter shall result in cancellation of such tariffs. In the event a common carrier's rates are published in one or more conference tariffs, the name of that common carrier who did not file an anti-rebating certification shall be stricken

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[6] 46 CFR part 582.

[7] *Persian Gulf Outward Freight Conference v. FMC*, 375 F.2d 335, 341, (D.C. Cir. 1967). See also *Continental Forwarding, Inc.—Independent Ocean Freight Forwarder Application and Possible Statutory Violations*, 23 F.M.C. 623, 626 (1981).

[8] To operate as a common carrier after tariff cancellation, a carrier would be required to file an ARC and a new tariff.

from the list of carriers participating in those conference tariffs.

* * * * *

PART 582—[AMENDED]

5. The authority citation to part 582 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701, 1702, 1707, 1709, 1712, and 1714–1716.

2. Section 582.1 is amended by revising paragraph (b) to read as follows:

§ 582.1 Scope.

* * * * *

(b) Information obtained under this part will be used to maintain continuous surveillance over common carrier and ocean freight forwarder activities and to deter rebating practices. Failure to file the required certification may result in a civil penalty of $5,000 for each day such violation continues. Failure of a common carrier to file an anti-rebating certification and publish notice of that certification in its tariffs as provided by this part and part 580 of this chapter shall result in summary cancellation or, if an initial tariff filing, rejection. In the event a common carrier's rates are published in one or more conference tariffs, the name of the common carrier will be stricken from the list of carriers participating in those conference tariffs. Failure of an ocean freight forwarder to file an anti-rebating certification as provided by § 510.25 shall result in suspension of that ocean freight forwarder's license effective thirty (30) day after notice. Section 510.12(a) requires that a freight forwarder license application include an anti-rebating certification filed in accordance with § 510.25 and this part:

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–8201 Filed 4–9–90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 88–140; FCC 90–93]

Broadcast Service; Amendment of the Rules Concerning FM Translator Stations

RIN 3060–AE23

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes amendments to part 74 of the Commission's Rules regarding FM translator stations. In particular, this decision proposes to revise and clarify the FM translator rules, including new rules for: ownership and financial support of translators; methods for selection among translator applications; the definition of "major change" in translator coverage areas; use of commercial, noncommercial and auxiliary band frequencies; interference criteria; and technical requirements for translators. The Commission also proposes that the freeze on the acceptance of applications for new commercial FM translators or major changes will continue until this proceeding is completed. The action is needed to clarify and tighten a number of the rules to ensure that FM radio broadcast stations are not adversely impacted by translator operations.

DATES: Comments are due by June 15, 1990, and reply comments are due by July 16, 1990.

ADDRESSES: Federal Communication Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tatsu Kondo, Mass Media Bureau, Policy and Rules Division, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making* (*Notice*) in MM Docket No. 88–140, FCC 90–93, adopted March 8, 1990, and released March 28, 1990. The complete text of this *Notice* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making

1. The *Notice of Inquiry (NOI)*, 53 FR 22035, June 13, 1988, in this proceeding was issued in response to seven petitions for rule making seeking various, sometimes conflicting changes to the FM translator rules. The record in this proceeding to date leads the Commission to several conclusions concerning the FM translator rules. First, we tentatively conclude that there is a need to clarify and tighten several rules in order to ensure that translator operations do not adversely affect FM radio broadcast stations. After reviewing the record, the Commission continues to believe that the proper role for FM translators is that of a secondary service intended to supplement the service of FM radio broadcast stations.

2. The Commission invites the public to comment on proposals to retain, modify or eliminate existing FM translator rules. First, we propose to classify FM translators into two categories. The first category includes FM translators providing "fill-in" service—*i.e.*, the FM translator's predicted 1 mV/m contour is within the protected contour of the primary station and within the predicted 1 mV/m contour of the primary station. The second category includes FM translators providing service to "other areas"—*i.e.*, the FM translator's predicted 1 mV/m contour extends beyond the protected contour of the primary station.

3. With respect to translator ownership, we propose to modify the existing rule, which provides that an authorization for a commercial FM translator intended to provide reception to places beyond the predicted 1 mV/m contour of the primary station and within the predicted 1 mV/m contour of another commercial FM station assigned to a different principal community will not be granted to a licensee of an FM radio station. Our proposed rule states that the licensee of an FM radio broadcast station may not own a commercial FM translator if the predicted 1 mV/m contour of the FM translator goes beyond the protected contour of the primary station. We also propose to define the translator's coverage area as its predicted 1 mV/m contour, whether it is authorized for fill-in service or service to other areas. This will be the area within which an FM translator station can operate and is used for allocation and regulatory purposes, not to impose a minimum service obligation.

4. Our current rules limit a primary station's support of commercial translators serving areas beyond its 1 mV/m contour to the actual cost of operating and maintaining the translator. However, we are proposing to revise our financial support rule to make it easier to enforce and less subject to possible abuse. Specifically, we proposed to allow a primary station to support commercial translators providing fill-in service, both before and after the translator station commences operation, but to prohibit a primary station from supporting, directly or indirectly, any commercial FM translators providing service to other areas, both before and after they commence operation. We also propose to clarify our rules governing the content and duration of the broadcasting translators are permitted to originate.

5. We propose to permit FM translators providing fill-in service to

use terrestrial microwave transmission facilities for signal delivery to facilitate the rebroadcast of signals to remote or geographically inaccessible areas to which over-the-air terrestrial retransmission has not been particularly effective. We tentatively conclude that commercial FM translators in fill-in areas should be authorized to use aural broadcast auxiliary frequencies on a secondary basis if they first coordinate such use with local frequency coordinating committees or, in the absence of a coordinating committee, local broadcast users, and we propose to amend our rules to achieve this result.

6. Section 74.1232(b) of the Rules states that an applicant may be licensed to operate more than one FM translator, even if such translators serve substantially the same area, upon an appropriate showing of need for the additional stations. The Commission proposes to clarify that "need" refers solely to the quality of the signal received (i.e., technical necessity). We propose to apply the same standard to all translators. Under this proposal, to demonstrate the need to own a second translator within its protected service contour, a primary station must only show that a technical necessity exists for the additional translator.

7. The *NOI* had proposed use of a lottery system to select among numerous mutually exclusive applicants. Because we now propose to eliminate the rules restricting FM translators to certain limited frequencies and to permit them to use all 80 channels of the commercial FM frequency band, we expect that mutually exclusive applications will rarely occur. If we were confronted with mutually exclusive applications, we would first propose to use other available frequencies to accommodate the applicants. In those instances where there are no available frequencies to substitute for a mutually exclusive application, we propose to apply the priority classification specified in BC Docket No. 80–130, *Second Report and Order*, 90 FCC 2d 88 (1982), as appropriate in order to select a winning applicant. Applications for FM translator stations proposing to provide fill-in service of the commonly owned primary station will be given priority over all other applications.

8. The Commission proposes to define a minor change for an FM translator station as one where at least 90 percent of the area within the proposed predicted 1 mV/m contour is encompassed by the previously authorized 1 mV/m contour, assuming no change in output frequency. All other changes would be considered major.

9. We also seek comment on a number of proposals relating to technical operation of FM translators, including: (1) To change our standards regarding translator maximum output power from TPO values to ERP values; (2) to adopt a maximum 1 kW ERP limit for translators providing fill-in service with the additional restriction that the translator's predicted 1 mV/m contour may not exceed the protected contour of the primary station; (3) to adopt a maximum power criterion of 1 kW ERP for translators serving other areas with the restriction that the distance from their transmitter antenna to their predicted 1 mV/m contour may not exceed 16 km or approximately 10 miles); (4) to codify the use of directional antennas by FM translator stations and to impose standards for such use; and (5) to adopt § 73.509 for FM translators as a means to define predicted interference, with the exception that commercial Class B and B1 stations will be protected to their predicted 0.5 mV/m and 0.7 mV/m contours, respectively, as specified in § 73.215 of the Rules.

10. There are currently no specific guidelines for evaluating interference caused by NCE–FM stations operating on the reserved band to television channel six. The *Notice* proposes two methods to deal with potential interference to channel six that would apply to translators providing fill-in service, as well as those providing service to other areas. For cases of predicted interference, we propose to adopt the distance separation tables of § 73.525 currently used to predict interference between television channel six and NCE–FM radio broadcast stations. However, with respect to NCE–FM translators, we propose to apply this rule without consideration of population or need, for cases of predicted interference. In cases of actual interference, we will require the translator to cease operation if there are a "significant number of complaints" that cannot be resolved by modification of the translator stations' operations.

11. The Commission seeks comment on the extent to which existing translators should be required to comply with any rules adopted in this proceeding. We propose that pending, non-mutually exclusive applications should be processed under any new rules that are adopted as a result of this *Notice*. The *NOI* had imposed a freeze on acceptance of applications for new commercial FM translators, or major changes to existing commercial FM translator stations. We propose to continue this freeze for 60 days after the effective date of any new rules adopted and, thereafter, to provide a 60 day period for applicants to amend their applications to conform with the new rules. If the modification would result in a "major change," applicants would be required to file new fees in order for the Commission to process those applications.

12. Finally, in light of the numerous modifications to the existing translator rules proposed here, we propose to undertake a general revision of part 74, subpart L of the Commission's Rules governing the FM translator and booster service. We note that the only substantive changes to the proposed rules are those discusssed in this decision.

Paperwork Reduction Act Statement

13. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act.

Ex Parte Consideration

14. This is a non-restricted proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Comment Information

15. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before June 15, 1990, and reply comments on or before July 16, 1990. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Initial Regulatory Flexibility Act Analysis

16. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, this proceeding could, dependent on the actions ultimately taken, affect FM translator operators by, for example, changing the technical standards concerning maximum permissible power, and by probihiting any financial support from the primary station to any commercial FM translator in other areas. The chief intent of the proposed rules is to clarify and tighten the translator rules. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

17. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IFRA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Inquiry, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981)).

18. Authority for this proposed rule making is contained in sections 1, 3, 4 (i) and (j), 303, 308, 309, and 403 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Parts 73 and 74

Radio broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-8144 Filed 4-9-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 80

[PR Docket No. 90-26; RM-6770]

VHF ship station transmitters

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment dates.

SUMMARY: The Federal Communications Commission is extending the comment and reply comment period to May 10, 1990 and May 25, 1990, respectively, in PR Docket No. 90-26; FCC 90-33; RM-6770. This action is taken in response to a request by the Radio Technical Commission for Maritime Services. This action has been taken so that all affected segments of the maritime community are aware of the proposal and can have their views represented.

DATES: Comments are due on or before May 10, 1990. Reply comments are due on or before May 25, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: George R. Dillon, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: The Commission requested specific comments related to public correspondence channels and other issues in the Commission's Notice of Proposed Rule Making, PR Docket No. 90-26, adopted January 22, 1990, and released February 5, 1990 (55 FR 4886, February 12, 1990). The Radio Technical Commission for Maritime Services (RTCM) notes that the questions raised in the Notice of Proposed Rule Making are appropriate and pertinent to the goal of relieving congestion and requests the additional time so that all affected segments of the maritime community are aware of the proposal and have their views represented. The RTCM is a non-profit organization whose objectives include improving the efficiency and capability of marine communications and is comprised of a diverse membership expert in the effects of the proposed rules. An extension of time, as requested by the RTCM, will give the Commission specific information upon which to base its decision regarding the proposed rules. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before May 10, 1990, and reply comments on or before May 25, 1990. The Commission will consider all relevant and timely comments before taking final action in this proceeding.

The complete text of this Notice of Proposed Rule Making, including the proposed rule amendment, 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 Notice of Proposed Rule Making may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 80

Maritime services, Maritime mobile stations, Communications equipment.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-8143 Filed 4-9-90; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1056

[Ex Parte No. MC-19 (Sub-No. 36)]

Practices of Motor Common Carriers of Household Goods; Revision of Operational Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: The Commission is discontinuing this proceeding which was instituted to consider an overall revision of its household goods operational regulations. (48 FR 49526, October 26, 1983). Due to the lapse of time since the proceeding was instituted, and the changes that have occurred in the industry during the interim period, the present record may not reflect a basis for an informed Commission decision. In addition, some of the regulations were modified in separate Commission decisions, rendering consideration of these regulations moot in this proceeding. Discontinuance of this proceeding appears warranted for the reasons stated above. The Commission will continue to review the need for change in the operational regulations, and when warranted, on its own motion, will institute an appropriate proceeding to consider needed changes. Petitions, of course, may be filed at any time by persons desiring the Commission to address issues relating to our regulations in this area.

DATES: This proceeding is discontinued on April 10, 1990. Other decisions have or may alter certain regulations which were initially under consideration in this proceeding. For this reason, the Commission finds that public notice is impracticable and unnecessary. Moreover, this action is not a substantive rule. It simply preserves the status quo and therefore does not require a 30-day delay in the effective date.

FOR FURTHER INFORMATION CONTACT: Patricia M. Schulze (202) 275-7841 or Heber P. Hardy (202) 275-7148 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: The Commission's decision served October 25, 1983, 48 FR 49526 (October 26, 1983), proposed a plenary review of the regulations adopted in Ex Parte No. MC-19 (Sub-No. 36), *Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations)*, 132 M.C.C. 599 (1981). The proceeding responded to a petition filed by the

American Movers Conference. Public comment was received from several parties. No action was taken with respect to the merits of the comments submitted. As the elapsed time since notice of the proceeding was given exceeds six years, action on the existing record is not appropriate. In addition, the regulations at 49 CFR 1056.15, *Collection of freight charges on household goods shipments involving loss or destruction in transit* were modified in Ex Parte No. MC–19 (Sub-No. 40), *Return of Proportional Freight Charges by Motor Common Carriers of Household Goods*, 5 I.C.C. 2d (1989). This modification addresses the problem of drivers making "tailgate" refunds for lost or destroyed items by requiring carriers to refund freight charges proportionate to such items concurrent with consideration of claims for loss or damage. Another issue involving carrier liability for items of extraordinary value is the subject of a pending case. See, Ex Parte No. MC–19 (Sub-No. 41), *Practices of Motor Common Carriers of Household Goods; Limitations of Liability*, 54 FR 46635 (proposed November 6, 1989).

Energy and Environmental Considerations

We conclude that the proposed action will not affect significantly either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We conclude that this action will not have a significant impact on a substantial number of small entities.

It is ordered:

This proceeding is discontinued.

Decided: April 3, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90–8233 Filed 4–9–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on Petition to Reclassify the African Elephant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The Service announces a 12-month finding on a petition to reclassify the African elephant from threatened to endangered. The requested action has been found to be warranted for populations throughout Africa except for populations in Botswana, South Africa and Zimbabwe.

DATES: The finding announced herein was made on February 16, 1990.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority, Mail Stop: 725, Arlington Square Building, U.S. Fish and Wildlife Service, Washington, DC 20240. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 750 at the Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane at the above address (703–358–1708 or FTS 921–1708).

SUPPLEMENTARY INFORMATION: Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires that, within 12 months of receipt of a petition to add a species to, or remove a species from the Lists of Endangered and Threatened Wildlife and Plants, a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing activity. If the finding is that the action is warranted, section 4(b)(3) also requires prompt publication in the **Federal Register** of a proposed regulation to implement such action. The Service now announces a 12-month finding on a February 16, 1989, petition.

The petition was filed by the Humane Society of the United States, Animal Welfare Institute, International Wildlife Coalition, Animal Protection Institute, Society for Animal Protective Legislation, and Friends of Animals, Inc., and supported by 32 other regional, national, and international conservation and animal welfare organizations. It is dated February 16, 1989, and was received by the Department of the Interior on that same date. It requests that the classification of the African elephant (*Loxodonta africana*) on the List of Endangered and Threatened Wildlife be changed from threatened to endangered. On May 9, 1989, the Service made a finding that the petition had presented substantial information indicating that the requested action may be warranted. On June 26, 1989 (54 FR 26812), the Service published this finding and announced a status review of the African elephant. The comment period for the review ended on September 25, 1989.

The petition requested that the African elephant be reclassified as endangered because the species is in danger of extinction throughout a significant portion of its range. The petition described (1) the populations in West Africa as occurring in "small scattered ranges" and cited population declines of about 18 percent per annum, (2) substantial population decreases in Central Africa (albeit with large numbers of elephants remaining), and absence of elephants in portions of the rain forests in Cameroon, Congo, and Zaire, (3) high rates of population decline in East Africa, (4) an 8 percent per annum decline in Zambia and Mozambique, and (5) a secure albeit small population in South Africa and "somewhat stable" populations in Namibia, Zimbabwe, Malawi, and Botswana. Several reports and publications supporting these summary statements accompanied the petition. The petition also (1) noted the effect of agricultural land development, natural resource extraction, and human population expansion on African elephant habitat throughout equatorial Africa, (2) singled out the ivory trade as the "most important factor in the precipitous decline in African elephant numbers since 1978", and (3) pointed out the inadequacy of national laws or implementation of provisions under the Convention on International Trade in Endangered Species of Wild Fauna Flora (CITES) to prevent the observed population declines.

Additional information on populations has become available since receipt of the petition. Furthermore, unilateral import bans on ivory have been imposed including the one effected on June 9, 1989, by the United States; and at the October 1989 meeting of the Parties to CITES, the Party nations transferred the African elephant from appendix II to appendix I.

Although some taxonomists believe there are six subspecies of the African elephant, other authorities only recognize the forest subspecies (*L. a. cyclotis*) and the savannah or bush elephant (*L. a. africana*). The population census methods and their validity vary between forest and savannah habitats. The general status and threats are more regional in nature, and a country's ability to protect their elephant populations is an important consideration in the assessment of threats to the populations. The Service considered the status of populations in various areas of Africa.

Information contained in the petition and other sources leads the Service to conclude that the elephant populations in West Africa are fragmented and small with apparently only a few populations of viable size. Furthermore, elephant populations in this region are threatened with encroachment by human activities, and there may have been some decline due to poaching during the last 10 years. However, the recent decline appears to be much less than indicated in the petition. Elephant populations in Central Africa have declined significantly in most countries. Although estimates of elephant population numbers have been most inaccurate in forested regions of Central Africa, recent improvements in methodologies have probably accounted for increases in population estimates in some countries and perhaps masked the extent of decreases in others. Only in Gabon has the habitat been secure and the population presumed to be stable. Even here, the extent of poaching in surrounding countries, reports of recent commercial poaching in Gabon, and concerns about the effectiveness of enforcement suggest to the Service that there is a significant threat to this population. The precipitous declines in elephant populations in almost all countries in East Africa have been due almost entirely to poaching and in some countries internal disturbances pose additional problems to the proper management of elephant populations.

Except for elephant populations in Botswana, South Africa, and Zimbabwe, those in other southern African countries have either experienced significant declines due to poaching; have small vulnerable populations; occur in countries with internal disturbances, and this raises concerns about the adequacy of elephant management programs including protection; or a combination of the above factors. In recent years, the elephant populations in Botswana, South Africa, and Zimbabwe seem to have remained stable or to have increased. Thus, populations in these countries have been able to sustain any recent level of poaching as well as legal harvest, and enforcement capabilities are believed sufficient to provide adequate protection for these populations. Additionally, these countries are believed to presently have or are expected to have reasonable management programs.

The Service has reviewed the petition, other available data, and all comments received, and finds that the requested action with regards to the African elephant, except for those populations in Botswana, South Africa, and Zimbabwe, is warranted. A proposed rule to implement this measure will be published promptly.

Author

Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708 or FTS 921–1708).

Authority: 16 U.S.C. 1531–1543.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Dated: April 3, 1990.

Richard N. Smith,

Director.

[FR Doc. 90–8243 Filed 4–9–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 69
Tuesday, April 10, 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.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

North Carolina Aquarium Critical Area Treatment (Shoreline Erosion Control); RC&D Measure

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the North Carolina Aquarium Critical Area Treatment RC&D Measure, Dare County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Bobbye J. Jones, State Conservationist, Soil Conservation Service, 4405 Bland Road, Suite 205, Raleigh, North Carolina 27609; Phone number (919) 790–2888.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Bobbye J. Jones, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for reducing erosion and sedimentation while protecting public property. The planned works of improvement include installing rocl riprap, rock gabions, groins, breakwaters, and plant materials to serve as a demonstration of various shoreline erosion control techniques. All disturbed areas will be seeded with adapted permanent vegetation.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Bobbye J. Jones.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: March 27, 1990.

Bobbye J. Jones,

State Conservationist.

[FR Doc. 90–8216 Filed 4–9–90; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 14–90]

Foreign-Trade Zone in Rockford, IL; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Rockford Airport Authority, a public corporation of the State of Illinois, requesting authority to establish a general-purpose foreign-trade zone in Rockford, Illinois. The Greater Rockford Airport at Rockford, Illinois, was recently designated a "user fee" facility by the U.S. Customs Service. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 26, 1990. The applicant is authorized to make the proposal under chapter 24, paragraph 1362 of the Illinois Revised Statutes.

The proposed foreign-trade zone would be located at the industrial park area of the Greater Rockford Airport (2000 acres), on Route F.A. 179, south of downtown Rockford. The designated zone operator, Parkside Warehouses, Inc., will make its airport warehouse facilities available for initial zone activity.

The application contains evidence of the need for zone services in Rockford. Several firms have expressed an interest in using zone procedures for warehousing/distribution, repacking, labeling and inspecting such items as sewing accessories, cookware, hardware and window shades. No specific manufacturing approval is being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Richard Roster, District Director, U.S. Customs Service, North Central Region, 610 South Canal Street, Chicago, Illinois 60607; and Colonel John R. Brown, District Engineer, U.S. Army Engineer District Rock Island, P.O. Box 2004, Clock Tower Building, Rock Island, IL 61204–2004.

As part of its investigation the examiners committee will hold a public hearing on May 7, 1990, beginning at 1:00 p.m. in the Garden Court Area, Main Floor, Airport Terminal Building, Greater Rockford Airport, Rockford, Illinois.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by April 30, 1990. Instead of an oral presentation written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary at any time from the date of this notice through June 7, 1990.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

U.S. Customs Service, Greater Rockford Airport, 4 Airport Circle, Rockford, Illinois 61109

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: April 3, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-8148 Filed 4-9-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or § 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than April 30, 1990, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

	Period
Antidumping Duty Proceeding	
Canada: Steel Reinforcing Bars, (A-122-004)	04/01/89-03/31/90
Canada: Sugar and Syrups, (A-122-085)	04/01/89-03/31/90
France: Sorbitol, (A-427-001)	04/01/89-03/31/90
Greece: Electrolytic Manganese Dioxide, (A-484-801)	08/16/88-03/31/90
Italy: Spun Acrylic Yarn, (A-475-084)	04/01/89-03/31/90
Japan: Calcium Hypochlorite, (A-588-401)	04/01/89-03/31/90
Japan: Cyanuric Acid, (A-588-019)	04/01/89-03/31/90
Japan: Dichloroisocyanurates, (A-588-019)	04/01/89-03/31/90
Japan: Trichloroisocyanuric Acid, (A-588-019)	04/01/89-03/31/90
Japan: Electrolytic Manganese Dioxide, (A-588-806)	08/16/88-03/31/90
Japan: 3.5" Microdisks and Media Thereof, (A-588-802)	09/29/88-03/31/90
Japan: Roller Chain, Other Than Bicycle, (A-588-028)	04/01/89-03/31/90
Japan: Spun Acrylic Yarn, (A-588-086)	04/01/89-03/31/90
Kanya: Standard Carnations, (A-779-602)	04/01/89-03/31/90
Mexico: Certain Fresh Cut Flowers, (A-201-601)	04/01/89-03/31/90
Taiwan: Color Television Receivers, (A-583-009)	04/01/89-03/31/90
The Republic of Korea: Color Television Receivers, (A-580-008)	04/01/89-03/31/90
United Kingdom: Diamond Tips for Phonograph Needles, (A-412-027)	04/01/89-03/31/90
Suspended Investigation	
Colombia: Leather Wearing Apparel, (C-301-001)	10/01/88-12/31/89
Countervailing Duty Proceeding	
Argentina: Cold Rolled Carbon Steel Flat-Rolled Products, (C-357-005)	01/01/89-12/31/89
Argentina: Wool, (C-357-002)	01/01/89-12/31/89
Brazil: Pig Iron, (C-351-062)	01/01/89-12/31/89
Malaysia: Carbon Steel Wire Rod, (C-557-701)	01/01/89-12/31/89
Mexico: Leather Wearing Apparel, (C-201-001)	01/01/89-12/31/89
Peru: Pompon Chrysanthemums, (C-333-601)	01/01/89-12/31/89
Thailand: Rice, (C-549-503)	01/01/89-12/31/89

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by April 30, 1990.

If the Department does not receive by April 30, 1990 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: April 2, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-8149 Filed 4-9-90; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. A-588-053]

Birch 3-Ply Doorskins From Japan; Revocation of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of revocation of antidumping finding.

SUMMARY: The Department of Commerce has determined to revoke the antidumping finding on birch 3-ply doorskins from Japan because it is no longer of interest to interested parties.

EFFECTIVE DATES: February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Dennis Askey or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 3433) its intent to revoke the antidumping finding on birch 3-ply doorskins from Japan (41 FR 7389, February 18, 1976).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this finding on each interested party listed on the service list. Interested parties who objected to the revocation were provided the opportunity to submit their comments no later than thirty days from the date of publications.

Scope of Finding

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for a section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this finding are shipments of birch 3-ply doorskins. Through 1988 such merchandise was classifiable under item numbers 240.1420, 240.1440, and 240.1460 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item numbers 4412.11.10, 4412.12.10, and 4412.91.10. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Determination to Revoke

The Department may revoke a finding if the Secretary of Commerce concludes that a finding is no longer of interest to interested parties. We received no objections to our intent to revoke and no requests to review the antidumping finding on birch 3-ply doorskins from Japan. Further, we received no requests to conduct an administrative review pursuant to our notice of Opportunity to Request Administrative Review (51 FR 4641, February 6, 1986; 52 FR 3841, February 6, 1987; 53 FR 2771, February 1, 1988; 54 FR 5102, February 1, 1989; 55 FR 4647, February 9, 1990).

Since we received no objections to the revocation of this finding by an interested party and no review requests for four consecutive anniversary months (see 19 CFR 355.25(d)(4) (i) and (ii)), the Department has concluded that the finding is no longer of interest to interested parties. Therefore, any entries for the period February 1, 1989 through January 31, 1990 will be subject to automatic assessment pursuant to 19 CFR 353.22(e). In addition, we are revoking the antidumping finding on birch 3-ply doorskins from Japan in accordance with 19 CFR 353.25(d)(4)(iii).

The revocation applies to all unliquidated entries of this merchandise of Japanese origin entered, or withdrawn from warehouse, for consumption on or after February 1, 1990. The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after February 1, 1990, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries.

This notice is in accordance with 19 CFR 353.25(d)(4)(iii).

Dated: March 29, 1990.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–8147 Filed 4–9–90; 8:45 am]

BILLING CODE 3510-DS-M

Postponement of Preliminary Antidumping Duty Determination; Gray Portland Cement and Clinker from Mexico (A–201–802)

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioner in this investigation to postpone the preliminary determination, as permitted in section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673b(c)(1)(A)). Based on this request, we are postponing our preliminary determination as to whether sales of gray Portland cement and clinker from Mexico have occurred at less than fair value until not later than April 5, 1990.

EFFECTIVE DATE: April 10, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Saeed, Brad Hess, or Louis Apple at (202) 377–1777, 377–3773 or 377–1769, respectively, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On January 12, 1990, petitioner requested that the Department postpone the preliminary determination for a period of 14 days. On January 19, 1990 we postponed the preliminary determination to March 19, 1990. A notice announcing the postponement was published in the **Federal Register** on January 24, 1990 (55 FR 2397). On March 16, 1990, petitioner requested that the Department postpone the preliminary determination for an additional 15 days. On March 19, 1990, we postponed the preliminary determination to April 3, 1990. A notice announcing the postponement was published in the **Federal Register** on March 26, 1990 (55 FR 11034).

On April 3, 1990, counsel for petitioner requested that the Department postpone the preliminary determination by two days, in accordance with section 733(c)(1)(A) of the Act. Accordingly, we are postponing the date of the preliminary determination until not later than April 5, 1990. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

Dated: April 2, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–8145 Filed 4–9–90; 8:45 am]

BILLING CODE 3510-DS-M

[C–357–803]

Amendment to Scope of Investigation; Leather from Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice announces an amendment to the scope of investigation in the countervailing duty investigation of leather from Argentina.

SUPPLEMENTARY INFORMATION: On March 12, 1990, after the publication of our Notice of Initiation in the **Federal Register** (55 FR 8159, March 7, 1990), the Government of Argentina (GOA) sent

the Department a letter stating that a number of products on which petitioners requested the imposition of countervailing duties enter the United States duty-free under the Generalized System of Preferences (GSP). The letter from the GOA also states that because these products from Argentina enter duty-free and because Argentina is a signatory to the GATT, an injury determination by the International Trade Commission (ITC) is required under section 303(a)(2) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1303(a)(2)). On March 22, 1990, the Department received a letter from petitioners requesting that the scope of this investigation be amended to exclude those products entering duty-free under GSP. Therefore, we have amended the scope of the investigation, pursuant to 19 CFR 355.12(e), to exclude the duty-free products.

The excluded products are as follows: bovine upper and lining leather not exceeding 28 square feet, currently classified under *Harmonized Tariff Schedule* (HTS) subheadings 4104.10.20 and 4104.10.40; buffalo and upholstery leather, currently classified under HTS subheadings 4104.29.30, 4104.31.20, 4104.31.40, 4104.39.20, and 4104.39.40; vegetable pretanned sheep or lambskin leather, currently classified under HTS subheading 4105.11.00; goat or kidskin leather, currently classified under HTS subheadings 4106.11.00, 4106.12.00, 4106.19.00, 4106.20.30, and 4106.20.60; certain reptile leather, currently classified under HTS subheadings 4107.21.00 and 4107.29.30; and chamois leather, currently classified under HTS subheading 4108.00.00.

In addition to deleting the above mentioned items, we are clarifying the language used to define the scope of the investigation by deleting the words "but are not necessarily limited to." Accordingly, the scope of this investigation is as follows: "The product covered by this investigation is leather. The types of leather that are subject to this investigation include bovine (excluding upper and lining leather not exceeding 28 square feet, buffalo leather, and upholstery leather), sheep (excluding vegetable pretanned sheep and lambskin leather), swine, reptile (excluding vegetable pretanned and not fancy reptile leather), patent leather, calf and kip patent laminated, and metalized leather. Leather is an animal skin that has been subjected to certain treatment to make it serviceable and resistant to decomposition. It is used in the footwear, clothing, furniture and other industries. The types of leather included within the scope of this investigation are currently classified under HTS numbers 4104.10.60, 4104.10.80, 4104.21.00, 4104.22.00, 4104.29.50, 4104.29.90, 4104.31.50, 4104.31.60, 4104.31.80, 4104.39.50, 4104.39.60, 4104.39.80, 4105.12.00, 4105.19.00, 4105.20.30, 4105.20.60, 4107.10.00, 4107.29.60, 4107.90.30, 4107.90.60, 4109.00.30, 4109.00.40, and 4109.00.70, and were formerly classifiable under *Tariff Schedules of the United States Annotated* (TSUSA) item numbers 121.20.00, 121.40.00, 121.45.00, 121.50.00, 121.54.00, 121.61.05, 121.61.10, 121.61.20, 121.61.25, 121.61.30, 121.61.33, 121.61.36, 121.61.37, 121.61.38, 121.63.41, 121.63.43, and 121.65.00. The HTS and TSUSA item numbers are provided for convenience and customs purposes. The written description remains dispositive."

EFFECTIVE DATE: April 10, 1990.

FOR FURTHER INFORMATION CONTACT: Kay Halpern or Roy A. Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–0192 and (202) 377–5414.

Dated: April 3, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–8146 Filed 4–9–90; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council, its Scientific and Statistical Committee (SSC), Advisory Panel (AP), and other Council advisory groups will meet on April 24–27, 1990, at the Hilton Hotel in Anchorage, AK. The meetings are open to the public with the exception of the Council's executive session, scheduled for April 25 to discuss personnel, ongoing litigation and international affairs.

The Council will begin its meeting on April 24 at 8 a.m., and will continue meeting through April 27. The Council will hear management reports by the Alaska Department of Fish and Game, the National Marine Fisheries Service, and the U.S. Coast Guard. The Council also will review an overfishing definition for the Salmon Fishery Management Plan (FMP), for inclusion in the current amendment cycle; will receive an overview of the State of Alaska's crab observer program; and will discuss recent actions of the Alaska Board of Fisheries regarding crab management. It will approve a meeting schedule for 1991, as well as a revised Statement of Organization, Practices and Procedures.

The Council will review a supplemental analysis and proposed regulations for a limited access system for the sablefish fisheries off Alaska, before sending these actions for public review; a final decision is scheduled for June. The Council will consider new schedules for halibut, groundfish and crab limited access, and will review recommendations from the Fishery Planning Committee on a moratorium, cut-off date, and "pipeline" definition for those fisheries. It will also discuss the inshore-offshore issue.

The Council will consider approving Amendment 19/14 (pollock roe-stripping and season apportionment of pollock) to the Gulf of Alaska and Bering Sea/Aleutian Islands Groundfish FMPs for Secretarial review, and approve other groundfish amendments and associated decision documents for public review. The Council also will receive a report on bycatch management and recommendations from its Ad Hoc Bycatch Committee, and consider emergency action to prevent unacceptable herring bycatch in 1990.

On April 22 the Council's AP and SSC will begin meeting at 1:30 p.m. Their agendas will be similar to that of the Council's. On April 23 the Council's Fishery Planning Committee is scheduled to meet. Other workgroup and committee meetings may be held on short notice during the meeting week.

For more information contact Steve Davis, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: April 3, 1990.

David S. Crestin,

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

[FR Doc. 90–8124 Filed 4–9–90; 8:45 am]

BILLING CODE 3510–22–M

Endangered and Threatened Species; Request To Modify a Permit; Georgia Department of Natural Resources (P403)

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

Notice is being given that the National Marine Fisheries Service has received a

request from the Georgia Department of Natural Resources to modify a permit it holds (as authorized by the Endangered Species Act—16 U.S.C. 1531–1543) to conduct scientific research on shortnose sturgeon. Currently, this permit allows the Department to tag shortnose sturgeon using external tags. The request for a modification would allow the Department to implant duplex radiosonic transmitters in up to 10 sturgeon as well as marking them with an external tag.

1. *Applicant:* Duane Harris, Georgia Dept. of Natural Resources, 1200 Glynn Avenue, Brunswick, Georgia 31523–9990.

2. *Type of Permit:* Scientific Purposes—To assess the shortnose sturgeon stock in the Altamaha River, Georgia.

3. *Name and Number of Species:* Shortnose sturgeon (*Acipenser brevirostrum*).

Up to 10 shortnose sturgeon will be captured, tagged with duplex radiosonic transmitters and released. An incidental mortality of 5 sturgeon is requested. The current permit allows for tagging and releasing an unspecified number of shortnose sturgeon captured incidentally to gill netting activities associated with an Atlantic sturgeon biotelemetry study.

4. *Type of Take:* The applicant proposes to capture 10 shortnose sturgeon, implant transmitters and release the fish in the area where they were captured. Adult fish will be captured in trammel or gill nets. The length of each fish will be recorded and each will be marked with an external plastic-tipped dart tag. The fish will be tracked to determine migration and movement.

5. *Location and Duration of Activity:* The collecting and tagging efforts will take place this year in the Altamaha River system, Georgia. The fish will be tracked in both the freshwater and saltwater portions of the river. The current 3-year permit will expire December 31, 1990.

Written data or comments and requests for a public hearing on this modification should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Individuals requesting a hearing should state specifically why a hearing on this request would be appropriate. The Assistant Administrator will decide whether a hearing is appropriate. Statements and summaries in this request for modificiation of a permit represent the applicant and not NMFS.

Documents submitted in connection with the above request are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910—Phone (301) 427–2322.

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702—Phone (813) 893–3366.

Dated: April 4, 1990.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 90–8261 Filed 4–9–90; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of 34 Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of 34 Department of Defense (DoD) Advisory Committees.

SUMMARY: Under the provisions of Pub. L. 92–463, "Federal Advisory Committee Act," notice is hereby given that the following 34 DoD advisory committees have been determined to be in the public interest and have been removed:

Academic Advisory Board to the Superintendent, U.S. Naval Academy
Advisory Committee on the Air Force History Program
Advisory Council on Dependents' Education
Advisory Group on Electron Devices
Armed Forces Epidemiological Board
Army Advisory Panel on ROTC Affairs
Army Science Board
Board of Advisors to the President, Naval War College
Board of Advisors to the Superintendent, Naval Postgraduate School
Air University Board of Visitors
Air Force ROTC Advisory Committee
Board of Visitors, Defense Systems Management College
Board of Visitors, Equal Opportunity Management Institute
Board of Visitors, National Defense University
Chief of Engineers Environmental Advisory Board
Chief of Naval Operations Executive Panel Advisory Committee
Command and General Staff College Advisory Committee
Community College of the Air Force Advisory Committee
Defense Advisory Committee on Military Personnel Testing
Defense Advisory Committee on Women in the Services
Defense Communications Agency Scientific Advisory Group
Defense Policy Advisory Committee on Trade
Defense Science Board
Department of the Army Historical Advisory Committee
DoD Wage Committee
National Security Agency Scientific Advisory Board
Naval Research Advisory Committee
Naval Resale System Advisory Committee
Scientific Advisory Board of the Armed Forces Institute of Pathology
Scientific Advisory Group for the Joint Strategic Target Planning Staff
Scientific Advisory Group on Effects
Secretary of the Navy's Advisory Committee on Naval History
U.S. Air Force Scientific Advisory Board
U.S. Army Medical Research and Development Advisory Panel

These committees provide necessary and valuable advice to the Secretary of Defense and other senior officials in the DoD in their respective areas of expertise. They make important contributions to DoD efforts in research and development, education and training, and various other program areas.

It is a continuing DoD policy to make every effort to achieve a balanced membership in DoD advisory committees. Each committee is evaluated in terms of the functional disciplines, levels of experience, professional diversity, public and private association, and similar characteristics required to ensure that a high degree of balance is obtained.

Dated: April 4, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–8178 Filed 4–9–90; 8:45 am]

BILLING CODE 3510-01-M

Defense Intelligence Advisory Board Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of Closed Meetings.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that closed meetings of a committee of the DIA Advisory Board have been scheduled as follows:

DATES: Thursday, 26 April 1990 (9:00 a.m. to 5:00 p.m.); Friday, 27 July 1990 (9:00 a.m. to 5:00 p.m.); Thursday, 11 October 1990 (9:00 a.m. to 5:00 p.m.).

ADDRESSES: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Chief, DIA Advisory Board Office, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meetings will be devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on DIA Modernization.

Dated: April 4, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-8179 Filed 4-9-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-462) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 29 June 1990.

Time: 0830-1600.

Place: Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: Tick Borne Infections; Army, Navy and Air Force Preventive Medicine Reports; HIV Update; Army Malaria Merozoite Research; Navy Malaria Sporozoite Program; Time Loss Due to Orthopedic Injury.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041-3258.

Dated: April 2, 1990.

Robert A. Wells,

COL, USA, MSC, Executive Secretary.

[FR Doc. 90-8131 Filed 4-9-90; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Supplement to the Final Environmental Impact Statement (SEIS) for the Jupiter/Carlin Segment of the Palm Beach County Beach Erosion Control Project, Palm Beach County, FL

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: The project consists of the restoration and maintenance at 8-year intervals of 1.08 miles of the Jupiter/Carlin Segment for erosion control in Palm Beach County, Florida, to protect beach front properties from wave damage and beach erosion.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and SEIS can be answered by: Mr. William J. Fonferek, (904) 791-1690, Environmental Resources Branch, Planning Division, PO Box 4970, Jacksonville, Florida 32232-0019.

SUPPLEMENTARY INFORMATION: 1. A Feasibility Study for a Beach Erosion Control Project for Palm Beach County, Florida, was authorized on 23 October 1962, by Public Law 87-878. A Final Environmental Impact Statement (FEIS) was published in April 1987. The FEIS addressed alternative methods of accomplishing project goals and the impacts associated with the alternatives. The local sponsor for the project is the County of Palm Beach. A Supplemental Design Memorandum and SEIS are being prepared for the Jupiter/Carlin segment to discuss locations of borrow areas and alternatives designs. Impacts to significant rock outcrop habitat and mitigation for any losses of this resource that may be caused by the proposed action will also be addressed in the SEIS.

2. Scoping: The scoping process will involve Federal, State, and local agencies, and other interested persons and organizations. A scoping letter is currently being sent to interested adjacent property owners and to Federal, State, and local agencies, requesting their comments and concerns. Any persons and organizations wishing to provide information on issues or concerns should contact the Corps of Engineers at the above address. Significant issues that are anticipated include concern for offshore hard bottom communities, fisheries, water quality, and endangered and threatened species and cultural resources. Consultation with the State Historic Preservation Officer (SHPO) during the development of the FEIS indicated that historical and archaeological resources may be present in the project area. Magnetometer surveys performed showed magnetic anomalies in some of the offshore borrow areas. Further coordination with the SHPO will occur during the scoping process for the SEIS.

3. Coordination with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service will be accomplished in compliance with section 7 of the Endangered Species Act. Coordination required by applicable Federal and State laws and policies will be conducted. Since the project will require the discharge of material into waters of the United States, the discharge will comply with the provisions of Section 404 of the Clean Water Act as amended.

4. **SEIS Preparation:** It is estimated that the final SEIS will be available to the public in July 1990.

Dated: March 9, 1990.

A.J. Salem,

Chief, Planning Division.

[FR Doc. 90-8130 Filed 4-9-90; 8:45 am]

BILLING CODE 3710-AJ-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 89-54-NG]

Orchard Gas Corp.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application for Long-term Authorization to Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application on August 11, 1989, supplemented by letters dated September 8, 1989, November 29, 1989, and Fedruary 8, 1990, filed by Orchard Gas Corporation (Orchard), for authorization to import up to 25 MMcf per day of Canadian natural gas for a term of 15 years. The gas would be purchased from ProGas Limited (ProGas) and transported into the United States by means of the proposed Iroquois Gas Transmission System (Iroquois) through an interconnection with the pipeline facilities of TransCanada PipeLines Limited (TransCanada) to be constructed near Iroquois, Ontario. However, by mutual agreement between the parties the proposed import may take place at the international border at the interconnect between the pipeline systems of TransCanada and Tennessee near Nigagara, Ontario and Highwater, Quebec using existing facilities. Orchard requests that the authorization commence November 1, 1991, and continue for 15 years.

Orchard would import the gas as agent for (1) MASSPOWER, a joint venture formed for the purpose of owning and operating a 240 megawatt (MW) cogeneration facility to be

constructed in Springfield, Massachusetts, and (2) Granite State Gas Transmission System (Granite State), an interstate pipeline. The gas would be used to fuel MASSPOWER's cogeneration facility. Prior to the date that the facility is operating commercially, the imported gas would be purchased by and delivered to Granite State for resale to its distribution company customers. After the date of commercial operation, any gas that is not taken by MASSPOWER may either be purchased by Granite State from MASSPOWER or sold to other buyers that are willing to pay a higher price than Granite State.

The application is filed pursuant to section 3 or the Natural Gas Act (NGA) 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., May 10, 1990.

ADDRESSES: 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:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394.

Michael T. Skinker, Natural 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: Orchard, a Delaware corporation, is owned and controlled by J. Makowski Company, Inc. MASSPOWER is comprised of affiliates of Bechtel Development Company, Tenneco Gas, General Electic Company, Granite State Gas Transmission, Inc., and J. Makowski Company, Inc., with its principal office in Boston, Massachusetts. Granite State serves two affiliated distribution company customers: Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities). Bay State distributes gas in Massachusetts and Northern Utilities distributes gas in New Hampshire and Maine.

Construction of the combined cycle cogeneration plant at Monsanto Chemical Company (Monsanto) site in Springfield, Massachusetts, is expected to begin on or about September 1, 1990, and would be completed in early 1993. It would be operated as a "qualifying facility" under section 201 of the Public Utility Regulatory Policies Act of 1978. In addition, MASSPOWER has filed a Certification of Compliance with the coal capability requirement for proposed new electric powerplants under the Powerplant and Industrial Fuel Use Act of 1978, as amended. The cogeneration facility will provide electrical power to a number of potential customers, including several Connecticut and Massachusetts municipal electric companies, Massachusetts Municipal Wholesale Electric Company, Commonwealth Electric, and Boston Edison Company. In addition, the steam produced will be sold to Monsanto.

Orchard filed with the application a precedent gas sales agreement entered into with ProGas. Under this draft sales agreement, ProGas will supply MASSPOWER through Orchard as agent, up to 25,000 Mcf of gas per day. In addition to the firm volumes, Masspower may purchase excess gas to the extent it is available.

If MASSPOWER'S purchases from ProGas fall below 75 percent of the aggregate of the maximum daily quantities in a contract year (25,000 x 365 days), and that deficiency is not made up in subsequent years, MASSPOWER must pay a deficiency charge levied on the volumes not taken below the required quantity, equal to the average of the commodity charges in effect during the year and an interest rate of 200 basis points over the prime rate. ProGas also has the option, in the event MASSPOWER purchases less than the minimum volume for a two-year period, to reduce permanently the daily contract quantity.

The price that Masspower would pay for firm volumes of gas consists of a demand and commodity charge. The proposed price provisions would also apply to the volumes imported on behalf of Granite State prior to the time that the cogeneration plant is operational. Under the draft contract, the demand charge, separately determined for each month, is calculated by multiplying the average of the daily contract quantities of gas delivered in the month by the monthly demand charge rate (MDR). The MDR is the sum of the monthly demand tolls of TransCanada, Nova Corporation of Alberta (NOVA), and ProGas for pipeline transportation of the gas in Canada. The commodity charge for the gas is calculated monthly by adding (1) the adjusted base price, (2) the commodity cost per MMBtu billed by NOVA, (3) the commodity cost per MMBtu billed by TransCanada, and (4) the cost of fuel for transportation. The proposed contract establishes a negotiated initial base price of $1.70 (U.S.) per MMBtu, which is tied to the New England Power Pool (NEPOOL) Fossil Fuel Index. (NEPOOL is a large group of New England utilities. The NEPOOL Index price is derived from the weighted average cost for energy produced from fossil fuels to member utilities.) The adjusted base price would be determined each month by multiplying $1.70 per Mcf by the ratio of the average monthly NEPOOL Index price for the preceding three-month period to that for the period of September, October, and November, 1988.

Either party may initiate renegotiation of the price provisions prior to the commencement of each contract year. If they are unable to agree, the matter may be referred to arbitration. In the event that ProGas cannot meet its sales obligations, the contract provides that substitute supplies may be secured from other sources.

According to the sales contract, Masspower may enter into a special marketing agreement with ProGas whereby surplus volumes would be released back to ProGas to be re-marketed. Any volumes sold by ProGas would be credited toward Masspower's monthly demand charge.

In addition, Masspower may release for sale to Granite State all volumes of gas which are excess to the requirements of the cogeneration plant on any particular day under the provisions of a proposed release gas agreement between Masspower and Granite State. The price of the release gas shall be equal to (1) the sum of the commodity charges for gas prescribed in the precedent sales agreement between Orchard and ProGas and the cost of United States pipeline transportation when this gas is taken during the period April 1 through October 31 of any year, or (2) the 100 percent load factor rate for gas under the precedent sales agreement and the cost of transportation when this gas is taken during the period November 1 through March 31. If Masspower can sell its excess gas at a higher price than that offered by Granite State and Granite State is unwilling to match the higher offer, then Masspower would have no obligation to sell the gas to Granite State.

The gas would be transported in the United States first by Iroquois and then by Tennessee Gas Transmission Company (Tennessee) to the pipeline facilities of Bay State near Monson, Massachusetts for ultimate delivery to the cogeneration plant. Each is

proposing to construct new facilities through which the imports would be transported. Applications to construct the Iroquois and Tennessee pipeline facilities and provide transportation service are pending before the Federal Energy Regulatory Commission (FERC) in Iroquois Docket No. CP89–634–000 and Tennessee Docket No. CP89–629–000. Bay State has an application to construct its new facilities that is pending before the Massachusetts Energy Facility Siting Council. Bay State is not subject to the FERC's jurisdiction. To serve the cogeneration plant with gas, Bay State would be required to construct a two to five-mile extension of a 19-mile gas distribution main that it is planning to build for reasons unrelated to this import project. Deliveries to Granite State would be made directly into Granite State's pipeline system from a delivery point on Tennessee's system at Haverhill, Massachusetts.

The sales contract with ProGas provides that as an alternative, deliveries of the gas may be made at a mutually agreed upon point on the international border other than Iroquois, Ontario, presumably, Niagara, Ontario through Tennessee's existing facilities or North Troy, Vermont where the Portland Pipe Line, which Granite State leases, connects with a Canadian pipeline. If either of these receipt points is used there would be no new pipeline construction involved except for the Bay State gas main which would be built regardless of whether Orchard is granted import authorization because it would enable Bay State to market gas to other customers that are not now available to it.

In support of its application, Orchard asserts that data provided by ProGas indicates that it has under contract with producers in the Province of Alberta sufficient quantities of natural gas to meet its previously existing commitments for export, domestic requirements, and proposed exports including volumes to be purchased by Orchard. Current estimates place total Alberta reserves from conventional producing areas at 60.8 Tcf and total proven Canadian reserves from conventional producing areas at 72 Tcf. Potential marketable reserves from conventional producing areas in Alberta are estimated at 119 Tcf, and in all of Canada 213 Tcf. Total requirements for full deliveries under the purchase contract would be .137 Tcf. Therefore, the proposed import would not be inconsistent with the public interest.

The decision on this application 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). Other matters that may be considered in making a public interest determination include need for gas, security of the long-term supply and any relevant issues that unique to cogeneration facilities. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the natural gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this requested long-term import is approved, the authorization may be conditioned to require that Orchard file quarterly reports to facilitate the DOE's monitoring of its natural gas import and export program.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 43 *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 procedural action to be taken on the application. All protests, motions to intervene, notices on 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, Fossil Energy, at the above address.

It is intended that a decisional record will be developed on the application 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, 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 Orchard'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 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 30, 1990.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–8260 Filed 4–9–90; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for

review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et. seq.) The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–581.
3. 1902–0130.
4. Management and Procurement Reporting and Recordkeeping Requirements.
5. Extension.
6. Other (As specified).
7. Mandatory.
8. Businesses or other for profit, Small businesses or organizations.
9. 155 respondents.
10. 11 responses.
11. 3 hours per response.
12. 5115 hours (total).
13. FERC–581 information is used by FERC staff to determine if potential contractors meet the Federal Government's requirements including price for the acquisition of supplies and services. The information supplied is considered necessary to obtain the benefits of the awarded contract. The Commission monitors contract progress to assure all terms are met upon contract closeout.

Statutory Authority

Sec. 5(a), 5(b), 13(b), and 52, Public Law 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. subsections 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, April 4, 1990.

Douglas R. Hale,

Acting Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90–8258 Filed 4–9–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

[Notice 90–3 (Amended)]

Special Research Grant Program; X-Ray Lithography

AGENCY: Department of Energy, (DOE).

ACTION: Extension of application receipt date.

SUMMARY: On February 14, 1990, the Department of Energy published in the **Federal Register** at 55 FR 5254 Notice 90–3 inviting grant applications on X-Ray Lithography. In response to requests for additional time for preparation of applications, Notice 90–3 is hereby amended to extend the application receipt date to May 16, 1990.

ADDRESSES: Completed applications referencing Program Notice 90–3 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER–64, room G–236, Washington, DC 20545, ATTN: Program Notice 90–3.

FOR FURTHER INFORMATION CONTACT: Dr. Walter M. Polansky, Division of Advanced Energy Projects, ER–16, U.S. Department of Energy, Washington, DC 20545. Telephone inquiries and requests for application materials may be made to (301) 353–5995.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 90–8259 Filed 4–9–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 2016–012, et al.]

Hydroelectric Applications (City of Tacoma, et al.); Applications Filed With Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Amendment of License
b. *Project No:* 2016–012
c. *Date Filed:* December 5, 1989
d. *Applicant:* City of Tacoma
e. *Name of Project:* Cowlitz River
f. *Location:* Cowlitz River in Lewis County, Washington
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)
h. *Applicant Contact:* Mr. Mark Crisson, City of Tacoma, P.O. Box 11007, Tacoma, WA 98411, (206) 383–2471
i. *FERC Contact:* Jon Cofrancesco, (202) 357–0650
j. *Comment Date:* April 13, 1990.
k. *Description of Project:* The City of Tacoma, licensee for the Cowlitz River Project, requests Commission approval of several proposed revisions to the approved Exhibit R (recreation use plan) for the project. The proposed revisions range from removing portions of undeveloped project lands, reserved for future recreation development, for inclusion in the licensee's wildlife habitat management program to developing a major recreation facility that extends beyond the boundaries of project land designated for future recreation development. The licensee states the proposed revisions would respond to actual recreation pressures at the project and accommodate the need for wildlife habitat on project lands (a copy of the application may be obtained by interested parties directly from the licensee).
l. This notice also consists of the following standard paragraphs: B, C, and D2.

2 a. *Type of Application:* Amendment of License
b. *Project No:* 3511–004
c. *Date Filed:* December 21, 1989
d. *Applicant:* UAH-Groveville Hydro Associates

e. *Name of Project:* Groveville Mills Hydroelectric Project

f. *Location:* City of Beacon, Dutchess County, New York

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mr. David Goodman, President, United American Energy Corp., Managing Partner, UAH-Groveville Hydro Associates, 50 Tice Boulevard, Woodcliff Lake, NJ 07675, (201) 307–1818

i. *FERC Contact:* Lawrence Marquez (202) 357–0670

j. *Comment Date:* April 20, 1990.

k. *Description of Project:* The licensee proposes to install three feet of flashboards to the crest of the existing Groveville Dam to increase the gross head available for electric generation.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

3 a. *Type of Application:* Surrender of License

b. *Project No:* 4506–009

c. *Date Filed:* December 6, 1989

d. *Applicant:* City of Westernport, Maryland

e. *Name of Project:* Bloomington Lake Hydro Project

f. *Location:* On the Potomac River bordering the States of Maryland and West Virginia

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mr. Michael G. LaRow, Sigma Consultants, Inc., 74 Bent Road, Sudbury, MA 01776, (508) 443–5660

i. *FERC Contact:* Ed Lee on (202) 357–0809

j. *Comment Date:* April 20, 1990.

k. *Description of Application:* The license for this project was issued on December 20, 1983, for an installed capacity of 13,846–kW. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. This notice also consists of the following standard paragraphs: B and C.

4 a. *Type of Filing:* Surrender of License

b. *Project No.:* 7830–004

c. *Date Filed:* April 11, 1989

d. *Applicant:* Florida Water Conservancy District

e. *Name of Project:* Lemon Dam Hydroelectric Project

f. *Location:* On the Florida River, within the San Juan National Forest, in La Plata County, Colorado

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. *Applicant Contact:* Mr. L.W. McDaniel, 1040 Main Avenue, Durango, CO 81301, (303) 247–1113

i. *FERC Contact:* Thomas Dean, (202) 357–0841

j. *Comment Date:* April 20, 1990.

k. *Description of Proposed Action:* The project for which the license is being surrendered would have utilized the Bureau of Reclamation's (BOR) existing Lemon dam and would have consisted of: (1) an 8-inch and 10-inch-diameter, 14-foot-long penstock; (2) a single Worthington pump-induction generator unit with a rated capacity of 110 kilowatts; (3) a 1,200-foot-long, 7.2-kilovolt transmission line; and (4) appurtenant facilities. The applicant estimated the average annual energy generation to be 757,000 kWh.

l. *Purpose of Project:* Applicant intended to sell the power generated from the proposed facility to a local utility.

m. *This notice also consists of the following standard paragraphs:* B and C.

5 a. *Type of Application:* Transfer of License

b. *Project No.:* 9167–013

c. *Date filed:* December 14, 1989

d. *Applicant:* Pennsylvania Hydroelectric Development Corporation (Transferor) and New Kernsville Hydro Associates (Transferee)

e. *Name of Project:* New Kernsville Hydro Associates

f. *Location:* On Schuylkill River, in Berk County, Pennsylvania

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:*

Mr. Lawrence Gleeson, President, Pennsylvania Hydroelectric Development Corporation, P.O. Box 402, Belfast, ME 04915, (207) 338–2507

Kenneth R. Broome, Managing General Partner, New Kernsville Hydro Associates, 15 Fawn Drive, Reading, PA 19607, (215) 775–1709

Lee M. Goodwin, Esq., Jonathan W. Gottlieb, Esq., Wickwire Gavin, P.C., Two Lafayette Centre, Suite 500, 1133—21st Street, NW., Washington, DC 20036, (202) 887–5200

i. *FERC Contact:* Ed Lee (202) 357–0809

j. *Comment Date:* April 20, 1990.

k. *Description of Application:* On August 28, 1986, a license was issued for the construction, operation, and maintenance of the New Kernsville Dam project. It is proposed to transfer the license to New Kernsville Hydro Associates since the project will be sold to them by the licensee. The proposed transfer will not result in any changes to the proposed development. The Transferor certifies that it has fully complied with the terms and conditions of the license. The Transferee accepts all terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

6 a. *Type of Application:* Amendment of License

b. *Project No:* 9886–004

c. *Date Filed:* November 27, 1989

d. *Applicant:* Valatie Falls Hydro, Inc.

e. *Name of Project:* Valatie Falls Project

f. *Location:* Village of Valatie, New York

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* P.S. Eckhoff, Vice-President, Valatie Falls Hydro, Inc., Box 158, Stuyvesant Falls, NY 12174, (518) 828–4684

i. *FERC Contact:* Lawrence Marquez (202) 357–0670

j. *Comment Date:* April 20, 1990.

k. *Description of Project:* The licensee proposes to amend the license to allow for construction of the powerhouse and appurtenant facilities on the south side of the dam instead of the north side.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

7 a. *Type of Application:* Minor License

b. *Project No.:* 10828–000

c. *Date Filed:* October 10, 1989

d. *Applicant:* Fairfax County Water Authority

e. *Name of Project:* Occoquan River Hydro Project

f. *Location:* On the Occoquan River in Fairfax and Prince William Counties, Virginia

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Warren J. Hunt, Fairfax County Water Authority, 8560 Arlington Blvd., P.O. Box 1500, Merrifield, VA 22116, (703) 698–5600

i. *FERC Contact:* Ed Lee (202) 357–0809

j. *Comment Date:* April 20, 1990.

k. *Description of Project:* The proposed project would consist of two hydroelectric developments:

A. The Upper Occoquan River Development which consists of: (1) the 740-foot-long and 65-foot-high concrete Upper Dam; (2) the 1,840-acre Upper Reservoir; (3) an existing concrete powerhouse housing two existing and operating 500-kW generating units for a total installed capacity of 1,000 kW; and (4) appurtenant facilities.

B. The Lower Occoquan River Development which consists of: (1) the 436-foot-long and 22-foot-high Lower Dam; and (2) the 19-acre Lower Reservoir; (3) and existing 2-foot by 4-

foot water intake; (4) an existing and operating 350-kW generating unit located in a pumped station used for water supply; and (5) appurtenant facilities.

The primary purpose of the project is for water supply. The generation of electrical energy for the two developments has a total capacity of 1,350 kW, and an average annual generation of 4,672 MWh. This energy is used entirely by the applicant to meet energy needs for operaion pumps and treatment plant equipment. The applicant owns all project works and structures. The project is existing and operating, and was found jurisdictional under UL-87-3 and UL-87-9.

1. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D1.

8 a. *Type of Application:* Declaration of Intention.

b. *Project No:* EL90-11-000.

c. *Date Filed:* January 12, 1990.

d. *Applicant:* Grover-Kelly #4.

e. *Name of Project:* Ancram Mills (NY).

f. *Location:* Roeliff Jansen Kill River Columbia County, New York.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Dr. Kenneth Grover, President GSA International Corporation Crofton Falls Executive Park Crofton Falls, NY 10519.

i. *FERC Contact:* Hank Ecton, (202) 357-0678.

j. *Comment Date:* April 20, 1990.

k. *Description of Project:* The proposed Ancram Mills Project, a run-of-river project, would consist of: (1) an existing 22-foot-high, 93-foot-long concrete dam with a spillway crest elevation of 460 feet msl; (2) an existing 6-acre reservoir with a storage capacity of 67 acre-feet; (3) an existing intake structure; (4) an existing 4-foot-diameter, 450-foot-long penstock; (5) an existing powerhouse, with a proposed turbine/generator with a capacity of 150 kilowatts; and (6) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Applicant intends to use the energy produced on-site. No energy will be sold.

m. *This notice also consists of the following standard paragraphs:* B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal request will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly

from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 4, 1990, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8166 Filed 4-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-9-20-001]

Algonquin Gas Transmission Co.; Amended Tariff Sheet

April 4, 1990.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on March 29, 1990, tendered for filing a proposed amendment to a previously filed tariff sheet to it FERC Gas Tariff, Second Revised Volume No. 1, as set forth below:

Proposed to be effective February 1, 1990

First Revised Original Sheet No. 220

Algonquin states that in its filing of March 26, 1990 in Docket No. TM90-1-20-000 it included First Revised Sheet No. 220. Such tariff sheet was inadvertently named using pagination already in use. The appropriate pagination should have been First Revised Original Sheet No. 220. Accordingly, Algonquin is submitting First Revised Original Sheet No. 220 as a direct replacement for Sheet No. 220 as filed on March 26, 1990.

Algonquin notes that a copy of the instant filing was served upon each of the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8164 Filed 4-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-161-012, TA90-1-48-001, and CP89-221-001]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

April 4, 1990

Take notice that ANR Pipeline Company ("ANR") on March 30, 1990 tendered for filing as part of its FERC Gas Tariff those tariff sheets listed on Attachment A.

In an Order dated March 21, 1990, at Docket No. CP89-221-000 the Commission approved "ANR's proposal to change its method of measuring the BTU content of natural gas from a saturated to a dry basis". Consistent with that Order, ANR hereby submits for filing tariff sheets reflecting the increase in contract quantities to reflect a change in ANR's measurement methodology of BTU content from a "saturated" to a "dry" basis. This increase in contract quantities is only reflected for customers who have specifically requested an increase in entitlements from ANR. ANR also submits revised tariff sheets that provide for a "dry" BTU measurement methodology. The tariff sheets listed on pages 1 and 2 of Attachment A contain such changes, all as more fully set forth in the letter of transmittal to the instant filing.

In addition, in accordance with the terms of § 154.305(c)(4) of the Commission's Regulations, ANR is submitting a revision to the current adjustment contained in its Annual Purchased Gas Adjustment (PGA) that was filed on February 28, 1990 to reflect the aforementioned change in measurement basis. The tariff sheet reflecting such change is listed on Page 3 of Attachment A.

ANR submits the tariff sheets listed on Attachment A with a requested effective date of May 1, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before April 11, 1990. Protests with the considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8163 Filed 4-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-95-000]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

April 3, 1990.

Take notice that Colorado Interstate Gas Company ("CIG"), on March 28, 1990, tendered for filing the following tariff sheets to revise its FERC Gas Tariff, Original Volume No. 1:

Second Revised Sheet No. 61G5
Original Sheet No. 61G11.1

CIG states that the above-referenced tariff sheets are being filed to implement recovery of Buyout-Buydown costs incurred by CIG as a result of the settlement of a contract claim in litigation as of March 31, 1989, pursuant to the Commission's Order No. 500 and in conformance with the procedures proposed and approved in CIG's filings in Docket Nos. RP89-98 and RP89-133.

CIG states that, pursuant to the procedures established in Docket Nos. RP89-98 and RP89-133, as amended, CIG will allocate its Buyout-Buydown costs between its jurisdictional and nonjurisdictional customers, absorb 50 percent of the jurisdictional portion of the Buyout-Buydown costs, and recover 50 percent of such costs through fixed surcharges applicable to its jurisdictional firm sales customers. CIG states that the total and the jurisdictional protion of the Buyout-Buydown costs related to this filing are $6,619,194 and $6,253,360, respectively. Therefore, CIG is proposing to recover $3,126,680 from its affected jurisdictional firm sales customers.

CIG has requested that the Commission accept this filing, to become effective April 1, 1990.

CIG states that copies of the filing were served upon all of its affected firm sales customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules

and Regulations. All such motions or protests should be filed on or before April 10, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8151 Filed 4-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-94-000]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.; Petition for Limited Waiver

April 3, 1990.

Take notice that on March 26, 1990, Columbia Gas Transmission Corporation (Columbia) and Columbia Gulf Transmission Company (Columbia Gulf) (collectively Columbia) petitioned for a limited one-time waiver of 18 CFR 161.3(b) to the extent necessary to permit Columbia to waive transportation imbalance penalties which would otherwise be imposed under section 6 of Columbia Gas' FTS and ITS Rate Schedules, and section 6 of Columbia Gulf's FTS-1, FTS-2, ITS-1, and ITS-2 Rate Schedules.

Columbia requests authority to waive provisions of its tariff as necessary to implement the waiver of penalties for all shippers. Columbia states that such waiver would relieve shippers of the obligation to pay penalties for March 31, 1990, but would not relieve them of the obligation to collect their imbalances.

Columbia also requests authority to partially waive, on a one-time basis, the amount of its transportation imbalance penalty for undertenders, to the extent the penalty specified in Columbia's tariff exceeds Columbia's actual commodity weighed average cost of gas (WACOG) for the month of March, 1990.

Columbia states that the waivers requested would give Columbia's shippers the relief from penalties for imbalances as of March 31, 1990, giving them additional time in which to correct overtenders or undertenders, to correct undertender imbalances by paying a penalty based on Columbia's March 1990 WACOG.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 10, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8169 Filed 4-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-2-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 4, 1990.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on March 30, 1990 certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective May 1, 1990.

ESNG states that such tariff sheets are being filed pursuant to § 154.,308 of the Commission's regulations and §§ 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a decrease of $0.6524 per dt in the Commodity Charge; a decrease of $0.5577 per dt in the Demand Charge 1; and no change in the Demand Charge 2 all as measured against ESNG's previously scheduled PGA filing in Docket No. TQ90-1-23-000 as filed on January 5, 1990 and aprpoved to be effective February 1, 1990. The current purchased gas cost adjustment has been developed using a quarterly projection of gas supply (firm and spot) and requirements and the latest pipeline supplier rates on file with the Commission.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 11, 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. 90-8155 Filed 4-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ90-3-33-001 and TQ90-3-33-002]

El Paso Natural Gas Co.; Change in Tariff Filing

April 3, 1990.

Take notice that on March 13, 1990, El Paso Natural Gas Company (El Paso) tendered for Thirty-fourth Revised Sheet No. 100, to its FERC Gas Tariff, First Revised Volume No. 1, to be effective April 1, 1990.

On March 22, 1990, El Paso filed First Revised Volume No. 1, Third Revised Volume No. 2 and Original Volume No. 2A, which revises the Monthly Direct Charge and Throughput Surcharge to be effective April 1, 1990. El Paso states that this tariff sheet revises the Throughput Surcharge contained in its filing in Docket No. TM90-3-33-000.

El Paso states that this tariff sheet changes the way in which El Paso reflects the estimate average cost of gas.

El Paso states that a copy of the filing is being served upon all interstate pipeline system sales customers and all interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before April 10, 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8152 Filed 4-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP90-88-001 and RP90-88-002]

El Paso Natural Gas Co.; Change in Tariff Filing

April 3, 1990.

Take notice that on March 13, 1990, El Paso Natural Gas Company (El Paso) tendered for filing its Eighteenth Revised Sheet No. 100-A, to its FERC Gas Tariff, First Revised Volume No. 1, to be effective April 1, 1990.

On March 22, 1990, El Paso filed Substitute Eighteenth Revised Sheet No. 100-A to its FERC Gas Tariff, First Revised Volume No. 1, to be effective April 1, 1990. El Paso states that this tariff sheet revises the Throughput Surcharge contained in its filing in Docket No. RP90-88.

El Paso states that this tariff sheet changes the way in which El Paso reflects the estimate average cost of gas.

El Paso states that a copy of the filing is being served upon all interstate pipeline system sales customers and all interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before April 10, 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8153 Filed 4-9-90; 8:45 am]

BILLING CODE 6717-01-1

[Docket No. TQ90-10-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

April 4, 1990.

Take notice that on March 30, 1990, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission Substitute Thirty-Fifth Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness on April 1, 1990.

According to Granite State, its filing is a revision of its regular quarterly purchased gas cost adjustment based on revised projected gas costs and purchase volumes for the second quarter of 1990. Granite State further states that it filed its quarterly adjustment on March 2, 1990 and this filing reflects further reductions in projected gas costs because of the increased availability of transportation capacity on the Tennessee Gas Pipeline Company system for the transportation of spot market purchases for system supply

It is stated that the proposed rate changes are applicable to Granite State's wholesale sales to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers 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 April 11, 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. 90-8156 Filed 4-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-8-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff; Purchased Gas Adjustment Clause Provisions

April 4, 1990.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on March 30, 1990 tendered for filing Seventh Revised Substitute First Revised Twenty-Fifth Revised Sheet Nos. 57(i) and 57(ii) and Sixth Revised Substitute First Revised Eleventh Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

The above tariff sheets reflected PGA rates for the months of May, June and July, 1990 pursuant to the Quarterly PGA filing requirements of § 154.304(a)(2) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before April 11, 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Louis D. Cashell,

Secretary.

[FR Doc. 90-8159 Filed 4-9-90; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. RP89-248-003]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 4, 1990.

Take notice that on March 30, 1990, Mississippi River Transmission Corporation ("MRT"), 9900 Clayton Road, St. Louis, MO 63124 moved into effect certain rates and revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 1-A of its FERC Gas Tariff.

MRT states that the tariff sheets reflected on Appendix A hereto are to become effective April 1, 1990, pursuant to the Commission's October 1, 1989 and January 26, 1990 orders in the above-referenced docket. MRT states that a copy of its motion and the accompanying tariff sheets has been served on all jurisdictional customers and interested state commissions and all persons on the Commission's official service list in Docket No. RP89-248-000.

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, N.E., Washington, DC 20426, in accordance with Sections

385.211 and 385.214 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 April 11, 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. 90-8167 Filed 4-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-2-41-000]

Paiute Pipeline Co.; Proposed Change in FERC Gas Tariff

April 4, 1990.

Take notice that on March 29, 1990, Paiute Pipeline Company (Paiute) tendered for filing, pursuant to part 154 of the Commission's regulations, a Quarterly Adjustment in Rates for jurisdictional gas service rendered to sales customers served under rate schedules affected by and subject to the PGA provisions contained in section 9 of the General Terms and Conditions of Paiute's FERC Gas Tariff, Original Volume No. 1.

Paiute tendered Thirteenth Revised Sheet No. 10, which reflects a decrease of 61.61 cents per dekatherm in commodity rates compared with those in effect on February 1, 1990. Paiute's demand charges do not contain gas costs, and no demand gas costs are included in Paiute's filing.

Paiute states that in accordance with previous Commission orders, Paiute has included in its filing a breakdown of purchases from its suppliers by NGPA category. Paiute states that the projected rates reflected in its filing for purchases from its supplier are not based on NGPA category, but rather upon the total projected supply delivered by supplier into Paiute's sytem.

The proposed effective date for the tendered tariff sheet is May 1, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 11, 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. 90-8165 Filed 4-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST85-623-002]

Panhandle Gas Co.; Notice of Extension Reports

April 3, 1990.

The company listed below has filed an extension report pursuant to section 311 of the Natural Gas policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue sales of natural gas for an additional term of up to 2 years.[1]

The table below lists the name and address of the company selling pursuant to Part 284; the party receiving the gas; the date the extension report was filed; and the effective date of the extension. A "D" indicates a sale by an intrastate pipeline extended under § 284.146.

Lois D. Cashell,

Secretary.

[1] Notice of this extension report does not constitute a determination that a continuation of service will be approved.

EXTENSION LIST

[March 19, 1990]

Docket No.	Seller	Recipient	Date filed	Part 284 subpart	Effective date	Expiration date [2]
ST85-623-002 [1]	Panhandle Gas Co., P.O. Box 1188, Houston, TX 77251.	Florida Gas Transmission Co.	03-19-90	D	01-21-89	06-17-90
ST85-994-002 [1]	Panhandle Gas Co., P.O. Box 1188, Houston, TX 77251.	Transwestern Pipeline Co.	03-19-90	D	03-12-89	06-17-90

[1] This extension report was filed after the date specified by the Commission's Regulations, and shall be the subject of a further Commission order.
[2] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.

[FR Doc. 90-8170 Filed 4-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-96-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 3, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on March 29, 1990 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Sixth Revised Sheet No. 52
Sixth Revised Sheet No. 53
Fifth Revised Sheet No. 54
Sixth Revised Sheet No. 55
Seventh Revised Sheet No. 482
Seventh Revised Sheet No. 483

Texas Eastern states that the purpose of this filing is to establish the procedures pursuant to which Texas Eastern will recover a portion of United Gas Pipe Line Company's (United) take-or-pay charges as proposed by United in Docket No. RP90-91 on March 8, 1990.

The proposed effective date of the above tariff sheets is April 1, 1990.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 10, 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. 90–8154 Filed 4–9–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–2–17–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 4, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on March 30, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Fifth Revised Volume No. 1:

Twenty-First Revised Sheet Nos. 50.1, 50.2, 50.3 and 50.4
Fourteenth Revised Sheet Nos. 50A.1 and 50A.2
Fourteenth Revised Sheet Nos. 50B.1 and 50B.2
Fourteenth Revised Sheet Nos. 50C.1 and 50C.2
Fourteenth Revised Sheet Nos. 50D.1 and 50D.2

The proposed effective date of these revised tariff sheets is May 1, 1990.

Texas Eastern states that these revised tariff sheets filed herewith reflect a Demand-1 and Demand-2 increase of $0.017/dth and $0.0008/dth, respectively, and a commodity increase of $0.0169 per Dt, representing the change in Texas Eastern's projected quarterly cost of purchased gas from Texas Eastern's last scheduled PGA filing effective February 1, 1990 in Docket No. TA90–1–17.

Texas Eastern states that the above-referenced tariff sheets are being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to section 23 (Purchased Gas Cost Adjustment Clause) of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1 to reflect changes in Texas Eastern's rates effective May 1, 1990.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern and applicable state regulatory agencies.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–8160 Filed 4–9–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–2–58–000]

Texas Gas Pipeline Corp.; Proposed Changes in FERC Gas Tariff

April 4, 1990.

Take notice that on March 30, 1990, Texas Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the below listed tariff sheet to be effective May 1, 1990.

Twenty-Ninth Revised Sheet No. 4a

TGPL states that the purpose of the instant filing is to reflect rate adjustments pursuant to Section 12 of the General Terms and Conditions of TGPL's Tariff (Purchased Gas Cost Adjustments). Specifically, Twenty-Ninth Revised Sheet No. 4a reflects an average cost of gas of 188.66¢/Mcf, representing a current adjustment decrease of (13.08¢)Mcf. The tariff sheet also reflects a surcharge adjustment reduction of .19¢/Mcf and a proposed total rate of 217.94¢/Mcf (at 14.65 psia).

Copies of the filing were served upon TGPL's jurisdictional customers.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–8157 Filed 4–9–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–2–18–000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 4, 1990.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on March 30, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Twenty-seventh Revised Sheet No. 10
Twenty-seventh Revised Sheet No. 10A

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to the Quarterly Rate Adjustment provision of the Purchased Gas Adjustment clause of its FERC Tariff and are proposed to be effective May 1, 1990. Specifically, Texas Gas further states that the proposed tariff sheets reflect a commodity rate decrease of $(.2747) per MMBtu, a D–1 demand rate decrease of $(.02) per MMBtu, and a D–2 demand rate decrease of $(.0002) per MMBtu from the rates set forth in the regularly scheduled PGA filed December 29, 1989 (Docket No. TA90–1–18–001).

Texas Gas states that copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–8158 Filed 4–9–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90-3-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

April 4, 1990.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on March 30, 1990, revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, which tariff sheets are included in Appendix A attached to the filing. Such tariff sheets are proposed to be effective May 1, 1990.

Transco states that the proposed tariff sheets reflect a rate decrease of 38.1¢ per dt in the current gas cost portion of commodity rates under the CD, G, OG, PS, ACQ and S-2 Rate Schedules, compared to Transco's last scheduled quarterly PGA filing which became effective February 1, 1990. The instant PGA filing reflects an average cost of gas of 229.4¢ per dt for the quarterly period May 1, 1990 through July 31, 1990.

Transco further states that it has filed the necessary schedules in order to comply with § 154.305 and FERC Form 542. Transco has also filed a 9-track magnetic tape as required by FERC Form 542.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers and interested State Commissions. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8161 Filed 4-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-3-82-000]

Viking Gas Transmission Co.; Notice of Rate Filing Pursuant to Tariff Rate Adjustment Provisions

April 4, 1990.

Take notice that on March 30, 1990, Viking Gas Transmission Company (Viking) filed Sixth Revised Sheet No. 6 to Original Volume No. 1 of its FERC Gas Tariff, to be effective May 1, 1990.

Viking states that the current Purchased Gas Cost Rate Adjustments reflected on Sixth Revised Sheet No. 6 consist of a $.1019 per dekaterm adjustment applicable to the gas component of Viking's sales rates, and a $1.01 cents per dekaterm adjustment applicable to the Demand D-1 component.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before April 11, 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 petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8168 Filed 4-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-3-52-000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

April 4, 1990.

Take notice that Western Gas Interstate Company ("Western"), on March 30, 1989, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date for the tariff sheets is May 1, 1990.

Western states that, among other things, its filing proposes changes to its rates in accordance with the terms of the Purchased Gas Adjustment Clause of its FERC Gas Tariff, which permits recovery of changes in the cost of gas and of unrecovered purchased gas costs.

Western further states that the proposed changes provide for: (1) a decrease in cost under Western's rate Schedule G-N of 9.02 cents per Mcf; and (2) a decrease in cost under Western's Rate Schedule G-S of 8.11 cents per Mcf.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 90-8162 Filed 4-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. PR90-3-000 et al.]

Galaxy Energies, Inc., et al.; Petitions for Rate Approval Filings

Take notice that the following filings have been made with the Commission:

1. Galaxy Energies, Inc.

[Docket No. PR90-3-000]

March 28, 1990.

Take notice that on March 2, 1990, Galaxy Energies, Inc. filed, pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 20 cents per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Galaxy's petition states that it owns and operates segregated, non-interconnecting facilities in a number of states, including Alabama. Galaxy's facilities in Fayette and Lamar Counties, Alabama are the subject of this petition.

Comment date: April 17, 1990, in accordance with Standard Paragraph R at the end of this notice.

2. J-W Gathering Company

[Docket No. PR90-4-000]

March 28, 1990.

Take notice that on March 2, 1990, J-W Gathering Company filed, pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 38.48 cents per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

J-W Gathering's petition states that it owns and operates segregated, non-interconnecting facilities in a number of states, including Arkansas. J-W Gathering's Dorcheat-Macedonia System in Arkansas is the subject of this petition.

Comment date: April 17, 1990, in accordance with Standard Paragraph R at the end of this notice.

3. Coronado Transmission Company

[Docket No. PR90-2-000]

March 28, 1990.

Take notice that on March 2, 1990, Coronado Transmission Company filed, pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 15 cents per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Coronado's petition states that it owns and operates segregated, non-interconnecting facilities in a number of states, including Alabama. Coronado's West Fayette System and East Fayette System in Fayette County, Alabama are the subject of this petition.

Comment date: April 17, 1990, in accordance with Standard Paragraph R at the end of this notice.

Standard Paragraph:

R. Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments. Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-8177 Filed 4-9-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3754-1]

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 Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before May 10, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Machinery Manufacturing, Rebuilding and Maintenance Survey (ICR #1206.01).

Abstract: EPA is surveying facilities engaged in machinery manufacturing, rebuilding and/or maintenance. The survey will take place in two stages. The first stage is a one-page screening questionnaire which will be mailed to 8000 facilities. The second stage is directed at a subset of 1000 facilities and consists of a more detailed data collection portfolio, containing questions on process operations, wastewater generation and treatment, and financial data. The information collected will be used to develop effluent limitation and pretreatment regulations.

Burden Statement: The reporting burden for most respondents to this survey (7,000 facilities, or 88 percent) is estimated at 1 hour, for completion of a one-page screening form. 1,000 facilities (12 percent) will complete a combination of the screening form and a longer questionnaire (80 hours average), for an average total of 81 hours. Since most respondents will receive only the screening form, the weighted average burden per respondent is 11 hours.

Respondents: Businesses engaged in machinery manufacturing, rebuilding and/or maintenance. Included are portions of the following Standard Industrial Classification (SIC) Major Groups: 33 (Primary Metal Industries); 34 (Fabricated Metal Products); 35 (Industrial and Commercial Machinery and Computer Equipment); 36 (Electronic and Other Electrical Equipment and Components); 37 (Transportation Equipment); 38 (Instruments); 39 (Miscellaneous Manufacturing Industries); 40 (Railroad Transportation); 41 (Local and Suburban Transit and Interurban Highway Passenger Transportation); 42 (Motor Freight Transportation and Warehousing); 44 (Water Transportation); 45 (Transportation by Air); 55 (Automotive Dealers and Gasoline Service Stations); 73 (Business Services); 75 (Automotive Repair and Services); and 76 (Miscellaneous Repair Services).

Estimated No. of Respondents: 8,000.

Estimated Total Annual Burden on Respondents: 88,000 hours.

Frequency of Collection: one time.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Dated: April 4, 1990.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 90-8254 Filed 4-9-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3754-2]

Public Water Supply Supervision Program; Program Revision for the State of Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Wisconsin is revising its approved State Public Water Supply Supervision Primary Program. Wisconsin has adopted: (1) Drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987, (52 FR 25690) and (2) public

notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987, (52 FR 41534). EPA has determined that these two sets of State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted within 30 days of the date of this Notice to the Regional Administrator, at the address shown below. If requests which indicate sufficient interest and/or significance are received by the end of this Notice period, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective 30 days from this Notice date.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Wisconsin Department of Natural Resources, Public Water Supply Section, 101 South Webster, P.O. Box 7921, Madison, Wisconsin 53707. State Docket Officer: Mr. Don Swailes, Phone: (608) 266–7093, and;

Safe Drinking Water Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604–1586.

FOR FURTHER INFORMATION CONTACT: Marcia Lynn Damato, Region V, Drinking Water Section at the Chicago address given above, telephone 312/886–6297, (FTS) 886–6297.

(Sec. 1413 of the Safe Drinking Water Act, as amended, (1986) and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: March 30, 1990.

Frank M. Covington,

Acting, Regional Administrator, EPA, Region V.

[FR Doc. 90–8256 Filed 4–9–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Gen Docket No. 90–7; DA 90–507]

Washington, DC Metropolitan Area Public Safety Plan

RIN 3060–AE43

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The FCC is accepting the Washington, DC Metropolitan area's (Region 20's) plan for public safety. By accepting this plan, the FCC enables the licensing of the 821–824/866–869 MHz spectrum for public safety to begin.

EFFECTIVE DATE: March 30, 1990.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, Policy and Planning Branch, Washington, DC 20554, (202) 632–6497.

SUPPLEMENTARY INFORMATION: 1. On November 15, 1989, the Washington, DC Metropolitan Area (Region 20) submitted its public safety plan to the Commission for review. Region 20 is comprised of the State of Maryland, Washington, DC, and Northern Virginia, including Arlington, Fairfax, Fauquier, Loudoun, Prince William and Stafford counties and Alexandria, Fairfax, Falls Church, Manassas and Manassas Park cities. The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in its region.

2. The Region 20 plan was placed on Public Notice for comments on January 25, 1990, 55 FR 2407 (Jan. 24, 1990). The Commission received one comment in this proceeding, from the Baltimore Regional Council of Governments, supporting the Region 20 Plan and urging the Bureaus to accept it.

3. We have reviewed the plan submitted for Region 20 and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987) 53 FR 1022, January 15, 1988, and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in the Washington, DC Metropolitan Area.

4. *Accordingly, it is ordered* that the Public Safety Radio Plan for Region 20 is accepted. Furthermore, licensing of the 821–824/866–869 MHz band in Region 20 may commence immediately.

List of Subjects in the Public Safety Plan

Public Safety, Special emergency, Trunking, Land mobile.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 90–8142 Filed 4–9–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Barclays PLC, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 30, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays PLC*, London, England; Barclays Bank PLC, London, England; Barclays USA Inc., New York, New York; Barclays U.S. Holdings, Inc., New York, New York; and Barclays-American-Corporation, Charlotte, North Carolina; to acquire First Charter Mortgage Company, Concord, North Carolina, and thereby engage in the servicing of mortgage loans pursuant to § 225.23(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Bancorporation of Ohio*, Akron, Ohio; to acquire Peoples Savings Bank, Ashtabula, Ohio, and thereby engage in savings and loan activities pursuant to § 225.23(b)(9) of the Board's Regulation Y.

2. *Huntington Bancshares Incorporated*, Columbus, Ohio; to acquire First Home Federal Savings and Loan Association, Sebring, Florida, and thereby engage in owning, controlling and operating a savings association that will engage only in deposit taking activities and lending and other activities pursuant to § 225.23(b)(9) of the Board's Regulation Y.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Security Corporation*, Salt Lake City, Utah; to acquire BHC Holding, Inc., Philadelphia, Pennsylvania, and thereby engage in brokerage and related activities pursuant to § 225.23(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 4, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-8210 Filed 4-9-90; 8:45 am]

BILLING CODE 6210-01-M

Bourbon Bancshares, Inc., et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifyng specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 30, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Bourbon Bancshares, Inc.*, Paris, Kentucky; to engage *de novo* through its subsidiary, Kentucky Bank, F.S.B., Georgetown, Kentucky, in savings and loan activities pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated*, Detroit, Michigan; to engage *de novo* in management consulting to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Dated: April 4, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-8211 Filed 4-9-90; 8:45 am]

BILLING CODE 6210-01-M

Edward Lee Spencer, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 24, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 100 Marietta Street NW., Atlanta, Georgia 30303:

1. *Edward Lee Spencer*, Auburn, Alabama; to acquire an additional 4.36 percent of the voting shares of Auburn National Bancorporation, Auburn, Alabama, for a total of 16.08 percent, and thereby indirectly acquire Auburn National Bank of Auburn, Auburn, Alabama.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *A. Clifford Edwards*, Lewistown, Montana, and Wayne C. Edwards, Denton, Montana; to acquire 20.10 percent of the voting shares of State Bank of Denton, Denton, Montana.

2. *David A. Erickson*, Linton, North Dakota; to acquire an additional 0.43 percent of the voting shares of Linton Bancshares, Inc., Bismarck, North Dakota, for a total of 11.56 percent, and thereby indirectly acquire First Nation Bank, Linton, North Dakota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *B.D. Fairchild*, Tonkawa, Oklahoma; to acquire an additional 11.2 percent of the voting shares of Service Bancshares, Limited, Tonkawa, Oklahoma, for a total of 21.6 percent, and thereby indirectly acquire the Service Bank of Tonkawa, Tonkawa, Oklahoma.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *James Lynn Davis*, Many, Louisiana; to acquire 55.50 percent of the voting shares of Sabine Bancshares, Inc., Many, Louisiana, and thereby indirectly acquire Sabine State Bank & Trust Company, Many, Louisiana.

Board of Governors of the Federal Reserve System.

Dated: April 4, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–8212 Filed 4–9–90; 8:45 am]

BILLING CODE 6210–01–M

First Colonial/York, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summerizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 30, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Colonia/York, Inc.*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of York Bancshares Corporation, Elmhurst, Illinois, and thereby indirectly acquire York State Bank and Trust Company, Elmhurst, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Community Bank Group, Inc.*, Minnetonka, Minnesota; to become a bank holding company by acquiring 90 percent of the voting shares of Todd County Agency, Inc., Bertha, Minnesota, and thereby indirectly acquire First National Bank of Bertha-Verndale, Bertha, Minnesota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *American Merchants Bancorp, Inc.*, Laguna Hills, California; to become a bank holding company by acquiring 100 percent of the voting shares of Centennial National Bank, Englewood, Colorado.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *ANB Financial Corp.*, Kennewick, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of American National Bank, Kennewick, Washington.

2. *GNW Financial Corporation*, Bremerton, Washington; to become a bank holding company by converting Great Northwest Savings and Loan Association, Bremerton, Washington, to Great Northwest Bank, A Savings Bank, Bremerton, Washington. Applicant would refrain from applying to the Director of the Office of Thrift Supervision to be treated as a savings and loan holding company pursuant to section 10(1) of the Homeowner's Loan Act, in order to be deemed a bank holding company at the time of the proposed conversion. Savings Bank will retain *two* acting indirect subsidiaries which are now under the S&L: (1) Fulmer & Co., Inc., which sells tax deferred annuities as well as automobile, home and commercial insurance; and (2) Projects West, Ltd., which develops single family residential properties, primarily on a speculative basis.

Board of Goverors of the Federal Reserve System, April 4, 1990

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–8213 Filed 4–9–90; 8:45 am]

BILLING CODE 6210–01–M

Pittsburgh National Bank; Establishment of a U.S. Branch of a Corporation Organized Under Section 25(a) of the Federal Reserve Act

An application has been submitted by a corporation organized under § 211.4(c)11 of the Board's Regulation K (12 CFR 211.4(c)(1)), for the Board's approval of the establishment of a branch. The branch would operate as a subsidiary of the parent company. The factors that are to be considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Federal Reserve Bank listed. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing. Any person wishing to comment on the application should submit views in writing to be received not later than April 24, 1990.

A. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, DC 20551

1. *Pittsburgh National Bank*, Pittsburgh, Pennsylvania: to establish a branch, PNC International (New York) Bank, New York, NY, which would operate as a subsidiary of Pittsburgh National Bank. This application may be inspected at the Federal Reserve Bank of Cleveland.

Board of Governors of the Federal Reserve System, April 4, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–8214 Filed 4–9–90; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

RIN 0938–AE11

[BPD–622–PN]

Medicare Program; Withdrawal of Coverage of Extracranial-Intracranial Arterial Bypass Surgery for the Treatment or Prevention of Stroke

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

ACTION: Proposed notice.

SUMMARY: This notice announces the Medicare program's intent to withdraw Medicare coverage of extracranial-intracranial (EC–IC) arterial bypass surgery when used to treat or prevent ischemic cerebrovascular disease of the carotid or middle cerebral arteries. Available evidence does not show that this surgery is effective.

DATES: To assure consideration, comments must be received at the

appropriate address, as provided below, no later than 5 p.m. on June 11, 1990.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–622–PN, P.O. Box 26676, Baltimore, Maryland 21207.

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

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD–622–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Sam Della Vecchia, 301–966–5316.

SUPPLEMENTARY INFORMATION:

I. Background

Administration of the Medicare program is governed by the Medicare statute, title XVIII of the Social Security Act (the Act). The Medicare law provides coverage for broad categories of benefits, including inpatient and outpatient hospital care, skilled nursing facility (SNF) care, home health care, and physicians' services. It places general and categorical limitations on the coverage of the services furnished by certain care practitioners, such as dentists, chiropractors and podiatrists, and it specifically excludes some categories of services from coverage, such as cosmetic surgery, personal comfort items, custodial care, routine physical checkups, and procedures that are not reasonable and necessary for diagnosis or treatment of an illness or injury. The statute also provides direction as to the manner in which payment is made for Medicare services, the rules governing eligibility for services, and the health, safety and quality standards to be met by institutions furnishing services to Medicare beneficiaries.

The Medicare law does not, however, provide an all-inclusive list of specific items, services, treatments, procedures, or technologies covered by Medicare. Thus, except for the examples of durable medical equipment in section 1861(m) of the Act, and some of the medical and other health services listed in sections 1861(s) and 1862(a) of the Act, the statute does not specify medical devices, surgical procedures, or diagnostic or therapeutic services that should be covered or excluded from coverage.

The intention of Congress, at the time the Medicare Act was enacted in 1965, was the Medicare would provide health insurance to protect the elderly or disabled from the substantial costs of acute health care services, principally hospital care. The provision was designed generally to cover services ordinarily furnished by hospitals, SNFs, and physicians licensed to practice medicine. Congress understood that questions as to coverage of specific services would invariably arise and would require a specific decision of coverage by those administering the program. Thus, it vested in the Secretary the authority to make those decisions. Specifically, section 1862(a)(1)(A) of the Act prohibits payment for any expenses incurred for items or services "which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member."

We have interpreted this statutory provision to exclude from Medicare coverage those medical and health care services that are not demonstrated to be safe and effective by acceptable clinical evidence. Effectiveness in this context is defined as the probability of benefit to individuals from a medical item, service, or procedure for a given medical problem under average conditions of use, that is, day-to-day medical practice. On January 30, 1989, we published a proposed rule in the **Federal Register** (54 FR 4302) that describes the process we use in reaching coverage decisions and re-evaluating coverage decisions already made. That proposed rule includes a discussion of our reliance on the Office of Health Technology Assessment (OHTA) in the Public Health Service (PHS) for medical consultation and advice.

In August 1978, we requested a coverage recommendation for EC–IC arterial bypass surgery from the former Office of Health Practice Assessment (OHPA), now OHTA, within PHS. Based upon a recommendation from OHPA dated November 30, 1978, HCFA issued EC–IC coverage criteria in the Coverage Issues Manual [section 35–37 of HCFA Pub. 6) that is presently still applicable. (On August 21, 1989, we published a general notice (54 FR 34555) that lists all current Medicare national coverage decisions that have been issued in HCFA Pub. 6, including section 35–37 (54 FR 34568). We will continue to publish as quarterly notices in the **Federal Register** all coverage decisions that we include in HCFA Pub. 6.) The process used to make the November 30, 1978 recommendation took into account information available at that time. The assessment practice at that time did not include publication of assessments in the **Federal Register**; thus, public input was less than expected had publication occurred. Currently, EC–IC arterial bypass surgery may be covered under Medicare, as recommended by PHS, if performed for symptomatic atherosclerotic disease of the internal carotid artery or middle cerebral arteries. Thus, Medicare covers EC–IC arterial bypass surgery that is performed for one of the following reasons:

1. Occlusion or stenosis of the inaccessible portion of the internal carotid artery presenting with a transient ischemic attack (TIA), prolonged reversible ischemic neurological deficit (PRIND), or completed stroke (CS).

2. Middle cerebral artery stenosis or occlusion presenting with TIA, PRIND, or CS.

3. A longstanding complete internal carotid occlusion considered inoperable by carotid endarterectomy because of difficulties in establishing or maintaining patency.

In addition, Medicare also covers EC–IC arterial bypass surgery for prevention of an expected vascular insufficiency in surgical treatment of a giant aneurysm of the carotid bifurcation or middle cerebral artery and of skull based tumors involving the internal carotid and middle cerebral artery.

On November 7, 1985, the "New England Journal of Medicine" published the results of a controlled clinical trial of the surgical procedure EC–IC anastomosis for the treatment and prevention of stroke. The study was supported by a grant from the United States National Institutes of Helath (NIH) and was in keeping with NIH protocol. Its purpose was to determine whether or not EC–IC arterial bypass surgery would benefit patients with symptomatic atherosclerotic disease of the internal carotid artery. For this study, 1,377 patients participated in a clinical trial in which some were randomly assigned good medical management only while the others were assigned the same medical management with the addition of EC–IC arterial bypass surgery. The study revealed that stroke occurred earlier and more frequently in those patients who had surgery than in those who received good

medical management only, although the difference was not statistically significant. The conclusion was a finding of "no difference" between medical treatment alone and surgical treatment.

In response to the published report, we asked OHTA on December 2, 1985 to reassess the appropriateness of current Medicare instructions that permit coverage for EC–IC arterial bypass surgery under limited circumstances. OHTA evaluated the report on the clinical trial, which some critics asserted lacked validity. OHTA also considers the recommendations of the American Academy of Neurology and the NIH.

The American Academy of Neurology advised PHS it considers EC–IC bypass surgery for the treatment or prevention of stroke to be experimental. According to the NIH, the EC–IC bypass study failed to demonstrate that EC/IC arterial bypass surgery is an improvement over medical management in reducing the risk of stroke or stroke-related death. The NIH has concluded that surgical bypass is ineffective in preventing stroke in patients with atherosclerotic arterial disease in the carotid or middle cerebral artery. The NIH also noted that the clinical trial had identified a sub-group of patients in whom the procedure is harmful.

On August 3, 1988, OHTA advised us that EC–IC arterial bypass surgery should not be covered when it is performed to treat or prevent ischemic cerebrovascular disease of the carotid or middle cerebral arteries. The premise that this procedure, which bypasses narrowed arterial segments, would improve blood supply to the brain and reduce the risk of having a stroke has not been demonstrated to be of any more value than no surgical intervention.

II. Provisions of this Proposed Notice

Based on the recent OHTA recommendation, there appears to be no probable benefit from EC–IC bypass surgery for the treatment or prevention of stroke. Therefore, we propose to withdraw Medicare coverage of this surgery on the basis that it does not meet HCFA's criteria for effectiveness. In keeping with our policy for making national coverage determinations, we are publishing this proposed notice to announce our intention to withdraw coverage.

We propose to exclude EC–IC arterial bypass surgery when used to treat: (1) Occlusion or stenosis of the inaccessible portion of the internal carotid artery presenting with a transient ischemic attack (TIA), prolonged reversible ischemic neurological deficit (PRIND), or completed stroke (CS); (2) middle cerebral artery stenosis or occlusion presenting with TIA, PRIND, or CS; or (3) a longstanding complete internal carotid occlusion considered inoperable by carotid endarterectomy because of difficulties in establishing or maintaining patency. In short, EC–IC surgery for symptomatic atherosclerotic disease of the internal carotid artery or middle cerebral arteries (stroke) would no longer be covered under Medicare. We would withdraw coverage for this surgery beginning 30 days after the date the final notice is published in the **Federal Register**. Upon publication, we would issue instructions to HCFA intermediaries and carriers.

Coverage of EC–IC would continue for prevention of an expected vascular insufficiency as a result of surgical treatment of a giant aneurysm of the carotid bifurcation or middle cerebral artery and of skull based tumors involving the internal carotid and middle cerebral artery. While the provisions of this notice would not change any existing Medicare regulations, they would affect section 35–37 of the Coverage Issues Manual.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed notice that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed notice does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this proposed notice is not a major rule under E.O. 12291, and an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians are treated as small entities; States and individuals are not considered small entities.

In 1986, according to HCFA's Part B Medicare Annual Data system (BMAD), Medicare paid for 174 surgical procedures for EC–IC arterial bypass surgery for the treatment or prevention of stroke at a median charge of $2,002 for the physician surgical service. In its July 1988 report entitled "Medicare Coverage of Extracranial-Intracranial Arterial Bypass Surgery" (Report #A–09–87–00005), the OIG states that the 790 surgeries performed in calendar year 1985 cost Medicare an estimated $10.7 million. This estimate included the allowed charges of surgeons, anesthetists, and assistant surgeons, as well as hospitalization charges. Although only a small number of procedures are performed annually, we realize that there may be a few physicians who perform the majority of these procedures and who may be substantially affected by the withdrawal of Medicare coverage. However, a significant number of physicians would not be affected by this proposed notice. For these reasons, we have determined, and the Secretary certifies, that this proposed notice would not meet RFA criteria and therefore we are not preparing an initial regulatory flexibility analysis.

Additionally, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural hospital impact statement since we have determined, and the Secretary certifies that this proposed notice would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Response to Comments

Because of the large number of comments we receive on proposed notices, we cannot acknowledge or respond to them individually. However, in preparing the final notice, we will consider all comments received timely and respond to the major issues in that notice.

V. Collection of Information Requirements

This notice contains no information collection requirements. Consequently, this notice need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Authority: Sec. 1862(a) of the Social Security Act (42 U.S.C. 1395y(a)).

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: November 13, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: February 17, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-8187 Filed 4-9-90; 8:45 am]

BILLING CODE 4120-03-M

[OACT-33-N]

Medicare Program; Monthly Supplementary Medical Insurance Premium Beginning January 1, 1990

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

ACTION: Notice.

SUMMARY: This notice announces the monthly premium rate, as changed by the Omnibus Budget Reconciliation Act of 1989 and the Medicare Catastrophic Coverage Repeal Act of 1989, for aged (age 65 or over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for calendar year 1990. The 1990 SMI premium will be $28.60. This notice also announces the repeal of the monthly catastrophic coverage premium for aged and disabled enrollees.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Carter S. Warfield, (301) 966-6396.

SUPPLEMENTARY INFORMATION:

I. Background

On October 27, 1989, we published a notice in the **Federal Register** (54 FR 43862) announcing the monthly actuarial rates, monthly premium rate, and catastrophic coverage premium rate for aged (age 65 or over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for 1990. (On December 7, 1989 (54 FR 50581), we issued several minor corrections to the notice.) The amounts contained in the October notice were based on laws in effect at the time we were required to make the determinations.

Specifically, section 1839 of the Social Security Act (the Act) requires us to determine in September of each year the monthly SMI premium rate to be paid by aged and disabled enrollees for the calendar year beginning the following January. Beginning with the passage of section 203 of Public Law 92-603 (the Social Security Amendments of 1972), and until the passage of section 124 of Public Law 97-248 (the Tax Equity and Fiscal Responsibility Act of 1982), the premium rate was limited by section 1839 of the Act to the lesser of the monthly actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly title II (cash payments) social security benefits.

Section 124 of Public Law 97-248 changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees. Section 606 of Public Law 98-21, section 2302 of Public Law 98-369, section 9313 of Public Law 99-272, and section 4080 of Public Law 100-203 extended through 1989 the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees. This extension was to expire at the end of 1989. Therefore, the monthly premium rate announced in the October 27, 1989 notice was limited to the lesser of the monthly actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly title II (cash payments) social security benefits. The premium rate published in the notice for 1990 was $29.00.

Section 211(a) of the Medicare Catastrophic Coverage Act of 1988 (MCCA) (Pub. L. 100-360) added section 1839(g) to the Act to require Part B beneficiaries to pay a monthly premium beginning January 1989 to offset part of the cost of catastrophic coverage. The statute specified the amount of the monthly premium through 1993. Although not required by statute to do so, we also announced to the public in the October 27, 1989 notice the statutorily specified premium of $4.90 for 1990.

II. Provisions of this Notice

A. Monthly SMI Premium

Section 6301 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), enacted December 19, 1989, extended the provision that the monthly SMI premium be based on 50 percent of the monthly actuarial rate for aged enrollees through the end of 1990. Consequently, the 1990 monthly SMI premium rate will be based on 50 percent of $57.20, the monthly actuarial rate for aged enrollees for 1990 announced on October 27, 1989. (See the notice for a statement of the actuarial assumptions and bases employed in determining the monthly actuarial rates.) Therefore, the standard monthly premium rate for both aged and disabled enrollees for calendar year 1990 is $28.60, which is 50 percent of the monthly actuarial rate for aged enrollees for this period.

B. Catastrophic Coverage Premium

On December 13, 1989, Public Law 101-234, the Medicare Catastrophic Coverage Repeal Act of 1989 was enacted. Section 202 of Public Law 101-234 repeals section 211(a) of Public Law 100-360, which contained the provision for a catastrophic coverage premium. Consequently, the provisions under section 1839(g) of the Act are also repealed. Therefore, beginning January 1, 1990, there is no longer a catastrophic coverage premium for beneficiaries to pay in addition to the monthly SMI premium.

C. Rebate of Premiums for 1990

Due to the late enactment of Public Law 101-234 and Public Law 101-239, the Social Security Administration was unable to implement the legislative changes in beneficiary premiums by January 1, 1990. Consequently, Medicare beneficiaries whose premiums are deducted from monthly social security benefits will find that the deductions are not based on the most recent premiums presented in this notice. To remedy the situation, these beneficiaries were paid a $10.60 refund in February 1990. A second refund is planned for April 1990 to complete repayment of all premium overpayments deducted from benefit checks in January through April 1990.

III. Regulatory Impact Statement

The standard monthly SMI premium rate of $28.60 for all enrollees during calendar year 1990 is 2.5 percent higher than the $27.90 monthly premium amount for the previous financing period. The estimated cost of this increase over the 1989 premium to the approximately 33.0 million SMI enrollees will be about $277 million for calendar year 1990.

This notice merely announces amounts required by section 1839 of the Act. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined, and the Secretary certifies, that no analyses are

required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612) or section 1102(b) of the Act.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: January 26, 1990.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: February 13, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90–8186 Filed 4–9–90; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

Consensus Development Conference on Adjuvant Therapy for Patients With Colon and Rectum Cancer

Notice is hereby given of the NIH Consensus Development Conference on "Adjuvant Therapy for Patients with Colon and Rectum Cancer" which will be held on April 16–18, 1990 in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the National Cancer Institute and the NIH Office of Medical Applications of Research.

Large bowel adenocarcinoma is a major public health problem in the United States. More than 150,000 new cases of colon and rectum cancer will be diagnosed in 1990, and approximately 75 percent will have a primary surgical resection with the hope of complete tumor eradiction. Despite this high resectability rate, nearly half of all colorectal cancer patients die of metastatic tumor.

The need for effective adjuvant therapy is obvious. Over the past three decades, many studies have failed to identify the benefits of adjuvant therapies, and claims of efficacy have often been viewed with skepticism by the practicing physician. However, more recently, new information has been generated from carefully designed and performed clinical trials. Several studies purport to demonstrate disease-free and overall survival benefits for selected groups of patients.

In order to judge the relative merits of several adjuvant treatment programs, this Consensus Development Conference will bring together surgeons, gastroenterologists, medical oncologists, pathologists, radiation oncologists, statisticians, patients, and the public to examine these issues.

Following a day and a half of presentations by experts and discussion by the audience, an independent Consensus Panel will weigh the scientific evidence and write a draft statement in response to the following questions:

—Who is at risk for recurrence after colon and rectum cancer resection?
—Is there effective adjuvant therapy for patients with colon cancer?
—Is there effective adjuvant therapy for patients with rectum cancer?
—What are the directions for future research?

On the third day of the conference, following deliberation of new findings or evidence that might have been presented during the meeting, the Consensus Panel will present its final consensus statement.

Information on the program may be obtained from: Kathleen Isner, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468–6338.

Dated: April 3, 1990.

William Raub,

Acting Director, NIH.

[FR Doc. 90–8181 Filed 4–9–90; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Meeting of the Vision Research Program Planning Subcommittee, Forum II, of the National Advisory Eye Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Vision Research Program Planning Subcommittee, Forum II, of the National Advisory Eye Council. The meeting will be held on April 18–19, 1990, at the Guest Quarters Hotel, 335 Wisconsin Avenue, Bethesda, MD 20814.

This entire meeting will be open to the public from 9:00 a.m. until 4:00 p.m. on April 18 and 19, to discuss current policy issues and provide input and guidance to the Vision Research Program Planning Subcommittee concerning the development of Institute policies and programs. Attendance by the public will be limited to space available.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Anterior Segment Diseases Research; 13.871, Strabismus, Amblyopia, and Visual Processing Research; National Institutes of Health)

Dated: April 4, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–8239 Filed 4–9–90; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency for Health Care Policy and Research; Reassessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating a reassessment of the safety, clinical effectiveness, appropriateness, and use of bone mass measurements.

In response to comments received regarding their proposed notice in the **Federal Register** on September 8, 1989 to withdraw coverage of certain bone mineral density studies, the Health Care Financing Administration has requested an assessment of the safety and effectiveness of single and dual photon absorptiometry, radiographic absorptiometry, quantitative computed tomography, and dual energy X-ray absorptiometry.

Specifically, we wish to evaluate the use of bone mass measurements for: (1) Patients receiving long-term steroid therapy, (2) estrogen deficient women, (3) patients with primary asymptomatic hyperparathyroidism, (4) patients with vertebral abnormalities, and (5) End Stage Renal Disease patients.

Where effective methods exist for bone mass measurements in the patient categories discussed above, this assessment seeks to develop (1) patient selection criteria, and (2) measurement criteria for determining when appropriate treatment should be instituted, i.e., at what point do these tests identify the need for treatment. We also seek to determine whether the results of any of these particular tests would alter a given course of therapy for a particular patient.

This assessment also seeks to determine if one procedure (method) for bone mass measurements is more appropriate for patients with a specific clinical condition as opposed to another. Also, we wish to determine if one site for bone mass measurements is more appropriate for patients with a specific clinical condition as opposed to another, or whether bone mass measurements at one site can be used to predict the probability of fractures at other sites. Given that it is difficult to detect small changes in bone mass over short periods of time, what role should precision play

in choosing the appropriate method for measuring bone mass. Information regarding the cost of the various procedures for use at different sites is also being sought.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety, clinical effectiveness, and appropriate uses of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. The information being sought is a review and assessment of past, current, and planned research related to this technology, as well as a bibliography of published, controlled clinical trials and other well designed clinical studies. Information related to the characterization of the patient population most likely to benefit from it, as well as on clinical acceptability and the effectiveness of this technology and extent of use, are also being sought. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than July 16, 1990 or within 90 days from the date of publication of this notice.

For purposes of evaluation by the interested scientific community, it is sometimes helpful to include attributions for the comments cited in OHTA assessments. In addition, information provided in response to notices such as this one are often requested by interested individuals or groups. Without a written consent, disclosure of the names of individuals or other information that might result in the identification of individuals who provide comments will be kept confidential in accordance with 42 U.S.C. 299a–1(c) or Public Health Service Act section 903(c). Please indicate as part of the response whether disclosure is acceptable.

Written material should be submitted to: Agency for Health Care Policy and Research, Office of Health Technology Assessment, 5600 Fishers Lane, room 18–40, Rockville, MD 20857, (301) 443–4990.

Further information is available from Mr. Martin Erlichman, Senior Health Science Analyst, at the above address or by telephone at (301) 443–4990.

Dated: March 28, 1990.

Donald Goldstone,

Acting Director, Office of Health Technology Assessment, Agency for Health Care Policy and Research.

[FR Doc. 90–8185 Filed 4–9–90; 8:45 am]

BILLING CODE 4160–17–M

Agency for Health Care Policy and Research; Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), reannounces that it is coordinating an assessment of the safety and effectiveness of intermittent positive pressure breathing (IPPB).IPPB therapy consists of the use of a pressure-limited respirator to deliver a gas with or without humidity and/or an aerosol solution at various intervals to assist a patient in breathing.

Information is sought as to the risks and benefits associated with the use of this mode of treatment. Information is also sought pertaining to the advantages and disadvantages of IPPB in the treatment of acute bronchospasm or chronic obstructive pulmonary disease or other forms of lung disease. We also seek information regarding other uses of IPPB either as a therapeutic modality or as a preventive measure against pulmonary complications following abdominal surgery. Specifically, we wish to determine if this treatment method offers any advantages over using a compression nebulizer or a metered-dose inhaler with or without B-agonists. We also seek information about IPPB clinical results as compared to deep breathing exercises or incentive spirometry as well as a comparison of complications with the use of a hand-held nebulizer. Finally, are there conditions or circumstances under which IPPB is not only a reasonable and necessary therapy but is the preferred therapy?

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety, clinical effectiveness, and appropriate uses of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. The information being sought is a review and assessment of past, current, and planned research related to this technology, as well as a bibliography of published, controlled clinical trials and other well designed clinical studies. Information related to the characterization of the patient population most likely to benefit from it as well as on clinical acceptability and the effectiveness of this technology and extent of use, are also being sought. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than July 3, 1990 or within 90 days from the date of publication of this notice.

For purposes of evaluation by the interested scientific community, it is sometimes helpful to include attributions for the comments cited in OHTA assessments. In addition, information provided in response to notices such as this one are often requested by interested individuals or groups. Without a written consent, disclosure of the names of individuals or other information that might result in the identification of individuals who provide comments will be kept confidential in accordance with 42 U.S.C. 299a –1(c) or Public Health Service Act section 903(c). Please indicate as part of the response whether disclosure is acceptable.

Written material should be submitted to: Director, Office of Health Technology Assessment, 5600 Fishers Lane, room 18–40, Rockville, MD 20857, (301) 443–4990.

Dated: March 28, 1990.

Donald Goldstone,

Acting Director, Office of Health Technology Assessment, Agency for Health Care Policy and Research.

[FR Doc. 90–8184 Filed 4–9–90; 8:45 am]

BILLING CODE 4160–17–M

Agency for Health Care Policy and Research; Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating a reassessment of the current Medicare criteria for the use of sleep disorder clinics.

Specifically, we are interested in the medical indications for, and the effectiveness of, sleep disorder diagnostic testing and therapeutic services. Under current Medicare policy, coverage is provided for diagnostic testing in a sleep disorder clinic when narcolepsy, sleep apnea, or impotence are suspected conditions. This assessment will not address diagnostic nocturnal penile tumescence testing for impotence in a sleep disorder clinic.

As part of this reassessment, OHTA will examine the question of whether a physician must be present whenever diagnostic tests are performed in a sleep disorder clinic. OHTA is seeking information regarding the safety and effectiveness of this procedure when it is performed without the direct supervision of a physician.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety, clinical effectiveness, and appropriate uses of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. The information being sought is a review and assessment of past, current, and planned research related to this technology, as well as a bibliography of published, controlled clinical trials and other well designed clinical studies. Information related to the characterization of the patient population most likely to benefit from it, as well as on clinical acceptability and the effectiveness of this technology and extent of use, are also being sought. Any person or group wishing to support OHTA with information relevant to this assessment should do so in writing no later than July 5, 1990 or within 90 days from the date of publication of this notice.

For purposes of evaluaton by the interested scientific community, it is sometimes helpful to include attributions for the comments cited in OHTA assessments. In addition, information provided in response to notices such as this one are often requested by interested individuals or groups. Without a written consent, disclosure of the names of individuals or other information that might result in the identification of individuals who provide comments will be kept confidential in

For purposes of evaluation by the interested scientific community, it is sometimes helpful to include attributions for the comments cited in OHTA assessments. In addition, information provided in response to notices such as this one are often requested by interested individuals or groups. Without a written consent, disclosure of the names of individuals or other information that might result in the identification of individuals who provide comments will be kept confidential in accordance with 42 U.S.C. 299a–1(c) or Public Health Service Act Section 903(c). Please indicate as part of the response whether disclosure is acceptable.

Written material should be submitted to: Director, Office of Health Technology Assessment, 5600 Fishers Lane, room 18–40, Rockville, Maryland 20857, (301) 443–4990.

Dated: March 29, 1990.

Donald Goldstone,

Acting Director, Office of Health Technology Assessment, Agency for Health Care Policy and Research.

[FR Doc. 90–8183 Filed 4–9–90; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–90–3037; FR–2726–N–01]

Certification of Substantially Equivalent Agencies—Annual Notice and Proposed Withdrawal of Hawaii

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: As required by 24 CFR 115.6(f), this document announces (1) an updated consolidated list of all certified agencies; (2) a list of all agencies whose certification has been withdrawn since publication of the previous notice; (3) a list of agencies with respect to which notice of denial of recognition has been published under § 115.7(c) since the issuance of the previous Notice; (4) a list of agencies with respect to which a notice of comment has been published under § 115.6(b) and whose status remains pending; (5) a list of agencies for which notice of proposed withdrawal of certification has been published under § 115.8(c) and whose withdrawal remains pending; and (6) a list of agencies with which an agreement for interim referrals or other utilization services under § 115.11 and remains in effect. Additionally, as required under § 115.8(c), this Notice announces the proposed withdrawal of Hawaii. The Department is seeking comments from interested parties within 30 days of the publication date in accordance with 24 CFR 115.8(e).

DATES: Comment Due Date: May 10, 1990.

ADDRESS: Interested persons are invited to submit comments regarding this Notice to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying from 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile (FAX) machine. The telephone number of the FAX receiver is (202) 755–2575. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Docket Clerk at ((202) 755–7084).

FOR FURTHER INFORMATION CONTACT: Marion F. Connell, Director, Programs Division, Office of Fair Housing Enforcement and section 3 Compliance, 451 Seventh Street, room 5208, SW Washington, DC 20410–2000.

SUPPLEMENTARY INFORMATION:

Background

Under the Fair Housing Act (42 U.S.C. 3600–3620), HUD is authorized to investigate complaints alleging discrimination in housing. Section 810(f) of that Act requires the Department to refer complaints to agencies that have "substantially equivalent" fair housing standards, as determined and certified by the Department. The certification standards are codified by the Department at 24 CFR part 115. This document announces, among other things, the annual list of certified agencies under § 115.6(f), and the proposed withdrawal of certification of the agency administering the Fair Housing law of Hawaii in accordance with § 115.8(c).

Section 115.6(c), provides that the Department must enter into a written agreement with a State or Locality wishing to be certified as having substantially equivalent fair housing laws. The responsible officials of Hawaii have refused to endorse the written agreement despite various efforts on the part of the Department. Therefore, the Department proposes to withdraw recognition of equivalency from the State of Hawaii. Public comments on this proposal are invited.

THIS DOCUMENT: In this document, the Department announces that the agencies administering the fair housing laws of the following States and Localities are certified under section 810(f) of the Act and 24 CFR 115.6(d):

States (36)

Alaska
California
Colorado
Connecticut
Delaware
Florida
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Dakota
Tennessee
Virginia
Washington
West Virginia
Wisconsin

Localities (79)

Alaska
Anchorage
Arizona
Phoenix
Connecticut
New Haven
District of Columbia
Washington
Florida
Brown County
Clearwater
Dade County (Metropolitan)
Escambia County
Gainesville
Hillsborough County
Jacksonville
Orlando
Pensacola
Pinellas County
St. Petersburg
Tallahassee
Tampa
Illinois
Bloomington
Danville
Elgin
Evanston
Hazel Crest
Park Forest
Springfield
Urbana
Indiana
Columbus
East Chicago
Fort Wayne
Gary
Hammond
Marion
South Bend
Iowa
Des Moines
Dubuque
Iowa City
Kansas
Kansas City
Lawrence
Olathe
Salina
Kentucky
Jefferson County
Lexington-Fayette
Maryland
Howard County
Montgomery County
Prince Georges County
Massachusetts
Boston
Cambridge
Minnesota
Minneapolis
St. Paul
Missouri
Kansas City
St. Louis
Nebraska
Lincoln
Omaha
New York
New York City
Rockland County
North Carolina
Asheville
Charlotte
Meckleburg County
New Hanover County
Raleigh
Winston-Salem
Ohio
Dayton
Pennsylvania
Allentown
Harrisburg
Philadelphia
Pittsburgh
Reading
York
South Dakota
Sioux Falls
Tennessee
Knoxville
Texas
Fort Worth
Virginia
Arlington County
Washington
King County
Seattle
Tacoma
West Virginia
Beckley
Charleston
Huntington
Wisconsin
Beloit
Madison

In addition, this Notice announces that no certification has been withdrawn since publication of the previous notice; no notice of denial of certification has been published since the previous notice; no agencies with respect to which a notice of comment has been published under § 115.6(b) have pending requests for certification; and the Department has proposed to withdraw the agency administering the fair housing law of the following States and Localities from the list of certified agencies. This withdrawal remains pending.

States	Localities
Hawaii	None.

Finally, this notice announces that agencies administering the fair housing laws of the following States and Localities have entered into an agreement for interim referrals on September 12, 1988. These agencies are therefore considered to be certified (for a limited period):

States	Localities
Georgia and Ohio	Lee County, FL, St. Joseph, MO; Albany, NY; Durham, NC; Greensboro, NC.

Dated: April 3, 1990.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 90-8245 Filed 4-9-90; 8:45 am]

BILLING CODE 4210-28-M

Office of the Secretary

[Docket No. N-90-3024; FR-2746-N-01]

Federally Mandated Exclusions From Income

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: Under several HUD programs (Rent Supplement under part 215, Mortgage Insurance and Interest Reduction Payment for Rental Projects under part 236, section 8 Housing Assistance programs and the Public and Indian Housing programs), the definition of income does not include amounts of other benefits specifically exempted by Federal law. Periodically, HUD announces the list of benefits to excluded. This notice reports that payments received from the Agent Orange Settlement Fund are not to be

considered as income or as resources for purposes of the above-mentioned programs.

DATES: Effective Date: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: For Rent Supplement, section 236, and section 8 programs administered under 24 CFR parts 880, 881, and 883 through 886: James J. Tahash, Director, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street, Washington, DC 20410, telephone-Voice: (202) 426–3944, TDD: (202) 755–3938.

For section 8 programs administered under 24 CFR part 882 (Existing Housing, Moderate Rehabilitation) and under part 887 (Vouchers), and for the Public and Indian Housing programs: Edward Whipple, Chief, Rental and Occupancy Branch, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, Washington, DC 20410, telephone-Voice: (202) 426–0744, TDD: (202) 245–0850. (These are not toll-free numbers.)

Any member of the public who becomes aware of any other Federal statute which he or she believes requires any other benefit to be excluded from consideration as income in these programs should submit information about the statute and the benefit program to one of the persons listed as contact or to the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: Under certain HUD subsidized housing programs, annual income is a factor in determining eligibility and level of benefits. Annual income is broadly defined as the anticipated total income from all sources received by every family member. Traditionally, HUD excludes certain types of benefits from applicants' and participants' annual income. In addition under 24 CFR 215.21(c)(10), 236.3(c)(10), 813.106(c)(10) and 913.106(c)(10), the definition of annual income excludes amounts specifically excluded by any other Federal statute from consideration for purposes of determining eligibility for or level of benefits to be received under the HUD programs in question.

On December 6, 1989, Senate Bill 892 was signed into law. (Pub. L. No. 101–201, 103 Stat. 1795 (1989).) This new law excludes payments from the Agent Orange Settlement Fund from being considered as income or resources under federal means-tested programs. The HUD programs in question fall under the definition of "federal means-tested programs". Hence, for purposes of these programs, no Agent Orange payments are to be considered as income or resources.

Congress expressly provided that the exclusionary treatment given to Agent Orange payments be retroactive to January 1, 1989. Therefore, no one should be penalized for receiving any payments made on or after the effective date. Implementation of this new exclusion from income provision will require PHAs and owners, as soon as they are able to do so, to make adjustments to income and rent determinations retroactive to January 1, 1989, for former and current participants who receive Agent Orange payments.

In addition, PHAs and owners will need to determine which applicants have been denied admission to these programs since January 1, 1989 because their annual income was too high because it included payments under the Agent Orange Settlement fund. Since these payments are made to Veterans of the Vietnam War, PHAs and Owners can limit their efforts to applicants who are in the appropriate age group to have served in the armed services during that conflict. These past applicants need to be informed of their right to request reconsideration of the denial of eligibility.

The Department published its last updated list of federally mandated exclusions from income on September 27, 1989. (54 FR 39585). This notice supersedes that announcement.

The following list of program benefits is the comprehensive list of benefits that currently qualify for the income exclusion stated in 24 CFR 215.21(c)(10), 236.3(c)(10), 813.106(c)(10) and 913.106(c)(10):

(i) Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4636);

(ii) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b));

(iii) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);

(iv) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));

(v) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 495e);

(vi) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(vii) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b));

(viii) Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94–540, 90 Stat. 2503–04);

(ix) The first $2,000.00 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407–08) or from funds held in trust for an Indian tribe by the Secretary of the Interior (25 U.S.C. 117b, 1407);

(x) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work-study program, or scholarships funded under the Bureau of Indian Affairs student Assistance programs, that are made available to cover the cost of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of a student at an educational institution (20 U.S.C. 1087uu);

(xi) Payments received from programs funded under title V of the Older Americans Act of 1965 (42 U.S.C. 3056(f)); and

(xii) Payments received after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the *In Re Agent Orange* product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

Dated: March 30, 1990.

Jack Kemp,

Secretary.

[FR Doc. 90–8246 Filed 4–9–90; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for Decurrent False Aster for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft Recovery Plan for the Decurrent False Aster (*Boltonia decurrens*). The plant is found on 18 sites in nine counties along the Illinois River in Illinois, and 12 sites in St. Charles County along the Mississippi River in Missouri. In Illinois, five of the 18 sites are on State property, three are on National Wildlife Refuges,

and the remaining 10 sites are on private property. In Missouri, all known populations of *Boltonia decurrens* occur in either the Spatterdock Bottoms or Columbia Bottoms. Although there are some privately owned sites, most sites are under the jurisdiction of the St. Louis District, U.S. Army Corps of Engineers. The Service solicits review and comment from the public on this draft Plan.

DATES: Comments on the draft Recovery Plan must be received on or before June 11, 1990, to receive consideration by the Service.

ADDRESSES: Copies of the Recovery Plan will be available for public inspection, by appointment, during normal business hours at the following Service offices:

1. Regional Division of Endangered Species, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, (612/725–3276).
2. Fish and Wildlife Enhancement Field Office, 608 East Cherry Street, Columbia, Missouri 65201, (314/875–5374).
3. Fish and Wildlife Enhancement Field Office, Route 3, Box 198A, Marion, Illinois 62959, (618/997–5491).

Written comments and materials regarding the Plan should be addressed to Daniel L. James at the Regional Office address listed above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the Regional Office address. A copy of the Recovery Plan can be obtained at the Regional Office address.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel L. James, U.S. Fish and Wildlife Service, Regional Division of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, (612/725–32767 or FTS 725–3276).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implememnting approved Recovery Plans.

Boltonia decurrens was listed as a threatened species under the Act on November 14, 1988 (53 FR 45861). A wet prairie perennial, this plant reproduces both vegetatively, by producing basal shoots, and sexually. It appears to require abundant light. The habitat is listed as disturbed alluvial ground and open muddy shores of the floodplain forest along the Mississippi and Illinois Rivers. The plant presently grows in these habitats but is most common in disturbed lowland areas where it appears to be dependent on human disturbance such as periodic cropping, which controls plant succession and keeps the habitat relatively open.

Boltonia decurrens is threatened by habitat destruction and modification. Wet prairies and natural marshes are essentially eliminated within the species' range. Many natural lakes have been drained and converted to cropland as well. Shore habitats have been modified by heavy siltation and altered flooding regimes. Extensive row crop agriculture in the watershed and the numerous levee systems on the floodplain are believed responsible for these problems.

A draft Recovery Plan has been prepared for *Boltonia decurrens* and is available for review. Priority actions for recovery include: (1) Research on the requirements of a naturally reproducing population, (2) locating and protecting as many existing populations as practical, (3) enhancing existing populations through management practices where appropriate, and (4) establishing additional populations in suitable protected habitat.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 29, 1990.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 90–8215 Filed 4–9–90; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. app. 1 s 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held Tuesday, May 8, 1990.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting will convene at Park Headquarters, Marconi Station, South Wellfeet, Massachusetts at 10 a.m. for the following reasons:

1. Swearing-In of New Commissioners,
2. Overview of Cape Cod National Seashore,
3. Recommendation of Officers to the Secretary,
4. Opportunity for Public Comments,
5. Other Business.

The meeting is open to the public. It is expected that 50 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Dated: April 2, 1990.

Herbert Olsen,

Acting Regional Director.

[FR Doc. 90–8277 Filed 4–9–90; 8:45 am]

BILLING CODE 4310–70–M

Lake Clark National Park and Preserve; Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Lake Clark National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Lake Clark National Park announce a forthcoming meeting of the Subsistence Resource Commission for Lake Clark National Park and Preserve.

The following agenda items will be discussed:

(1) Introduction of guests.

(2) Review of minutes from last meeting.

(3) Old businesss.

(4) Review draft regulation of subsistence hunting roster plan.

(5) Review progress on preparation of rosters for Iliamna, Newhalen, Nondalton, Port Alsworth.

(6) Status report on Alaska Supreme Court ruling.

(7) New business.

DATES: The meeting will begin at 9:00 a.m. on Monday, May 7, 1990 and conclude that afternoon.

ADDRESSES: The meeting will be held in the multi-purpose room of the Nondalton School, Nondalton, Alaska.

FOR FURTHER INFORMATION CONTACT: Bob Gerhard, Management Assistant, Lake Clark National Park and Preserve, 222 West 7th Avenue, #61, Anchorage, Alaska 99513–7539. Phone (907) 271–3751.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, (Pub. L. 96–487), and operates in accordance with the provisions of the Federal Advisory Committees Act.

David B. Ames,

Acting Regional Director.

[FR Doc. 90–8276 Filed 4–9–90; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 31, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by April 25, 1990.

Patrick Andrus,

Acting Chief of Registration, National Register.

FLORIDA

Volusia County

New Smyrna Beach Historic District, Roughly bounded by Riverside Dr., US 1, Ronnoc Ln., and Smith St., New Smyrna Beach, 90000714

IDAHO

Latah County

Freeze Community Church, 1 mi. W of US 95, Potlatch, 90000679

Valley County

Southern Idaho Timber Protective Association (SITPA) Buildings, 1001 State St., McCall, 90000680

Southern Idaho Timber Protective Association (SITPA) Buildings, SR 55, Smiths Ferry, 90000681

MASSACHUSETTS

Dukes County

Tucker, Dr. Harrison A., Cottage, 42 Ocean Ave., Oak Bluffs, 90000678

Union Chapel, Bounded by Circuit, Kennebec, and Narragansett Aves. and Grove St., Oak Bluffs, 90000677

Essex County

Cable, Benjamin Stickney, Memorial Hospital, Jct. of SR 1A and SR 133, Ipswich, 90000683

Our Lady of Good Voyage Church, 136—144 Prospect St. and 2–4 Taylor St., Gloucester, 90000706

NEW YORK

Erie County

Forest Lawn Cemetery, 1411 Delaware Ave., Buffalo, 90000688

Monroe County

St. Luke's Episcopal Church, 17 Main St., Brockport, 90000686

Montgomery County

Nellis Tavern, SR 5, St., Johnsville, 90000685

Nassau County

Justice Court Building, Jct. of Town Path Ext. and Glen Cove Hwy., Glen Cove, 90000691

Niagara County

St. John's Episcopal Church, 117 Main St., Youngstown, 90000687

Onondaga County

Gleason, Lucius, House, 314 Second St., Liverpool, 90000693

Orange County

Horton, Webb, House, 115 South St., Middletown, 90000690

Oswego County

Sweet Memorial Building, 821 Main St., Phoenix, 90000695

Rockland County

Tappan Historic District, Roughly bounded by Main St./Kings Hwy., Andre Ave. and New York Central RR, Tappan, 90000689

Wayne County

LOTUS (schooner), Trestle Landing Marina, Co. Rt. 14 at Sentell Rd., Sodus Point, 90000694

Westchester County

Mt. Zion Methodist Church, Primrose St. S of Reis Park, Somers, 90000692

OREGON

Marion County

Livesley, T.A., House, 533 Lincoln St., S., Salem, 90000684

PENNSYLVANIA

Allegheny County

Homestead Historic District, Eighth Ave. area roughly bounded by Mesta, Sixth, Andrew, 11th and Walnuts Sts. and Doyle and Seventh Aves., Homestead Borough, 90000696

Beaver County

Pennsylvania and Lake Erie Passenger Station, Aliquippa, 111 Station St., Aliquippa, 90000700

Bucks County

Stover, Isaac, House, River Rd. S. of Geigel Hill Rd., Erwinna, 90000702

Chester County

Hamorton Historic District, Jct. of US 1 and SR 52, Kennett Square vicinity, 90000704

Dauphin County

Donaldson, William, House, 2005 N. Third St., Harrisburg, 90000699

Highspire High School, 211 Penn St., Highspire, 90000703

Mount Pleasant Historic District (Boundary Increase), 1100–1321 Market St., 1142 Derry St., Harrisburg 90000710

Sheffield Apartments, 2003 N. Third St., Harrisburg 90000698

Delaware County

Risley, Dr. Samuel D., House, 430 N. Monroe St., Media, 90000697

Huntingdon County

Warrior Ridge Dam and Hydroelectric Plant (Industrial Resources of Huntingdon County MPS), 2 mi. S of Petersburg, along Conrail main line, Petersburg vicinity, 90000701

Lehigh County

Burnside Plantation, Schoenersville, Rd., 2 mi. SE of jct. with Easton Ave., Bethlehem, 90000705

WASHINGTON

Adams County

Ritzville Historic District, Roughly bounded by Broadway, Division St., Railroad Ave., and Washington St., Ritzville, 90000676

Lincoln County

Mary Queen of Heaven Roman Catholic Church, N. First and B St., Sprague, 90000675

Snohomish County

Everett City Hall, 3002 Wetmore Ave., Everett, 90000674
Everett Fire Station No. 2, 2801 Oakes Ave., Everett, 90000673
Floral Hall, Forest Park, Everett, 90000671

Stevens County

Winslow, Colburn T., House, 458 E. 2d St., Colville, 90000670

Thurston County

Black Lake School (Rural Public School Buildings in Washington State MPS), 6000 Black Lake Blvd. SW., Olympia vicinity, 90000709
Lackamas School (Rural Public School Buildings in Washington State MPS), 16240, 16312 Bald Hill Rd. SE., Velm vicinity, 90000707
Ticknor School (Rural Public School Buildings in Washington State MPS), 7212 Skookumchuck Rd. SE., Tenino vicinity, 90000708

Yakima County

Gleed, James, Barn, 1960 Old Naches Hwy., Naches vicinity, 90000672

WEST VIRGINIA

Kanawha County

Edwards, William H. and William S., House, SR 61 NE of Cabin Creek, Coalburg, 90000713
Good Shepherd Church, SR 61 SW of East Bank, Coalburg, 90000712

Ohio County

Wheeling Country Club, 355 Oglebay Dr., Wheeling vicinity, 90000711

[FR Doc. 90-8278 Filed 4-9-90; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 80X)]

Norfolk and Western Railway Co.—Abandonment Exemption—In Person County, NC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Norfolk and Western Railway Company of 5.7 miles of rail line in Person County, NC, subject to standard labor protective conditions, a historic preservation condition, a consultation condition, and certain wetlands conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 14, 1990. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 20, 1990, petitions to stay must be filed by April 25, 1990, and petitions for reconsideration must be filed by May 7, 1990.

ADDRESSES: Send pleadings referring to Docket AB–290 (Sub-No. 80X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and
(2) Petitioner's representative: Angelica D. Lloyd, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275–1721.]

Decided: April 2, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-8234 Filed 4-9-90; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Lodging of Settlement Agreement Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 30, 1990, a partial consent decree in *United States and State of California* v. *City of San Diego*, Civil Action No. 88–1101–B, was lodged with the United States District Court for the Southern District of California. The complaint filed by the United States, pursuant to Section 309 of the Clean Water Act, 33 U.S.C. 1319, sought, among other things, mandatory injunctive relief requiring the City to upgrade its wastewater treatment system to provide secondary treatment; to properly operate and maintain its wastewater treatment system; and to implement the pretreatement requirements of the Clean Water Act. The proposed partial consent decree, which resolves only the claims for injunctive relief sought in the Complaint, requires the City to upgrade its wastewater treatment system to achieve fully secondary treatment by no later than December 31, 2003, to build disinfection facilities to comply with the California Ocean Plan standards by no later than January 31, 1992, and to implement a number of measures to reduce spills from the treatment system and to comply with the pretreatment requirements of the Act.

The Department of Justice will receive for a period of sixty (60) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of California* v. *City of San Diego*, D.J. Ref. No. 90–5–1–1–2987. The proposed partial consent decree may be examined at the Office of the United States Attorney, Civil Division, 940 Front Street, San Diego, California. A copy of the partial consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, at Room 1647, Tenth and Pennsylvania Avenue, Room 1647, NW., Washington, DC 20530, or at 301 Howard Avenue, San Francisco California. A copy of the proposed settlement agreement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $4.30 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

Barry Hartman,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-8128 Filed 4-9-90; 8:45 am]

BILLING CODE 4401-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that on March 21, 1990 a proposed consent decree in

United States v. *UNIVAR Corporation*, Civil Action No. 90–0291 SC, was lodged with the United States District Court for the District of New Mexico. The proposed consent decree involves claims by the United States pursuant to CERCLA for recovery of clean-up costs incurred and to be incurred at the Edmunds Street Property located at 3301 Edmunds Street, Albuquerque, New Mexico as well as claims for injunctive relief.

The proposed consent decree requires the defendant to perform the remedial action selected in the Records of Decision issued by the United States Environmental Protection Agency ("EPA") on June 28, 1988 and March 30, 1989, which specify extraction of contaminated groundwater through wells, air stripping of contaminants at the surface, and reinjection of the treated water. In addition, defendants are required to pay $548,000 to the United States for past costs expended at the Site by EPA and to reimburse EPA for any additional response costs incurred in oversight of the remedial action. In return, the defendants are given a covenant not to sue for costs or injunctive relief relating to two additional operable units which are part of the Albuquerque South Valley Superfund site. Based on investigations at the Site, the United States has determined that the contamination from the Edmunds Site is not related to other contamination found at the South Valley Superfund site.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *UNIVAR Corporation*, D.J. Ref. No. 90–11–2–448 (Edmunds Street portion).

The proposed consent decree may be examined at the Office of the United States' Attorney for the District of New Mexico, United States Courthouse, Room 12020, 500 Gold Avenue, SW, Albuquerque, New Mexico 87103 and at the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $5.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90–8129 Filed 4–9–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entrries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected. an An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration

Guidelines for the State Employment Security Agency Program and Budget Plan for the Unemployment Insurance Program.

1205–0132; ETA 8632A, 2208, 2208A

Form #	Affected public	Respondents	Frequency	Average Time Per response
ETA 8632A; (UI–1)	State/Local Govt	53	Annually	3 hours
ETA 2208; (UI–2)	do	53	Annually	3 hours
Narrative descrip	do	53	Annually	27 hours
Narrative descrip. (QC)	do	37	Annually	4 hours
Narrative description (EDWAA, ES, TAA)	do	53	Annually	6 hours
Transmittal Memo Checklist, Sig. Pg	do	53	Annually	1 hour
ETA 2208A; (UI–3)	do	53	Eight	1 hour
Salary Benefit Rate Determ	do	53	Annually	1 hour
2,745 total hours				

The Program Budget Plan provides the basis for an application for funds for State intent to comply with assurances. The affected public are the 53 State Employment Security Agencies.

Extension

Employment and Training Administration

Targeted Jobs Tax Credit (TJTC) Program Report Forms.

1205–0058; ETA 8471, 8472, 8473, 8588.

Quarterly, State or local governments; businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small business or organizations.

Form #	Affected public	Respondents	Frequency	Average time per response
ETA 8471	State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-propfit institutions, Small businesses or organizations.	52	Quarterly	8 hrs.
ETA 8472	do	52	Quarterly	8 hrs.
ETA 8473	do	52	Quarterly	7 hrs.
ETA 8588	do	52	Quarterly	8 hrs.
Recordkeeping	do	52	Annually	997 hrs.

Data provided by the States on these forms are used for program planning and evaluation and for oversight or verification activities as mandated by the Tax Equity & Fiscal Responsibility Act of 1982, the Deficit Reduction Act of 1984, the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988, and Omnibus Budget Reconciliation Act of 1989.

Signed at Washington, DC this 5th day of April, 1990.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 90–8269 Filed 4–9–90; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Dana Engine Products et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–23,731; Dana Engine Products, Plant #5, Richmond, IA

TA–W–23,979; Jill Robbins, New York, NY

TA–W–23,859; Savion International, Inc. Miami Lakes, FL

TA–W–23,903; Clarendon Ceramics Corp., Clarendon, PA

TA–W–23,904; Clarendon Ceramics Corp., Warren, PA

TA–W–23,999; Stanley Woolen Co., Uxbridge, MA

TA–W–24,000; Stanley Woolen Mill Store, Uxbridge, MA

TA–W–23,916; Texasgulf, Inc., New Gulf, TX

TA–W–23,916A; Texasgulf, Inc., Fort Stockton, TX

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–23,914; Smithkline Beecham, Philadelphia, PA

U.S. imports of pharmaceutical preparations were negligible.

TA–W–23,911: Plastoid Corp., Hamburg, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–23,922; Ziff Communications Co., Cherry Hill, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–23,906; Dinol International, Inc., Detroit, MI

The workers' firm does not produce an articles as required for certification under section 222 of the Trade Act of 1974.

TA–W–23,905; Dinner Bell Foods, Inc., Archbold, OH

Increased imports did not contribute importantly to workers separations at the firms.

TA–W–23,908; ITT Eaton Oil Co., Contract Drilling Div. Oklahoma City,OK

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,943; Kerry Petroleum Co., Midland, TX

The investigation revealed that criterion (2) has not been met. Sales of production did not decline during the relevant period as required for certification.

TA-W-23,918; Valentec Galion, Inc., Galion, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,929; Chrysler Corp., St. Louis #1, Fenton MO

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,954; North American Refractories Co., Curwensville, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,919; Vetco Gray, Inc., Houston., TX

U.S. imports of oilfield machinery are negligible.

TA-W-23,951; Munsingwear, Inc., Ashland, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,952; Munsingwear, Inc., Minneapolis, MN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,900; Alpine Petroleum, Inc., Wichita, KS

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,878; Jameco Chevrolet, Jamaica, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,931; Eaton Industries Div., Carol Stream, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,930; Crown Products, Stevens Point, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,961; Western Slope Refining Co., Fruita, CO

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,962; The Gary-Williams Energy Corp., Denver, CO

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,932; Fruehauf Trailer Operations, Uniontown, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,008; WLK Properties, Inc., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,009; WLK Properties, Inc., Winters, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,945; KWH Oil Co. & PNR Energy Corp., Dallas, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,964; Artech Energy, Boynton, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-23,960; UNOCAL (Union Oil Co. of California) Refining & Marketing Div., Beaumont Refinery, Nederland, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,941; Kaiser Aluminum & Chemical Corp., Newark Works-Rod, Bar and Wire Div, Health, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,920; Whirlpool Corp., Ft. Smith Div., Ft. Smith, AR

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA-W-23,913; Smith & Nephew Perry, Massillon, OH

A certification was issued covering all workers separated on or after January 4, 1989.

TA-W-23,946; Ladir Manufacturing Co., Union City, NJ

A certification was issued covering all workers separated on or after February 5, 1989.

TA-W-23,950; Mineral Wells Manufacturing Mineral Well, TX

A certification was issued covering all workers separated on or after January 22, 1989 and before January 21, 1990.

TA-W-23,917; Triboro Electric Corp., Waterbury Products Div., Hightstown, NJ

A certification was issued covering all workers separated on or after January 11, 1989 and before May 31, 1990.

TA-W-23,948; Masonite Corp., Cincinnati Fabricating Operation, Cincinnati, OH

A certification was issued covering all workers separated on or after January 5, 1989.

TA-W-23,935; General Motors Corp., CPC Arlington, Arlington, TX

A certification was issued covering all workers separated on or after February 5, 1989.

TA-W-23,936; Hagglunds-Denison Corp., Delaware, OH

A certification was issued covering all workers separated on or after May 6, 1989.

TA-W-23,915; T.R.J. Corp., Fort Worth, TX

A certification was issued covering all workers separated on or after January 18, 1989.

TA-W-23,915A; T.R.J. Corp., Covering Operations in Various Other Locations in the State of Texas

A certification was issued covering all workers separated on or after January 18, 1989.

I hereby certify that the aforementioned determinations were issued during the month of March 1990. Copies of these determinations are available for inspection in room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: April 3, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-8271 Filed 4-9-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23, 190, 191, 192, 192A and 192B]

Shell Offshore, Inc., et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 15, 1989 applicable to all workers of Shell Oil Company, Houston, Texas; Shell Offshore Inc., New Orleans, Louisiana and Shell Western E&P, Inc., Houston Texas and California. The notice was published in the **Federal Register** on October 3, 1989 (54 FR 40755).

The Department is amending the certification to properly reflect the correct worker groups. The correct worker group for Shell Western E&P should be all workers in Texas and California. The amended notice applicable to TA–W–2, 192 is hereby issued as follows:

All workers of Shell Oil Company, Houston, Texas; Shell Offshore, Incorporated, New Orleans, Louisiana and Shell Western E & P, Incorporated, Houston, Texas and all other locations in Texas and California who became totally or partially separated from employment on or after July 5, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 2nd day of April 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90–8270 Filed 4–9–90; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act: Research and Demonstration (R&D) Request for Applications—School to Work Transition Demonstration Projects (SGA/DAA 201–90)

AGENCY: Employment and Training Administration.

ACTION: Notice of availability of funds and of solicitation for grant applications (SGA).

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) announces its intent to award grant(s) on a competitive basis to conduct a series of research and demonstration projects that will establish work-based learning programs to assist youth in the transition to the work force. This notice provides a synopsis of the proposed SGA. Grant award(s) will be made by June 30, 1990.

DATES: The applications will be available April 25, 1990. The requests must be made in writing to the address below. Telephone requests will not be honored. The requests must cite SGA/DAA 201–90 and must include two self-addressed labels. These requests will be honored on a first-come, first-serve basis until the supply is exhausted. The closing date for receipt of proposals will be May 24, 1990 at 4:45 P.M. (Eastern Time).

ADDRESSES: Mail your request for Solicitation of Grant Application (SGA) to: U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, Division of Acquisition and Assistance, room C–4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Betty Koonce; Reference SGA/DAA 201–90.

SUPPLEMENTARY INFORMATION: The Employment and Training Adminsitration of DOL will award grant(s) under the Job Training Partnership Act (JTPA), title IV, to conduct a series of research and demonstration projects that will establish a more efficient way by which American youth can make the tansition from school to the work force.

Awards may be made to more than one applicant. The period of performance will be 24 months from the date of execution. It is anticipated that $1.8 million will be disbursed accordingly. This solicitation is opened to public, profit and non-profit organizations. Any award made as a result of this solicition will be non-fee bearing.

Signed at Washington, DC on March 30, 1990.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 90–8262 Filed 4–9–90; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act: Research and Demonstration (R&D) Request for Application—Work-Based Learning Skill Shortages in Construction (SGA/DAA 200–90)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and of solicitation for grant applications (SGA).

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) announces its intent to award grant(s) on a competitive basis to focus on issues relating to the American work force and its training needs. The grant(s) will respond to the growing concerns regarding shortages of skilled construction workers in selected areas of the country. This notice provides a synopsis of the proposed SGA. Grant awards will be made by June 30, 1990.

DATES: The applications will be available April 25, 1990. The requests must be made in writing to the address below. Telephone requests will not be honored. The requests must cite SGA/DAA 200–90 and must include two self-addressed labels. These requests will be honored on a first-come, first-serve basis until the supply is exhausted. The closing date for receipt of proposals will be May 24, 1990 at 4:45 p.m. (Eastern Time).

ADDRESS: Mail your request for Solicitation for Grant Application (SGA) to: U.S. Department of Labor, Employment and Training Administration Office of Grants and Contract Management, Division of Acquisition and Assistance, Room C–4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Charlotte Adams; Reference SGA/DAA 200–90.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration of DOL will award grant(s) under the Job Training Partnership Act (JTPA), title IV, to identify specific occupation/areas in the construction industry where skill shortages are occurring and are expected to continue. Grantees will also examine the feasibility of developing delivery systems with close collaboration between EDWAA, education, employers and labor to alleviate those shortages.

Awards may be made to more than one applicant. The period of performance will be 24 months from the date of execution. It is anticipated that $500,000 will be disbursed accordingly. This solicitation is opened to public, profit and non-profit organizations. Any award made as a result of this solicitation will be non-fee bearing.

Signed at Washington, DC on March 30, 1990.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 90–8263 Filed 4–9–90; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–90–47–C]

Enlow Fork Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Enlow Fork Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler systems; arrangement of sprinklers) to its Enlow Fork Mine (I.D. No. 36–07416) located in Greene and Washington Counties, Pennsylvania. 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 arrangement of water sprinkler systems.

2. As an alternate method, petitioner proposes to use a single overhead pipe system with ½ inch orifice automatic

sprinklers located on 10-foot centers, located to cover 50 feet of fire-resistant belt or 150 feet of non-fire resistant belt, with actuation temperatures between 200 degrees Fahrenheit and 230 degrees Fahrenheit, and with water pressure equal to or greater than 10 pounds per square inch.

3. In support of this request, petitioner states that—

(a) Automatic sprinklers would be located not more than 10 feet apart, so that the discharge of water would extend over the belt drive, belt take-up, electrical control, and gear reducing unit; and

(b) A test to ensure proper operation would be conducted during the installation of each new system and during the subsequent repair or replacement of any critical part.

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 May 10, 1990. Copies of the petition are available for inspection at that address.

Dated: April 2, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–8264 Filed 4–9–90; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–90–46–C]

Enlow Fork Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Enlow Fork Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Enlow Fork Mine (I.D. No. 36–07416) located in Greene and Washington Counties, Pennsylvania. 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 locked padlock be used to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded metal locking device in lieu of padlocks. The spring-loaded device would be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and would be attached to prevent accidental loss.

3. The spring-loaded metal locking devices would be easier to maintain than padlocks because the keys would be attached to the devices and dirt would not be able to get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification would be trained in the proper use of the locking devices, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. 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 May 10, 1990. Copies of the petition are available for inspection at that address.

Dated: April 2, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–8265 Filed 4–9–90; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–90–48–C]

Enlow Fork Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Enlow Fork Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1101–8(a) (water sprinkler systems; arrangement of sprinklers) to its Enlow Fork Mine (I.D. No. 36–07416) located in Greene and Washington Counties, Pennsylvania. 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 at least one sprinkler be installed above each electrical control.

2. Petitioner requests a modification for all combination belt starter boxes not located in belt entries.

3. As an alternate method, petitioner proposes that—

(a) All combination belt starter boxes would be properly ventilated with the intake air coursed directly into the return aircourse;

(b) All electrical controls would be isolated from the belt entry by a concrete stopping; and

(c) The electrical controls would be in a metal enclosure and equipped with an automatic alarm system that would deenergize the system and give an audible and visual alarm at 20 percent above normal operating temperature.

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 May 10, 1990. Copies of the petition are available for inspection at that address.

Dated: April 2, 1990.

Patricia W. Silver,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–8266 Filed 4–9–90; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–90–49–C]

Webster County Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Webster County Coal Corporation, P.O. Box 128, Clay, Kentucky 42404 has filed a petition to modify the application of 30 CFR 75.1100–2(b) (quantity and location of firefighting equipment—belt conveyors) to its Dotiki Mine (I.D. No. 15–02132) located in Webster 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 waterlines may be installed in entries adjacent to the conveyor belt entry as long as the outlets project into the belt conveyor entry.

2. As an alternate method, petitioner proposes the following:

(a) To install the waterline and firehose outlets in the adjacent track or supply entry;

(b) To install firehose outlets at 180-foot spacings with unrestricted access from the belt entry to the outlets; and.

(c) To clearly mark the firehose outlet locations with a sign in the belt conveyor entry.

3. In support of this request, petitioner states that—

(a) In the event of a belt fire, the PVC waterline would not be exposed to damage or destruction; and

(b) Firefighters would have better accesss to firehose outlets.

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 May 10, 1990. Copies of the petition are available for inspection at that address.

Dated: April 25, 1990.

Patricia W. Silvey

Director Office of Standards, Regulations and Variances.

[FR Doc. 90-8267 Filed 4-9-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-45-C]

Western Fuels-Utah, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Western Fuels-Utah, Inc., P.O. Box 1067, Rangely, Colorado 81648 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Deserado Mine (I.D. No. 05-03505) located in Rio Blanco 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 located outby the last open crosscut be in intake air.

2. The petitioner requests a modification of the existing standard to permit the use of nonpermissible pumps in a borehole in a sump area of its mine.

3. As an alternate method, petitioner proposes to drill a borehole into a sump located inby longwall panel No. 5. A nonpermissible submersible pump will be installed in this borehole to dewater this sump. Five feet of water will be maintained above the pump's motor at all times. The water level shall be maintained by use of a probe to monitor the water level in the sump.

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 May 10, 1990. Copies of the petition are available for inspection at that address.

Dated: April 2, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-8268 Filed 4-9-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships Prescreening #2 Section) to the National Council on the Arts will be held on April 27-28, 1990, from 9 a.m.-5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code. Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: April 2, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-8133 Filed 4-9-90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Fourth Quarter CY 1989

Section 208 of the Energy Reorganization Act of 1974, as amended, requires to NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). The AOs are described below, together with the remedial actions taken. The events are also being included in NUREG-0090, Vol. 12, No. 4 ("Report to Congress on Abnormal Occurrences: October-December 1989"). This report will be available in the NRC's Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

There were no AOs at the nuclear power plants.

Other NRC Licensees

89-13 Medical Diagnostic Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—October 18, 1989; Mayo Foundation; Rochester, Minnesota.

Nature and Probable Consequences—On October 27, 1989, the licensee

reported to NRC Region III that on October 18, 1989, a patient received a diagnostic dose of radioactive iodine compound that was 10 times the intended dose.

The referring physician intended that a patient receive a neck scan using 100 microcuries of iodine-131, but checked the box on the referral form indicating a scan using 1 millicurie of iodine-131. The hospital reported that the patient received an additional radiation exposure of about 1200 rem to the thyroid beyond that intended by the referring physician. Had the intended dose of 100 microcuries been administered, the thyroid would be expected to receive an exposure of no more than about 140 rem.

A medical consultant, retained by the NRC, indicated that the added dose would result in a very slight increase in the risk that the patient could develop hypothyroidism or thyroid cancer. The consultant recommended that the hospital monitor the patient with annual thyroid function tests.

Cause or Causes—This misadministration occurred because the referring physician checked the wrong box on the nuclear medicine referral sheet. The nuclear medicine physician approved the neck scan procedure, but did not specify that it should be the neck scan with the lower dose of 100 microcuries (i.e., the nuclear medicine physician did not write the prescription on the order form).

Actions Taken to Prevent Recurrence

Licensee—The hospital has revised its procedures to require additional precautions for procedures involving greater than 20 microcuries of radioactive iodine. Under the revised procedures, the nuclear medicine physician is to review the request for the diagnostic test and the patient's chart and not only approve the test but also write the prescribed dosage on the referral request form. The hospital's radiopharmacy will not dispense any quantities of iodine greater than 20 microcuries without a properly prepared referral request form, which includes a prescription by a nuclear medicine physician.

NRC—A special inspection will be conducted at the hospital to review the incident and other aspects of the licensee's nuclear medicine program.

89-14 Medical Therapy Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—November 30, 1989; Kuakini Medical Center; Honolulu, Hawaii.

Nature and Probable Consequences—On November 30, 1989, the licensee reported to the NRC that a medical therapy misadministration had taken place at its facility earlier that day when a therapeutic dose of 9 millicuries of iodine-131 was inadvertently given to the wrong patient (Patient A rather than Patient B).

Patient A was intended to receive only a 20 millicurie diagnostic dose of technetium-99m MDP. This dose was administered and the patient was seated in the waiting room pending a bone scan. Meanwhile, Patient B arrived. Patient B, who was scheduled to receive an iodine-131 hyperthyroidism treatment, completed an interview, signed a consent form, and was seated in the waiting room pending the iodine treatment.

The technologist prepared a dose of 9 millicuries of iodine-131 for administration and reportedly called Patient B. However, Patient A responded. A technologist explained the iodine-131 treatment, scheduled a follow-up appointment, and administered the dose to Patient A. The patient then questioned the technologist, and it became evident that the wrong patient had been treated.

Patient A as immediately informed of the error, and the patient's stomach was pumped, retrieving 3.2 millicuries of the material. The patient was then given potassium perchlorate and Lugol's solution to release any iodine-131 already trapped in the thyroid and to block further uptake. The use of Lugol's solution continued for 14 days.

The misadministration resulted in an estimated dose to the thyroid of from 560 to 820 rem. This dosage would result in a very slight increase in the risk that the patient could develop hypothyroidism or throat cancer. The licensee plans to monitor the patient with annual thyroid function tests.

An NRC medical consultant reviewed the incident. He concurred with the immediate actions taken by the licensee, and with the licensee's planned corrective actions to prevent recurrence that are described below.

Cause or Causes—The licensee stated that the misadministration was caused by human error on the part of the technologist and by inadequate procedural controls. The root cause was due to inadequate supervision of activities.

Actions Taken to Prevent Recurrence

Licensee—The licensee stated that: (1) A training class has been scheduled for all technologists, (2) a single technologist will be required to handle all aspects of the iodine-131 therapy and must be able to recognize the correct patient prior to the treatment, and (3) the technologist, physician, and patient are required to concurrently sign the therapy worksheet prior to the administration.

NRC—An NRC inspection was performed on February 6 and 8, 1990. No violations of license requirements were identified. The licensee's corrective actions to prevent recurrence were satisfactory.

Dated at Rockville, MD this 4th day of April 1990.

For The Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-8226 Filed 4-9-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on the Medical Uses of Isotopes; Renewal Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: This notice is to announce the renewal of the Advisory Committee on the Medical Uses of Isotopes for a period of two years.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has determined the renewal of the charter for the Advisory Committee on the Medical Use of Isotopes for the two year period commencing on April 6, 1990 is in the public interest in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the Advisory Committee on the Medical Uses of Isotopes is to provide advice to the U.S. Nuclear Regulatory Commission (NRC), with respect to the development of standards and criteria for regulating and licensing uses of radionuclides in human subjects. Members of this Committee have demonstrated professional qualifications and expertise in scientific and technical disciplines including diagnostic and therapeutic radiology, pathology, internal medicine, nuclear medicine, nuclear cardiology, and medical physics.

FOR FURTHER INFORMATION CONTACT: Francis St. Mary, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-0611.

Dated: April 14, 1990.

John C. Hoyle,

Federal Advisory Committee Management Officer.

[FR Doc. 90-8227 Filed 4-9-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-424]

Georgia Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License NPF-68 issued to the Georgia Power Company, et al. (the licensee), for operation of the Vogtle Electric Generating Plant, Unit 1 (Vogtle 1), located on the licensee's site in Burke County, Georgia.

Environmental Assessment

Identification of Proposed Action

The proposed action would revise paragraph (1)(a) of Appendix C to Facility Operating License NPF-68 as follows: insert "owing, operating or proposing to own or operate equipment" in line 3 before the phrase "or facilities within the State * * *"; and insert "or rate schedule on file with and subject to the regulation" in line 10 before the phrase "of the Public * * *."

The proposed action is in accordance with the licensee's application for amendment dated July 31, 1989.

The Need for the Proposed Action

The proposed amendment is needed in order to make the Vogtle Unit 1 Antrist Conditions consistent with the Vogtle Unit 2 Antitrust Conditions and in accord with the Construction Permit Antitrust Conditions.

Environmental Impacts of the Proposed Action

The proposed amendment does not impact the operation of the Vogtle facility. Specifically, the proposed amendment does not involve features located either within or outside of the restricted area as defined in 10 CFR part 20. As a result, it does not affect the potential for or consequences of radiological accidents and does not affect radiological plant effluents in any way. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Because the Commission's staff has concluded that there is no significant environmental impact associated with the proposed amendment, any alternative to this amendment will have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of the Vogtle Electric Generating Plant, Units 1 and 2" dated March 1985.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request that supports the proposed amendment. The staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the amendment dated July 31, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 28th day of March 1990.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-8228 Filed 4-9-90; 8:45 am]

BILLING CODE 7590-01-M

Public Workshop on Maintenance Standard for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Notification of Revised Date for Workshop.

SUMMARY: On December 8, 1989, the Commission published in the **Federal Register** (54 FR 50611) a Revised Policy Statement for Maintenance of Nuclear Power Plants. In the Revised Policy Statement, the Commission indicated its intent to hold a workshop in early 1990 to promote dialogue in the development of a Maintenance Standard for nuclear power plants. The workshop is now tentatively scheduled for September 5–6, 1990. An announcement including further details of the workshop will be made in the **Federal Register** in early August, 1990.

DATES: Workshop is now tentatively scheduled for September 5–6, 1990.

ADDRESS: Workshop will be held in the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: Moni Dey, Office of Nucelar Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-3730.

Dated in Rockville, Maryland this 28th day of March, 1990.

For the Nuclear Regulatory Commission.

Moni Dey,

Task Manager, Division of Regulatory Application, Office of Nuclear Regulatory Research.

[FR Doc. 90-8229 Filed 4-9-90; 8:45 am]

BILLING CODE 7590-01-M

NUREG Report; Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of final report, "Maintenance Approaches and Practices in Selected Foreign Nuclear Power Programs and Other U.S. Industries: Review and Lessons Learned," NUREG-1333.

SUMMARY: The Commission published a Notice of Proposed Rulemaking on Maintenance of Nuclear Power Plants on November 28, 1988, spelling out NRC's expectations on maintenance. Subsequently, on August 17, 1989, a draft regulatory guide was published to provide guidance on the implementation of the rule. In preparing the proposed rule, the NRC considered maintenance approaches in other countries and reviewed practices in other industries in this country in which equipment reliability and maintenance play an important role in safe operations. The regulatory activities associated with these maintenance practices were also examined to assess their effectiveness and applicability to the NRC. A draft

report for comment was published in November 1988 in which the review and findings of the study were presented. No comments were received on the draft report for comment version of this document. Therefore, a final report has been issued with only minor editorial changes.

ADDRESSES: Copies of NUREG series reports may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection or copying for a fee in the NRC Public Document room, 2021 L Street, Lower Level, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Moni Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3730.

Dated in Rockville, Maryland, this 28th day of March, 1990.

For the Nuclear Regulatory Commission.

Moni Dey,

Task Manager, Office of Nuclear Regulatory Research.

[FR Doc. 90–8230 Filed 4–9–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–247]

Consolidated Edison Co. of New York, Inc.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the Consolidated Edison Company of New York, Inc. (the licensee) to withdraw its October 13, 1987 application for proposed amendment to Facility Operating License No. DPR–26 for the Indian Point Nuclear Generating Unit No. 2, located in Westchester County, New York.

The proposed amendment would have revised the Technical Specifications to remove fire protection requirements per Generic Letter 86–10 and would have revised License Condition 2.K. to address the fire protection program plan as described by reference in the updated Final Safety Analysis Report.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 18, 1988 (53 FR 17785). However, by letter dated March 30, 1990, the licensee withdrew the proposed changed.

For further details with respect to this action, see the application for amendment dated October 13, 1987, and the licensee's letter dated March 30, 1990, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document room, 2120 L Street, NW., Washington, DC, and the White Plains Public Library, 100 Maritine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 3rd day of April, 1990.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

FR Doc. 90–8231 Filed 4–9–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp.; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The amendment would revise Technical Specifications 3.3.F.2 Specifically, the changes would include limitations on operation with an idle recirculation loop which is isolated. A revision to section 3.3 and 3.10 bases would also be needed to reflect this change.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 10, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the

petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 200 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 19, 1990, which is available for public inspection at the Commission's Public Document room, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 4th day of April 1990.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 90-8232 Filed 4-9-90; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting of Environment and Public Health Panel

Pursuant to their authority under section 5051 of Public Law 100-203 of the Nuclear Waste Policy Amendments Act of 1987, the Environment and Public Health Panel of the Nuclear Waste Technical Review Board (NWTRB) will hold a meeting on April 24, 1990, at the Ramada St. Tropez, Las Vegas, Nevada.

Members will hear presentations by the State of Nevada and by representatives of the Western Shoshone National Council regarding potential impacts on the environment and public health of a repository for permanent storage of high-level radioactive waste. Panel members also will receive a status report on the DOE Environmental Program.

In its presentation to Panel members, the DOE will provide an update on its program, including data collection and reporting, documentation, and quality assurance. The DOE will provide an overview of its environmental planning and implementation process and a status report on field activities. Topics will include terrestrial ecosystems, water resources, soils and reclamation, radiological studies, air quality, Native American studies, and archaeological resources.

The meeting will be held in the Monte Carlo Room, Ramada St. Tropez, 455 East Harmon Ave., Las Vegas, Nevada (702-369-5400), from 8 a.m. to 5 p.m. The public is welcome. Due to limited space, those wishing to attend should contact Helen Einersen (202-254-4792) on or before April 20, 1990. Transcripts will be available on loan beginning May 15 on a first come, first served basis from the NWTRB.

For further information contact Paula N. Alford, Director, External Affairs, 1111 18th Street NW., Suite 801, Washington, DC 20036 (202-254-4792).

Dated: April 5, 1990.

William W. Coons,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 90-8221 Filed 4-9-90; 8:45 am]

BILLING CODE 6820-AM-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 27879; File No. 600-21]

Intermarket Clearing Corp.; Filing and Order Granting Accelerated Approval of an Amendment to Application for Registration Until October 3, 1991

April 5, 1990.

On October 3, 1988, the Securities and Exchange Commission ("Commission") granted the application of the Intermarket Clearing Corporation ("ICC") for registration as a clearing agency, pursuant to sections 17 A and 19(a) of the Securities Exchange Act of 1934 ("Act"), and Rule 17Ab2-1(c) thereunder, for a period of 18 months.[1] On March 13, 1990, ICC filed an amendment to its application requesting that the Commission extend ICC's registration as a clearing agency until October 3, 1991.[2]

As discussed in detail in the order granting ICC's registration, one of the primary reasons for ICC's registration was to enable it to develop a cross-margining program ("Program") with its parent company, the Options Clearing Corporation. Recent developments may enable ICC to expand the number of participants eligible for the Program. For example, ICC and OCC have filed proposals to allow pairs of affiliates, one of which is a clearing member of ICC and the other of which is a clearing member of OCC, to participate in the Program.[3] ICC and OCC also have

[1] *See* Securities Exchange Act Release No. 26154 (October 3, 1988), 53 FR 39556.

[2] *See* Letter from James C. Yong, Deputy General Counsel, ICC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, dated March 13, 1990.

[3] *See* Securities Exchange Act Release No. 27749 (February 28, 1990), 55 FR 8276.

recently filed proposals that would allow market professionals to participate in the Program.[4]

ICC has functioned effectively as a registered clearing agency for the past 18 months. Indeed, the Commission believes that ICC continues to satisfy the requirements necessary to functions as a registered clearing agency as enumerated in section 17A(b)(3) of the Act. Accordingly, in light of the past performance of ICC, as well as the need for ICC to provide continuity of service to its members, the Commission believes "good cause" exists, pursuant to section 19, for extending ICC's registration as a clearing agency for an additional 18 months without separately soliciting comments on such extension.[5]

You are invited to submit written data, views, and arguments concerning the foregoing application within 30 days of the date of publication of this notice in the **Federal Register**. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File Number 600–21. Copies of the application and all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

It is therefore ordered, that ICC's registration as a clearing agency be, and hereby is, extended until October 3, 1991.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–8247 Filed 4–9–90; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* File Nos. SR–ICC–90–3 and SR–OCC–90–04.

[5] On or before the end of the 18 months, the Commission expects to consider whether to grant ICC permanent registration as a clearing agency. In advance of such time, the Commission expects ICC to file an appropriate request for permanent registration. The Commission will solicit comment at that time and consider any comments it may receive from interested persons.

[Release No. 34–27874; File No. SR–NASD–90–17]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASD Assessments and Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 29, 1990 the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the fee effective upon the Commission's receipt of this filing. 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 proposed rule change to section 2(c) of Schedule A of the NASD's By-Laws [1] increases the General Securities Registered Representative examination fee from $60.00 to $110.00 pursuant to converting the examination format from written to computer-based.

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 NASD 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 NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change to section 2(c) of Schedule A raises the General Securities Registered Representative examination fee from $60.00 to $110.00 pursuant to converting the examination format from written to computer-based. This change reflects the impact of general cost increases, the cost of improved service quality, and the continued shift of the NASD to computer-based examinations. In setting the assessment and fee rates for 1990, the NASD has attempted to align revenues with related costs where appropriate. The Board of Governors has determined that the fee increase described above will yield revenue sufficient to cover the costs of advancing technology within the industry as necessary to administer the General Securities Registered Representative examinations.

The NASD believes the proposed rule change is consistent with section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable fees and other charges among members and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it affects assessments and fees imposed by the Association exclusively upon its members. Imposition of the fee will, however, be delayed until May 1, 1990.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[1] *NASD Manual,* paragraph 1753.

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 provisons 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to the file number in the caption above and should be submitted by May 1, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: April 4, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-8248 Filed 4-5-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27877; File No. SR-NYSE-90-14]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Regarding Cooperative Agreements With Domestic and Foreign Self-Regulatory Organizations

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 23, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The proposal adopted new Rule 27 ("Regulatory Cooperation"), which would codify general language authorizing the Exchange to enter into bilateral information-sharing agreements for regulatory purposes with domestic and foreign exchanges and associations. The Exchanes has requested accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act[3] because it is preparing to exercise this authority in the near future with certain foreign self-regulatory organizations ("SROs").

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to adopt a new rule that sets forth the Exchange's policy with respect to cooperation with domestic and foreign SROs and associations. The text of the proposed rule is available at the NYSE's Office of the Secretary and in the Commission's Public Reference Section.

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. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Proposed Rule 27 sets forth the Exchange's Policy of cooperation with domestic and foreign SROs. The on-going development of a surveillance system that is appropriate for today's international and domestic securities markets requires close cooperation between the Exchange and other domestic and foreign SROs. The Exchange routinely shares surveillance and investigative information with domestic SROs pursuant to cooperative regulatory agreements *e.g.*, agreements pursuant to Rule 17d-2 under the Act,[4] and those in connection with the Intermarket Surveillance Group and the Intermarket Financial Surveillance Group. In addition, the Exchange is preparing to enter into bilateral information-sharing agreements with foreign exchanges and associations. Adoption of the rule will codify the Exchange's authority to enter into information-sharing agreements for regulatory purposes with domestic and foreign SROs.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[5] in general and furthers the objectives of section 6(b)(5) of the Act[6] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that this 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 Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change from members, participants or others.

III. 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 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings 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 May 1, 1990.

IV. Conclusion

The Commission finds that the Exchange's proposal to adopt new Rule 27 is consistent with the requirements of the Act and the rules and regulations

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] 15 U.S.C. 78s(b)(2) (1982).

[4] 17 CFR 240.17d-2 (1989).

[5] 15 U.S.C. 78f(b) (1982).

[6] 15 U.S.C. 78f(b)(5) (1982).

thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 of the Act [7] and the rules and regulations thereunder. The Commission has stated before that it believes that U.S. national securities exchanges have the authority to enter into surveillance-sharing agreements with foreign SROs, and the Commission encourages the development of such agreements.[8] Thus, while the Commission believes the NYSE already has the authority to enter into such agreements, the proposed rule change will clarify the Exchange's authority to coordinate with domestic and foreign SROs in developing a surveillance system appropriate to today's increasingly linked markets. In this regard, the Commission notes that codification of the Exchange's authority to enter into bilateral surveillance agreements furthers the protection of investors and the public interest because it will enable the Exchange to conduct prompt investigations into possible trading violations and other regulatory improprieties. The Commission believes that exercise of this authority will enhance the NYSE's surveillance program and help to provide the Exchange with sufficient information for it to carry out its oversight responsibilities with respect to enforcement-related matters in an efficient and expeditious manner.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notices thereof in the **Federal Register.** The Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can enter into bilateral information-sharing agreements with foreign SROs without delay. In addition, the NYSE's proposed rule change is virtually identical to a proposal by the American Stock Exchange that was approved by the Commission on January 10, 1989.[9] The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.[10]

It is therefore ordered, pursuant to section 19(b)(2) of the Act [11] that the proposed rule change (SR–NYSE–90–14) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: April 4, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–8249 Filed 4–9–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27878; File No. SR–NYSE–89–44]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to NYSE Rule 476A

I. Introduction

On December 28, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to sections 19(b)(1) and (d)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rules 19b–4 and 19d–1(c)(2) thereunder,[2] a proposed rule change to revise the list of Exchange rule violations and fines applicable thereto that are subject to NYSE Rule 476A [3] and amend the Exchange's Rule 476A minor rule violation enforcement and reporting plan ("Plan").[4] On January 19, 1990 the Exchange filed Amendment No. 1 to the proposed rule change with the Commission.[5] Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 27710, February 14, 1990), and by publication in the **Federal Register** (55 FR 6140, February 21, 1990). The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations.[6] In 1985, the Commission approved NYSE Rule 476A,[7] which authorizes the Exchange, in lieu of commencing a disciplinary proceeding before a hearing panel, to impose a fine not to exceed $5,000,[8] on any member, member organization, allied member, approved person, or registered or non-registered employee of a member organization for any violation of a specified Exchange rule which the NYSE determines to be minor in nature.[9] NYSE Rule 476A permits any person to contest the Exchange's imposition of the fine through the submission of a written Answer, at which time the matter will become a "disciplinary proceeding" subject to NYSE Rule 476, and, where applicable, the reporting provisions of paragraph (c)(1) of Rule 19d–1 under the Act.

Also in 1985, the Commission approved the Exchange's Rule 476A minor rule violation reporting Plan,[10] which provides for quarterly reporting to the Commission of covered rule violations with sanctions not exceeding $2,500. For covered minor disciplinary rule violations, the Plan relieves the Exchange from the current reporting requirement otherwise imposed by section 19(d)(1) of the Act for "final" disciplinary actions. In accordance with paragraph (c)(2) of Rule 19d–1, the NYSE's Rule 476A Plan specifies those

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[7] 15 U.S.C. 78s (1982).

[8] *See* Securities Exchange Act Release No. 26436 (January 10, 1989), 54 FR 1829 (order approving File No. SR–AMEX–88–27).

[9] *Id.*

[10] 15 U.S.C. 78f (1982).

[11] 15 U.S.C. 78s(b)(2) (1982).

[12] *See* 12 CFR 200.30–3 (1989).

[1] 15 U.S.C. 78s(b)(1) and (d)(1) (1982).

[2] 17 CFR 240.19b–4 and 240.19d–1(c)(2) (1989).

[3] NYSE Rule 476A ("Imposition of Fines for Minor Violations of Rules") includes a list of Exchange rules whose violations may be reported pursuant to the NYSE's minor rule violation plan.

[4] *See also,* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Howard Kramer, Assistant Director, SEC, Division of Market Regulation, dated January 5, 1990 (proposal to amend Plan).

[5] *See also,* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Howard Kramer, Assistant Director, SEC, Division of Market Regulation, dated January 18, 1990 (proposal to amend Plan).

[6] *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) (order approving amendments to paragraph (c)(2) of Rule 19d–1 under the Act). Pursuant to paragraph (c)(1) of Rule 19d–1, a self-regulatory organization ("SRO") is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d–1, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated, minor violations as not final, the Commission permits the SRO to report violations on a periodic, as opposed to an immediate, basis.

[7] *See* Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025 (order approving File No. SR–NYSE–84–27).

[8] Any fine imposed in excess of $2,500 will be subject to current, rather than quarterly, reporting to the SEC, in accordance with Rule 19d–1 under the Act. *See supra,* note 5.

[9] Although the NYSE's Board of Governors makes the initial determination of whether an Exchange rule violation is "minor" for purposes of inclusion in Rule 476A, this determination is subject to Commission review pursuant to sections 19(b)(1) and (d)(1) of the Act and Rules 19b–4 and 19d–1(c)(2) thereunder.

[10] *See* Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (September 23, 1985) (order approving File No. 4–284).

uncontested minor rule violations with sanctions not exceeding $2,500 that would not be subject to the current reporting provisions of paragraph (c)(1) of Rule 19d–1, provided the Exchange gives notice of such violations to the Commission on a quarterly basis.

The purpose of the Rule 476A procedure is to provide for disciplinary action for a rule violation when a meaningful sanction is appropriate but when a full disciplinary proceeding under Rule 476 would be very costly and time consuming to the Exchange given the minor nature of the violation. Rule 476A provides for an appropriate response to minor violations of certain Exchange rules while preserving the due process rights of the party accused through specified, required procedures. The list of rules which are eligible for 476A procedures ("List") specifies those rule violations which may be the subject of fines under the rule and also includes a schedule of fines.

The Exchange proposes to revise the List of Exchange rule violations and fines applicable thereto that are subject to Rule 476A by adding to the List certain rules and policies administered by the Exchange's Market Surveillance Division. In particular, the Exchange proposes to add to the List Rules 104.10, 106, 123A.30, 121, 123, 15, 15A, and the Exchange's policy regarding mandatory participation in the quarterly Specialist Performance Evaluation Questionnaire ("SPEQ") process (as administered under Rule 103A).[11]

Rule 104.10 imposes affirmative and negative obligations on specialists, and contains a number of specific restrictions and limitations as to both acquisition and liquidation of specialist positions. The Exchange believes that adding Rule 104.10 to the Rule 476A program will give Exchange surveillance staff additional flexibility in determining appropriate sanctions for violations of this Rule.

The Commission recently approved File No. SR–NYSE–89–32, which consists of a new SPEQ, administered pursuant to Rule 103A.[12] The new SPEQ, as amended by that filing, employs a new rating scale and scoring methodology, and participation in the SPEQ process is mandatory for all Floor brokers. The Exchange is now seeking approval to add the requirement of mandatory participation in the SPEQ process to the Rule 476A List. Failure to participate may subject an individual broker to the imposition of a fine under Rule 476A.[13]

Since the inception of the Rule 476A program at the Exchange in 1985, the List of rules subject to the imposition of fines for minor rule violations has included certain provisions of Rules 15 and 15A, the Exchange's Intermarket Trading System ("ITS") Rules. In order to enhance the Exchange's disciplinary process in regard to enforcing all provisions of the ITS rules, the Exchange believes it is appropriate to amend the List by deleting the two separate references to specific ITS provisions and incorporating all aspects of Rules 15 and 15A into the List of rules which may be subject to the imposition of fines under Rule 476A.

The Exchange also has proposed for inclusion in the Rule 476 List new Rule 106, which sets forth quarterly contact requirements by a specialist unit with each of its listed companies, and semi-annual contacts with the 15 largest Exchange member organizations, as well as with other Exchange member organizations who are significant customers, or who request such contacts. Additionally, the Exchange is proposing for inclusion on the Rule 476A List Rules 121 and 123, which require time-recording of all orders received at the specialist's post, and all orders received at a member's booth from off the Floor, respectively. Finally, the Exchange is seeking to add to the Rule 476A List Rule 123A.30, which states the format by which percentage orders must be received by the specialist and that such orders must be time-stamped upon receipt.[14]

The Exchange believes the proposed rule change will advance the objectives of section 6(b)(6) of the Act,[15] in that it will provide a procedure whereby member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious that a warning or cautionary letter is appropriate. The Exchange also believes the proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of sections 6(b)(7) and 6(d)(1) of the Act.[16]

III. Discussion and Conclusion

The Commission finds that the amendments to the Rule 476A List and reporting Plan are consistent with the requirements of the Act and the rules and regulations thereunder, and in particular, with the requirements of sections 6(b)(1), (6) and (7) and section 19(d).[17] Rule 476A provides a simplified disciplinary system that enables the Exchange to resolve a broader range of minor rule violations conveniently and quickly. Because the fine systems provide members with a simple, equitable method under which they can plead guilty to a minor rule violation charge and pay an appropriate find, they enable the Exchange to deal more efficiently with minor rule violations, as well as provide a more meaningful deterrent, thus furthering the purposes of sections 6(b)(1) and 6(b)(6) of the Act.[18]

The Commission believes that because violations of most of the rules that the Exchange proposes to add to the Rule 476A List can be adjudicated quickly and objectively, it is reasonable for them to be included in the Exchange's abbreviated periodic reporting plan.[19] For example, a member's failure to participate in the Rule 103A SPECQ process is easily determined. Aggressive enforcement of the mandatory participation requirement through the mechanism of Rule 476A will assist the Exchange in its continuing efforts to improve the quality of specialist market making operations on the Exchange by encouraging broader participation in the specialist evaluation process and, ultimately, more meaningful SPEQ results. As a second example, non-compliance with the timerecording and time-stamping requirements of NYSE Rules 121, 123 and 123A.30 is also easily determined, and enforcement of these Rules through the expedited procedures of Rule 476A should enable the Exchange's Surveillance Department to construct more accurate audit trails. Moreover, the Rule 106 specialist contact requirements are objective standards that are amenable to enforcement through the mechanism of Rule 476A.

Rule 104.10 is different from the other rules being proposed for inclusion in the Rule 476A program. Rule 104.10 is a comprehensive rule governing the

[11] The Exchange also requested Commission approval to amend its Rule 19d–1 reporting Plan for Rule 476A violations to include these items. *See supra, notes 3 and 4.*

[12] *See* Securities Exchange Act Release No. 27675 (February 5, 1990), 55 FR 4922 (February 12, 1990) (order approving File No. SR–NYSE–89–32).

[13] In addition, the requirement to participate in the SPEQ pilot program would be deleted from the existing Rule 476A List since the SPEQ process is no longer in a pilot phase.

[14] Rule 123A.30 also deals with the conversion of such orders, special instructions, occasions where Floor Governor approval is required and the manner in which the specialist must handle such orders.

[15] 15 U.S.C. 78f(b)(6) (1982).

[16] 15 U.S.C. 78f(b)(7) and 78f(d)(1) (1982).

[17] 15 U.S.C. 78f(b)(1), (6) and (7) and 78s(d)(1) (1982).

[18] 15 U.S.C. 78f(b)(1) and 78f(b)(6) (1982).

[19] *See, e.g.*, Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (September 23, 1985) (order approving New York Stock Exchange minor disciplinary rule violation plan).

conduct of specialists. Violations of this rule can range from minor transgressions of some of its technical aspects to serious breaches of specialist performance. For the minor, technical violations of the rule, the Rule 476A program will give the Exchange additional flexibility and efficiency in administering sanctions against specialists. At the same time, any serious, continuing, or substantial breaches of the rule must be pursued through full disciplinary actions and, in some cases, reallocation proceedings against the deficient specialists. Due to the scope of Rule 104.10, however, it is difficult to specify the precise items of the rule that are amenable to the minor rule violation program. Accordingly, the Commission believes that although Rule 104.10 may be included under the Rule 476A program, only the most technical and nonsubstantive violations of a specialist's market making obligations should be handled pursuant to the minor rule Plan. Futher, through its oversight function, the Division will examine closely the NYSE's use of its minor rule Plan to address specialist market making concerns.

Finally, the Commission believes that it is appropriate to incorporate the entirety of Rules 15 and 15A into the List of rules which may be subject to the imposition of fines under Rule 476A. Aggressive and quick enforcement of violations of these rules can benefit customers in the form of better executions by, for example, diminishing the frequency with which trades occur on the NYSE at prices disadvantageous relative to quotes available in other market centers.[20]

As noted in previous Commission orders on the Exchange's Rule 476A program, because the Plan provides procedural rights to persons who are fined and permits disciplined persons to contest the Exchange's imposition of the fine and request a full disciplinary proceeding, the Plan is consistent with section 6(b)(7) of the Act,[21] which requires that the rules of an exchange must comply with section 6(d) and generally must provide a fair procedure for disciplining members.[22] The Commission also notes that the NYSE retains the discretion to bring full disciplinary proceedings for violations of the rules listed in the Rules 476A Plan and should do so when appropriate for the particular violation(s) involved.[23]

It is therefore ordered, pursuant to section 19(b)(2) and Rule 19d–1(c)(2) under the Act,[24] that the above mentioned proposed rule change and proposed amendments to the Plan be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Jonathan G. Katz,

Secretary.

Dated: April 4, 1990.

[FR Doc. 90–8250 Filed 4–9–90; 8:45 am]

BILLING CODE 8010–01–M

[File No. 500–1]

The Securities of Southland Communications Inc.; Order of Suspension of Trading

April 4, 1990.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Southland Communications Inc. (1) because of questions concerning a possible undisclosed change in control, (2) because of questions regarding the identity of the owners of its common and preferred stock, (3) because of questions concerning recent market activity in those securities, and (4) because of questions concerning an accumulation of over twenty-five (25) percent of the company's outstanding common stock and approximately nineteen (19) percent of the company's outstanding preferred stock by several broker-dealers and certain of their customers.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company, is suspended for the period from 9:30 a.m. (e.d.t.) on April 4, 1990 through 11:59 p.m. (e.d.t.) on April 13, 1990.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–8251 Filed 4–9–90; 8:45 am]

BILLING CODE 8010–01–M

[20] *See, e.g.*, NYSE Rule 15A(a) ("trade throughs").

[21] 15 U.S.C. 78f(b)(7) (1982).

[22] 15 U.S.C. 78f(d) (1982).

[23] Inclusion of a rule in an exchange's minor rule plan should not be interpreted to mean it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of objective rules under a minor rule violation plan not only can reduce reporting burdens of an SRO but also can make its disciplinary system more efficient in prosecuting violations of these rules.

[24] 15 U.S.C. 78s(b)2) (1982) and 17 CFR 240.19d–1(c)(2) (1989).

[25] *See* 17 CFR 200.30–3(a)(12 (1989).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area # 2414]

Alabama; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on March 21, 1990, and an amendment dated March 23, 1990, I find that the Counties of Autauga, Barbour, Bullock, Butler, Calhoun, Chilton, Clarke, Coffee, Conecah, Covington, Crenshaw, Dale, Dallas, Elmore, Escambia, Geneva, Henry, Houston, Lowndes, Mobile, Monroe, Montgomery, Pike, Randolph, Washington and Wilcox are a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on March 15, 1990. Applications for loans for physical damage may be filed until the close of business on May 21, 1990, and for economic injury until the close of business on December 21, 1990, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308; or other locally announced locations. In addition, applications for economic injury from small business located in the contiguous counties of Baldwin, Bibb, Chambers, Cherokee, Choctaw, Clay, Cleburne, Coosa, Etowah, Macon, Marengo, Perry, Russell, Shelby, St. Clair, Talladega, and Tallapoosa in the State of Alabama; Escambia, Holmes, Jackson, Okaloosa, Santa Rosa and Walton Counties in Flordia; Carroll, Clay, Early, Heard, Quitman, Seminole, Stewart and Troup Counties in Georgia; and George, Greene, Jackson, and Wayne Counties in Mississippi may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-profit Organizations) With Credit Available Elsewhere	9.250
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage for the State of Alabama is 241406, and for economic

injury the number is 704200. The economic injury number for the State of Florida is 704700, for Georgia the number is 704800, and for Mississippi the number is 704900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 27, 1990.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 90-8205 Filed 4-9-90; 8:45 am]

BILLING CODE 8025-01-M

Interest Rate

Pursuant to 13 CFR 108.503-8(b)(4), the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 108.503-4) shall be the greater of 6% over the New York prime rate or the limitation established by the constitution or laws of a given State. For a fixed rate loan, the initial rate shall be the legal rate for the term of the loan.

Charles R. Hertzberg,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 90-8204 Filed 4-9-90; 8:45 am]

BILLING CODE 8025-01-M

Advisory Committee on Veterans Business Affairs; Public Meeting

The U.S. Small Business Administration's Advisory Committee on Veterans Business Affairs will hold a public meeting at 10 a.m., on Thursday, May 24, 1990, at the U.S. Small Business Administration Headquarters, 1441 L Street NW., Room 214 Washington, DC 20416 to discuss the following subjects:

(1) Transition Conferences. What SBA is doing to counsel military personnel on entrepreneurship during their transition to civilian life.

(2) Entrepreneurship for Veterans with Disabilities. What can be done to assure that veterans with disabilities receive assistance in starting up their own business rather than merely receiving employment training.

(3) Promotional Plans. A presentation by SBA's Assistant Administrator for Public Communications on SBA's promotional activities and how veteran organizations and other government agencies can help.

(4) Legislative Agenda. What veterans can expect to see in new legislation relating to veteran business ownership, and Special Consideration for Veterans in Agency programs.

Members of the public wishing to comment on these issues or for further information should write or call Leon J. Bechet, Director, Office of Veterans Affairs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416, (202) 653-8220.

Dated: April 3, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-8208 Filed 4-9-90; 8:45 am]

BILLING CODE 8025-01-M

Utah; Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Salt Lake City, will hold a public meeting at 10 a.m. on Monday, April 30, 1990, at the Fort Douglas Hidden Valley Cuntry Club, 2 North Medical Drive, Salt Lake City, Utah, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Stan Nakano, District Director, U.S. Small Business Administration, 125 South State Street, Salt Lake City, Utah 84138, phone (801) 524-5804.

Dated: March 30, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-8206 Filed 4-9-90; 8:45 am]

BILLING CODE 8025-01-M

Wyoming; Region VIII Advisory Council

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Casper, will hold a public meeting at 9 a.m. on Thursday, May 10, 1990, at the Hitching Post Inn, 1600 West Lincolnway, Cheyenne, Wyoming, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Paul W. Nemetz, District Director, U.S. Small Business Administration, Federal Building, Room 4001, 100 East B Street, P.O. Box 2839, Casper, Wyoming 82602-2839, phone (307) 261-5761.

Dated: March 30, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-8207 Filed 4-9-90; 8:45 am]

BILLING CODE 8025-01-M

Mississippi; Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Jackson, will hold a public meeting from 1 to 4 p.m. on Thursday, April 12, 1990 in the Jackson District Office of the U.S. Small Business Administration, Jackson, Mississippi, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jack Spradling, District Director, U.S. Small Business Administration, 101 West Capitol Street, Suite 400, Jackson, Mississippi 39210, phone (601) 964-4363.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 30, 1990.

[FR Doc. 90-8202 Filed 4-9-90; 8:45 am]

BILLING CODE 8025-01-M

Pennsylvania; Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, combining the geographical area of Philadelphia and Pittsburgh, will hold a public meeting beginning at 2 p.m. on Monday, May 21, 1990 and ending at 12:30 p.m. on Tuesday, May 22, at the Harrisburg Marriott, 4650 Lindle Road, Harrisburg, Pennsylvania, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William T. Gennetti, District Director, U.S. Small Business Administration, 475 Allendale Road, King of Prussia, Pennsylvania 19406, phone (215) 962-3800.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 30, 1990.

[FR Doc. 90-8203 Filed 4-9-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on May 1, and May 2, 1990, of the following debt management advisory committee:

Public Securities Association

Treasury Borrowing Advisory Committee

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides for a working session on May 1 and the preparation of a written report to the Secretary of the Treasury on May 2, 1990.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus these meetings also fall within the exemption covered by section 552b(c)(9)(A) of title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of title 5 of the United States Code.

Dated: April 4, 1990.

David W. Mullins, Jr.,

Assistant Secretary (Domestic Finance).

[FR Doc. 90-8217 Filed 4-9-90; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 10-90]

Treasury Notes of April 15, 1997, Series E-1997

Washington, April 5, 1990.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $7,500,000,000 of United States securities, designated Treasury Notes of April 15, 1997, Series E-1997 (CUSIP No. 912827 YT 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated April 16, 1990, and will accrue interest from that date, payable on a semiannual basis on October 15, 1990, and each subsequent 6 months on April 15 and October 15 through the date that the principal becomes payable. They will mature April 15, 1997, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2 The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5 The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1 p.m., Eastern Daylight Saving time, Wednesday, April 11, 1990. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, April 10, 1990, and received no later than Monday, April 16, 1990.

3.2 The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3 A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4 Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to

submit tenders only for their own account.

3.5 Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting non-competitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in § 3.5. must be made or completed on or before Monday, April 16, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, April 12, 1990. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 90-8418 Filed 4-6-90; 3:05 pm]

BILLING CODE 4810-40-M

Internal Revenue Service (IRS)

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on April 24 & 25, 1990. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8:30 A.M. on Tuesday, April 24 and 10:30 A.M. on Wednesday, April 25, 1990. The agenda will include the following topics:

Tuesday, April 24, 1990

Recap of 1989 Reports to the Commissioner
1990 Filing Season Reports
Extensions of Time to File
Strategic Business Plan

Wednesday, April 25, 1990

Coordinated Exam Program (CEP)
Q & A and News Items

Note: Last minute changes to the day or order of topic discussion are possible and could prevent effective advance notice.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notifications of intent

to attend the meeting must be made with Robert F. Hilgen, Assistant to the Senior Deputy Commissioner no later than April 13, 1990. Mr. Hilgen may be reached on (202) 566–4143 [not toll-free].

If you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, Internal Revenue Service, 1111 Constitution Avenue, NW., C:SD Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, [202] 566–4143 [Not toll-free].

Fred T. Goldberg, Jr.,

Commissioner.

[FR Doc. 90–8136 Filed 4–9–90; 8:45 am]

BILLING CODE 4830–01–M

[Delegation Order No. 143; Rev. 4]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: Delegation Order No. 143 (Rev. 4) redelegates authority to perform certain functions related to the enforcement of 31 CFR 103 (Bank Secrecy Act Regulations) that was delegated to the Commissioner by Treasury Directive 15–41, dated December 8, 1987, and procedures approved by Assistant Secretary of the Treasury (Enforcement) to Assistant Commissioner (Criminal Investigation); District Directors and Assistants; Special Assistant for Enforcement, Detroit Computing Center; and Chiefs, Criminal Investigation Division. In Assistant Commissioner (International) this authority will be exercised as it relates to tax treaty partners or tax executive agreement.

EFFECTIVE DATE: April 4, 1990.

FOR FURTHER INFORMATION CONTACT: Gregory Zampogna, Director, Office of Enforcement, Internal Revenue Service, Washington, DC 20224, (202) 566–5029 (not a toll-free call).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978.

Order No. 143 (Rev. 4)

Effective date: 4–4–90

Authority To Perform Certain Functions To Enforce 31 CFR 103 (Bank Secrecy Act Regulations)

1. The authority vested in the Commissioner of Internal Revenue by 31 CFR 103.46(a)(8), to initiate investigations of financial institutions other than banks and brokers or dealers in securities as referenced in 31 CFR 103.46(a)(1) through 103.46(a)(6) for possible criminal violations of 31 CFR Part 103 (except 31 CFR 103.23 and 103.48), is hereby delegated pursuant to 31 CFR 103.46(a)(8) and 26 CFR 301.7701–9(c) to the Director, Office of Enforcement, and to the Chiefs, Criminal Investigation Division (District Directors in streamlined districts) and Chief, Criminal Investigation Division, Office of Taxpayer Service and Compliance, Assistant Commissioner (International). This authority may not be redelegated.

2. The authority vested in the Commissioner by Treasury Directive 15–41, to initiate investigations of banks and brokers or dealers in securities referenced in 31 CFR 103.46(a)(1) through 103.46(a)(6) for possible criminal violations of 31 CFR part 103 (except 31 CFR 103.23 and 103.48), is hereby delegated to the Assistant Commissioner (Criminal Investigation) pursuant to Treasury Order 150.10 and Treasury Directive 15–41, and Memorandum of Understanding approved September 6, 1985, and Clarification of Memorandum approved January 29, 1986, between the Assistant Secretary (Enforcement and Operations) and the Commissioner, Internal Revenue Service, and 26 CFR 301.7701–9(c). This authority may not be redelegated.

3. The authority vested in the Commissioner by Treasury Directive 15–41, to perform certain functions related to the enforcement of 31 CFR part 103, is hereby delegated pursuant to Treasury Order 150–10 and Treasury Directive 15–41, and Memorandum of Understanding approved September 6, 1985, between the Assistant Secretary (Enforcement and Operations) and the Commissioner, Internal Revenue Service and 26 CFR 301.7701–9(c) as follows:

(a) The Director, Detroit Computing Center, is delegated the authority to:

(1) Grant exemptions from the reporting requirements contained in 31 CFR 103.22(a);

(2) Issue requests for lists of financial institution customers whose currency transactions have been exempted from the reporting requirement in 31 CFR 103.22; and

(3) Direct banks to file currency reports as prescribed in 31 CFR 103.22(a)(1) with respect to customers whose transactions had been previously exempted.

(b) The Assistant Commissioner (Examination) is delegated the civil enforcement authority for the compliance aspects of 31 CFR 103.22 (b) (c), (d), (e), and (f) regarding exemptions.

(c) The District Directors and the Assistant Commissioner (International) are delegated the authority to assure compliance with the requirements of 31 CFR part 103 by all banks not currently examined by Federal supervisory agencies for safety and soundness.

(d) The authority delegated in (a) above may be redelegated by the Director, Detroit Computing Center, but may not be further redelegated.

(e) The authority delegated in (b) above may be redelegated by the Assistant Commissioner (Examination) but may not be further redelegated.

(f) The authority delegated in (c) above may be redelegated by the District Directors and the Assistant Commissioner (International) but may not be further redelegated.

4. The authority vested in the Commissioner by 31 CFR 103.46(a)(8), to assure compliance with the requirements of 31 CFR part 103 by those financial institutions not referenced in 31 CFR 103.46(a)(1) through 103.46(a)(6), is hereby delegated pursuant to 31 CFR 103.46(a)(8) and 26 CFR 301.7701–9(c) to the Assistant Commissioner (Examination) and to the Chiefs, Examination Division (District Directors in streamlined districts) and Chief, Examination Division, Office of Taxpayer Service and Compliance, Assistant Commissioner (International). This authority may be redelegated by the Assistant Commissioner (Examination) and the Chiefs, Examination Division (District Directors in streamlined districts), but may not be further redelegated.

5. The authority vested in the Commissioner by Treasury Directive 15–41, specifically to disseminate copies of the reports required by Department of the Treasury regulations (31 CFR part 103), issued to implement 31 U.S.C. 5319, is delegated to the officials listed below. The exercise of this authority is subject to the Dissemination Policies and Guidelines for the Release of Information Reported under the Provisions of the Bank Secrecy Act issued by the Assistant Secretary of the Treasury (Enforcement). This authority may not be redelegated.

a. Assistant Commissioner (Criminal Investigation),

b. District Directors and Assistants,
c. Special Assistant for Enforcement, Detroit Computing Center, and
d. Chiefs, Criminal Investigation Division. In Assistant Commissioner (International) this authority will be exercised as it relates to tax treaty partners or tax executive agreement.

6. Delegation Order No. 143 (Rev. 3), effective May 12, 1986, is superseded.

Dated: March 14, 1990.

Approved:

Charles H. Brennan,

Deputy Commissioner (Operations).

[FR Doc. 90-8137 Filed 4-9-90; 8:45 am]

BILLING CODE 4830-01-M

Tax on Certain Imported Substances; Notice of Filing of Petition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the acceptance, under Notice 89-61, 1989-1 C.B. 717, of a petition requesting that *methyl Isobutyl ketone* be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89-61. This is not a determination that the list of taxable substances should be modified.

DATES: Written comments and request for a public hearing relating to this petition must be delivered by June 11, 1990. Any modification of the list of taxable substances based upon this petition would be effective as of July 1, 1990.

ADDRESSES: Send comments and requests for a public hearing to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (Petition), Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), 202-566-4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The petition was received on September 11, 1989. The petitioner is Pecten Chemicals, an exporter of this substance. The following is a summary of the information contained in the petition. The complete petition is available in the Internal Revenue Service Freedom of Information Reading Room.

HTS number: 2914.13.00
Schedule B number: 2914.13.000
CAS number: 108-10-1

This substance is derived from the taxable chemical *propylene*. Methyl isobutyl ketone is a colorless liquid produced by a three-step process utilizing acetone in condensation, dehydration, and hydrogenation steps. Acetone is passed over a strong base catalyst to form diacetone alcohol, then dehydrated to mesityl oxide, and subsequently hydrogenated to methyl isobutyl ketone.

The stoichiometric material consummption formula for this substance is:

$$2\ CH_3CHCH_2 + O_2 \rightarrow CH_3COCH_2CH(CH_3)_2 + .5\ O_2$$

propylene + oxygen → methyl isobutyl ketone + oxygen

According to the petition, taxable chemicals constitute 75 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $5.72 per ton. This is based upon a conversion factor for propylene of 1.175.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-8138 Filed 4-9-90; 8:45 am]

BILLING CODE 4830-01-M

Office of Thrift Supervision

[No. 90-555]

Withdrawal of Notice of Application for Response to Notice of Intent To Issue Capital Directives

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice, withdrawal.

SUMMARY: On December 21, 1989, the Office of Thrift Supervision ("Office") erroneously published a notice indicating that the Office had submitted a request for a new information collection entitled "Application for Response to Notice of Intent to Issue Capital Directives," to the Office of Management and Budget ("OMB") for approval in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). This information collection does not require OMB's review and approval, pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35) because the collection is being conducted during an enforcement-related action with respect to a specific party; and therefore, the Office hereby withdraws the notice published.

DATES: April 10, 1990.

FOR FURTHER INFORMATION CONTACT: Dawn Causey, (202) 906-7157, Office of Thrift Supervision, Enforcement, 1700 G Street, NW., Washington, DC 20552.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-8172 Filed 4-9-90; 8:45 am]

BILLING CODE 6720-01-M

[No.: AC-11]

St. Anthony Federal Savings and Loan Association, Cicero, IL.; Final Action Approval of Conversion Application

Date: April 4, 1990.

Notice is hereby given that on February 27, 1990, the Chief Counsel and the Senior Deputy Director for Supervision Operations, or their respective designees, acting pursuant to delegated authority, approved the application of St. Anthony Federal Savings and Loan Association, Cicero, Illinois, for permission to convert to the stock form of organization, pursuant to a voluntary supervisory conversion, and to acquire 100% of St. Anthony's voting stock by St. Anthony Bancorp, Inc., Cicero, Illinois.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-8173 Filed 4-9-90; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-12]

Washington Shores Savings Bank, F.S.B. Orlando, FL; Final Action Approval of Conversion Application

Date: April 4, 1990.

Notice is hereby given that on February 28, 1990, the Chief Counsel and the Senior Deputy Director for Supervision Operations, or their respective designees, acting pursuant to delegated authority, approved the application of Washington Shores Savings Bank, F.S.B., Orlando, Florida (the "Association"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and acquisition of 64.65 percent of the Association's voting stock by Hosey B. Sessler, James A. Mobley, Royce B. Walden, A.L. Bookhardt and Guardian Care Development Corp.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-8174 Filed 4-9-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-9; OTS]

Gwinnett Federal Savings and Loan Association, Lawrenceville, GA; Revised Notice of Final Action Approval of Conversion Application

Date: April 3, 1990.

Notice is hereby given that on March 22, 1990, the designee of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Gwinnett Federal Savings and Loan Association, Lawrenceville, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, Nw., Washington, DC 20552, and District Director, Office of Thrift Supervision, Atlanta District Office, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-8175 Filed 4-9-90; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-10]

Emporia Federal Savings Bank, Emporia, VA; Final Action Approval of Conversion Application

Date: April 4, 1990.

Notice is hereby given that on January 5, 1990, the Chief Counsel and the Senior Deputy Director for Supervision Operations, or their respective designees, acting pursuant to delegated authority, approved the application of Emporia Federal Savings Bank, Emporia, Virginia ("Emporia"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and acquisition of over 90% of Emporia's voting stock by Essex Savings Bank, Elizabeth City, North Carolina.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-8176 Filed 4-9-90; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 69
Tuesday, April 10, 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 MINE SAFETY AND HEALTH REVIEW COMMISSION

April 5, 1990.

TIME AND DATE: 10:00 a.m., Wednesday, April 11, 1990.

PLACE: Room 600, 1730 K Street, N.W., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Roger L. Stillion v. Quarto Mining Company*, Docket No. LAKE 88-91-D. (Issues include whether complainant Stillion, an employee of Quarto Mining Company, is entitled to be paid by Quarto for acting as a walkaround representative of Quarto's mine during a Section 103(g) (1) inspection of an independent contractor's equipment and work site.)

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)]

MATTERS TO BE CONSIDERED:

2. *Arnold Sharp v. Big Elk Creek Coal Company*, Docket No. KENT 89-147-D. (Consideration of a Petition for Interlocutory Review.)

It was determined by a unanimous vote of Commissioners that this portion of the meeting be closed.

Any person intending to attend the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653-5629 / (202) 708-9300 for TDD Relay 1-800-877-8339 for Toll Free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 90-8433 Filed 4-6-90; 3:08 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, April 16, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

April 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-8439 Filed 4-6-90; 3:27 pm]

BILLING CODE 6210-01-M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, April 17, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda item. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED: As set forth below in the Appendix.

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of Government and Public Affairs, Telephone: (202) 275-7252.

Noreta R. McGee,

Secretary.

Appendix

Voting Conference Agenda

April 17, 1990

Ex Parte No. 445 (Sub-No. 2), Intramodal Rail Competition—Proportional Rates—Petition for Reconsideration.

No. 37063, Increased Rates on Coal, L&N RR, October 31, 1978: No. 380258, The Dayton Power and Light Company v. Louisville and Nashville Railroad Company; and Ex Parte No. 357, Increased Freight Rates and Charges, Nationwide—8 Percent—Market Dominance.

No. 38239S (Sub-No. 1), Amstar Corporation v. The Alabama Great Southern Railroad, et al.—Appeal of Chairman Order.

No. 40169, National Grain and Feed Association v. Burlington Northern Railroad Company, et al.—Motion to Dismiss.

Finance Docket No. 30800 (Sub-No. 27), Union Pacific/MKT Merger—TCU Implementing Agreement—Does Union Dues Deduction Violate *New York Dock*.

Finance Docket No. 31438, Sandusky County—Seneca County—City of Tiffin Port Authority—Feeder Line application—Stay Pending Judicial Review.

Finance Docket No. 31464, Indiana Railroad Company—Lease and Operation Exemption—Norfolk and Western Railway Company; Finance Docket No. 31470, Central Railroad Company of Indianapolis—Lease & Operation Exemption—Line of the Norfolk and Western Railway Company; and, Finance Docket No. 31063, Midsouth Corporation—Control Exemption—Midsouth Rail Corporation and Louisiana Rail Corporation—Stay of Arbitration.

Docket No. AB-12 (Sub-No. 124X), Southern Pacific Transportation Company—Abandonment Exemption—in Mineral County, NV.

Docket No. AB-322 (Sub-No. 1X), NRUC Corporation—Discontinuance of Service and Operations Exemption—in St. Lawrence County, NY and Docket No. AB-323 (Sub-No. 1X), Ogdensburg Bridge and Port Authority—Abandonment and Discontinuance of Service Exemption—in St. Lawrence County, NY.

No. MC-F-18505, GLI Acquisition Company—Purchase—Trailways Lines, Inc.; GLI Acquisition Company—Control—Continental Panhandle Lines, Inc., and No. MC-F-19206, Texas, New Mexico & Oklahoma Coaches, Inc.—Purchase—Scenic Trails, Inc., d/b/a Scenic Trailways—Petitions to Reopen.

[FR Doc. 90-8224 Filed 4-5-90; 12:28 pm]

BILLING CODE 7035-01-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 30, 1990.

PLACE: On board MV MISSISSIPPI at City Front, Cape Girardeau, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public of any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 90–8362 Filed 4–6–90; 10:47 am]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., May 1, 1990.

PLACE: On board MV MISSISSIPPI at City Front, vicinity of Beale Street, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public of any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 90–8363 Filed 4–6–90; 10:47 am]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., May 2, 1990.

PLACE: On board MV MISSISSIPPI at Port of Rosedale, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 90–8364 Filed 4–6–90; 10:47 am]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 3:00 p.m., May 3, 1990.

PLACE: On board MV MISSISSIPPI at Foot of North Street, Baton Rouge, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 90–8365 Filed 4–6–90; 10:47 am]

BILLING CODE 3710-GX-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 9, 16, 23, and 30, 1990.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 9

Friday, April 13

10:00 a.m.
Briefing on Risk Based Technical Specifications Program (Public Meeting)

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. ALAB–925 (Rockwell International Special Nuclear Material License Renewal)

Week of April 16—Tentative

Monday, April 16

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Comanche Peak (Unit 1) (Public Meeting)

Thursday, April 19

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 23—Tentative

Thursday, April 26

2:00 p.m.
Briefing on Containment Performance Improvement Program (Other Than Mark I) (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, April 27

9:00 a.m.
Briefing on Evolutionary Light Water Reactor Certification Issues and Related Regulatory Requirements (Public Meeting)

Week of April 30—Tentative

Monday, April 30

10:00 a.m.
Briefing on Status of Nine Mile Point 1 Restart (Public Meeting)

Thursday, May 5

10:00 a.m.
Briefing on Incident Investigation Team (IIT) Report on Amersham Materials Event (Public Meeting)

2:00 p.m.
Briefing on EEO Program (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Public Comments Received Concerning the Enforcement Policy Revision Involving Maintenance-Related Root Cause" scheduled for April 5, was *cancelled.*

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserve basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: April 5, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90–8420 Filed 4–6–90; 2:37 pm]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that Corporation business requires the addition to the "New Business" for the

open session of the Tuesday, April 3, 1990, meeting of the Resolution Trust Corporation the following:

Briefing re:
Policy on Post-Insolvency Interest for Direct Collateralized Borrowings.

The changes were required with less than seven days notice to the public and no earlier notice was practicable.

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. John M. Buckley, Jr., Executive Secretary of the Corporation, at (202) 898–7102.

Dated: April 3, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90–8333 Filed 4–5–90; 4:57 pm]

BILLING CODE 6714–01–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 on Tuesday, April 3, 1990, at 3:06 p.m., the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the resolution of four thrift institutions and internal corporate activities.,

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director Salvatore R. Martoche, (Acting Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street NW., Washington, DC.

Dated: April 4, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90–8334 Filed 4–5–90; 4:57 pm]

BILLING CODE 6714–01–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 at 2:15 p.m. on Tuesday, April 10, 1990, to consider the following matter:

Summary Agenda:

No Cases.

Discussion Agenda:

A. *Memorandum re:*
Policy on Post-Insolvency Interest for Direct Collateralized Borrowings

The meeting will be held in the Board Room 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) 898–3604.

Dated: April 3, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90–8335 Filed 4–5–90; 4:57 pm]

BILLING CODE 6714–01–M

Corrections

Federal Register
Vol. 55, No. 69
Tuesday, April 10, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Amendment of an Existing System of Records

Correction

In notice document 90-7227 beginning on page 11628 in the issue of Thursday, March 29, 1990, make the following correction:

On page 11628, in the third column, under **EFFECTIVE DATE**, in the second line, "March 14, 1990" should read "May 14, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Short Supply Determinations; High-Manganese Non-Magnetic Steel Plate

Correction

In notice document 90-7759 beginning on page 12398 in the issue of Tuesday, April 3, 1990, make the following correction:

On page 12399, in the second column, in the paragraph headed *Comments:*, in the third and fourth lines, "April 7, 1990" should read "April 10, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90M-0053]

IntraOptics, Inc.; Premarket Approval of Models SK15 and SK16 Posterior Chamber Intraocular Lenses

Correction

In notice document 90-4511 beginning on page 7033 in the issue of Wednesday, February 28, 1990, make the following correction:

On page 7033, in the third column, under **DATES**, "February 28, 1990" should read "March 30, 1990".

BILLING CODE 1505-01-D

OFFICE OF MANAGEMENT AND BUDGET

Revised Standards for Defining Metropolitan Areas in the 1990's

Correction

In notice document 90-7425 beginning on page 12154 in the issue of Friday, March 30, 1990, make the following correction:

On page 12155, in the third column, in paragraph C, the second line, "250,000" should read "25,000".

BILLING CODE 1505-01-D

federal register

Tuesday
April 10, 1990

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Walking and Working Surfaces and Personal Protective Equipment (Fall Protection Systems); Notices of Proposed Rulemaking

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket S-041]

RIN 1218-AB04

Walking and Working Surfaces

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise its general industry standards for workplace walking and working surfaces (29 CFR part 1910, subpart D) in order to focus on the hazards that can result in trips, slips, and falls causing serious and fatal injuries.

This proposed standard will also eliminate ambiguities and redundancies contained in the existing subpart D standards; address areas not covered in the existing standards; and consolidate and simplify many of the provisions contained in the existing standards.

In a related notice of proposed rulemaking, OSHA proposes to amend the existing standards in 29 CFR part 1910, subpart I—Personal Protective Equipment, to add criteria pertaining to personal fall protection systems, including fall arrest systems (lifelines and lanyards, body belts and harnesses, deceleration devices, etc.), work positioning systems (lineman's body belts and pole straps, window cleaner's belts, etc.), travel restricting systems (tether lines, etc.), and fall protection systems for climbing (ladder safety devices, etc.). The proposed revisions to subparts D and I, because of their interdependency with regard to the use of personal fall protection systems, are being published concurrently.

OSHA believes that the proper use of fall protection systems can protect employees from injury and death due to falls to different elevations. The existing subpart D standards for walking and working surfaces refer to or require the use of such systems, but provide little or no information to identify what criteria these systems must meet in order to provide employee safety. The subpart I proposal will clearly state those criteria.

DATES: *Comments.* Comments must be postmarked by July 9, 1990.

Requests for public hearing on objections to the proposed standard. Requests for a public hearing on objections to the proposal must be postmarked by July 9, 1990.

Notices of intention to appear, testimony and documentary evidence. If OSHA receives requests for a hearing on objections to the proposal, OSHA will hold a hearing. Any interested persons may participate in the hearing. Notices of intention to appear, testimony and documentary evidence for the hearing must be postmarked by August 8, 1990.

Public hearing. If OSHA receives requests for a hearing from the public, OSHA will commence a hearing on September 11, 1990.

ADDRESSES: *Comments and requests for a hearing.* Comments on the proposal and requests for a hearing on objections to the proposed standard should be submitted in quadruplicate to the Docket Officer, Docket S-041, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210.

Notices of intention to appear, and testimony and documentary evidence. Notices of intention to appear at the hearing, and testimony and documentary evidence which will be introduced into the hearing record, must be submitted in quadruplicate to Mr. Tom Hall, Division of Consumer Affairs, Room N3649, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

Public hearing. If requested by the public, a hearing will be held in Washington, DC, beginning September 11, 1990, at 10:00 a.m. in the Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: *Proposal.* Mr. James A. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8151.

Public hearing. Mr. Tom Hall, Division of Consumer Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3649, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8615.

SUPPLEMENTARY INFORMATION: The author of this proposed rule is Terence P. Smith, Directorate of Safety Standards Programs, Occupational Safety and Health Administration.

I. Background

The vast majority of workers in general industry employment spend their work hours walking on level working surfaces such as office floors, hallways, or the floors of shops and factories. While slips, trips and falls are still common occurrences to such workers, the likelihood of a major injury from such a fall is not great.

However, many employees in general industry work on scaffolds; climb up and down ladders; walk on narrow stairs; work in areas where there may be holes in the floor; or work on elevated floors which have unprotected edges. Slips, trips, and falls from ladders, scaffolds, stairs, elevated floors and similar work surfaces are major causes of employee injury (Refs. 14, 16, 17, 22, 26, 32, 34, 38).

The existing standards in subpart D, which deal with the hazards of walking and working surfaces, are part of the initial package of standards promulgated by OSHA in 1971, under section 6(a) of the Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 655(a)). During the period since OSHA promulgated subpart D, interested parties have suggested changes in these regulations. As discussed below, efforts to revise subpart D have been going on over a number of years. In September 1973, OSHA published a proposed revision of subpart D in the Federal Register (38 FR 24300). In April 1976, OSHA published a notice in the Federal Register (41 FR 17227) which withdrew the 1973 proposal because, in the Agency's view, it had become outdated and did not reflect then current information. Concurrently, in a separate notice, OSHA requested further information (41 FR 17102) on revisions needed in subpart D. In addition, OSHA conducted several informal public meetings to provide interested parties with the opportunity to present their views on issues related to subpart D.

After reviewing the responses to the April 1976 notice, OSHA determined that a more thorough scientific and technical research effort was needed to develop objective information upon which an effective subpart D standard could be developed.

OSHA had contracted with the National Bureau of Standards (NBS) to conduct research in the area of fall protection. The NBS research resulted in four reports. Three reports, published in 1976, addressed guardrails (Refs. 9, 10, 11). In the guardrail reports, NBS described a variety of existing guardrail systems that complied, at the time of installation, with various building codes. However, NBS tested these systems, and found that they did not meet the pertinent OSHA standards. The testing program used an anthropomorphic model and other ergonomic data to generate information which, along with

the results of other research efforts that reviewed human and environmental factors interaction, enabled the NBS to develop its final guardrail report, "A Model Performance Standard for Guardrails" (Ref. 11).

The fourth NBS report addressed personal fall protection systems, specifically body harnesses, body belts and lanyards (Ref. 8). That report also described various situations in which fall protection systems have failed, as well as the lack of test criteria for evaluating the shock absorbing qualities of the various systems. The report reviewed the wearing of various personal fall protection systems, and the possible body stresses each system could place upon the wearer (Ref. 8). The information contained in these reports has been very helpful to OSHA in developing the proposed subpart D revisions, as well as the proposed additions to subpart I.

Around the time that OSHA withdrew the proposed subpart D revision, the Agency contracted with researchers at Texas Tech University and at the University of Michigan to study problems related to other hazards addressed in subpart D (Refs. 1, 2, 3), such as those associated with ladders and scaffolds. The results of these studies will be discussed elsewhere in the preamble where they relate to particular provisions of the proposal. Around this time, OSHA also began to develop more comprehensive injury data in order to determine the types and causes of injuries which occurred on walking and working surfaces (Refs. 7, 15, 16, 25, 43). In addition, OSHA requested the Bureau of Labor Statistics (BLS) to study lost time injuries associated with scaffolds and other working surfaces.

The Agency has determined, based on the BLS reports and other research reports (Refs. 13, 17, 18, 20, 26, 27, 34, 36), together with the information developed by OSHA, that the hazards associated with the use of walking and working surfaces constitute a significant risk to employees. OSHA has also determined that revisions to subpart D are necessary to reduce these risks, and that there is sufficient information upon which a protective and feasible standard can be based.

II. Agency Action

Hazards associated with walking and working surfaces are confronted by virtually all of the approximately 77.3 million employees working in industry classifications regulated by OSHA as "general industry," under 29 CFR part 1910. This employee estimate has been taken from the Bureau of Labor Statistics (BLS) report, "Supplement to Employment and Earnings," July 1987 (Ref. 59).

Several studies have been performed for, or by, OSHA concerning the hazards confronted by employees on walking and working surfaces. These studies address the economic costs, human toll and causes of the accidents which occur on walking and working surfaces. OSHA presents a brief discussion of these studies to demonstrate the problems associated with walking and working surfaces, and the need for revisions to the existing subpart D standards.

In one study performed by BLS (Ref. 38), 938 employee injuries resulted from accidents on stairs alone. All of those injuries occurred during a four month period which ended in early 1982. This injury total was based on workers' compensation reports which BLS obtained from 24 states. OSHA expects that a proportionately higher injury figure would have been produced if all the states had been included in the study.

A BLS study, "1985 SDS Current Cases Involving Disability" (Ref. 60), indicates that, in 1985, nearly 200,000 injuries that involved one or more lost work days occurred in the 23 states participating in the survey, as the result of falls. Another BLS study, "Occupational Injuries and Illnesses in the United States by Industry, 1985," BLS Bulletin 2278, May 1987 (Ref. 19), indicated that falls accounted for nine percent of all deaths of employees in workplaces with 11 or more employees. According to BLS Bulletin 2278, these falls resulted in over 300 deaths per year in 1984 and 1985. OSHA expects that, as high as the reported fall-related toll may be, the actual number of deaths and injuries resulting from accidents occurring on walking and working surfaces would be higher if data from all workplaces were available.

Studies show that accidents involving walking and working surfaces impose large costs. BLS studies (Refs. 17, 18, 20, 60) indicate that falls account for more than 15 percent of all worker compensation cases. In addition, those fall-related injuries and deaths accounted for at least 20 percent of all worker compensation indemnity payments in the states that were studied (Ref. 18).

One study performed by OSHA (Ref. 16) investigated the causes of fatalities resulting from falls onto the same level on which the employee was walking or working. OSHA found that the major causes of those incidents included being knocked off balance or pushed to the floor by some external force and slipping on the floor.

OSHA also performed studies concerning walking and working on scaffolds and other work surfaces in order to determine the nature and causes of employee injuries on these surfaces. These studies revealed the following:

1. Many employee injuries occurred because no fall protection system was used at the opening or edge of the work surfaces (roofs, ceilings, floors, catwalks and similar surfaces). In other cases, the floor surface itself was responsible for employee injuries because it was slippery (Refs. 15, 16, 20). The NBS statistical analyses of falls (Refs. 9, 10, 11) indicated that about 25 percent of work surface accidents were guardrail-related, with 87 percent of those involving falls to a different level. These NBS analyses further demonstrate the problems which arise when fall protection systems are misused or absent.

2. Studies addressing scaffolds indicated that more than half of the injuries to employees occurred while they were working on scaffolds. The employee activity with the next highest injury total was climbing between levels on the scaffold (Refs. 7, 13, 23).

BLS studied the specific walking or working surfaces (such as ladders and scaffolds) which have been involved in incidents. One such study concerning ladders (Ref. 34) indicates that in more than half of the incidents involving employee injury, the ladder being used either moved, slipped, fell or broke. The study also indicated that ladders were secured or braced in fewer than half of the incidents resulting in employee injury. Additionally, in more than half of these incidents, employees were carrying things in their hands at the time that they fell.

In summary, the information in the record, together with the studies performed by and for OSHA, clearly demonstrate that walking and working surfaces continue to pose significant risks of employee injury and death despite OSHA's initial promulgation of subpart D. In particular, OSHA notes that even after allowing for the reduction in reported employee injury and death in the studies conducted after OSHA promulgated and began to enforce its standards, compared to those studies conducted before OSHA, the risk of employee exposure to hazards associated with walking and working surfaces remains significant. OSHA believes that compliance with proposed subpart D would substantially reduce these risks.

Accordingly, OSHA proposes to revise subpart D so that it better addresses the dangers of slips, trips, and falls which occur on workplace walking and working surfaces. The proposal addresses the causal factors that appear to produce such accidents. For example, the proposal defines the term "slip-resistance", a term which has not been defined before.

Proposed subpart D also eliminates the perceived ambiguities and redundancies of existing subpart D, addresses areas not previously covered, and consolidates and simplifies many of the provisions contained in existing subpart D. OSHA believes that the proposed rule is both technologically and economically feasible. Based on the above-stated considerations, OSHA has determined that compliance with proposed subpart D will prevent substantially more injuries and fatalities than are prevented by compliance with existing subpart D.

III. Specific Issues for Comment

During the development of this proposed revision to subpart D, several issues surfaced. OSHA seeks further public comment on these issues:

1. *Request for additional accident data.* The Agency recognizes that, in some cases, the information collected by OSHA regarding walking and working surface hazards does not contain enough detail for OSHA to evaluate the circumstances of incidents. OSHA further recognizes that such information is necessary to determine how best to achieve the appropriate protection from workplace hazards. Only by clearly understanding the causes of accidents, can OSHA develop a rule which will prevent as many as possible of the estimated 132 fatalities occurring each year. For example, OSHA does not always know whether falls from roofs are the result of faulty equipment, workers with poor health (heart attacks, etc.,), or improper use of the equipment. Such information is crucial to determining whether OSHA should focus on revising equipment specification, worker training, or non-compliance measures.

The current data contains much of the information required to make regulatory decisions. However, OSHA has not been able to determine from the data specifically which provisions in the rule will be the most effective at preventing accidents. OSHA desires that better data and information be collected to further refine the regulatory decisions reached in the NPRM. Specifically, OSHA requests that commenters submit information on the causes of walking and working surface accidents: (1) Was the accident related to faulty or poorly-designed equipment? (2) did the employer/employee fail to use the proper safety equipment, such as guardrails or ladder safety devices? (3) did some unusual event contribute to the accident, such as a heart attack or poor weather conditions? The Agency would be particularly interested in receiving this information on slipping, tripping and falling incidents which occurred on walking and working surfaces.

With a better understanding of the causes of these accidents, OSHA will seek, in the regulatory impact analysis for the final rule, to determine the variations in cost-effectiveness of individual provisions. Significant variation in cost-effectiveness could mean that more intensive regulation in some areas (in those provisions where the rule is more cost-effective) and less intensive in other areas (in those provisions where the rule is less cost-effective) would increase the number of fatalities prevented and reduce the overall cost of the rule. Thus, OSHA also requests comment on the more general issue of how the rule's provisions can be modified to increase the overall cost-effectiveness of the final rule.

2. *Telecommunication.* OSHA has proposed to delete the telecommunications industry regulations for ladders (§ 1910.268(h)) except in the case of the requirements for ladder coatings and rolling ladders and proposes to replace them with coverage under proposed subpart D. Are there either provisions in proposed subpart D which should be modified or other provisions in § 1910.268 which should be retained in order to address the particular needs of telecommunication workers? To the extent that these proposed standards apply to ladders, step bolts and individual rung ladders used on telecommunication towers, how should such towers be regulated with respect to climbing clearances, ladder safety devices, the use of structural members as climbing surfaces, etc.? What would be the economic impact of such regulations? Which of the proposed provisions, if any, should be modified for application to such towers? Please provide information to support any suggested changes.

3. *Manway openings in pressure vessels.* There are no existing OSHA requirements for the minimum size of openings for manways. Proposed § 1910.22(a)(4) requires that manholes and manways which are built a year or more after the effective date of the final rule and which lead to confined spaces, such as non-pressurized tanks and atmospheric vessels, have a minimum diameter of 24 inches (61 cm). How large are the manway openings in existing tanks and pressure vessels? Is the proposed 24-inch (61 cm) minimum width for new manways in pressure vessels appropriate? How much time should OSHA allow for employers to achieve compliance with the 24-inch (61 cm) minimum requirement? What are recommended sizes of manway openings in pressure vessels when taking into consideration the possible need for emergency rescue of injured employees? What would be the cost of requiring 24-inch (61 cm) or larger manway openings in new pressure vessels? Please submit information to support any suggestions.

4. *Walking or working on flowable material.* There have been fatalities involving employees who have stood or walked on seemingly stable surfaces of flowable material stored in the open, such as piled coal, that were bridged over voids. When the surface gave way, the employees fell into the voids. OSHA regulations do not address the hazards of working on flowable material stored in the open. Should OSHA set such regulations? What requirements, such as for work practices, administrative controls or personal protective equipment, should OSHA set for these work surfaces? How often have such incidents occurred? Please submit examples of any materials or circumstances that present similar hazards.

5. *Training of employees to inspect and use ladders that provide a working height of six feet (1.82 m) or more.* Proposed § 1910.23(b)(1) would require that employers train employees who use ladders with a working height of six feet (1.82 m) or more to inspect and use such ladders properly. It has been suggested by the American Ladder Institute that the hazard warnings and safe use instruction markings appearing on portable ladders which comply with the American National Standards Institute (ANSI) series of standards for portable ladders (ANSI A14.1, A14.2 and A14.5) provide portable ladder users with adequate information. OSHA believes that portable ladders already have labels on them and the employers will have no cost involved in providing the labels. Does the ANSI-specified labeling provide the necessary guidance? What additional information or training should be required? What would constitute proper training for employees who climb fixed ladders and are not "qualified climbers" as addressed in proposed § 1910.23(b)(5)? Please submit information on the number of employees who would need training, current

training efforts and the anticipated cost impact of the training requirements which would be imposed by the proposed rule.

OSHA requests comments on what height would be the appropriate threshold height for the training requirement. What should any such training include? How many employees would need to be trained? What would be the cost of the training? Should OSHA trigger training requirements at a minimum working height greater than six feet (1.82 m)? Please support any such suggested alternative threshold height with information on the need for such a threshold and on the anticipated impact of setting such a threshold.

6. *Articulated stairs.* The existing and proposed standards exclude coverage of articulated stairs (stairs that change pitch due to change in height at the point of attachment), such as may be installed on floating roof tanks or access facilities for mobile equipment. OSHA has been unable to locate any consensus standards or published industry practices addressing articulated stairs. If any such documents are available, OSHA requests that interested persons provide them for the record. Should OSHA have specific standards for articulated stairs, and if so, what should they be? What is the injury experience of employees who use articulated stairs? Please submit information on the costs and benefits of any such specific standards.

7. *Stair rails used as handrails.* Proposed § 1910.28(c)(2) (v) and (vi) allows stair rail systems to also serve as handrails. These provisions take into account the overlapping dimensional requirements in proposed § 1910.28 (c)(2) (i) and (ii) for handrails and in proposed § 1910.28 (c)(2) (iii) and (iv) for stair rails. OSHA believes that allowing combination of stair rails and handrails into a single system, even though the range is limited for new installations, will provide employers with adequate design flexibility. Does the range of 36 to 37 inches (91 to 94 cm) for new installations offer employers sufficient flexibility? What should the range be and why? Please submit comments on the above.

8. *Boatswains' chairs.* The existing and proposed requirements for boatswains' chairs (§§ 1910.28(j) and 1910.30(g), respectively) require that an employee riding a boatswains' chair wear a personal fall protection device which is connected to an anchorage by a lifeline that is separate from the line supporting the chair. Some systems which are currently in use provide two separate lines attached to two separate anchor points; however, both lines are connected to a single attachment on the body support system. Would attaching both lines to a single body support defeat the purpose of requiring separate lines for chair support and for fall protection? A failure of this single body support mechanism, or body support system, could result in an uncontrolled fall for the employee. Should OSHA permit the use of such a system in which the lifeline and support line connect to a single mechanism or body support system? If so, what criteria should be used to ensure the reliability of the single mechanism or body support system to prevent failures? What economic impact would result if OSHA were to recognize such a system? What has been the injury experience with this type of system?

9. *Use of, and requirements for, suspension scaffolds and powered platforms.* Historically, there have been two national consensus standards covering suspended work surfaces. One standard, ANSI A10.8 (incorporated into OSHA Standards in 1971, in § 1910.28), applies to "suspended scaffolds," while the other ANSI A120.1, which was the original source for § 1910.66, applies to "powered platforms." OSHA regulates equipment under the powered platform standard when the equipment is designed and installed for use with a specific building (some refer to these as "permanently installed" or "permanently dedicated" to a building). OSHA regulates equipment under the suspended platform standard when the equipment is designed to be used with any building (some refer to these as "temporary scaffolds," "transportable scaffolds" or "rental scaffolds").

As noted below, the recently revised powered platform standard (54 FR 31408), July 28, 1989 contains a number of requirements which are not found in the suspended platform standards. Powered platforms are required to maintain continuous contact and pressure on the face of the building, and there must be positive attachment to the building by means such as T-rails, tracks or intermittent tie-ins when the building is over 130 feet (39.6m) high. On the other hand, while suspension scaffolds must be securely lashed to the building to prevent swaying, there are no requirements for continuous contact and pressure or for positive attachment to the face of the building during travel up and down the face of the building. Two-way communication is required on powered platforms, but not on suspended scaffolds. In addition, the OSHA powered platform standard addresses stabilization, safe access and egress, emergency planning, davit requirements, fire extinguishers, inspections, and training, while the suspended scaffolds standard does not address those safeguards and precautions.

At the OSHA informal public hearing on the proposed rule for Powered Platforms for Exterior Building Maintenance held on February 19–21, 1986, several witnesses (Tr.2/20/86 pp. 19–22, 195, 329, 330) recommended that the powered platform requirements also apply to all suspended equipment used on new buildings after the effective date of the powered platform standard, and that OSHA should adopt a single standard which would apply to all scaffolds, whether "temporary" or "permanent." OSHA invites comments regarding these two recommendations. In addition, if these two recommendations were accepted, would it be appropriate for OSHA to apply the proposed rules for suspended scaffolds (temporary scaffolds) only to existing buildings?

Should requirements for two-way communication and continuous contact and pressure on the face of the building be added to the requirements in this proposed rule? Should other requirements, such as those mentioned above for powered platforms, be added to further ensure employee safety on suspended scaffolds? OSHA does not require that equipment (either permanent or temporary) be provided for building maintenance. Should OSHA consider such a requirement? Should OSHA maintain the distinction between powered platforms and suspended scaffolds? Please submit supporting information along with comments.

10. *Working height of suspension scaffolds.* Neither the existing nor the proposed scaffold requirements limit the height at which single-point adjustable suspension scaffolds and two-point suspension scaffolds (swinging scaffolds) may be used. Should OSHA limit the height at which suspension scaffolds may be used? If so, what should this height be, and why? What would be the impact of this restriction?

11. *Guardrails on the working side of suspension scaffolds.* The present and the proposed standards for scaffolds require guardrails on all "open sides and ends" of scaffold platforms. There has always been a question as to the application of this requirement to the working side (i.e., the side toward the structure) of suspension scaffolds. In particular, OSHA is considering the extent to which the working side of a suspension scaffold which keeps within some set distance (i.e., one foot (.3m)) of a structure would be considered to be "open". Should OSHA require guardrails

on the working side of suspension scaffolds? How does the presence of the guardrails affect the work activity? Are there work settings where the use of guardrails on the working side of a scaffold would be infeasible? If guardrails are needed, when should they be required, and what type should be used? What would be the estimated cost of installing such guardrails? What alternative means of protection can be used effectively in place of guardrails?

12. *Increasing the number of allowed climbs per year per ladder for qualified climbers.* The qualified climber concept is being introduced in this proposal. A qualified climber is a properly trained and physically capable employee who has climbing duties as part of his or her routine work activity. OSHA proposes to exempt from the ladder safety device, wells or cage requirements, all fixed ladders that are climbed no more than twice a year and are climbed only by qualified climbers. The outdoor advertising industry has asked that OSHA allow as many as 12 climbs per year on fixed ladders on billboards which are climbed by qualified climbers without ladder safety devices, wells or cages. Should OSHA increase the permissible number of climbs per ladder by all qualified climbers, and if so, what should be the frequency? What injury experience is available for supporting an increase in the allowable climbs from two to twelve per year? What would be the cost savings for increasing the number of allowable climbs from the two to twelve climbs per ladder per year? OSHA is proposing two climbs per year for each ladder, but is considering a maximum of twelve climbs per year based on information presented to the record. Please provide information and data to support any comments or suggestions.

13. *Special surfaces not specifically addressed.* Proposed § 1910.32, *Special surfaces,* exempts specific work locations such as repair and assembly pits, slaughtering facilities, loading racks, loading docks and teeming tables from perimeter guarding requirements of proposed § 1910.27(b), where guardrails would prevent employees from doing their work provided other criterion is followed. OSHA notes that there may be similar workplaces which are not specifically addressed by this proposal. The Agency seeks to ensure that any such similar operations are regulated under proposed § 1910.32(b). OSHA solicits information on any such work activities that should be regulated as "special surfaces".

14. *Use of performance language.* In some of the existing provisions and in some of the proposed provisions, OSHA uses specific numerical limits to define and clarify the duties set forth. For example, existing § 1910.28(a)(4) and proposed § 1910.30(c)(3) require that scaffold components have a factor of safety of at least 4:1. Another example is proposed § 1910.31(d)(2) which restricts the maximum work surface height of mobile ladder stand to four times the least base dimension without additional support. In addition, some of the existing provisions specify the type of materials which employers could use. The proposed rule on the other hand emphasizes the strength and other characteristics of the material used, not the type.

These and other limits, which are based on existing consensus standards, are used in lieu of either more performance-oriented language (such as "scaffold components shall be strong enough to properly support the loads imposed on them") or language which requires a numerical limit but then allows other configurations which give "equivalent" protection. OSHA notes that requiring specific numerical limits in the rule and allowing the employer to use other limits which the employer can show will provide "equivalent" protection may both provide guidance and permit some flexibility. OSHA believes that, in some cases, it is necessary to set specific numerical requirements (such as those for minimum guardrail heights and platform widths) in order to provide clear notice to employers as to what constitutes compliance with a provision. On the other hand, OSHA recognizes that, in some circumstances, specification language increases costs without increasing safety, discourages technical innovation, prevents the use of safe alternatives, and fails to take into account varying workplace situations.

OSHA solicits public comment on the extent to which the proposed use of numerical limits is appropriate. Should OSHA move some or all of the specification language to a non-mandatory appendix which could simply provide guidance to employers. Commenters who maintain that the use of specification language is inappropriate, should submit information to support their positions and should suggest language which provides clear notice of what is required and which allows employers flexibility in setting their compliance strategies. OSHA requests that commenters who believe that the proposed use of specification language is appropriate also provide supporting information as well as input on the extent to which the proposed language would abate the pertinent hazards. Comments should include applicable cost and injury data.

15. *Crane or derrick suspended personnel platforms.* On August 2, 1988, OSHA amended its Construction Standards for Cranes and Derricks (52 FR 29116), 29 CFR 1926.555, by adding a new paragraph (g) to prohibit the use of cranes or derricks to hoist personnel except in the situation where no safe alternative is possible, in which case the requirements for such hoisting set out in paragraph (g) would apply. OSHA initiated this rulemaking to establish clearly the conditions under which employees on personnel platforms may be hoisted by cranes or derricks, and to ensure that this information is readily available to employers. On November 29, 1988, OSHA proposed to revise the shipyard employment safety standards addressing scaffolds (53 FR 48182), requesting public input (Issue 27) regarding the appropriateness of replacing the existing shipyard provisions for personnel hoisting with those which have been adopted for construction. Should OSHA also apply the Construction Industry standard for crane or derrick suspended personnel platforms to General Industry? If OSHA was to propose the adoption of that standard in part 1910, should it be located in subpart D, subpart N—"Materials Handling and Storage" or in some other subpart? Please submit information regarding the need for such a standard, accident and injury data related to the use or lack of use of crane or derrick suspended personnel platforms, and the cost associated with the training of affected employees and the provision of equipment which could comply with the pertinent standard.

16. *Training requirements.* OSHA has proposed training requirements for employees using ladders (proposed §§ 1910.23(b)(1) and 1910.132) and mobile elevating work platforms, mobile ladder stands and powered industrial fork lift truck platforms (proposed § 1910.31(b)(4)). In both cases, the Agency believes that an explicit training requirement is necessary to ensure that affected employees know how to work safely and how to determine if the equipment in question is safe for use.

There are several provisions (such as proposed § 1910.25, Stairs, and § 1910.30, Scaffolds) in which OSHA has not explicitly proposed training requirements because the Agency believes that compliance with the pertinent requirements for proper design, construction, use and maintenance of equipment would lead employers to train their employees

appropriately. Should OSHA set more specific training requirements, either in particular sections or as a general requirement in subpart D? Should OSHA modify or delete any proposed training requirements? Comments should be accompanied by supporting information, including descriptions of any training programs which have been used to cover work activities regulated under subpart D.

IV. Summary and Explanation of Proposed Revision.

Format. Because of OSHA's proposed revisions to these standards, it is necessary to reformat the entire subpart. OSHA's proposed format changes are set forth in the Redesignation Table following:

REDESIGNATION TABLE

Existing	Proposed
§ 1910.21 Definitions.....	§ 1910.21 Scope, application, and definitions.
§ 1910.22 General requirements.	§ 1910.22 General requirements.
§ 1910.23 Guarding floor and wall openings.	§ 1910.23 Ladders.
§ 1910.24 Fixed industrial stairs.	§ 1910.24 Step bolts and manhole steps.
§ 1910.25 Portable wood ladders.	§ 1910.25 Stairs.
§ 1910.26 Portable metal ladders.	§ 1910.26 Ramps and bridging devices.
§ 1910.27 Fixed ladders.	§ 1910.27 Work surfaces.
§ 1910.28 Safety requirements for scaffolds.	§ 1910.28 Fall protection systems.
§ 1910.29 Manually propelled mobile ladder stands and scaffolds (towers).	§ 1910.29 Wall openings.
§ 1910.30 Other working surfaces.	§ 1910.30 Scaffolds.
§ 1910.31 Sources of standards.	§ 1910.31 Mobile ladder stands and powered industrial platforms.
§ 1910.32 Standards organizations.	§ 1910.32 Special surfaces.

As mentioned in the Summary, the revisions to subpart D and subpart I are being proposed concurrently. Proposed subpart D requires the use of personal fall protection equipment under certain circumstances, while proposed subpart I contains the performance criteria which personal fall protection equipment must meet in order to protect employees. OSHA notes that wherever proposed subpart D makes specific reference to the requirements in subpart I, the reference is to the pertinent provisions in proposed subpart I (which accompanies this proposal), and not to the existing subpart I requirements.

Section 1910.21 Scope, Application, and Definitions

OSHA proposes to revise existing § 1910.21, which currently contains definitions for certain terms used in subpart D. Those definitions are divided into paragraphs that correspond to the existing sections of subpart D. Because of subject matter overlapping between the existing sections, some definitions appear in more than one paragraph. OSHA has determined that a single set of definitions applicable to all of subpart D will simplify reference to the definitions and eliminate redundancy. These definitions will be included as part of revised § 1910.21.

OSHA proposes a new § 1910.21 that will contain a general scope and application statement, which states clearly that subpart D covers all walking and working surfaces used by employees, except where specifically provided otherwise, and definitions for certain terms used in the subpart. OSHA exempts coverage of fall hazards from the exposed perimeters of entertainment stages and rail station platform because the presence of fall protection, such as a guardrail system, would interface with its operation. Should OSHA exclude other walking and working surfaces? Please identify these additional walking and working surfaces and explain why they should be excluded from coverage.

OSHA is proposing three exceptions to the application of subpart D. First, in proposed § 1910.21(a)(1), OSHA exempts surfaces that are an integral part of self-propelled, motorized mobile equipment from the scope of this subpart. The Agency, however, has proposed to cover platforms hoisted or lifted by powered industrial lift trucks, through regulations in proposed § 1910.31(e) because OSHA believes that workers on such platforms are exposed to significant safety hazards. The existing general industry standards contain no requirements for safe operation of powered industrial lift trucks. Examples of exempted surfaces include ladders or steps used for access to integral machinery parts, and platforms used to reach periodic maintenance points or areas. Employee exposure to these types of surfaces is usually brief and sporadic. This proposal will not affect the existing regulations for these surfaces found elsewhere in the General Industry Standards.

Second, in proposed § 1910.21(a)(2), OSHA exempts powered platforms used for exterior building maintenance from the application of subpart D, insofar as this type of equipment is covered by specific standards in subpart F of part 1910. A final rule revising subpart F was published in the **Federal Register** on July 28, 1989 (54 FR 31408).

Third, in proposed § 1910.21(a)(3), OSHA excepts the exposed perimeters of certain types of surfaces from the proposed guardrail requirements. OSHA believes that there are circumstances, such as where employees are working on stages or subway platforms, where the use of guardrails would be inappropriate because such use would unreasonably interfere with work operations, or would create a greater hazard than would otherwise be present. Other specific situations are addressed in proposed § 1910.32. OSHA solicits comments accompanied by supporting information on the proposed exceptions. OSHA also directs attention to proposed § 1910.32, where the Agency sets requirements which take into account the difficulties that employers whose workplaces contain "special surfaces" would face if they were required to comply with the fall protection provisions of proposed § 1910.28.

Proposed paragraph (b), which contains definitions for certain terms used in subpart D, includes many that appear in existing § 1910.21, eliminates those definitions that OSHA believes are no longer needed, clarifies the meaning and intent of some existing definitions, and defines certain terms that have not previously been defined. These terms will be addressed where appropriate in the Summary and Explanation.

Section 1910.22 General Requirements

OSHA proposes to revoke the existing requirements contained in § 1910.22, and to propose new requirements that address surface hazards in a performance-oriented manner. The existing requirements in § 1910.22 address the scope of subpart D—housekeeping, aisles and passageways, covers and guardrails, and floor loading protection. Where language of the existing standards appropriately addresses surface hazards, OSHA proposes to use that language, with editorial corrections as necessary. For example, existing § 1910.22(a)(3) addresses the hazards of "protruding nails, splinters, holes, and base boards" under "Housekeeping." OSHA believes that such puncture or laceration hazards are more appropriately addressed as general surface conditions. In proposed paragraph (a)(1), therefore, OSHA would require that all surfaces be designed, constructed and maintained free of hazards that can cause injury or death to employees.

Proposed paragraph (a)(2) is a performance-oriented provision which requires the employer to implement appropriate alternative protective measures when surfaces cannot be maintained free of hazards. Such alternatives may include personal protective equipment, or even something as simple as the use of salt on icy walkways.

Proposed paragraph (a)(3) provides for a minimum 18 inch (45.7 cm) clearance for employee passage around obstacles in the workplace. This dimension is consistent with the minimum width of scaffolds that is proposed in § 1910.30(c)(7) and ANSI A10.8–1988 and will establish uniformity throughout the proposal.

Proposed paragraph (a)(4) establishes a minimum size access opening for manways and manholes built on or after (insert date one year after the effective date of the final rule in the **Federal Register**). This proposal is based on the American Society for Testing and Materials (ASTM) C 478–85a, *Standard Specification for Precast Reinforced Concrete Manhole Sections* (Ref. 44), which requires a minimum access opening of 24 inches (61 cm) in diameter for manholes. OSHA believes that a requirement for a minimum size access opening is necessary for new installations to facilitate safe passage, and for the rescue and extraction of injured employees. Existing manways and manholes would not be subject to the proposed requirement. The one year deferral of the effective date will allow for changing designs and retooling that may be necessary to come into compliance with this new requirement.

Proposed paragraph (b) of § 1910.22 addresses OSHA's concern that overloading of walking and working surfaces must be prevented in order to avoid imposing stresses which could result in collapse. Existing § 1910.22(d)(2) makes it "unlawful" for a floor or roof to be overloaded. Proposed paragraph (b)(1) requires employers to design, construct and maintain all surfaces so that they can support the maximum intended loads, and prohibits overloading of those surfaces. Existing paragraph (d)(1) of § 1910.22 requires that employers mark the pertinent floor loading limits on plates, affix and maintain those in conspicuous places in the spaces to which they relate. Proposed paragraph (b)(2) simply requires employers to ensure that affected employees know the maximum intended loads for the storage or warehousing areas where they work, leaving the choice of compliance approach to the employer. Also, existing paragraph (d)(1) requires that plates showing load limits be placed in all structures used for mercantile, business, industrial or storage purposes. Proposed paragraph (b)(2) provides that only employees who work in storage or warehousing operations need to know the maximum intended load for the area where they work. OSHA proposes to delete the information requirement for areas not used for storage or warehousing because OSHA believes the requirement serves no purpose.

Proposed paragraph (b)(1) does not require any safety factor in the strength of the surface. Proposed § 1910.25(b)(4) requires that stairs shall be capable of supporting at least five times their maximum intended load, and proposed § 1910.30(c)(3) requires that scaffolds shall support its own weight and at least four times the maximum intended load. These safety factors were taken from national consensus standards. Should OSHA require a general safety factor? What safety factor should OSHA use? Please submit data supporting your comments on the above questions.

OSHA has proposed two new provisions for inclusion in § 1910.22. First, in proposed paragraph (c), employers are required to provide employees with a safe means of moving from one surface to another. Existing paragraph (b)(1) already addresses this concern indirectly, but OSHA has determined that the existing language does not cover all of the pertinent walking and working surfaces. Therefore, the Agency has proposed paragraph (c) to close any possible gaps in coverage.

Second, proposed paragraph (d) sets requirements for the inspection, maintenance and repair of walking and working surfaces. Proposed paragraph (d)(1) requires employers to ensure, through regular and periodic inspection and maintenance, that walking and working surfaces are safe. Proposed paragraph (d)(2) requires employers to ensure that all hazardous conditions which are discovered are corrected, repaired or temporarily guarded so that employees are not endangered. Proposed paragraph (d)(3) requires that only "qualified persons," as defined in this standard, shall be permitted to inspect, maintain, or repair walking and working surfaces except for the incidental cleanups of non-toxic materials. OSHA is proposing these requirements, which do not appear in existing § 1910.22, in order to state clearly that employers must inspect, repair and maintain their walking and working surfaces as necessary for employee safety, and that the original design capabilities must be maintained. OSHA anticipates that employers will schedule and conduct the inspection and maintenance of walking and working surfaces according to manufacturers recommendations where applicable or in accordance with reasonable practice given the conditions and frequency of use.

Section 1910.23 Ladders

OSHA's proposed changes in § 1910.23 involve a consolidation and revision of the existing standards in § 1910.25, *Portable wood ladders;* § 1910.26, *Portable metal ladders;* and § 1910.27, *Fixed ladders.* Many of the existing standards for portable and fixed ladders are redundant or address similar hazards with different requirements. For example, the various ladder standards all address rung spacing. However, the permitted spacing varies depending upon the type of ladder addressed. The same is true for the specifications for ladder heights and rung widths.

Paragraph (a) contains the scope and application of proposed § 1910.23. This section is proposed to cover all ladders used in General Industry, except as specifically provided. In proposed paragraph (a)(1)(i), OSHA exempts ladders which are used only for fire fighting or rescue operations. OSHA is proposing this exemption because such ladders are used only in emergency situations. The Agency notes that the primary concern expressed in the design of some of those ladders, such as the single-rail ladders, is for fast placement and access. By contrast, proposed § 1910.23 focuses on the need to protect employees who use ladders routinely, in non-emergency situations. Therefore, given the circumstances in which fire fighting and rescue operations are conducted, OSHA believes that it would be inappropriate to regulate fire fighting and rescue ladders under proposed § 1910.23. When employees are members of a company fire brigade, they must be trained as required by § 1910.156 in the use of such ladders.

OSHA is also exempting ladders forming an integral part of machinery. These ladders will be covered in the future by the specific requirements for the pertinent machinery in other subparts. However, there has been some concern that ladders forming integral parts of machinery should be covered by proposed § 1910.23. Do existing ladders that form integral parts of machinery meet the proposed ladder regulations or any other regulations? Should OSHA regulate these ladders in this section? Should OSHA exempt existing ladders

forming integral parts of machinery and only cover new ladders? How long of a lead time would industry need to have new ladders come into compliance with the proposed requirements? What would be the cost of compliance? What accident data is available concerning these types of ladders? Please provide information and data to support any comments or suggestions.

In paragraph (a)(2), OSHA proposes to exempt employers with fixed ladder installations which are climbed two or fewer times a year from the proposed fall protection requirements, provided that the ladders are used only by "qualified climbers." OSHA notes that many fixed ladders used in general industry are not equipped with cages, wells or ladder safety devices, and that, therefore, those ladders would not comply with existing § 1910.27. However, OSHA recognizes that requiring employers to install and maintain ladder safety devices, cages or wells on fixed ladders climbed two or fewer times a year would impose significant costs on employers for fall protection systems that would seldom be used, and that the employees installing and maintaining this equipment would be exposed to fall hazards. Indeed, OSHA believes that the amount of time employees would spend installing, inspecting and maintaining fall protection on fixed ladders could substantially exceed the amount of time that "qualified climbers" would be spending to climb the ladders. Therefore, as an alternative, OSHA believes it appropriate to allow "qualified climbers," as defined by OSHA, to climb these ladders without fall protection under certain conditions. First, the employer would have to certify that the employee is a "qualified climber," as provided in § 1910.32(b)(5) of this proposal. Second, once the qualified climber reaches a work station, the employer would be required to provide appropriate fall protection. OSHA believes that compliance with the proposed qualified climber provisions will provide the appropriate protection from fall hazards. The Agency solicits comments and information on these provisions. OSHA has been asked to increase the maximum allowable number of climbs per fixed ladder to twelve per year to come under this proposed exemption. Please see Issue 11 for this discussion.

Proposed paragraph (b) contains general requirements that apply to all ladders. The proposed paragraph consolidates the provisions of existing standards for portable wood ladders (§ 1910.25), portable metal ladders (§ 1910.26) and fixed ladders (§ 1910.27). Only those provisions which do not appear in the existing standards are discussed below.

Proposed paragraph (b)(1) requires that employers train employees who work on ladders at a working height of six feet (1.82 m) or more to inspect and use ladders properly. OSHA believes that the consequences of a fall from a height of six feet (1.82 m) or more are sufficiently serious to justify this requirement. The Agency requests comments and information regarding the choice of six feet (1.82 m).

Proposed paragraph (b)(8) requires that ladders placed in any location where they could be displaced by other activities or traffic shall be secured or barricaded such as through the use of traffic cones used at the base of the ladders.

Proposed paragraph (b)(13) exempts emergency escape ladders from the proposed fall protection requirements. Emergency escape ladders would have to comply with all other requirements of proposed subpart D. OSHA proposes this exemption because of the unique application of emergency escape ladders. OSHA believes that since such ladders are intended for rapid escape, the installation and use of fall prevention systems, such as ladder safety devices or off-set platforms, would hinder the rapid movement of employees during an emergency escape.

Proposed paragraph (c) contains requirements for the design, construction, maintenance, and inspection of ladders. Proposed paragraphs (c)(1) through (c)(5) contain requirements for the loading of portable ladders. Existing paragraph § 1910.26(c)(3)(ii) requires portable metal ladders to be designed as "a one-person working ladder based upon a 200 pound (90.6 kg) load." This requirement came from the 1956 edition of ANSI A14.2, *Portable Metal Ladders*, that based the test criteria on a 200 pound (90.6 kg) working load and a safety factor of four. The 1982 edition of ANSI A14.2, section 8.2.1.2, has retained use of the safety factor of four, but has changed the maximum working load from 200 pounds (90.6 kg) to a range of 200 to 300 pounds (90.6 to 136.2 kg).

Taken together, proposed paragraphs (c)(1)(i), (c)(1)(ii), (c)(4) and (c)(5) require that portable ladders be designed to support, without ultimate failure, a load equal to four times the maximum intended load (but not less than four times a 200 pound [90.6 kg] load) when the ladder is in its climbing position. Compliance with this provision would ensure that heavier employees wearing tool belts with heavy tools, as well as lighter employees, receive the necessary protection.

Proposed paragraph (c)(2) allows, as an alternative to complying with proposed paragraph (c)(1), ladders to be designed in accordance with the current applicable A14 series ANSI code (Ref. 45–48). Since almost all manufactured portable ladders are already made and tested to meet the pertinent ANSI standard, and labeled as such, there would not be a significant burden on manufacturers or employers.

Proposed paragraph (c)(3) is a new requirement that will require combination ladders to be designed to meet the criteria for stepladders when in the stepladder position, and the criteria for extension ladders when in the extension ladder position. This is consistent with the ANSI standard, and will provide protection equivalent to that required for single purpose ladders.

Proposed paragraph (c)(4) establishes the minimum design load of portable ladders. This was taken from existing § 1910.26(c)(3)(ii).

Proposed paragraph (c)(5) requires that the combined weight of an employee and any tools and supplies on a portable ladder shall not exceed the maximum intended load of the ladder. This paragraph is based in part on proposed § 1926.1053(b)(3), which would apply to the use of ladders in construction.

Proposed paragraph (c)(6) requires that fixed ladders be capable of supporting at least two loads of at least 250 pounds (113.3 kg), concentrated between any two consecutive attachments. The proposed language would replace existing § 1910.27(a)(1), which sets specific design considerations for fixed ladders, including the minimum design load and its application. The major change in the proposed requirement is OSHA's intent to raise the design load from 200 pounds (90.6 kg) to 250 pounds (113.3 kg). Existing § 1910.27(a)(1)(i) requires that the minimum design live load shall be a concentrated load of 200 pounds (90.6 kg). OSHA believes that 250 pounds (113.2 kg) is a more representative weight for an employee wearing a tool belt. OSHA also believes that virtually all existing fixed ladders would comply with the 250 pound (113.2 kg) requirement so that the number of employers that would need to replace their fixed ladders to comply would be insignificant. The Agency notes that the 250 pound (113.3 kg) figure is consistent with ANSI A14.3–1984, *Fixed Ladders*.

The Agency believes that it is unnecessary to set minimum diameters

for rungs that satisfy the general requirements for surface conditions in proposed § 1910.22(a) and the performance criteria in proposed paragraph (c)(6). Therefore, OSHA proposes to delete existing § 1910.27(b)(1)(i), which specifies minimum rung diameters. Rungs which satisfied the performance-oriented design criteria in proposed paragraph (c)(6) could vary in diameter. OSHA anticipates that ladders which comply with the existing standard would meet the proposed language.

Proposed paragraph (c)(7) requires that ladder rungs and steps be parallel, level and uniformly spaced when the ladder is in position for use. The proposed provision, which is based on existing § 1910.25(c)(2)(i)(B) (portable wood ladders), would apply to all ladders.

Proposed paragraph (c)(8) requires that ladder steps and rungs be spaced between six and 12 inches (15 and 31 cm), as measured along the ladder siderails. The existing standards for portable wood ladders (§ 1910.25(c)(2)(i)(*b*)) and fixed ladders (§ 1910.27(b)(1)(ii)) set a 12-inch (31 cm) maximum spacing but do not set minimum spacing. On the other hand, the existing standard for portable metal ladders specifies 12-inch (31 cm) spacing. Based on its evaluation of the studies in the record, OSHA has determined that it is appropriate to set 12 inches (31 cm) as the maximum spacing for all ladders and to set 6 inches (15 cm) as the minimum spacing. OSHA believes that spacing of less than 6 inches (15 cm), though currently permitted technically for portable wood ladders and fixed ladders, is unsafe, because it does not sufficiently allow for free movement of feet from rung to rung. The Agency anticipates that few ladders would have to be replaced to comply with proposed paragraph (c)(8). OSHA has worked with the University of Michigan, and with Texas Tech University (Ref. 1, 3), to develop an ergonomic basis for regulating ladder step spacing. As a result of that work, OSHA has determined that, as long as steps are uniformly spaced, ladders with step spacing within the proposed range will allow for safe passage by employees. OSHA notes that all ladders which comply with existing § 1910.26(a)(1)(iii) and that most, if not all, ladders which comply with existing §§ 1910.25(c)(2)(i)(*b*) and 1910.27(b)(1)(ii) would also satisfy the proposed requirement. Additionally, the Agency believes that proposed paragraph (c)(8) provides clear guidance to employees who may have the capacity and the need, as workplace conditions require, to change the spacing of their ladder steps and rungs.

OSHA proposes to eliminate the length limits for portable wood ladders, which appear in existing § 1910.25 (c)(2), (c)(3), (c)(4), and (c)(5). The Agency has focused, instead, on setting performance-oriented provisions which will ensure that ladders, whatever the length, are safe to use.

Proposed paragraph (c)(9) sets minimum widths for ladder steps and rungs, retaining the existing requirements for the different kinds of ladders covered by subpart D. Thus, proposed paragraph (c)(9)(i) sets minimum widths of 16 inches (40.6 cm) for individual rung and fixed ladders (existing § 1910.27(b)(1)(iii), 12 inches (30.5 cm) for portable metal ladders and reinforced plastic ladders (existing § 1910.26(a)(2)(i), and 11½ inches (29.2 cm) for portable wood ladders (existing § 1910.25(c)(2)(i)(*c*)). OSHA solicits comment on the need to retain separate width requirements for the different kinds of ladders. Please submit supporting data and information along with any suggestions for change.

Proposed paragraph (c)(9)(ii) addresses ladders, such as those used by fruit pickers and window washers, which taper so that the width of the last few rungs is less than required under proposed paragraph (c)(9)(i). OSHA proposes to exempt such ladders from the minimum width requirements, insofar as steps or rungs on which employees would not stand are concerned. The Agency notes that all rungs on which employees may stand must comply with the proposed minimum width requirements.

Proposed paragraph (c)(10), a new provision, regulates the coating of wood ladders. This paragraph would require that wood ladders not be coated with any opaque covering, except for identification or warning labels which may be placed on one face only of a side rail. OSHA anticipates that compliance with this proposed provision would ensure that wood ladder defects are not concealed by coatings.

Proposed paragraph (c)(11), which requires employers to protect metal ladders from corrosion, is based, in part, on the existing § 1910.27(b)(7) requirements for fixed metal ladders. It is also based, in part, on the existing § 1910.26(c)(2)(iv) requirements for portable metal ladders. The proposed provision clarifies and consolidates the existing provisions.

Proposed paragraph (c)(12) restates existing § 1910.27(c)(4), without substantive changes in the wording.

Proposed paragraph (c)(13) restates the existing § 1910.27(c)(1) requirement that the minimum perpendicular clearance between the center line of fixed ladder rungs or steps and any obstruction on the climbing side shall be 30 inches (76 cm). This provision is consistent with ANSI A14.3–1984, section 5.4.1.1. In addition, the proposed paragraph provides that the minimum perpendicular distance may be reduced to 24 inches (61 cm) when an unavoidable obstruction is present, as long as a deflection device is installed to guide employees around the obstruction. This change is based on ANSI A14.3–1984, section 5.4.1.3 and, also reflects OSHA's awareness that there may be circumstances where compliance with the 30-inch (76 cm) requirement would be infeasible.

Proposed paragraph (c)(14) requires that fixed ladders be equipped with ladder safety devices, cages or wells, when the length of the fixed ladders exceeds 24 feet (7.3 m) or when the top of the ladder is more than 24 feet (7.3 m) above lower levels. OSHA notes that existing §§ 1910.27(d)(1)(ii) and 1910.27(d)(5) set a 20-foot (6.1 m) threshold for provision of fall protection. The Agency proposes raising the threshold to 24 feet (7.3 m) so that employees may climb without fall protection to the roof of a two story building that has a parapet. OSHA believes that the four-foot (1.2 m) increase, which is consistent with ANSI 14.3–1984, sections 4.1.1 and 4.1.2, and with proposed §§ 1915.86(a)(19), 1915.86(a)(20), 1926.1053(a)(20), and 1926.1053(a)(21), would not reduce employee protection. This provision reflects the Agency belief, based on the ANSI standard and its review of the record, that employees can safely climb a fixed ladder for up to 24 feet (7.3 m) above a lower level without relying on a cage, well or ladder safety device as long as the ladder complies with § 1910.23 and the other pertinent provisions of proposed subpart D. The Agency also agrees with the ANSI A14.3 Committee that employees other than "qualified climbers" who climb more than 24 feet (7.3 m) on a fixed ladder need the protection provided by ladder safety devices, cages or wells.

Questions have arisen regarding the effectiveness of cages and wells in protecting employees. The Agency solicits comments, supported by information and data, regarding the extent to which reliance on cages or wells either protects or endangers employees.

Proposed paragraph (c)(15) requires that cages and wells be designed so that

they permit easy access and egress, provide continuous coverage for length of ladder (except at access, egress and other transfer points), contain employees who fall, and direct falling employees to a lower landing.

The current OSHA Standards, in § 1910.27(d), provide very detailed specifications for the construction of cages and wells. In addition, these specifications are included in OSHA's proposals for the construction (§ 1926.1053(a)(22)) and Shipyard (§ 1915.86(a)(22)) industries, as well as in ANSI A14.3–1984. However, OSHA has eliminated these specifications in this proposal in favor of performance requirements which address the necessary characteristics for providing proper cages and wells. OSHA believes that the existing specifications are too design restrictive, and that the use of performance language will allow employers the flexibility to install cages and wells which fit a particular situation, without compromising employee protection.

Under the terms of proposed paragraph (c)(15), the length of continuous climb for a fixed ladder equipped only with a cage or well shall not exceed 50 feet (15.2 m) and the length of a continuous climb for a fixed ladder equipped with a ladder safety device shall not exceed 150 feet (45.7 m). Existing § 1910.27(d)(1)(ii) requires, in general, that cages or wells be provided on fixed ladders of more than 20 feet (6.1 m) to a maximum unbroken length of 30 feet (9.1 m). That language was adopted from ANSI A14.3–1956 when OSHA promulgated safety standards under section (6)(a) of the Act. OSHA has decided to increase the permissible length of continuous climb and to revise the fall protection provisions for fixed ladders in order to reflect ANSI A14.3–1984, sections 4.1.3, 4.1.4 and 4.1.4.1. The proposed provision is also consistent with the proposed shipyard (§ 1915.86(a)(20)) and construction (§ 1926.1053(a)(21)) standards. Proposed paragraph (c)(16) permits fixed ladders equipped with ladder safety devices to exceed 50 feet (15.2 m) in continuous length, based on ANSI A14.3–1984 and OSHA's belief that the proper use of ladder safety devices will enable employees to climb safely at levels where it would not be safe to rely on cages or wells. OSHA solicits comments accompanied by supporting information and data, on the proposed increases in the allowed climbing distances.

Proposed paragraph (c)(17) requires that fixed ladders with continuous lengths of climb greater than 150 feet (45.7 m) be provided with rest platforms at least every 150 feet (45.7 m). OSHA believes that compliance with this provision, which is based on ANSI A14.3–1984, section 4.1.4.2, will ensure that employees have a safe place to rest while climbing ladders that are over 150 feet (45.7 m) in length. The Agency solicits comments, with supporting information and data, on the proposed platform requirement.

Proposed paragraph (c)(18) would require that when two or more ladders are used to reach a work area, except when portable ladders are used to access fixed ladders, the ladders be offset, with a landing platform between the two ladders. This provision is virtually identical to a requirement in existing § 1910.27(d)(2). While the existing provision covers only fixed ladders, the proposal would apply the requirement to all multiple ladder situations, except where portable ladders are used to access fixed ladders. OSHA believes that the exception is appropriate because the installation and maintenance of a landing platform at the point where a portable ladder would reach a fixed ladder would expose employees to a greater fall hazard than that which would be prevented by the platform. In addition, OSHA notes that, in the absence of clearly applicable OSHA regulations, the outdoor advertising industry has, apparently, provided safe access to fixed ladders without installing landing platforms between the fixed and portable ladders.

Proposed paragraphs (c)(19) through (c)(21) simply restate existing requirements.

Proposed paragraph (c)(22), which is based on existing § 1910.26(c)(3)(viii) and proposed § 1926.1053(b)(12), requires ladders that might contact uninsulated energized electrical equipment to have nonconductive siderails. While existing § 1910.26(c)(3)(iii) covers only portable metal ladders, OSHA applies proposed paragraph (c)(22) to all regulated ladders, because the Agency believes that employees should be protected from electrocution with whatever type of ladder they are using. Through a separate rulemaking (54 FR 5012, January 31, 1989), OSHA has proposed § 1910.269(h)(3), which would allow the use of conductive ladders in specialized high-voltage work where the employer can demonstrate that nonconductive ladders would present a greater hazard than conductive ladders. When the above proposal becomes final, it will be listed as an exception to proposed paragraph (c)(22).

Proposed paragraph (c)(23) requires that, except for fixed ladders used in conical sections of manholes, all ladders, have a pitch of 90 degrees or less from the horizontal. This will replace existing § 1910.27(e) which contains specific requirements and limitations for the pitch of ladders. OSHA believes existing requirements concerning the classification of substandard pitches and the lower limit of 60 degrees from the horizontal are not necessary because proposed § 1910.23(b)(1) requires employers to ensure that employees receive the necessary training and use the ladders properly and proposed § 1910.23(b)(2) requires that ladders shall be used only for their designed purposes. If a ladder is designed to be used at a pitch of less than 60 degrees from the horizontal it would be required under proposed paragraphs (c)(1) through (c)(6), to be of sufficient strength to support the intended load.

Proposed paragraph (c)(24) is a revision of existing § 1910.27 (c)(6). The minimum distance has been eliminated because OSHA does not believe that there is a hazard if the top step or rung of a fixed ladder touches the nearest edge of a structure, building or equipment provided the upper surface of the top step or rung is either at the same level or above the adjacent surface. In the event the adjacent surface is above the upper surface of the top steps or rung, proposed paragraph (c)(12) provides for a minimum toe clearance.

Proposed paragraph (c)(25) revises existing § 1910.26(c)(3)(vi) and is the same as ANSI A14.2–1982, section 8.3.11. OSHA proposes to eliminate the regulatory language which distinguishes between means of connecting ladder sections because the Agency believes that proper design is the critical factor in determining if ladder sections can be connected safely.

Proposed paragraph (c)(26) retains the requirements for metal spreaders or locking devices on stepladders in existing § 1910.25(c)(2)(i)(*f*) and 1910.26(a)(3)(viii), and adds a requirement that combination ladders used as stepladders must be equipped with metal spreaders or locking devices.

Section 1910.24 Step Bolts and Manhole Steps

OSHA proposes to address step bolts and manhole steps in § 1910.24. These two types of climbing devices are limited to certain types of installations, but they are heavily used in these installations, particularly in the telecommunication and public utility industries. Specific requirements for step bolts and manhole steps are currently contained in § 1910.268.

paragraph (h). However, these requirements are limited to climbing devices used in telecommunication centers and field installations. The purpose of OSHA's proposed requirements in § 1910.24 is to provide coverage of step bolts and manhole steps in locations other than those covered by § 1910.268.

OSHA's proposed standards in § 1910.24 address the design, installation, maintenance and strength requirements of step bolts and manhole steps. Section 1910.268(h) and the American Society for Testing and Materials (ASTM) consensus standard C478–85a, were used as the basis for this proposal (Ref. 44).

OSHA recognizes that many workplaces already have step bolts or manhole steps installed and that it could be unreasonably disruptive and burdensome to require employers to retrofit those bolts and steps to comply with certain provisions of the proposed standard. Therefore, OSHA proposes to require corrosion resistance only on manhole steps and step bolts installed 60 days after the standard's effective date. In addition, only those manhole steps installed 60 days after the effective date would be required to have slip-resistant surfaces, and to withstand specific pull-out or vertical loads without exceeding permanent deformation limits of the steps or spalling of the concrete. Existing manhole steps would be required to support the maximum intended load instead of a specific minimum load.

Recognizing the potential hazards to employees associated with step bolts and manhole steps located in wet, damp, or slightly corrosive atmospheres, OSHA solicits public comment on the following: (1) The need for separate design and installation criteria for these unique devices; (2) the problems associated with using the existing ladder standards or the proposed ladder standards to regulate these devices; (3) injury or fatality data related to employee falls from these devices due to inadequate design or installation; (4) whether or not fixed or portable ladders that are used to replace inadequate step bolts or manhole steps should be regulated; (5) whether or not step bolts and manhole steps should be covered in the proposed ladder section, or in this section; and (6) whether or not existing manhole steps and step bolts should be made corrosion resistant and slip resistant if used in a corrosive environment.

Section 1910.25 Stairs.

In proposed § 1910.25, OSHA continues to regulate fixed general industrial stairs, as it does in existing § 1910.24. In addition to providing coverage for fixed general industrial stairs, OSHA is proposing additional requirements in this section for spiral stairs, ship's stairs and alternating tread type stairs. OSHA has excluded stairs forming an integral part of machinery as it excluded ladders that are integral parts of machinery in proposed § 1910.23(a). Do existing stairs that form integral parts of machinery meet the proposed stair regulations or any other regulations? Should OSHA regulate these stairs in this section? Should OSHA exempt existing stairs forming integral parts of machinery and only cover new stairs? How long of a lead time would industry need to have new stairs come into compliance with the proposed requirements? What would be the cost of compliance? What accident data is available concerning these types of stairs? Please provide information and data to support any comments or suggestions.

Although spiral stairs are addressed in existing § 1910.24, their use has been restricted to "special limited usage and secondary access situations where it is not practical to provide a conventional stairway." OSHA proposes to remove this restriction because the Agency does not believe there are any unique safety hazards in the use of spiral stairs. OSHA has proposed requirements for alternating tread type stairs because this type of stair, used by many employers, has unique design features which must be specifically addressed in order to protect employees. Ship's stairs are also used in general industry, so OSHA believes that appropriate regulations are necessary to provide employee safety.

ANSI is currently combining the ANSI A12, *Safety Requirements for Floor and Wall Openings, Railings, and Toeboards*, standard with the ANSI A64 standard, *Requirements for Fixed Industrial Stairs*, into a new ANSI A1264, *Safety Requirements for Workplace Floor and Wall Openings, Stairs and Railing Systems*. ANSI A12 and A64 were the standards which OSHA adopted under section 6(a) rulemaking in order to establish the existing requirements for floor and wall openings and fixed industrial stairs. OSHA will place all drafts and any approved text of the ANSI A1264 standard in the record if they are obtained while the record of this rulemaking is open.

OSHA presents the scope and application of § 1910.25 in proposed paragraph (a), which is based on existing § 1910.24 (a) and (b). The Agency proposes to revise the coverage of spiral stairs as discussed above.

Proposed paragraph (b) addresses general requirements for stairs. Proposed paragraphs (b)(1) and (b)(3) are based on existing § 1910.24(h), which, in turn, requires that stair railings and handrails be installed in accordance with existing § 1910.23.

In proposed paragraph (b)(1), OSHA requires that employers provide handrails on all unprotected sides of stairways with four or more risers, rather than "on at least one side of closed stairways preferably on the right side descending" as provided in existing § 1910.24(h) because the Agency believes that the proposed language provides clearer guidance to employers and because OSHA believes compliance with the proposed language would provide the appropriate protection.

Proposed paragraph (b)(2) references the fall protection provisions of proposed § 1910.28(c) and would allow stair rail systems, when properly installed, to serve as handrails.

OSHA proposes to cover stair strength in proposed paragraph (b)(4). This provision would replace existing § 1910.24(c). Both the existing and the proposed language require that stairs be designed to carry five times their intended load. The only change to the existing language would be the removal of the 1,000 pound (454 kg) concentrated minimum loading requirement. As part of the Agency's performance-oriented approach to standards development, OSHA has determined that stairs which can support, without failure, five times their maximum intended load will adequately protect employees. Therefore, OSHA believes that the 1,000 pound (454 kg) requirement is unnecessary and unduly restrictive.

OSHA proposes in paragraph (b)(5) to lower the minimum vertical clearance above stairs to six feet, eight inches (2.06 m) for existing stairs, and to retain the seven foot (2.13 m) requirement (as in existing § 1910.24(i)) for all stairs except spiral stairs installed after (insert date 60 days after the effective date of the final rule in the **Federal Register**). The Agency believes that the proposed reduction in the minimum vertical clearance would not significantly reduce employee protection because the change would be small and because only a few stairways would be affected. OSHA is proposing this change so existing facilities with a minor deviation would not have to undergo the significant disruption and burden of retrofitting. The Agency solicits comments, with supporting information and data, on the appropriateness of the proposed changes.

Proposed paragraph (b)(6) effectively restates existing paragraph § 1910.24(f).

Paragraph (c) of § 1910.25 contains proposed requirements for fixed stairs. Proposed paragraph (c)(1) requires that fixed stairs be installed at angles 50 degrees or less from the horizontal. This would constitute a revision of the existing angle requirements in existing § 1910.24(e) and Table D–1. OSHA proposes to delete Table D–1 because the Agency has determined that there is no need to specify the angle to the horizontal in degrees and minutes. The permissible range for the height of risers and depth of tread, currently provided in existing Table D–1, would be covered in proposed paragraphs (c)(2) and (c)(4), respectively. The proposed requirements limit the height of risers and the depth of treads to the same dimensions set in Table D–1, without specifying stairway angles in degrees and minutes. In addition, proposed paragraph (c)(5) would allow stairs with open risers to have less depth than closed risers because the toe of the shoe can extend through the open riser and still have approximately the same amount of sole contact on the tread as a deeper tread with a closed riser.

Proposed paragraph (c)(3) maintains the requirement in existing § 1910.24(d), that fixed stairs shall have a minimum width of 22 inches (55.9 cm).

Proposed paragraph (c)(6) maintains the requirement in existing § 1910.24(g), that stairway landings and platforms shall be at least 22 inches (55.9 cm) wide and 30 inches (76 cm) long.

OSHA is also proposing three paragraphs which have no counterparts in existing § 1910.24. Paragraph (d) addresses spiral stairways; paragraph (e) addresses ship's stairs; and paragraph (f) addresses alternating tread type stairs. OSHA believes, based on its enforcement experience, that these types of stairways need to be addressed because of their increased use, and because applying the general fixed industrial stair requirements would be inappropriate. The proposed requirements for spiral stairways were taken from the Life Safety Code, NFPA 101–1985. The proposed requirements for ship stairs are based on the Agency's enforcement experience. OSHA requests comments on how or if existing ship stairs should be regulated. Should OSHA require existing ship stairs to meet these new requirements? What accident data is available for ship stairs? What would be the cost of bringing existing ship stairs into compliance with these proposed requirements? Please provide information and data to support any comments or suggestions. The proposed requirements for alternating tread type stairs are based on the 1985 revisions to the Building Officials and Code Administrations International (BOCA) Code. Ships stairs and alternating tread type stairs are not addressed by the existing subpart D. The Agency solicits comments, accompanied by supporting information and data, on the adequacy of proposed paragraphs (d) through (f) to address the particular safety concerns facing employees who use such stairways.

Section 1910.26 Ramps and Bridging Devices

Proposed § 1910.26 addresses ramps and bridging devices. Bridging devices, such as car plates, dockboards and bridge plates, are currently addressed in existing § 1910.30(a). OSHA proposes to delete existing § 1910.30(b), *Forcing machine area*, and existing § 1910.30(c), *Veneer machinery*, because those provisions address specific work areas that OSHA believes would be adequately addressed by the general requirements in proposed § 1910.22.

Proposed paragraph (a) addresses the general requirements for ramps and bridging devices. In proposed paragraph (a)(1), OSHA requires that ramps and bridging devices be designed, constructed and maintained to support their intended loads. The proposed provision is essentially identical to existing § 1910.30(a)(1).

In proposed paragraph (a)(2), OSHA requires that ramps and bridging devices used by vehicles be provided with a means such as edging or curbing to prevent vehicles from running off the edge. This is a new requirement, which is being proposed to protect employees using vehicles.

Proposed paragraph (a)(3) requires separate and clearly designated areas for vehicle and pedestrian traffic when both are simultaneously permitted on a ramp or bridging device (both a vehicle and a pedestrian at the same time). If pedestrians can precede or follow a vehicle access a ramp or bridging device at a safe distance, then a separate area for pedestrian traffic is not necessary. This is a new requirement, which has been proposed to prevent accidental contact between pedestrians and vehicular traffic.

Proposed paragraph (a)(4) requires that ramps and bridging devices be secured to prevent their accidental displacement while employees are on them. It also requires that vehicles supporting a ramp or bridging device be prevented from moving while the device is being used by employees. The proposed provision consolidates existing § 1910.30 (a)(2) and (a)(5).

Proposed paragraph (a)(5) requires a safe means, such as handholds or grab rails, to grasp portable ramps and bridging devices when they are moved. The proposed provision is essentially identical to existing § 1910.30(a)(4).

In proposed paragraph (a)(6), OSHA requires that planks used to construct a ramp or bridging device be secured to each other to prevent unintentional movement or separation. This is a new requirement, which is intended to prevent failure of the plank system.

Proposed paragraph (b) presents the requirements for specific types of ramps and bridging devices. Proposed paragraph (b)(1) contains requirements for fixed ramps. In proposed paragraph (b)(1)(i), OSHA requires that any fixed ramp used by employees which has a ramp angle greater than 20 degrees from the horizontal must be provided with handrails which satisfy proposed § 1910.28. Proposed paragraph (b)(1)(ii) prohibits the use of ramps exceeding 30 degrees from the horizontal. In addition, proposed paragraph (b)(1)(iii) requires that fixed ramps with a fall distance of four feet (1.2 m) or more be provided with a stair rail system or an equivalent fall protection system meeting § 1910.28. These requirements which are new, are proposed to reduce the likelihood of employee slips and falls on inclined ramps.

Proposed paragraph (b)(2) contains requirements for portable or elevating ramps and bridging devices. In paragraph (b)(2)(i), OSHA proposes that such ramps and bridging devices overlap at least four inches (10.2 cm) onto unattached surfaces when the ramps and bridging devices are not permanently attached to the dock or vehicle. This is a new requirement, which has been proposed to provide a minimum positive contact with the unattached surface to provide proper support and limit movement of the ramps and bridging devices. The proposed provision is based upon ANSI Standard MH 14.1–1987, *Loading Dock Levelers and Dockboards* (Ref. 49).

Proposed paragraph (b)(2)(ii) provides that guardrail systems are not required for ramps or bridging devices used solely for material handling with motorized equipment, when employees are exposed to fall hazards of less than 10 (3 m) feet and the employees have been trained as provided by proposed paragraph (b)(2)(ii)(*b*). This proposed provision, in permitting employers to rely on training rather than on the use of fall protection systems, is consistent with the proposed requirements for loading docks in proposed § 1910.32(d). An example of this situation would be

the transfer of material between boxcars. Material handling exposure is generally of limited duration, and requires ready access to the open sides. Guardrails would interfere with the transfer and could create a greater hazard to employees. The 10 foot (3 m) limitation in proposed paragraph (b)(2)(ii)(*a*) reflects on OSHA's requirement for scaffolds in proposed paragraph § 1910.30(c)(27), which is based on proposed § 1926.451(e)(1), ANSI A10.8–1988 (section 4.5) and the Agency's understanding of current industry practice. OSHA requests comments and supporting documentation on the appropriateness of the 10 foot (3 m) limitation for portable or elevating ramps and bridging devices used exclusively for material handling with motorized equipment.

Section 1910.27 Work Surfaces.

Proposed paragraph (a) provides that this section regulates floors and similar surfaces, with the exception of scaffolds, stair landings and platforms, which are specifically covered elsewhere in proposed subpart D. Proposed paragraph (b) contains the general requirements applicable to floors and similar surfaces covered by this section.

Proposed paragraph (b)(1) requires that employees who are exposed to unprotected sides or edges of surfaces that present a falling hazard of four feet (1.2 m) or more shall be protected by a fall protection system which meets the requirements of proposed § 1910.28. In drafting this provision, OSHA has retained the four foot (1.2 m) fall distance threshold which appears in the pertinent existing provision, § 1910.23(c), while dispensing with other fall protection requirements in existing § 1910.23(c), because the Agency has determined that the updated and consolidated fall protection requirements in proposed § 1910.28 will provide appropriate protection for employees. OSHA notes that existing § 1910.23 repeats itself, in effect several times by presenting separate fall protection requirements for specific surfaces which all present the same basic hazard of falling four feet (1.2 m) or more. OSHA believes that referencing proposed § 1910.28 where appropriate would eliminate the redundancy and excessive specificity that the existing standards present.

Further, existing § 1910.23 recognizes only physical barriers or devices for the prevention of falls. The existing standards require railing, guardrails, covers of standard strength, screens and similar types of employee protection. the use of safety nets, lifelines, safety belts and other alternative personal protection devices is not explicitly permitted. Proposed § 1910.28, referenced in proposed § 1910.27(b), would recognize the use of alternative fall protection systems such as nets, lifelines, safety belts and lanyards, which complied with the proposed standard, in addition to the use of railings and other fall protection currently covered in existing § 1910.23.

OSHA notes that, unlike existing § 1910.23 (b) and (c), which cover potential fall distances of four feet (1.2 m) or more, § 1910.23(a), which addresses protection for floor openings, has no such four foot (1.2 m) limit for fall protection. The existing standard requirement fall protection for all fall hazards, regardless of the potential fall distance. OSHA has determined that it shall not be necessary to require fall protection on surfaces less than four feet (1.2 m) above grade unless dangerous equipment, material or operations are below or adjacent to the floor hole. Proposed § 1910.27(b)(2), which is consistent with existing § 1910.23(c)(3), would provide for this exception. Studies by the University of Michigan and the National Bureau of Standards indicate that the severity of employee injury due to falls is significantly greater when falls exceed four feet (1.2m) (References 1, 2, 9–12). OSHA is proposing to limit the requirement for fall protection systems to surfaces four feet (1.2 m) or greater in height, except as provided in proposed paragraph (b)(2). Comments are requested on this proposed language.

OSHA recognizes that slips or trips can occur on any surface, regardless of the surface's height above its surroundings. Employees would be afforded protection from such hazards through compliance with the proposed requirements in § 1910.22(a). This provision addresses the need to design, construct, and maintain surfaces free of conditions that may cause employees to slip or trip and then fall. Employees would be protected from falls onto, rather than off of, floors and similar surfaces which are less than four feet (1.2m) above lower levels.

Proposed paragraph (b)(3) would require that employers protect employees who are exposed either to a risk of falling through a covered opening to a level four feet (1.2 m), or more, below or to a risk of falling through a skylight by providing either a cover which will carry the intended load or a fall protection system which complies with proposed § 1910.28. The proposed paragraph consolidates and revises the provisions of existing § 1910.28 (e)(7) and (e)(8), which currently regulate floor openings and skylights, respectively. In particular, OSHA notes that the existing language, unlike that proposed, does not set a minimum height threshold for requiring fall protection. The Agency believes that the application of the four foot (1.2 m) threshold should be extended to regulation of floor openings and skylights. In addition, the proposed paragraph replaces minimum load requirements and other specification language with performance-oriented language, in order to permit employers a reasonable amount of flexibility in complying. OSHA believes that employee protection will be improved through compliance with proposed paragraph (b)(3). The Agency solicits comments, accompanied by supporting information and data, on the proposed revisions.

While OSHA considers most of the changes in proposed § 1910.27(b) to be editorial in nature, some requirements in the existing standards are substantively changed in the proposal. For example, proposed paragraph (b)(4), which was suggested by the American Boilers Manufacturers Association (ABMA), addresses floor holes provided for the passage of machinery, piping and other equipment that may expand, contract or vibrate. Existing § 1910.23(a)(9) limits the size of such openings to one inch (2.54 cm). In proposed § 1910.27(b)(4), OSHA permits the opening to be as large as 12 inches (30.5 cm) in its least dimension (the shortest distance form the edge of the work surface or toeboard to the object going through the work surface), provided that the employer guards the opening with a toeboard or equivalent means to prevent employees' feet from entering the hole, and tools from falling onto employees below. OSHA is proposing to reduce the regulatory burden in recognition of the minimal employee hazard presented by such openings, and the potential for damage to boilers, pipes and equipment when there is not enough room for vibration or expansion. OSHA agrees with the ABMA that one foot (30.5 cm) is the appropriate space to allow for such vibration or expansion. In addition, OSHA has determined that the proposed requirement for toeboards or equivalent means of preventing employees and equipment from falling into openings would provide the necessary protection.

Proposed paragraph (b)(5) requires that floor holes shall be protected by floor hole guards that are kept in place, or if the nature of the work requires the removal of floor hole guards, that alternative means of protecting the opening be provided. This provision is based on existing § 1910.23(a)(3)(i) and

has been revised to be more performance-oriented so that means of protecting the opening, other than guardrails, would be acceptable to use for employee protection. This revision to the existing provision will allow the employer to select the protection which is appropriate for a particular situation.

Proposed paragraph (b)(6) addresses the hazards to employees working at lower levels from tools or similar objects being kicked or rolling over the open edges of floors and similar surfaces. In particular, the proposed paragraph requires a guard, such as an acceptable toeboard, at unprotected sides or edges. OSHA believes that the proposed language simply clarifies the requirements of existing § 1910.23 (c)(1) and (e)(4).

Section 1910.28 Fall Protection Systems

Proposed § 1910.28 sets criteria for the fall protection systems required under proposed subpart D. OSHA would impose the duty to provide fall protection through the other sections of subpart D, which, in turn, would reference proposed § 1910.28 to indicate how an employer would go about complying with the particular fall protection requirement. OSHA believes that this approach is appropriate because it takes into account the diversity of the surfaces and the fall protection needs encompassed by subpart D. The Agency proposes to consolidate and revise the fall protection criteria, which appear in existing § 1910.23 and elsewhere, in order to provide employers with clear guidance, update specifications to reflect revisions of ANSI standards, provide consistency with other proposed OSHA rules for fall protection in shipyards and construction, and, to the extent appropriate, to replace specification language with performance-oriented language. In addition, there are several provisions where OSHA proposes to distinguish between existing fall protection systems and those which would be installed after the issuance of the revised rule. Explanation of the need for such distinctions appears with the discussion of the pertinent provisions.

Proposed paragraph (a) requires that fall protection be provided through the use of guardrail systems unless it is infeasible to use them. Appropriate alternative fall systems meeting the requirements of proposed section § 1910.28 would be acceptable when guardrail systems are infeasible. OSHA recognizes that there are circumstances where it is unnecessary to install guardrail systems on a structure. Therefore, as an exception to the requirement for the installation of guardrail systems, OSHA would allow employees to establish designated areas which comply with paragraph (d) of this section. The requirements of paragraph (d) are discussed in detail below.

Proposed paragraph (b) contains the requirements for guardrail systems and toeboards. Proposed paragraph (b)(1), which addresses top rails, clarifies the 200 pound (890 N) strength requirement for the top rail of a guardrail system, which appears in existing § 1910.23(e)(3)(iv). Under proposed paragraph (b)(1), OSHA would require top rails installed after the issuance of the revised rule to be no less than 39 inches (1 m) above the guarded surface when 200 pound (890 N) test load is applied. OSHA selected 39 inches (1 m) as the minimum top rail height, when a test load is applied, for new installations in order to be consistent with the requirement in proposed paragraph (b)(3) that top rails shall be 42 inches, (1.1 m) when no load is applied. In addition, top rails installed before 60 days after effective date of the final rule shall not be less than 36 inches (91 cm) above the guarded surface when test loads are applied. The existing rule, § 1910.23(e)(1), requires that standard railings "have a vertical height of 42 inches nominal." The rational for the different height is discussed in detail with regard to paragraph (b)(3) below.

Proposed paragraph (b)(2) covers midrails. In addition to retaining provisions from existing § 1910.23(e)(1), OSHA proposes, in paragraph (b)(2)(ii), a new provision which requires that midrails be capable of withstanding a force at least 150 pounds (667 N), without failure or permanent deformation. OSHA determined that this proposed provision was needed to supplement the criteria proposed for top rails. The existing standard does not contain a strength requirement for midrails, and this omission has caused confusion among employers. This proposed paragraph is based on proposed §§ 1926.502(b)(5) and 1915.252(e)(4)(ix).

Proposed paragraph (b)(2)(iii) retains with minor revision the portion of existing paragraph § 1910.23(e)(1), which addresses the proper spacing of the midrail. The proposed paragraph sets the maximum opening in guardrails as 19 inches (48 cm) in their least dimension. The 19-inch (48 cm) spacing is recommended by the National Bureau of Standards in "A Model Performance Standard for Guardrails" (Reference 11). The present standard requires that the intermediate rail be "approximately halfway between the top rail and the floor * * *". The existing standard, however, does not provide any criteria for guardrail systems which use vertical posts, ornamental designs and panels, or other alternatives to an intermediate rail. OSHA anticipates that the proposed criteria will clarify the acceptable spacing of members for all types of guardrails. OSHA solicits comments on the appropriateness of the 19-inch (48 cm) maximum size of opening in guardrail systems in their least dimension. Will this requirement unduly restrict technological development or innovative design? What should be the maximum size of this opening? Please submit rationale and cost information on the above questions.

Proposed paragraph (b)(3) sets height criteria for guardrail systems. Proposed paragraphs (b)(3)(i) and (b)(3)(ii) clarify existing paragraph § 1910.23(e)(1), which establishes the acceptable height of guardrails. Proposed paragraph (b)(3)(i) would require all guardrails installed on or after (insert date 60 days after the effective date of final rule in the **Federal Register**) to be at least 42 inches (1.1 m) in height. The current standard § 1910.23(e)(1) requires that guardrails have a vertical height of 42 inches (1.1 m) nominal, measured from the guarded surface to the upper surface of the top rail. OSHA proposes to eliminate the term "nominal" because the Agency believes that the term is vague and therefore, overly subject to conflicting interpretations. In order to provide clear guidance, the Agency proposes instead to set a minimum height for guardrails. OSHA recognizes that employers may on occasion add material, such as carpeting, tile, insulation, grating or mats, to walking and working surfaces, thereby, reducing the effective height of the guardrail. Proposed paragraph (b)(3)(i) allows this as long as the guardrail meets with proposed paragraph (b)(1), because OSHA believes it is unreasonable to require employers to raise the height of guardrails each time the walking and work surface is raised.

Proposed paragraph (b)(3)(ii) would allow existing guardrail systems to be a minimum of 36 inches (91 cm) high, which, as noted above, is consistent with OSHA field directive STD 1–1.10–1981. OSHA issued the directive because it recognized that employers with guardrails as low as 36 inches (91 cm) might have installed their systems in compliance with pre-OSHA building codes. The Agency was also concerned that employers would be unreasonably burdened by the cost of replacing their

old guardrail systems with new guardrail systems that were a nominal 42 inches (1.1 m) high. Indeed, OSHA's willingness to relax enforcement of the 42-inch (1.1 m) requirement was due, in part, to uncertainty as to what would constitute compliance with a "nominal" 42-inch (1.1 m) requirement. The Agency proposed the minimum 42-inch (1.1 m) high in order to remove this uncertainty. Therefore, OSHA determined that continuing to tolerate the use of guardrails as low as 36 inches (91 cm) would not unacceptably reduce employee protection and that the hazard to which employees would be exposed in replacing those guardrails would be greater than that from allowing the existing guardrails to remain in place. When existing guardrail systems are replaced, the requirements of proposed paragraph (b)(3)(ii) would apply to the replacement guardrail system.

Proposed paragraph (b)(3)(iii) is a new provision which allows employees as an alternative to complying with proposed paragraphs (b)(3) (i) and (ii) of this part to reduce guardrail system heights to as low as 30 inches (76 cm), provided the sum of the depth of the top rail and the height of the top edge of the top rail is at least 48 inches (1.2 m). This formula is recommended by the National Bureau of Standards in "A Model Performance Standard for Guardrails" (Reference 11). The study found that a 30 inch (76cm) high barrier with an 18 inch (46cm) deep surface or some other combination with a minimum height of 30 inches (76cm) and totaling at least 48 inches (1.2m) would be sufficient to prevent an employee from going over the edge. It would allow a employer flexibility in providing perimeter protection when parapets or other similar barriers are installed. OSHA is proposing this requirement to recognize design alternatives found in structures such as parapet walls. OSHA believes that a guardrail system which complies with the proposed paragraph would adequately protect employees from fall hazards.

Proposed paragraph (b)(4) retains the basic elements of existing § 1910.23 (e)(1) and (e)(3)(v)(*a*), which require the top rail to be smooth-surfaced, and extend those requirements to all guardrail system components. OSHA believes that compliance with the proposed paragraph, as with existing § 1910.23 (e)(1) and (e)(3)(v)(*a*), would ensure that employees are protected from injury due to either punctures, lacerations or from tripping caused by snagged clothing.

Proposed paragraph (b)(5) specifies that the outside diameter or thickness of midrails and top rails be one-quarter inch (0.6 cm) in its smallest dimension. This is a revision of existing § 1910.23 (e)(3)(i), (e)(3)(ii), and (e)(3)(iii), which overly restrict the type and size of material that may be used in guardrail systems. This proposed provision is included to prohibit the use of thin materials such as, but not limited to, metal or plastic banding material that would be difficult to see and grasp or that may cut an employee if grabbed during a fall.

Proposed paragraph (b)(6) permits the use of movable guardrail sections using material such as gates, chains and other means, which, when open, provide a means of access and when closed, provide guardrail protection that meets the criteria of proposed paragraphs (b)(1) through (b)(5). OSHA has determined that the proposed provision simply clarifies the requirements of existing § 1910.23 (a)(3)(ii) and (b)(1)(i), except that the requirements, in existing § 1910.23(b)(1)(i), for grab handles would be deleted. The Agency believes that grab handles are not needed, given that employers comply with the other provisions of proposed paragraph (b).

Proposed paragraph (b)(7) presents requirements for toeboards. Proposed paragraph (b)(7)(i) is a new provision that specifies the minimum strength of toeboards. Omission of this criteria in the existing standard has led to confusion as to what type of toeboard is acceptable. This is consistent with proposed § 1926.502(j)(2). OSHA believes that most if not all existing toeboards will meet the proposed 50 pound (222N) strength requirement. However, the Agency solicits comments as to the appropriateness of this proposed paragraph. If 50 pounds (222N) is too stringent what would be an appropriate strength requirement? How many existing toeboards will not meet the proposed requirement and what will be the cost of bringing them into compliance?

Proposed paragraph (b)(7)(ii) is a minor revision of a part of existing § 1910.23(e)(4), and clarifies that the minimum height of toeboards required is three and one-half inches (8.9 cm), rather than the existing confusing language of four inches (10.2 cm) nominal.

Proposed paragraph (b)(7)(iii) is a minor revision of a part of existing § 1910.23(e)(4), which specifies that toeboards are to be installed not more than one-quarter inch (6.4 mm) above floor level. OSHA has determined that toeboards placed as much as one-half inch (1.3 cm) above the work surface would adequately protect employees working below the protected surface from the hazards of tools or other equipment rolling off the surface. Increasing the space between the floor and the toeboard would also improve drainage, thereby reducing slipping hazards.

Proposed paragraph (c) contains the requirements for handrails and stair rails. Proposed paragraph (c)(1) requires handrails and the top rails of stair rail systems to be capable of withstanding, without permanent deformation or a loss of support, a force of at least 200 pounds (890 N) applied within two inches (5 cm) of the top edge, in any downward or outward direction, at any point along the top edge. This is a minor revision of existing § 1910.23 (e)(3)(iv) and (e)(5)(iv), and clarifies the design criteria for handrails and stair rails.

Proposed paragraph (c)(2)(i) requires that the height of handrails installed before (insert date 60 days after the effective date of the final rule in the Federal Register) be no less than 30 inches (76 cm) nor more than 42 inches (1.1 m), as measured from the upper surface of the handrail to the surface of the stair tread or ramp. Existing § 1910.23(e)(5)(ii) requires that handrails be between 30 and 34 inches (76 and 86 cm) in height. OSHA is aware that some existing handrails are set at heights above 34 inches (86 cm). The Agency believes that allowing handrails 30 to 42 inches (76 cm to 1.1 m) in height to remain in place would not reduce employee protection as long as the other pertinent provisions of the proposed paragraph are followed. In addition, this revision recognizes the impracticality of modifying handrails that are in place in existing buildings, but that are within a range of heights which may be considered a departure from height requirements of the existing standard.

Proposed paragraph (c)(2)(ii) requires the height of all handrails installed on or after (insert date 60 days after the effective date of the final rule of publication in the Federal Register) to be from 30 to 37 inches (76 to 94 cm) in height. OSHA believes this is the appropriate height range for handrails from an ergonomic standpoint (Ref. 1). OSHA is aware that some persons have been confused regarding the purpose of a handrail, which is to provide employees with a handhold to assist them in ascending and descending stairs. The purpose of the handrail should not be confused with the purpose of the stair rail, which is to protect employees from falling over the edge of an open-sided stairway to a lower level. It should be noted that under proposed § 1910.28(c)(2)(v), the function of

handrails and stair rails may be performed by a single system if the height of the combined handrail/stair rail is between 36 and 37 inches (92–94 cm), and the other criteria for both systems are met.

Proposed paragraph (c)(2)(iii), a minor revision of existing § 1910.23(e)(2), is also based on a recommendation by the University of Michigan (Ref. 1). It would require the height of stair rail systems installed before (insert 60 days after the effective date of the final rule in the **Federal Register**) to be no less than 30 inches (76 cm). OSHA has chosen not to raise the minimum stair rail height for existing systems, because the Agency has determined that modifying existing stair rail systems to meet the requirements set out in proposed § 1910.28(c)(2)(iv) for newly installed stair rail systems would impose unreasonable burdens on employers, and would potentially expose employees modifying the rails to significant fall hazards. In addition, the Agency is proposing to delete the current upper height limit of 34 inches (86 cm), because OSHA recognizes that the upper height limit serves no purpose. The purpose of the stair rail system is to prevent employees from falling over the edge of open-sided stairways. The Agency believes that eliminating the upper limit would allow employers flexibility which could allow the installation of safer systems.

Proposed paragraph (c)(2)(iv), a significant revision of existing § 1910.23(e)(2), requires that stair rail systems installed after (insert date 60 days after the effective date of the final rule in the **Federal Register**) shall not be less than 36 inches (91 cm) in height. This is a departure from the existing standard, which specifies a range in height of 30 to 34 inches (76 to 86 cm). OSHA has determined that in the case of stair rail height, as with guardrail height, 36 inches (91 cm) is the minimum acceptable height for employee fall protection under any circumstances. This revised requirement is consistent with the actual purpose of a stair rail system, i.e., to prevent employees from falling to lower levels. Since the stair rail system is measured at the forward edge of the step, the effective protection at the rear of the step will be at least 36 inches (91 cm) plus the riser height of the step.

Proposed paragraphs (c)(2) (v) and (vi) are new provisions which permit the top edges of stair rail systems to also serve the purpose of handrails. As stated above, when the proper conditions are met, a single system may perform the functions of both stair rails and handrails.

Proposed paragraph (c)(3), a revision of existing § 1910.23(e)(5)(iii), requires that there be a minimum clearance of one and one-half inches (3.8 cm) between a handrail and any obstructions. The existing standard specifies a minimum clearance of three inches (8 cm). However, the new requirement is consistent with the requirements of many local building codes, ANSI A12.1–1973, *Safety Requirements for Floor and Wall Openings, Railings and Toeboards* (Ref. 51), and the draft revision of ANSI A1264, *Safety Requirements for Workplace Floor and Wall Openings, Stairs and Railing Systems.* It is also consistent with ANSI A117.1–1986, *Providing Accessibility and Usability for Physically Handicapped People* (Ref. 52). OSHA believes that this revision will not result in a reduction of employee protection.

In paragraph (c)(4), OSHA proposes a minor revision of existing § 1910.23(e)(5)(i), which would require handrails to be smooth-surfaced, to make it clear that employers must protect employees using handrails and stair rails from puncture, laceration or snagging hazards.

Proposed paragraph (c)(5), which is a revision of existing paragraph § 1910.23(e)(2), requires that the openings in a stair rail system be a maximum of 19 inches (48 cm) in their least dimension. This is consistent with the requirements for guardrails in proposed paragraph (b)(2)(iii) of this section which in turn is based on a NBS study (Ref. 11). The existing standard requires construction similar to a "standard railing." The regulations for standard railings, such as are used in guardrail systems, in existing § 1910.23(e)(1) require that intermediate rails be installed approximately halfway between the toprail and the floor surface. OSHA believes that openings in stair rail systems should continue to have the same protection as openings in guardrail systems, following the performance-oriented approach taken for guardrails. Therefore, the Agency has proposed that openings both in stair rail and in guardrail systems shall be no more than 19 inches (48 cm) in their least dimension.

Proposed paragraph (c)(6), which is based on existing § 1910.23(e)(5)(i), requires handrails to provide a firm handhold for employees.

Proposed paragraph (c)(7), which is also based on existing paragraph § 1910.23(e)(5)(i), requires stair rail systems to be designed and constructed so that their ends do not constitute a projection hazard into which employees may inadvertently walk.

Proposed paragraph (d), a new provision, sets forth requirements regarding the use of "designated areas" as an alternative to providing fall protection. A designated area, as defined in proposed § 1910.21(b), is a section of a walking or working surface around which a perimeter line has been erected so that employees within the area would be warned, when they saw or contacted the line, that they were approaching a fall hazard. OSHA would allow employers to establish designated areas when they can demonstrate that employees within the area will not be exposed to fall hazards, because the Agency recognizes that it would be unreasonable to require the installation of guardrails when there is no fall hazard. OSHA contemplates that this provision would apply when employees are sent to the roof of a structure for maintenance of machinery, such as a cooling tower, which is set towards the center of the roof. The Agency anticipates that setting up and maintaining a warning line system, which complies with proposed paragraph (d), around a designated area would ensure that affected employees can perform their work free from fall hazards. The construction industry standard, § 1926.500(g), provides for use of a designated area, demarcated by warning lines, when employees are performing built-up roofing work on low-pitched roofs. The designated area approach is retained in proposed §§ 1926.501(b) and 1926.502 (f), (g) and (h) (51 FR 42718, November 25, 1986). In order to ensure OSHA standards regulate comparable work situations consistently, the Agency has based the proposed paragraph on the designated area concept as reflected in the existing and proposed construction industry standards.

Proposed paragraph (d)(1) provides that designated areas may be used as an alternative for guardrails when the employer can show that employees are not exposed to fall hazards, the work is temporary, the slope of the surface is 10 degrees or less from the horizontal and the designated area is surrounded by a rope, wire or chain supported by stanchions meeting the criteria in proposed paragraphs (d)(2) through (d)(5). The 10 degree slope limitation reflects OSHA's belief that the designated area approach should apply only to essentially flat-roofs that may have a slight pitch or unevenness. In particular, OSHA is concerned that a warning line system would not work on

a surface which sloped more than 10 degrees, because visibility and the employee's ability to stop when the warning line is contacted could not be ensured.

Proposed paragraph (d)(2), which is consistent with proposed § 1926.502(f)(2), provides strength criteria for the materials used to establish designated areas. Proposed paragraph (d)(2)(i) proposes that stanchions with rope, wire or chain attached, shall be capable of resisting, without tipping over, a force of at least 16 pounds (71 N) applied horizontally against the stanchion at a height of 30 inches (76 cm) above the working surface, perpendicular to the designated area line, and in the direction of the exposed edge. OSHA believes that the ability to resist a force of 16 pounds (71 N) ensures that an employee is adequately warned that the edge of the designated area has been reached. Proposed paragraph (d)(2)(ii) requires that the rope, wire or chain used to demarcate designated areas have a minimum tensile strength of 500 pounds (2.2 kN). In addition, after being attached to the stanchions, the line would be required to support, without breaking, the 16 pound (71 N) force applied to the stanchion. This performance requirement simply assures that the line is durable and capable of functioning as intended, regardless of how far apart the stantions are placed. In addition, the minimum tensile strength of 500 pounds (2.2kN) assures that the line is made of material more substantial than string, such as wire, chain, rope or heavy cord. OSHA believes that this minimum tensile strength is not an unreasonable burden on employers however, comments are requested on the appropriateness of this requirement. Proposed paragraph (d)(2)(iii) requires that the line be attached at each stanchion in such a way that pulling on one section of the line between stanchions will not result in slack being taken up in adjacent sections before a stanchion tips over. In order to maximize the warning capabilities of the line which demarcates the designated area, the proposal limits the amount of potential slack in the system.

Proposed paragraph (d)(3), which is also consistent with proposed § 1926.502(f)(2), requires that the height of the designated area line be no less than 34 inches (86 cm) nor more than 39 inches (1 m) from the work surface. This height is low enough to warn a short worker while the worker is stooped over, and at the same time, it is high enough not to be a tripping hazard for taller workers.

Proposed paragraph (d)(4) requires the perimeter of the designated area to be readily visible from a distance up to 25 feet (7.6 m). This criteria is provided so that the lines will be readily apparent and, therefore, effectively warn employees to stay away from fall hazards. OSHA does not believe that flagging, as required in proposed § 1926.502(f)(2)(i), is necessary for the designated area. In general industry work would be performed at a fixed location, while in construction there would be a greater need for aids to visibility (flagging) because the work location shifts from one part of the roof to another.

Proposed paragraph (d)(5) sets forth the details of how the designated area is to be established. Proposed paragraph (d)(5)(i) requires that the stanchions be erected as close around the work area as permitted by the work task. This criterion would be included to make the stanchions as obvious as possible without interfering with the work task. Proposed paragraph (d)(5)(ii), which is consistent with proposed § 1926.502(f)(1)(i), requires that the perimeter of the designated area be erected not less than six feet (1.8 m) from the exposed edge of the falling hazard. OSHA believes that the six foot (1.8 m) distance is sufficient to allow an employee to stop moving toward the fall hazard after realizing that the perimeter line has been contacted. Proposed paragraph (d)(5)(iii) requires that when the worker is using mobile mechanical equipment, the perimeter of the designated area be erected not less than 10 feet (3.1 m) from the unprotected side or edge, perpendicular to the direction of travel. This criterion would provide additional distance for the employee to stop moving towards the hazard, taking into account the extra momentum of the equipment being used. Proposed paragraph (d)(5)(iv) requires that access to the designated area shall be by a clear access path formed by two warning lines meeting the strength, height, and visibility requirements of proposed § 1910.28(d)(2)(4). OSHA has included this provision, which is based on existing § 1926.500(g)(3)(iii)(a) and proposed § 1926.502(f)(1)(iii), to underscore the importance of providing safe access to the work area.

Proposed paragraph (e) sets requirements for covers used to protect employees from falling into holes in floors, roofs and other walking and working surfaces. The proposed paragraph, which revises existing § 1910.23 (e)(7) and is identical to proposed § 1926.502(i), reflects OSHA's belief that clearly worded performance-oriented language provides employers with the necessary guidance and flexibility.

Proposed paragraph (e)(1) requires that covers located in roadways and vehicular aisles shall be capable of supporting, without failure, at least twice the maximum axle load of the largest vehicle expected to cross over the cover. The proposed paragraph deletes the 20,000 pound (9080 kg) minimum rear-axle load requirement in existing § 1910.23 (e)(7)(i) and (e)(7)(ii) in favor of a performance-oriented approach. Proposed paragraph (e)(2), a new provision, requires that all other covers shall be capable of supporting, without failure, the maximum intended load of employees, equipment and materials to be applied.to the cover at any one time, or 250 pounds (114 kg), whichever is greater. OSHA believes that compliance with the proposed paragraph would adequately protect employees who traverse covers. OSHA chose the 250 pound (114kg) minimum capacity because the Agency's data indicates that most employees, loaded with necessary tools and material, would impose a load of less than 250 pounds (114kg).

Proposed paragraph (e)(3), which is based on existing § 1926.500(f)(5)(ii) and proposed § 1926.502(i)(3), requires that covers be installed so as to prevent accidental displacement. This provision clarifies the requirement in existing § 1910.23(a)(9) that floor opening covers shall be held firmly in place, to ensure that employers anticipate and take precautions against all possible causes of cover displacement.

Proposed paragraph (f), a new provision, provides that personal protective equipment (PPE) used where the use of guardrails is infeasible, as provided in proposed § 1910.28(a)(1), shall meet the applicable requirements of subpart I. Existing subpart D allows for the use of the guardrails, but not the use of PPE for fall protection. Therefore, under the existing standard, an employer who finds that the use of guardrails is infeasible has no guidance as to acceptable alternatives. Subsequently, OSHA recognized that there are circumstances where employees would occasionally need to access work areas under circumstances where the guardrail requirement would be unreasonably burdensome. This understanding was reflected in STD 1–1.13, April 16, 1984. In drafting this proposed rule, OSHA has recognized the need for clear guidance on how to use PPE in situations where the use of

guardrails is infeasible. Therefore, proposed § 1910.28(a)(1) allows employers to provide their employees with appropriate alternative fall protection and proposed paragraph (f) provides that employers who use personal fall protection systems shall ensure that the equipment and systems chosen meet the applicable requirements of proposed subpart I. As noted above, OSHA is proposing the fall protection requirements of subpart D and the personal fall protection criteria of subpart I concurrently.

Proposed paragraph (g), another new provision, requires that restraint line systems satisfy the requirements of subpart I. OSHA notes that these systems may be used only in situations where, as provided in proposed § 1910.28(a)(1), it is not feasible to use guardrail systems.

Proposed paragraph (h), another new paragraph, sets criteria for the proper use of safety net systems. Existing Subpart D does not directly address safety nets. OSHA has determined that there are situations, especially in maintenance work, where due to the unsuitability of guardrail systems or personal fall protection systems, the use of a safety net system is the most appropriate means of employee protection. All of the proposed requirements in this new section are based upon the existing § 1926.105, proposed § 1926.502, and upon ANSI A10.11–1989, *American National Standard for Construction and Demolition Operations—Personal and Debris Nets* (Ref. 53).

Proposed paragraph (h)(1) requires that employers who use safety nets install them as close as practical under the guarded surface on which employees are working, but not more than 30 feet (9.1 m) below such levels. The proposed language is based upon the requirement in ANSI A10.11–1989, section 10.2.

Proposed paragraph (h)(2) requires that safety nets be installed with sufficient clearance under them to prevent contact with the surface or structures below if subjected to a drop test of 400 pounds (180 kg) falling into the net from the height of the guarded surface. The proposed requirement is based on existing § 1926.105(c)(1), and proposed § 1926.502(c)(3).

Proposed paragraph (h)(3) requires that safety nets be installed so that they extend from 8 to 13 feet (2.4 to 4 m) from the outermost projection of the work surface. These distances follow ANSI A10.11–1989, section 10.6. OSHA believes that increasing the extension of the safety net as the fall distance increases will more appropriately protect employees than the eight foot (2.4 m) extension in ANSI A10.11–1979. The proposed requirement is identical to proposed § 1926.502(c)(2).

Proposed paragraph (h)(4) sets forth the capacity requirements for installed safety nets. These requirements are based upon the test requirements contained in ANSI A10.11–1989, section 9.3, except that OSHA's proposal specifies that the test is to be performed from the level of the guarded surface, rather than from the 25 foot (7.7 m) height specified in the ANSI standard. OSHA believes that the test as presented in the proposal is more representative of actual workplace conditions. Proposed paragraph (h)(4) allows two methods for assuring that safety nets are properly designed and installed. The general requirement is for nets to be drop tested. The drop test requirements are based on proposed § 1926.502(c)(4)(i). Where drop testing is not possible, the proposed standard allows for a qualified person to certify that the net installation complies with the strength requirements and with all the other provisions of proposed paragraph (h). The exception to the drop testing is provided since it is not always appropriate to drop test safety net installations. An example of where a drop test may not be appropriate is where the net is strung over a public thoroughfare and the test could endanger people below. Another example is where the test weight cannot be readily retrieved from the net once it has been dropped.

Proposed paragraph (h)(5) requires inspections of safety nets on a weekly basis to determine the existence of mildew, wear, damage or deterioration. It would also require that the nets be removed from service if their strength is substantially reduced. This requirement is based upon section 11.1 of ANSI A10.11–1989.

Proposed paragraph (h)(6), which is based on proposed § 1926.502(c)(6) and, in part, on section 13.2 of ANSI A10.11–1989, requires debris and tools that have fallen into safety nets be removed as soon as possible, but at least before the next work shift. OSHA believes that clearing the debris from the nets will lessen the likelihood that employees falling into the net will be injured due to contact with the debris in the net. OSHA further believes that the removal of debris and tools every work shift is more effective than the ANSI requirement which requires removal at least daily, because if there is more than one shift, foreign material would be removed more often.

Proposed paragraph (h)(7) requires the mesh openings in safety nets not to exceed 36 square inches (230 cm2), nor be longer than six inches (15 cm) on any side measured from center to center of the material forming the mesh. This is based upon existing § 1926.105(d), proposed § 1926.502(c)(7), and, in part, on section 6.3 of ANSI A10.11–1989.

Proposed paragraph (h)(8) requires safety nets to have border ropes or border webbings with a breaking strength of at least 5,000 pounds (22.2 kN). This is based upon existing § 1926.105(d) and proposed § 1926.502(c)(8). OSHA believes this strength is needed at all times during the useful life of the net.

Proposed paragraph (h)(9) requires that the connections between net panels shall be as strong as internal net components, and that connections shall be spread between safety net panels at intervals at no more than six inches (15 cm). These requirements are based upon section 10.4 of ANSI A10.11–1989, and existing § 1926.105(f).

Section 1910.29 Wall Openings

OSHA has determined that it is appropriate to amend the existing requirements for the protection of wall openings (paragraph (b) of § 1910.23) and place those requirements in proposed § 1910.29. Where the amended language retains the substantive requirements of the existing standard, the Agency considers the change to be editorial. OSHA explains, below, where the proposed language differs significantly from existing language.

Existing § 1910.23(b)(1) provides two alternative approaches for guarding wall openings from which there is a drop of more than 4 feet. Grab handles are also required. Existing § 1910.23(b)(1)(i) provides that a wall opening can be protected through the use of an extension platform onto which material can be hoisted and which shall have side rails or equivalent guards of standard specification. OSHA proposes to revise and relocate existing § 1910.23 because the Agency expects that the provision would require appropriate protection at wall openings. The Agency proposes to delete existing § 1910.23(b)(1)(ii) which provides for the use of extension platforms with guardrails, because OSHA believes that this approach does not provide adequate protection for employees working in wall openings. As discussed below, OSHA proposes to set separate fall protection requirements for existing wall openings and for those installed 60 days or more after the effective date of the final rule.

Proposed paragraph (a) requires that an existing wall opening with the lower edge less than 36 inches (91cm) above a

surface be guarded with a fall protection system meeting the requirements of proposed § 1910.28. This is based on existing § 1910.23(b)(3).

Proposed paragraph (b) requires that a wall opening constructed on or after (insert date 60 days after the effective date of the final rule in the Federal Register), and having the lower edge less than 39 inches (1 m) above a surface, be guarded by a fall protection system meeting proposed § 1910.28. These dimensions are consistent with those required by the proposed requirements for guardrails in proposed § 1910.28(b)(1). OSHA believes that existing wall openings, like existing guardrails, should not have to be retrofitted to protect employees at 39 inches (1m) because to do so would impose unreasonable burdens on employers and expose employees who perform retrofitting to significant fall hazards.

Proposed paragraph (c), which is based on existing 1910.23 (b)(1)(i), requires grab handles where an employee's work activity at a wall opening requires the employee to reach through or around the opening. Further, the proposed paragraph requires that each grab handle be capable of withstanding a maximum horizontal pull-out force of twice the intended load or 200 pounds (890 N), whichever is greater.

Existing paragraphs § 1910.23 (b)(2) and (b)(3) address the fall protection needs of employees working in proximity to chute wall openings and window wall openings, respectively. OSHA believes that the performance-oriented language in proposed § 1910.29 (a) and (b) adequately addresses such openings. Therefore, OSHA proposes to delete the existing requirements and to set uniform requirements for all wall openings.

Existing § 1910.23(b)(4) addresses the guarding of temporary wall openings. Existing § 1910.23(b)(4) requires "adequate guards" for the opening, but does not require that the guard be of standard construction. OSHA believes that fall protection systems which meet the requirements of proposed § 1910.28 will adequately protect employers from fall hazards. Therefore, OSHA proposes to delete existing § 1910.23(b)(4).

Existing § 1910.23(b)(5) requires that a toeboard or enclosed screen be provided at wall openings where the rear side of the lower edge is less than four inches (10 cm) above the floor, and the far side of the hole is more than five feet (1.51 m) above the next lower level. OSHA proposes to delete paragraph § 1910.23(b)(5) because guards, such as toeboards, are required to protect employees from such a hazard under proposed § 1910.27(b)(6), which references criteria in proposed § 1910.28.

Section 1910.30 Scaffolds

OSHA proposes to revise existing § 1910.28, *Safety requirements for scaffolding*, and relocate the revised provisions in proposed § 1910.30, *Scaffolds*. OSHA has determined through its observation of general industry operations that of the nearly 20 different types of scaffolds covered in the existing OSHA standards, only four (the two-point adjustable suspension scaffold, the single-point adjustable suspension scaffold, the boatswain's chair and the mobile manually-propelled scaffold) are used regularly in general industry. OSHA has proposed subpart D regulations only for those scaffolds. OSHA has further determined that the types of scaffolds not covered by 29 CFR part 1910, subpart D, are usually used in construction operations. Therefore, in order to provide concise and consistent guidance to employers, the Agency proposes that scaffolds and scaffold components that are not addressed in proposed subpart D would be required to meet the applicable requirements of subpart L of 29 CFR part 1926. OSHA has proposed requirements for scaffolds used in general industry which are intended to be consistent with the requirements in the existing and proposed Construction Safety Standards (§§ 1926.450–1926.460, 51 FR 42680, November 25, 1986) and the proposed Shipyard Standards (§§ 1915.251–1915.253, 53 FR 48182, November 29, 1988) so that an employer could use a scaffold in either general industry, the construction industry, or shipyard employment without confronting divergent requirements.

The general requirement for guardrails on scaffolds that was originally promulgated by OSHA in 1971 under section 6(a) of the OSH Act in § 1910.28(a)(3) was revoked on February 10, 1984 (49 FR 5318). This provision was based on the advisory language of a national consensus standard, ANSI A10.8–1969, *Safety Requirements for Scaffolds*, which stated that "guardrails should be installed," but was changed by OSHA to read, "guardrails shall be installed." The courts ruled that OSHA's failure to adopt the national consensus standard verbatim under section 6(a), by changing the "should" to a "shall", rendered the resulting OSHA standard invalid and unenforceable [see Usery v. Kennecott Copper Corporation, 577 F.2d 1113, 1117 (10th Cir. 1977)]. Since the standard could not be enforced, OSHA subsequently revoked it and has resorted to citing employers under the general duty clause, section 5(a)(1), in cases where the Agency believes that the use of guardrails on scaffolds was necessary to protect employees from fall hazards. Proposed § 1910.30 is intended to fill the regulatory gap in the current scaffold standards by proving fall protection requirements for employees on scaffolds.

In developing this proposal, OSHA has reviewed the existing scaffold requirements in OSHA's general industry and construction standards, and has rewritten them into performance language to the extent appropriate. The provisions of ANSI A10.8–1988, *Safety Requirements for Scaffolding*, have also been considered for incorporation into this proposal (Ref. 61). The discussion of proposed § 1910.30, below, indicates where OSHA has based provisions on ANSI requirements. OSHA has not adopted those ANSI A10.8–1988 provisions which the Agency believes are redundant, unnecessary or overly specific.

Proposed paragraph (a) states the scope and application of the proposed scaffold provisions. This proposed section would apply to the listed scaffolds and scaffold components. OSHA also proposes that the scaffold requirements of 29 CFR part 1926, subpart L, cover those scaffolds used in general industry that are not specifically covered in this section. This approach would ensure that all scaffolds are regulated, and that the scaffold requirements in the general industry and construction standards are consistent to the extent appropriate.

OSHA proposes in paragraph (b) to prohibit the use of shore scaffolds and lean-to scaffolds since they are unsafe and should never be used under any circumstances. OSHA has determined that it is appropriate to prohibit these scaffolds, even though the Agency believes they are not used in general industry, because such scaffolds are so makeshift that they do not provide a safe work surface for employees. This requirement is identical to existing § 1910.28(a)(24).

OSHA proposes the general requirements for scaffold systems in paragraph (c). Proposed paragraph (c)(1) lists general requirements for the installation and use of scaffolds.

Proposed paragraph (c)(1)(i), which is a new provision, prohibits the use of ladders and makeshift devices to increase scaffold working height. This is based upon ANSI A10.8–1988, section 4.29, and is consistent with proposed § 1926.451(d)(13). OSHA anticipates that compliance with this requirement would ensure that employees are provided

with a secure work platform and would eliminate the hazard of tipping caused by portable ladders exerting a sideways thrust on scaffold systems.

Proposed paragraph (c)(1)(ii) requires scaffold suspension ropes to hang vertically unless specifically designed to be pulled laterally during use. The proposed requirement indicates OSHA's recognition that systems specifically designed to be used on convex structures, such as water towers, adequately protect employees. This flexibility, which is consistent with ANSI A10.8–1988, section 6.1.10, is a partial departure from the requirement in existing § 1910.28(i)(8), that supporting cable shall be straight for its entire length.

OSHA proposes in paragraph (c)(1)(iii) to require overhead protection for employees on scaffolds if they are exposed to falling objects. The overhead protection used would have to deflect objects and resist penetration. This requirement is based upon existing § 1910.28(a)(16).

Proposed paragraph (c)(1)(iv) which is consistent with ANSI A10.8–1988, section 4.7, requires that scaffolds not be altered or moved horizontally while occupied, except when a scaffold has been specifically designed for such use. The proposed provision is a modification of the prohibition in existing § 1910.28(a)(5) of such moving or alteration. The proposed revision reflects technological advances and permits alteration or movement of a scaffold which is occupied. OSHA notes that proposed paragraph (f)(6) of this section provides requirements for safe movement of mobile manually propelled scaffolds which are occupied by employees.

Proposed paragraph (c)(1)(v) requires that tools, materials and debris shall not be allowed to accumulate on scaffolds so as to cause a hazard. This is identical to existing § 1910.28(a)(20). The intent of this requirement is to allow only those items on the scaffold that are necessary for a particular operation. OSHA believes that compliance with this proposal would reduce fall hazards, and would also reduce the weight imposed on the scaffold.

Proposed paragraph (c)(1)(vi) prohibits work on scaffolds covered with snow, ice or other slippery materials except as necessary for the removal of such materials. The requirements relating to snow and ice are based upon existing paragraph § 1910.28(a)(19) and ANSI A10.8–1988, section 4.23. The proposed requirements for other slippery materials are based on proposed § 1926.451(d)(8). OSHA has determined that the proposed provisions are necessary to address the slippery surface hazards which employees may confront while working on scaffolds. OSHA has included the provision covering removal of slippery conditions in recognition of the likelihood that employees will need to be on scaffolds while removing the hazard.

Proposed paragraph (c)(1)(vii) prohibits work on or from scaffolds in winds above 40 miles per hour (64.4 km/hr) unless employees are protected from the effects of the wind's force. In addition, wind screens would not be permitted unless the scaffolding is designed for it and the scaffold is secured against the wind loads imposed on it. This requirement is based on existing § 1910.28(a)(18) and ANSI A10.8–1988, section 4.22 which prohibit work on scaffolds "during storms or high winds," and on proposed § 1926.451(d)(11). OSHA believes that working on scaffolds during storms or high winds may be necessary in certain circumstances, but only when proper precautions are taken. OSHA seeks comments on whether the standard should allow this type of operation, and what protective measures should be required. The proposed wind speed regulation is supported by the National Safety Council's "Accident Prevention Manual for Industrial Operations," 8th Edition (Ref. 55). In Table 2–A of that edition, 40 miles per hour (mph) (64.4 km/hr) is listed as the starting point for "very high wind." In addition, an OSHA report (Ref. 7) documents cases where high winds have blown scaffolds over and killed employees. In one of these cases, the wind velocity was reported as approximately 35 to 45 mph (56.3 to 72.4 km/hr). OSHA requests comments regarding the proposed 40 mph (64.4 km/hr) wind speed limitation for scaffold work and any potential compliance problems.

Proposed paragraph (c)(1)(viii) requires that scaffolds not be erected or used within specified distances from exposed and energized power lines, in order to protect employees from electrocution hazards. This requirement is identical to proposed § 1926.451(d)(6) and is consistent with the "National Electrical Code," ANSI A10.8 (section 4.37) and similar requirements applicable to portable ladders and to cranes. Separation distances are required for insulated lines as well as for uninsulated lines because insulation may be deteriorated or damaged, thus exposing energized power lines. Numerous electrocutions of employees working on scaffolds have been investigated by OSHA. As a result of these investigations, OSHA believes that the proposed requirements are necessary for employee safety.

Proposed paragraph (c)(1)(ix) requires that where materials are being hoisted onto or near scaffolds, a tag line or other equivalent measures to control the load shall be utilized. Existing § 1910.28(a)(15) already requires the use of tag lines in such circumstances. The provision for use of "equivalent measures," which is based on proposed § 1926.451(d)(9), affords employers an opportunity to develop effective alternatives to tag lines, in keeping with OSHA's performance-oriented approach to rulemaking.

The requirements for scaffold suspension ropes are in proposed paragraph (c)(2). Proposed paragraph (c)(2)(i) requires that suspension ropes be capable of supporting, without failure, at least six times the intended load calculated to be applied to or transmitted to that rope. This is based upon existing § 1910.28(a)(22), proposed § 1926.451(a)(3) and ANSI A10.8–1988, sections 4.26 and 6.7.1. Additional guidance for inspection and maintenance of suspension ropes is provided in non-mandatory Appendix A.

Proposed paragraph (c)(2)(ii) requires that suspension ropes supporting manually powered suspended scaffolds be not less than one-fourth inch (.63 cm) diameter improved plow steel wire ropes or equivalent. This requirement is based on ANSI A10.8–1988, section 6.7.2 and has been put into performance language to allow the use of ropes equivalent to wire rope.

Proposed paragraph (c)(2)(iii) requires that suspension ropes for powered scaffolds be not less than five-sixteenths of an inch (.79 cm) diameter improved plow steel wire ropes or equivalent. This requirement is based on ANSI A10.8–1988, section 6.7.3 and has been expanded to allow the use of ropes that are equivalent to wire rope in order to be more performance-oriented.

Proposed paragraphs (c)(2) (iv) and (v) address the need to prevent suspension ropes from separating from winding drum hoists and, thereby, dropping the scaffold. These requirements are based on existing § 1910.28(h)(7), proposed § 1926.451(b)(21) and ANSI A10.8–1988, section 6.3.5.2.

In paragraph (c)(2)(vi), OSHA proposes that wire suspension ropes shall not be joined together except by eye splicing with shackles or coverplates and bolts. This requirement is based on proposed § 1926.451(b)(23) and ANSI A10.8–1988, section 6.7.11.

In paragraph (c)(2)(vii), OSHA proposes that swaged attachments and spliced eyes on wire suspension ropes

be made only by the wire rope manufacturer or a qualified person to assure that these connections are made properly. This requirement, which is based on ANSI A10.8–1988, section 6.7.11.2, is consistent with proposed § 1926.451(b)(26). A comment on that corresponding provision in the part 1926 subpart L—Scaffolds rulemaking [Ex. 2–368] suggested that OSHA delete "the wire rope manufacturers" because "the manufacturers of wire rope do not, as a rule, provide that service." OSHA requests comment, with supporting information, on the extent to which safe swaged attachments and spliced eyes are available.

Proposed paragraph (c)(2)(viii) requires that wire rope clips used on suspension scaffolds be retightened after initial loading, inspected, and kept tight thereafter. This requirement is based on ANSI A10.8–1988, section 6.7.11.3, and is consistent with proposed § 1926.451(b)(27). It is proposed to assure that wire rope clips are properly secured to prevent possible failure of the suspension system. A comment on proposed § 1926.451(b)(27) [Ex. 2–368] suggested that OSHA require, in addition, that wire rope clips be (initially) "tightened to the manufacturer's recommended torque." The apparent purpose of the suggested addition would be to ensure that the clips were properly tightened from the outset. OSHA solicits comment on the proposed provision and on the suggested revision.

In paragraph (c)(2)(ix), OSHA proposes that suspension ropes be protected from open flames, hot work, corrosive chemicals or other adverse conditions. The proposed provision combines the requirements of existing § 1910.20 (a)(21) and (a)(27). In addition, the proposed language is consistent with ANSI A10.8–1988, sections 4.27 and 4.28, and with proposed § 1926.451(d)(10), except that the proposed construction industry standard provides for the use of suspension rope which would not be adversely affected by the substance being used.

Proposed paragraph (c)(2)(x) requires that ropes be regularly inspected and serviced, and prohibits both the use of repaired suspension ropes and the use of defective suspension ropes. This provision which is based on ANSI A10.8–1988, sections 6.16 and 6.17, is consistent with the combined requirements of proposed § 1926.451 (b)(22), (b)(25) and (d)(3).

Proposed paragraph (c)(3) requires that each scaffold component, except suspension ropes and guardrail systems, be capable of supporting, without failure, its own weight and at least four times the maximum intended load applied or transmitted to that component. This provision, which clarifies existing § 1910.28(a)(4) and is consistent with proposed § 1926.451(a)(1) and ANSI A10.8–1988, section 4.6, contains no substantive changes.

Proposed paragraph (c)(4) requires that scaffolds not be loaded in excess of their maximum intended load. The proposed ban on exceeding the intended load is based on existing § 1910.28(a)(7) and is consistent with proposed § 1926.451(d)(1) and ANSI A10.8–1988, section 4.9. In addition, employers would be required to inform employees using scaffolds of the scaffolds' maximum intended loads. Compliance with this provision would help to ensure that scaffolds would be used within their safe design limits.

Proposed paragraph (c)(5) requires that wood platform units not be covered with opaque coatings, except for unit edges which may be marked for purposes of identification. In addition, it is proposed that periodic coating with a clear wood preservative, fire retardant, or slip-resistant coating be permitted. OSHA proposed this provision, which is essentially identical to proposed § 1926.451(b)(10), because the Agency believes that structural defects in platform units could be concealed from view through the use of an opaque coating or finish. Hairline cracks can significantly reduce the strength of a wood member, so early detection of these cracks is very important. Opaque finishes can hide such cracks, decreasing the likelihood that the needed remedial measures will be taken. Unit edges are excepted from this rule to allow identification marks, grading marks, or other similar types of marks to be placed on the unit edges.

Proposed paragraph (c)(6) requires that scaffolds be erected and used in accordance with applicable manufacturers recommendations under the supervision of a qualified person, and that scaffolds be inspected by a qualified person prior to each day's use. It is also proposed that deficiencies be corrected before each use. This provision is based on existing §§ 1910.28(a)(5) and 1910.28(a)(6) and proposed §§ 1926.451(d)(3) and 1926.451(d)(7) of the OSHA Construction Standards. OSHA anticipates that compliance with the proposed paragraph will ensure that scaffolds are properly erected, inspected and repaired before employees are allowed to use them.

Proposed paragraph (c)(7) requires that scaffold platforms be at least 18 inches (46 cm) wide. OSHA has determined that the 18-inch (46 cm) dimension is the proper minimum width for scaffolds, and that it is consistent with proposed § 1926.451(b)(2) and with section 11.1.2 of ANSI A10.8–1988.

Proposed paragraph (c)(8), which is consistent with proposed § 1926.451(b)(1), requires that all platforms be fully decked or planked. As guardrails normally can be attached only at scaffold uprights, OSHA would require the planks to be sized such that there is no gap between the outermost plank edge and the guardrail. However, most prefabricated end frames do not have a lateral spacing between uprights which can accommodate a given number of intact, commercially-available planks. Therefore, the last plank would have to be notched, slanted, or cut to size. This can lead to a significant reduction in plank strength, and possibly cause a sideways tipping of the plank if eccentrically loaded. Therefore, to address this problem, the proposed rule would require the span between uprights to be planked or decked as fully as possible, but would allow up to nine and one-half inches (24 cm) between the planking or decking and the guardrail supports. OSHA proposed nine and one-half inches (24 cm) as the maximum allowable open space because spaces larger than that can be filled by a platform unit without modification. The proposed rule also recognizes that some side warpage may occur to individual planks, and paragraph (c)(8)(i) would allow a maximum one inch (2.5 cm) gap between platform units. When side brackets are used to extend the width of a platform, a gap would be permitted in the platform to accommodate the presence of the scaffold uprights.

Proposed paragraph (c)(9) requires that the front edge of the scaffold be as close as is practical to the face of the structure on which work is being performed. Where the front edge of the scaffold is more than 14 inches (35.6 cm) from the face of the structure, a guardrail system would be required to protect that side of the scaffold. OSHA notes that ANSI A10.8–1988, section 4.5.9, requires guardrail systems on suspended scaffolds which are more than 12 inches (30.5 cm) from the structure and on all other scaffolds which are more than 16 inches (40.6 cm) from the structure. This provision, which is consistent with proposed § 1926.451(b)(4), is based on a research study of scaffold spacing (Ref. 23). OSHA believes that this study, which addresses the maximum spacing necessary for the application of stucco to buildings, presents concepts which also apply to operations in general

industry. The Agency further believes that the uses of scaffolds in general industry and construction are sufficiently similar that the same spacing requirements would apply. Based on its review of the referenced study, OSHA has determined that the proposed 14-inch (35.6 cm) threshold, rather than the ANSI 12-inch (30.5 cm) threshold, provides the appropriate level of employee protection.

Proposed paragraph (c)(10) requires that when employees are working below scaffolds, precautions must be taken to prevent tools or material from falling onto them. Such precautions could include installing toeboards or roping off danger areas. The proposed provision, which is consistent with proposed § 1926.451(f)(2), clarifies existing § 1910.28(a)(17) and restates the existing provision in performance language.

Proposed paragraph (c)(11) requires that platform units extend over their end supports not less than six inches (15 cm), unless cleated or otherwise restrained by hooks or equivalent means at both ends, and that those units extend over their end supports no more than 18 inches (46 cm), unless the unit is designed and installed to support employees on the extended area without tipping, or is guarded so that employees do not have access to the cantilevered ends. This provision, which is consistent with proposed § 1926.451 (b)(5) and (b)(6), clarifies and updates existing paragraph § 1910.28(a)(13). OSHA recognizes that the means such as cleats or hooks, by which employers secure platform units which extend over the end supports less than six inches (15 cm) and the means, such as guarding, by which employers prevent access to a platform unit where it extends more than 18 inches (46 cm) over the end supports, would adequately assure the safety of employees working on scaffolds.

Proposed paragraph (c)(12) requires that, on scaffolds where platform units have been abutted to create a longer platform, each abutted end of a unit rest on a separate support, butt plate, or equivalent support. This provision, which is identical to proposed § 1926.451(b)(7), is based on existing § 1910.28(b)(12), which applies to wood pole scaffolds. OSHA believes, however, that proper platform support is a valid consideration for all scaffolds, and not just wood pole scaffolds. Abutted platform units do not rest upon one another, but are instead placed end-to-end. Consequently, one unit does not support the abutted unit, and proper support can be provided only by separate bearers, butt plates, or equivalent supports.

Proposed paragraph (c)(13) requires that, where platform units are overlapped to create longer platforms, the overlaps can occur only over the supports, and can be no less than 12 inches (30.5 cm) unless the overlapped planks are nailed together or otherwise restrained from moving. This provision, which is identical to proposed § 1926.451(b)(8), is based upon existing § 1910.28(a)(11) and ANSI A10.8–1988, section 4.16.

Proposed paragraph (c)(14), which is identical to proposed § 1926.451(b)(11), prohibits intermixing of scaffold components produced by different manufacturers, unless the component parts fit together without force or modification and the resulting scaffold meets the requirements of this section. OSHA is concerned that one manufacturer's components may not be designed to be used with components produced by other manufacturers. Many such combinations result in scaffolds that are not in alignment or that are not plumb. Therefore, they cannot properly carry or distribute the loads imposed on the scaffolds. However, OSHA is also aware that some units may be intermixed with no problem, so the proposed language does not prohibit such combinations. Are there circumstances under which OSHA should allow the modification of component parts? What would be these circumstances? Who should be allowed to modify and/or inspect or certify modified parts?

Proposed paragraph (c)(15) requires that ladders be located to assure that they do not adversely affect the stability of the scaffold, nor tip it over and cause employees on the scaffold to lose their balance. This provision, which is equivalent to proposed § 1926.451(c)(2)(i), is based on the existing mobile scaffold rule, § 1910.29(a)(3)(viii). OSHA has proposed this provision as a general requirement because the Agency believes that all scaffold users should ensure that their ladders do not endanger employees working on scaffolds.

Proposed paragraph (c)(16) requires that a means of access be provided to all scaffold platforms. This provision is based upon existing § 1910.28(a)(12).

Proposed paragraph (c)(17) prohibits the use of gasoline-powered hoists. The proposal, which is based on proposed § 1926.451(b)(29), existing § 1926.451(k)(2) and section 6.3.6.1 of ANSI A10.8–1988. OSHA has determined that gasoline hoists create fire hazards for employees and therefore, are not acceptable for use on scaffolds, given the confined area of a scaffold and the likelihood that escape from fire would be difficult.

Proposed paragraph (c)(18) requires that suspension scaffold hoists, both mechanically-powered and manually-powered, be of a type tested and listed by a nationally recognized testing laboratory. This provision is identical to proposed § 1926.451(b)(28) and is based on existing § 1910.28(g)(3). OSHA believes that the requirements of existing § 1910.28(g)(3), through currently applied only to two-point suspension scaffolds, should be applied to all suspended scaffolds, in order to protect employees.

Proposed paragraph (c)(19) requires that power operated gears and brakes on suspension scaffold hoists be guarded to prevent employee injury. This is the same requirement as existing paragraph § 1910.28(i)(3). OSHA is considering the inclusion of manually-powered hoists under this provision. Therefore, the Agency solicits comments and information regarding this possible action.

Proposed paragraph (c)(20) requires that a braking device other than the normal operating brake be provided to slow the hoist when the normal speed of descent, usually about 35 feet per minute (10.1 m/min), is exceeded. This is the same requirement as existing § 1910.28(i)(4).

Proposed paragraph (c)(21) requires that manually-powered hoists be built to require a positive crank force to lower the scaffold. This provision, which is identical to proposed § 1926.451(b)(32), is a new requirement for preventing uncontrolled descent, and is based upon ANSI A10.8–1988 section 6.6.10, and OSHA's view that such a provision is needed to eliminate the dangerous condition of a "free-running" hoist during descents.

Proposed paragraph (c)(22) requires that suspension support devices rest on surfaces capable of supporting the reaction forces imposed by the suspension scaffold. This provision, which is identical to proposed § 1926.451(b)(16), is consistent with existing § 1910.28(f)(10) and addresses the need for adequate support of the scaffold system.

Proposed paragraph (c)(23), which is consistent with proposed § 1926.451(b)(18)(i), requires that employers who wish to use outrigger beams with suspended scaffolds must have the direct connections to roof and floor decks evaluated by a qualified person before the outrigger beams are used, in order to ensure that such decks

are capable of supporting the loads to be imposed. The Agency believes that this requirement, while not specifically addressed in the current 1910 standards, is necessary for the protection of workers.

Proposed paragraph (c)(24), which is identical to proposed § 1926.451(b)(18)(ii) through (b)(18)(vii), requires stabilizing the inboard ends of outrigger beams by direct connections to the floor or roof deck or by the use of counterweights. This rule clarifies existing §§ 1926.451(h)(4) and 1926.451(j)(5), which require only that outriggers be securely fastened or anchored. Counterweights are not specifically addressed in the existing 1910 standards, and the proposal corrects this oversight. Counterweights are often the only way to anchor a scaffold without damage to the supporting floor or deck. Proposed paragraph (c)(24)(i) requires that direct connections be evaluated by a qualified person to insure that the roof or floor deck is capable of supporting the loads to be imposed. Proposed paragraph (c)(24)(ii) requires that counterweights be made of solid material, and, in effect, prohibits the practice of using sandbags or water-filled buckets as counterweights. Such counterweights are easily displaced and may leak. Proposed paragraph (c)(24)(iii) requires counterweights to be mechanically attached to the outrigger beam. This provision will help protect against accidental counterweight displacement. Proposed paragraph (c)(24)(iv) prohibits the removal of counterweights from a scaffold until the scaffold is disassembled. This new rule is also intended to prevent scaffolds from being improperly balanced. Proposed paragraph (c)(24)(v) requires outrigger beams to be tied back as an additional means of anchorage. This new provision will provide a back-up system in case the counterweights become displaced. Although tiebacks alone may not keep a scaffold from tipping, they will keep the system from falling to the ground and from causing a progressive failure of nearby scaffolds and scaffold sections. Vents, standpipes, other piping systems, and electrical conduits are not acceptable points of anchorage because they are often made of materials that cannot support the loads that would be imposed on them if a counterweight system were to fail. Proposed paragraphs (c)(24) (vi) and (vii) would specify how tiebacks are to be installed. The Agency believes that while these requirements, not specifically addressed in the current 1910 standards, are necessary for the protection of workers.

Proposed paragraph (c)(25), which is based on proposed § 1926.451 (b)(17) and (b)(19), presents the construction requirements for outrigger beams. Proposed paragraph (c)(25)(i), which is based upon existing § 1910.28(f)(9), requires U-bolts or shackles at each end of a beam to prevent the beam, as well as anything supported by the beam, from becoming displaced. Proposed paragraph (c)(25)(ii) allows the use of channel beams in lieu of "I" beams, provided they are fastened together with their flanges turned out. The provision is the same as existing paragraph § 1910.28(f)(7). Proposed paragraph (c)(25)(iii), which is a new requirement, requires that outrigger beams be installed with all bearing supports installed perpendicular to the beam centerline. This would help prevent tipping of the beam due to any eccentric loading. Proposed paragraph (c)(24)(iv) requires all outrigger beams to be used with the webs in a vertical position. This provision is the same as existing § 1910.28(f)(8). Proposed paragraph (c)(25)(v) specifies the correct alignment for steel shackles, clevises, and the hoisting drum when single outriggers are used. This provision is based on existing § 1910.28(f)(13). Proposed paragraphs (c)(25) (vi) and (vii) requires that outrigger beams on suspension scaffolds be made of structural steel or equivalent material, and that they be restrained to prevent movement. These are based on existing § 1910.28(f)(4).

Proposed paragraph (c)(26), which is identical to proposed § 1926.451(b)(20), provides requirements for suspension scaffold support devices, other than outrigger beams. Proposed paragraph (c)(26)(i) requires that support devices such as cornice hooks, roof hooks, roof irons, and parapet clamps be made of mild steel or equivalent material. This is the same requirement as appears in existing § 1910.28(g)(4). Proposed paragraph (c)(26)(ii), which is based on ANSI A10.8–1988, section 6.9.6, is a new provision, and requires bearing blocks to spread loads. The ANSI standard specifically requires wooden bearing blocks, but OSHA believes that allowing employers to use blocks made of other materials, so long as they provide equivalent strength and stability, would simplify compliance without detracting from employee protection. The referenced ANSI standard addresses only mason's adjustable multiple-point suspension scaffolds. OSHA, however, believes that this provision should be applied whenever outrigger beams are used with suspension scaffolds. Proposed paragraph (c)(26)(iii) requires the use of tiebacks, just as in existing § 1910.28(g)(4). In addition, the proposed provision specify that the tiebacks be equivalent in strength to the hoisting ropes. OSHA has determined that the tiebacks must be as strong as the hoisting ropes since they may have to support the full load of the scaffold in the event of a scaffold support system failure.

Proposed paragraph (c)(27) sets fall protection requirements for single-point adjustable suspended scaffolds (except for boatswains' chairs) and two-point adjustable suspension scaffolds. Employers would be required to comply with these provisions in lieu of complying with proposed § 1910.28. OSHA has determined that personal fall protection systems, in which employees wear body belts or harnesses which are properly tied off, provide the best assurance that employees working on suspended scaffolds will be adequately protected from fall hazards. OSHA considers guardrails on single-point adjustable and two-point adjustable suspension scaffolds to be barriers that delineate the scaffold edge, restrain movement, provide handholds, and prevent misstepping. Guardrails, however, do not protect employees from falling when a suspension rope fails, because the employees are either thrown from the scaffold as it tips or carried down by the scaffold as it falls. Therefore, the Agency has determined that it is appropriate to require the use of personal fall protection systems as the primary means of fall protection, which guard-rails being used to supplement that protection. OSHA would take the reduced role for guardrails into account by setting minimum height and strength requirements in proposed § 1910.30 (c)(27)(i) which are lower than those proposed for guardrails regulated under proposed § 1910.28. The provisions of proposed §§ 1910.30(c)(27)(i) are consistent with the requirements for guardrails used on suspended scaffolds in proposed § 1926.451(e)(4).

The proposed paragraph consolidates and revises the fall protection provisions in existing § 1910.28 (g)(5), (g)(9), (i)(5) and (i)(10). Those provisions require fall protection very similar to that required in proposed paragraph (c)(27). In particular, the existing provisions set the minimum guardrail height at 36 inches (91cm).

Proposed paragraph (c)(27)(ii) requires that employees working on single level scaffolds or on top surface of multilevel scaffolds be protected by personal fall protection systems, meeting the requirements of subpart I. Such systems must be attached either to a structure or,

if supplementary platform support lines are used in conjunction with automatic safety locking devices capable of stopping the fall of the scaffold in the event any of the main suspension lines fail, to supplementary platform support lines or a scaffold member which can withstand at least 5,000 pounds (22.2kN). The option of tying off to supplementary lines or scaffold components is not available under the existing standards. The Agency has determined that such connections, when performed in compliance with the proposed paragraph, provide protection which is equivalent to that provided through proper tie-off to a structure. OSHA believes that personal fall protection systems which satisfy the proposed requirements will adequately protect employees from fall hazards. The 5,000 pound (22.2kN) strength requirement was taken from the latest draft revision of ANSI A10.14, *Requirements for Safety Belts, Harnesses, Lanyards and Lifelines for Construction and Demolition.* The proposed paragraph is consistent with the recently issued § 1910.66 appendix C, section I(c)(10) requirements for anchorages used with powered platforms for building maintenance and with proposed § 1926.451(e)(3).

Proposed paragraph (c)(27)(iii) which is consistent with proposed § 1926.451(e)(3), requires that multilevel platforms and scaffolds with overhead protection be provided with supplementary platform support lines and automatic safety locking devices capable of stopping the fall of the loaded platform in the event any of the main suspension lines fail. Employees would be provided with personal fall protection systems, meeting the requirements of subpart I, which are attached to either a supplementary support line or a scaffold member capable of resisting an impact force of 5,000 pounds (22.2 kN). OSHA is aware that employees working on suspended scaffolds with overhead obstructions could be killed or seriously injured if body belts or harnesses connected outside the scaffold arrest a fall and the overhead obstruction strikes the employee as it falls past. Therefore, the Agency has proposed provisions which clearly state how employers who use scaffolds with overhead obstructions are to protect affected employees from fall hazards. OSHA believes that employers who comply with proposed paragraph (c)(27) would adequately protect employees working on suspended scaffolds from fall hazards.

OSHA proposes to address two-point adjustable suspension scaffolds in paragraph (d). This type of scaffold is regulated by paragraph (g) of § 1910.28 in the existing standards. Proposed paragraph (d)(1), which is identical to proposed § 1926.452(p)(1), limits the width of platform units to a maximum of 36 inches (91 cm), unless the platform is designed to be stable under the conditions of use by a qualified person. This is consistent with the existing requirement of § 1910.28(g)(1). However, the existing requirement also sets the minimum width of scaffold platforms at 20 inches (51 cm). As discussed above, in relation to proposed § 1910.30(c)(7), OSHA requires that all scaffold platforms, including two-point suspension scaffolds, have a minimum width of 18 inches (46 cm). The proposed provision is consistent with the requirements in proposed § 1926.451(b)(2).

The purpose of proposed paragraph (d)(1) is to prevent the construction and use of platforms on two-point suspended scaffolds that could overturn or otherwise fail. OSHA recognizes that platforms wider than 36 inches (91 cm) can be properly designed so that overturning or other unstable conditions are avoided.

Proposed paragraph (d)(2), which is consistent with proposed § 1926.452 (p)(2) and (p)(4) and with existing § 1926.451(i)(10) requires that platforms be securely fastened to their hangers by U-bolts or other equivalent means. This requirement is identical to existing § 1910.28(g)(1) and is consistent with ANSI A10.8–1988, section 5.1.1. The proposed paragraph revises and expands the application of existing § 1910.28(g)(2), which specifies the types of platforms to be used with two-point suspension scaffolds. The existing language covers all of the platform types covered by the proposal except the light metal-type. The testing requirement for light metal-type platforms is based on existing § 1926.451(i)(10)(iv) and proposed § 1926.452(p)(4). The proposed provision does not specify what type of material can be used to fabricate the platform. Instead, OSHA relies on the definition of "platform unit" in proposed § 1910.21(b) and compliance with the strength requirement in proposed § 1910.30(c)(3) to ensure appropriate employee protection. OSHA solicits comments as to the necessity of requiring light-metal type platforms to be tested and listed by a nationally reorganized testing laboratory.

Proposed paragraph (d)(3), which is identical to proposed § 1926.452(p)(5), requires that two-point suspension scaffolds be secured to prevent swaying, and would prohibit the use of window cleaners' anchorages for that purpose. This proposed provision is, effectively, identical to existing § 1910.28(g)(11). There is no change in the employer's duty.

Proposed paragraph (d)(4), which is identical to proposed § 1926.452(p)(6), prohibits the bridging or connecting of two or more scaffolds during raising and lowering operations, unless they are specifically designed for use in multi-point systems; have hoists which are properly sized; and are designed to articulate. This requirement is based on ANSI A10.8–1988, section 6.10.8, and reflects concern that a bridging device could cause significant overloading of the hoist nearest the bridging device during operation of the hoist. That overloading, in turn, could cause excessive platform tipping. In addition, OSHA notes that many hoists are sized so that they can support only one end of a two-point system. If one of two bridged scaffolds were to be raised by a hoist, a bridge or connection between the scaffolds could cause the rising scaffold to pick up the second scaffold also. This would significantly increase the load on the hoist, and could also result in the second scaffold tipping up at a dangerous angle. The proposed requirement would address these two hazards.

Proposed paragraph (d)(5), which is effectively identical to proposed § 1926.452(p)(7), allows the passage of employees from one scaffold to another, provided the scaffolds are at the same height, abutted, and walk-through stirrups are used. This provision is based on ANSI A10.8–1988, section 6.10.8.

Proposed paragraph (e) provides requirements for employers who use single-point adjustable suspension scaffolds. Proposed paragraph (e)(1) requires that scaffolds, including hoists, be of a design tested and listed by a nationally recognized testing laboratory. This requirement is based on existing § 1910.28(i)(1) and ANSI A10.8–1988, section 6.11.3.1. OSHA notes that single-point adjustable suspension scaffolds designs, unlike those of other scaffolds covered by this proposal, are generally tested and listed. This indicates to OSHA that such testing and listing are generally accepted as necessary to ensure the safety of employees using single-point adjustable scaffolds. Therefore, the Agency believes that this proposed requirement is appropriate.

OSHA proposes in paragraph (e)(2) that when two single-point adjustable suspension scaffolds are combined to form a two-point adjustable suspension scaffold, the resulting scaffold must

meet the requirements for two-point adjustable suspension scaffolds. This provision is, in effect, identical to existing § 1910.28(i)(7).

In paragraph (f), OSHA proposes specific requirements for mobile manually-propelled scaffolds. Proposed paragraph (f)(1) requires that employees on mobile scaffolds be protected by a fall protection system in accordance with § 1910.28 on all open sides and ends of platforms more than 10 feet (3 m) above lower levels. This is based on proposed § 1926.451(e)(1), section 4.5 of ANSI A10.8–1988 and OSHA's understanding of current industry practice. The proposed requirement would give the employer flexibility to provide employees the type of fall protection system best suited to the particular situation.

Proposed paragraph (f)(2), a new provision which is effectively identical to proposed § 1926.451(w)(9) and ANSI A10.8–1988, section 11.2.4, requires that casters be secured to prevent them from accidentally falling out of their mountings. OSHA is concerned that when casters fall out of their mountings, scaffolds become unstable and can tip over, resulting in employee injury.

Proposed paragraph (f)(3), requires that mobile scaffolds be used only on surfaces that are rigid and capable of supporting the scaffold in a loaded condition without settling or displacement. In addition, it is proposed that unstable objects, such as barrels, boxes, loose bricks, or concrete blocks, may not be used to support scaffolds. This provision is based upon existing § 1910.28(a)(2).

Proposed paragraph (f)(4), requires that when leveling of a scaffold is required, the scaffold legs have provisions for level adjustment. This provision is effectively identical to existing § 1910.29(a)(4)(iii).

Proposed paragraph (f)(5) requires that scaffolds be secured against unintentional movement when being used in a stationary manner. This provision is effectively identical to existing § 1910.29(a)(4)(ii) and based on existing § 1926.451(e)(8).

Proposed paragraph (f)(6), which is based on existing § 1926.451(e)(6) and proposed § 1926.452 (w)(3), (w)(5) and (w)(6)(i), requires that the force used to move mobile scaffolds be applied as close to the base of the scaffold as practicable, but no more than five feet (1.5 m) above the supported surface; that provisions be made to stabilize the scaffold to prevent tipping during movement; and that surfaces over which the scaffold is to pass shall be free of obstructions and openings that may cause the scaffold to tip. The movement of mobile scaffolds is not addressed in the existing part 1910. OSHA has proposed paragraph (f)(6) because of the Agency's concern for the need to reduce the possibility of employee injury during scaffold movement.

Proposed paragraph (f)(7) specifies the conditions that must be followed if employees are allowed to ride on mobile scaffolds. OSHA proposes the following in paragraph (f)(7)(i) through (f)(7)(vi): That the surface be within three degrees of level, and free of pits, holes, and obstructions; that the maximum height-to-base width ratio of the scaffold during movement should be two to one, or less (outrigger frames, when used, may be included as part of the base width dimension); that outriggers, when used, be installed on opposite sides of the scaffold; that all tools and materials be secured or removed from the platform, or that toeboards be installed on all sides of the scaffold; that employees do not ride on any part of the scaffold which extends outward beyond the wheels, casters, or other supports; and that employees have advance knowledge of the scaffold's movement. Proposed paragraphs (f)(7) (i), (ii), (iii) and (iv) are based, in part, upon existing § 1926.451(e)(7) and are consistent with proposed § 1926.452(w) of the OSHA Construction Standards. Proposed paragraph (f)(7)(v), a new requirement, which is consistent with proposed § 1926.452(w)(6)(v), is intended to minimize the possibility of the scaffold tipping during movement. Proposed paragraph (f)(7)(vi), which is based on ANSI A10.8–1988, section 11.3.2.5, is also a new provision, and is intended to minimize the possibility that employees on the scaffold will fall due to unexpected movement of the scaffold.

As stated above, proposed paragraph (f)(7)(i), which requires surfaces to be within three degrees of level, was taken from the existing and proposed OSHA Construction Standards. However, ANSI A10.8–1988, section 11.3.2.2, specifies that the surface should be within 1½ degrees of level. The Agency has determined that requiring surfaces to be within 1½ degrees from level is unreasonable because OSHA believes that many workplaces have surfaces that deviate more than 1½ degrees of level without posing tipping hazards for mobile scaffolds. The Agency notes that following the ANSI standard would, in effect, prohibit employees from riding mobile scaffolds. Therefore, OSHA proposes three degrees of level to be responsive to actual minor unevenness which the Agency believes is reasonable to anticipate in a great number of surfaces and to be consistent with the existing and proposed Construction Standards. OSHA requests comments, with supporting information on the proposed requirements.

Proposed paragraph (f)(8) requires that scaffolds with a height to base width ratio of more than four-to-one be restrained from tipping by guying, tying, bracing, or other equivalent means. This requirement, which is consistent with proposed § 1926.451(b)(13) and ANSI A10.8–1988, section 11.1.1, is based on a provision in existing § 1910.29(a)(3)(i).

Proposed paragraph (f)(9), requires that scaffold poles, legs, posts, and uprights be plumb, secure, and rigidly braced to prevent swaying and displacement. This requirement, which is consistent with proposed §§ 1926.451 (b)(15) and 1926.452 (w)(1), is essentially identical to existing § 1910.29(a)(3)(iii).

Proposed paragraph (f)(10) requires that scaffold platforms not extend outward past the base supports of the scaffold. OSHA anticipates that compliance with this provision, which is based on ANSI 10.8–1988, section 11.3.5, and is essentially identical to proposed § 1926.452(w)(7), would prevent dangerous eccentric loading on the scaffold frame which could cause the scaffold to tip over. The proposed paragraph also provides that where stabilizing means, such as outrigger supports, are used appropriately, the platform may extend outside the normal base points of support.

Proposed paragraph (g) regulates boatswains' chairs. Boatswains' chairs are currently regulated by existing § 1910.28(j). OSHA's proposal is based upon the requirements of existing § 1910.28(j) and ANSI A10.8–1988, section 6.14 (Ref. 56). The Agency notes that proposed § 1926.452(o) combines requirements for boatswains' chairs and other single-point adjustable suspension scaffolds. OSHA proposes to regulate boatswains' chairs separately from other single-point adjustable suspension scaffolds because the Agency believes that, for the sake of providing clear regulations for general industry operation, it is appropriate to emphasize requirements for safe use of boatswains' chairs.

Proposed paragraph (g)(1) sets the requirements for the chair strength. Existing paragraph (j)(1) of § 1910.28 specifies minimum dimensions for the seat and requires that the underside of the seat be reinforced to prevent splitting. OSHA believes, in keeping with its performance-oriented approach to rulemaking, that load limit criteria are more appropriate than specific size requirements. A platform meeting the existing requirement would be deemed to meet OSHA's proposed criteria.

Proposed paragraph (g)(2) requires that tiebacks, when used, shall be approximately perpendicular to the structure face. This is consistent with existing § 1910.28(j)(6).

Proposed paragraph (g)(3) requires that each employee be protected with a personal fall protection system which satisfies the requirements of subpart I. This proposed paragraph, which is based on existing § 1910.28(j)(4), adds body harnesses to the list of permissible fall protection measures, based on the Agency's belief that either body harnesses or body belts which comply with proposed subpart I will provide adequate fall protection.

Proposed paragraph (g)(4) sets criteria for boatswains' chair tackle and rope. The proposed requirement consolidates existing § 1910.28 (j)(2) and (j)(5) and, as with proposed paragraph (g)(1), revises the existing requirements so that they focus on the strength of the rope rather than a specific size and type of rope. The rating of the five-eighth inch (15.9 mm) manila rope that is required in both the existing standard and ANSI A10.8–1988, section 6.14.5, is 4,400 pounds (19.5 kN). By specifying a minimum strength rather then a specific size and type of rope, other types of rope that may be more elastic and durable than manila may be used. The proposed new requirement for "eye" splicing is based on section 6.14.5 of ANSI A10.8–1988.

In proposed paragraph (g)(5), OSHA would require that seat slings be constructed of at least three-eighth inch (.95 cm) diameter wire rope when the employee is conducting heat producing operations. This requirement is the same as existing paragraph (j)(3) of § 1910.28.

Section 1910.31 Mobile Elevating Work Platforms, Mobile Ladder Stands and Power Industrial Fork Lift Truck Platforms

OSHA proposes to revise existing § 1910.29, *Manually propelled ladder stands and scaffolds (towers)*, which covers mobile scaffolds, mobile work platforms and mobile ladder stands, so that manually propelled mobile scaffolds and mobile work platforms would be covered by proposed § 1910.30, *Scaffolds* as discussed above. The remaining provisions of existing § 1910.29, which address mobile ladder stands, would be covered in this new § 1910.31. In addition, as noted in paragraph (a) of proposed § 1910.31, OSHA proposes to include requirements for mobile elevating work platforms and powered industrial fork lift truck platforms equipment not presently covered by OSHA in the General Industry Standards.

OSHA sets forth the application of § 1910.31 in paragraph (a). OSHA is proposing general requirements in paragraph (b) that would be applicable to all equipment regulated by proposed § 1910.31. Proposed paragraph (b)(1) sets performance-oriented design criteria. It is proposed that all units regulated by § 1910.31 be designed, installed and maintained to support their maximum intended loads. The proposed requirement consolidates and clarifies the requirements in existing paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of § 1910.29.

Proposed paragraph (b)(2) requires that all units be visually inspected, prior to use, for defects that could cause failure of the unit. This is a new requirement. Proposed § 1910.22(d) requires inspection and maintenance of walking and working surfaces by a qualified person. Proposed paragraph (b)(2) sets the additional requirement that inspections be performed prior to the use of units and meet applicable manufacturers' specifications. This proposed requirement is consistent with inspection criteria for other types of regulated surfaces in proposed §§ 1910.23(b)(11), 1910.30(c)(6) and 1926.451(d)(3). OSHA anticipates that good inspection and preventive maintenance programs will be effective in reducing employee injuries.

Proposed paragraph (b)(3) requires that units found to be defective during inspection be tagged in accordance with § 1910.145, and removed from service until repaired. This is also a new requirement, and is consistent with requirements in proposed §§ 1910.23(b)(9) and 1926.1053(b)(16) for defective ladders. OSHA believes that the requirement is necessary to prevent the unintentional use of defective equipment.

Proposed paragraph (b)(4) requires that employees be trained in the safe use of units covered by § 1910.31 prior to their use. This new requirement, which OSHA believes is necessary to ensure that new employees are made aware of hazards associated with the equipment they are expected to use, is consistent with proposed §§ 1926.460, 1926,503 and 1926.1060. Employee training, as well as inspection and maintenance programs (previously discussed), would reduce employee injury because increased employee awareness of hazards would lead employees to avoid hazards.

Proposed paragraph (b)(5) requires that each unit be secured to prevent unintended motion while in use. The proposed paragraph would be a new requirement for all types of equipment covered by § 1910.31. Existing paragraph (a)(4)(ii) of § 1910.29 requires that mobile scaffolds mounted on casters be provided with a positive means for preventing unintended motion. OSHA believes that the existing requirement for scaffolds should have its coverage expanded so that it applies to all units regulated under this proposed section. Unintentional motion due to shifting work loads, external forces, or similar reactions could cause employees to lose their balance and fall from any type of mobile platform.

Proposed paragraph (b)(6) prohibits the use of any device to achieve additional height on a unit covered by this section. This new requirement is consistent with proposed §§ 1910.30(c)(1)(i) and 1926.451(d)(13). OSHA believes that the use of ladders, blocks, boxes, planks, or other devices to achieve greater height is likely to impose dangerous loads on the unit or create an unbalanced system that could become unstable and collapse.

Proposed paragraph (b)(7) requires that all exposed surfaces be kept free of hazards likely to cause punctures or lacerations. This proposal is consistent with existing § 1910.29(a)(2)(v) and with proposed §§ 1910.22(a)(1), 1910.28(b)(4) and 1926.451(e)(4)(xi), and is intended to prevent employee injury due to punctures or lacerations.

Proposed paragraph (c) addresses mobile elevating work platforms. OSHA is proposing this new paragraph to regulate equipment which, while not currently regulated, is being utilized in general industry.

Proposed paragraph (c)(1) requires the units to be capable of supporting at least 300 pounds (135 kg). Existing § 1910.29(e)(1), which covers mobile work platforms, requires that unit design comply with existing § 1910.29(a). Existing § 1910.29–(a), in turn, requires that units be designed to support their intended loads safely. OSHA's proposal provides employers with compliance guidelines, and reflects *American National Standard for Manually Propelled Elevating Work Platforms*, ANSI A92.3–1980 (Ref. 57).

Proposed paragraph (c)(2) requires structural safety factors for mobile work platforms. Paragraph (c)(2)(i), which is consistent with ANSI A92.3–1980, section 4.2.2.1, requires a structural safety factor of not less than two, based upon the minimum yield strength of the material used. Proposed paragraph (c)(2)(ii), which requires a structural safety factor of not less than five for structural members made of nonductile material, is consistent with ANSI A92.3–1980, section 4.2.2.2.

Under proposed paragraph (c)(3), employers must limit the maximum platform height of non-articulating units to four times the minimum base dimension. This proposal is based on the general requirements for manually propelled mobile ladder stands and scaffolds in existing § 1910.29(a)(3)(i) and is consistent with the height to base ratio for mobile scaffolds in proposed § 1910.30(f)(8).

Proposed paragraph (c)(4) sets requirements for unit platform size and perimeter protection. The existing standards do not provide requirements for the width of mobile elevating work platforms. OSHA proposes a minimum width of 18 inches (46 cm), based on ANSI A92.3–1980, section 6.1. This proposed requirement is consistent with existing requirements for minimum platform widths on scaffolds and ladder stands. Proposed paragraph (c)(4) also addresses the need for perimeter protection. While ANSI A92.3–1980 limits protection to the use of guardrails, OSHA proposes to allow the use of fall protection systems meeting the requirements of proposed § 1910.28 when the use of guardrails is infeasible. OSHA's proposal is consistent with its policy of providing for the use of alternative means of protection where possible. OSHA's proposed requirements for toeboards are consistent with the existing OSHA standards and ANSI A92.3–1980, section 6.3.

In proposed paragraph (c)(5), OSHA addresses the safety factors for the design of hydraulic or pneumatic elevating assemblies. The requirements do not have counterparts in the current OSHA standards. The proposed paragraph, which is based on ANSI A92.3–1980, section 7.1.2, specifies the minimum bursting strength for hydraulic or pneumatic system components. OSHA anticipates that compliance with the proposed paragraph will help employers to prevent system failures and the attendant employee fall hazards.

In paragraph (c)(6), OSHA proposes a minimum safety factor of eight to one (8:1) for ropes and chains used to support the maximum intended load of a platform. OSHA's proposal is based upon ANSI A92.3–1980, section 7.1.1, and is necessary to ensure employee safety while work is being conducted on a platform supported by ropes or chains. OSHA anticipates that compliance with the proposed paragraph will prevent failure of the platform system while it is bearing its rated work load.

Proposed paragraph (c)(7) addresses the hazard of uncontrolled work platform descent. This hazard arises when the elevating assembly fails. OSHA proposes that all systems be designed to prevent free fall descent or uncontrollable falls in the event of the elevating system's failure, so that employees are protected from injury resulting from uncontrollable platform descent. OSHA also proposes that an emergency means be provided, accessible from ground level, and clearly marked, for emergency lowering of a platform, in order to permit the emergency lowering of the unit from the base level should the employee on the unit become incapacitated. The proposal is based upon recommended industry practice contained in ANSI A92.3–1980, section 7.3.

Proposed paragraph (c)(8) requires outriggers and stabilizers to be constructed in a manner that will prevent their unintentional retraction. This requirement is based upon ANSI A92.3–1980, section 7.2.7, and is consistent with proposed §§ 1910.30(c)(25)(vii) and 1926.451 (b)(17) and (b)(18). The purpose of the requirement is to prevent the accidental retraction of the outriggers or stabilizers that could result in an unstable work platform.

Proposed paragraph (c)(9) sets requirements for the lateral movement of mobile elevating work platforms. This requirement is based on ANSI A92.3–1980, section 13.3.7. OSHA believes that some guidance to employers and employees is necessary to prevent employee injury during relocation of mobile elevating work platforms.

Proposed paragraph (c)(10) requires that the employer clear the area surrounding the work platform of employees and equipment before lowering the platform. This requirement is based upon ANSI A92.3–1980, section 13.3.8(8). OSHA believes that such a requirement is necessary to prevent employees from being under the descending units, and from being struck or injured by the platform itself or by other pieces of the equipment.

Proposed paragraph (d) regulates mobile ladder stands. This type of equipment is presently addressed by paragraph (f) of existing § 1910.29, the requirements of which are based upon ANSI A92.1–1971, *Standard for Manually Propelled Mobile Ladder Stands and Scaffolds (Towers).* The ANSI code was revised in 1977 (Ref. 58). In addition, OSHA notes that the ANSI A14.7 Committee on Mobile Ladder Stands and Mobile Work Platforms has developed a draft standard under which mobile ladder stands would be removed from the ANSI A92.1 standard and placed into the ANSI A14.7 draft standard. OSHA has assisted the ANSI A14.7 Committee in its efforts to develop a new ANSI A14.7 standard which covers mobile ladder stands, and has used the ANSI A14.7 draft standard as a basis for this proposal.

OSHA proposes to "grandfather" certain railing requirements so that proposed provisions would not apply to existing units. This means that existing equipment could remain in use if it meets the existing standards. Units placed into service 60 days or more after the effective date of the final rule would have to meet the revised requirements for mobile ladder stands. This is explained further in the discussion of proposed paragraph (d)(3) below.

In proposed paragraph (d)(1), OSHA addresses the design strength of mobile ladder stands and requires that equipment be capable of supporting four times its intended load. The proposed standard is based upon ANSI A92.1–1977 and is an accepted industry practice.

Proposed paragraph (d)(2) limits maximum work heights to four times the least base dimension. It would also address outriggers. The proposed regulation, in effect, restates the requirements of existing § 1910.29(a)(3)(i). The latest draft revision of ANSI A14.7 allows alternative testing of units in lieu of the four to one height to base ratio. This is similar to the stability test requirements in the *American National Standard for Boom-Supported Elevating Work Platforms,* ANSI A92.5–1980, section 4. Should OSHA consider the testing of units as an alternative to the base to height ratio? Please submit recommended test criteria with appropriate justification.

Proposed paragraph (d)(3) sets requirements for guardrails and railing systems.

Proposed paragraph (d)(3)(i) requires a railing system at least 29 inches (73.6 cm) high on the exposed sides and ends of units more than five steps or 60 inches (1.5 m) in vertical height to the top step, but less than 10 feet (3 m), placed into service before (insert date 60 days after the effective date of the final rule in the **Federal Register**). The proposed standard is consistent with existing § 1910.29(f)(4), and does not change the current obligation of the employer for existing units.

Proposed paragraph (d)(3)(ii) addresses railing systems for units with a maximum work surface height of at least four feet (1.2 m), but less than 10 feet (3 m), that are placed into service on or after (insert date 60 days after the effective date of the final rule in the **Federal Register**). This requirement will

provide a minimum 30-inch (7.6 cm) barrier for employee protection and is consistent with current manufacturing practices. The use of standard guardrails on these units is not considered to be necessary since this type of equipment is similar to scaffolds, where guardrails are only required above 10 feet (3 m).

In paragraph (d)(3)(iii), OSHA proposes to require guardrail systems on units placed into service prior to (insert date 60 days after the effective date of the final rule in the **Federal Register**), and with a maximum work surface height of 10 feet (3 m) or higher. This guardrail would have to be at least 36 inches (91 cm) high. The Agency proposes to delete the requirement in existing § 1910.29(a)(3)(vii) for a maximum guardrail height of 42 inches (1.1 m) because OSHA feels that it is not necessary. The proposed standard is otherwise consistent with existing § 1910.29 (a)(3)(vii).

In paragraph (d)(3)(iv), OSHA proposes to require a guardrail system meeting § 1910.28 for units with a maximum work surface height of 10 feet (3 m) or greater, which are placed into service on or after 60 days after the effective date of the final rule. This is a new requirement based on ANSI A92.1–1977 section 3.2.8. This provision would make the guardrail requirements for mobile ladder stands consistent with the guardrail requirements for scaffolds.

Proposed paragraph (d)(3)(v) allows the use of removal gates and non-rigid members in guardrail or railing systems, for the purpose of access, provided that the necessary guardrail or railing systems are in place when the access opening is not in use. OSHA notes that access openings are needed in a wide variety of work settings, such as where employees have to service aircraft engines, pull stock from shelves, or access areas where the presence of a barrier would seriously hinder operations. OSHA believes that the surface of the area being worked or accessed will act as a guard and prevent employees from falling to lower levels. This requirement is consistent with proposed § 1910.28(b)(6) for access through guardrails.

Proposed paragraph (d)(4) requires handrails on certain mobile ladder stands. Proposed paragraph (d)(4)(i) requires handrails at least 29 inches (73.6 cm) high for all mobile ladder stands of more than five steps or at least 60 inches (1.5 m) high and placed into service before 60 days after the effective date of the final rule. This proposed requirement is consistent with existing § 1910.29(f)(4).

Proposed paragraph (d)(4)(ii) requires handrails on mobile ladder stands, with a maximum work surface height of four feet (1.2 m) or more placed into service on or after 60 days after the effective date of the final rule, to meet the requirement of proposed § 1910.28. This requirement would provide consistency with the other regulations in subpart D.

Proposed paragraph (d)(5) allows greater flexibility in the design of steps. This expands the existing requirement, § 1910.29(f)(3), which is consistent with ANSI A92.1–1977, section 8.3. OSHA proposes to reduce the minimum height of the steps from nine inches (22 cm) to six and one-half inches (16.5 cm) to be consistent with the minimum height requirements in existing § 1910.24(e) and proposed § 1910.25(c)(2). Lowering the minimum height of the steps will decrease the angle of the mobile ladder stands and will not adversely affect the safety of employees. OSHA has retained the existing 10-inch (25.4 cm) maximum requirement from existing § 1910.29(f)(3).

Proposed paragraph (d)(6) requires that units be locked in position to prevent movement when in use, and requires positive locks on the swivels or wheels of swivel casters. This is a minor rewording of the existing requirement, § 1910.29(a)(4)(ii).

Proposed paragraph (d)(7) prohibits employees from riding mobile ladder stands. These units are not designed for riding insofar as they are generally equipped with spring-loaded casters that retract when a load is applied.

Proposed paragraph (e) addresses a type of platform that has not previously been regulated by OSHA, but which has become a commonly used method for elevating employees to high work stations. OSHA is concerned that platforms, such as shipping pallets, attached to powered industrial trucks, may not provide employees with appropriate protection. Rather than prohibit the use of platforms attached to powered industrial trucks, such as fork lifts, OSHA proposes to regulate the use of such devices. Currently, employees who use this equipment may not receive adequate protection, so requirements for the implementation of safe work practices are necessary. These requirements are based in part on ASME/ANSI B56.1–1988, *Safety Standard for Low Lift and High Trucks* (Ref. 62).

In proposed paragraph (e)(1), OSHA requires that platforms be securely fastened or connected to the lifting carriage or the forks of the industrial truck. This proposal is necessary to prevent the unintentional movement or disengagement of the platform.

Proposed paragraph (e)(2) requires that employees be protected from moving parts on the truck. Appropriate protection could include such measures as cages or any other barriers that would ensure that employees would not contact moving parts or the truck.

Proposed paragraph (e)(3) requires employees to be protected from objects falling on them from above their work level. The inclusion of a requirement for overhead protection is consistent with other provisions in the OSHA standards, such as existing § 1910.28(a)(16) and proposed § 1910.30(c)(1)(iii), which require protection from overhead hazards.

Proposed paragraph (e)(4) requires a minimum platform width of 18 inches (46 cm). This proposal is consistent with other OSHA standards. OSHA believes that compliance with the proposed provision would provide employees with an adequately sized work platform. Should OSHA require a minimum platform width other than 18 inches (46 cm)? Please submit recommended minimum width recommendations, along with appropriate justification.

Proposed paragraph (e)(5) requires employers to protect employees from fall hazards with a fall protection system on platforms four feet (1.2 m) or more off the ground. This is consistent with the general requirement protecting employees from fall hazards in proposed § 190.27(b)(3).

Section 1910.32 Special Surfaces

OSHA is proposing in § 1910.32 to regulate certain surfaces that are not currently covered, or which, though currently regulated, may need special consideration because of unique concerns. OSHA believes, based on its concerns for employee protection, that it is more appropriate to set specific requirements for these surfaces than to exempt them from the general requirements for fall protection. The fall protection requirements for walking and working surfaces that are set by other sections of this subpart would apply when there is no conflict with this section.

In proposed paragraph (a), OSHA sets the scope and application for this section. OSHA has determined that there are certain walking and working surfaces where it would be unreasonably burdensome to apply the fall protection provisions found elsewhere in subpart D. Therefore, the Agency has proposed alternative fall protection requirements which would apply to the specified walking and working surfaces.

In proposed paragraph (b)(1), OSHA addresses vehicle repair pits and assembly pits. These pits present a unique problem because the use of

guardrails for perimeter protection would interfere with normal work operations.

Vehicle repair pits are intended to provide employee access to the underside of vehicles, without the need to elevate the vehicle. Typically a vehicle is driven over the pit and the employee enters the pit via a flight of stairs. The employee then performs whatever repairs or adjustments are necessary to the underside of the vehicle.

Guardrails or similar fall protection systems installed at the perimeter of the pit may cause problems to employees when vehicles are moved over or away from the pit. Further, once a vehicle is moved over the pit, the hazard of falling into the pit has been eliminated. The primary falling hazard to employees exists only when vehicles are not over the pit. OSHA notes, based on its understanding of vehicle repair operations, that employees are unlikely to be in the vicinity of a repair pit unless there is a vehicle over the pit.

OSHA believes that adequate fall protection for employees can be provided by the various alternative methods allowed by proposed paragraph (b)(1). Floor markings applied to the area surrounding the pit; movable stanchions meeting the requirements of proposed § 1910.28; or a combination of both can be used to warn employees of the fall hazards resulting from the presence of the pit. A designated safe area, from the rim of the pit extending back six feet (1.8 m) from the rim, provides sufficient early warning to employees to prevent their unexpected falls into the pit. The use of caution signs that effectively notify employees of the presence of the fall hazard would restrict the area to authorized employees and would further limit employee exposure to the open perimeter.

Therefore, OSHA is proposing in paragraph (b)(1) to exempt repair and assembly pits less than 10 feet (3 m) deep from the fall protection system requirements contained in proposed § 1910.28. Instead, the employer would implement alternative methods of protection that would provide employees with timely warning of the hazards associated with working near vehicle repair and assembly pits.

In proposed paragraph (b)(2), OSHA addresses slaughtering facility platforms. OSHA proposes to exempt the working side of platforms from the perimeter protection requirements of proposed § 1910.27(b). The exemption, however, would cover only guardrails. Toeboards would still be required. All other sides of the platforms would require perimeter guarding. Further, OSHA proposes that all employees be trained to recognize and avoid the hazards involved with this work. OSHA solicits comments, with supporting information, on the extent to which slaughterhouse workers can be protected from fall hazards through the use of personal fall arrest systems, or through other alternative measures.

Platforms in slaughtering facilities where carcasses are being processed raise unique concerns. Federal meat inspection requirements prohibit contact between the meat being processed or inspected, and surrounding surfaces. If guardrails were required, contact with the carcasses would be unavoidable. Therefore, because of the apparent conflict between the proposed rule and meat inspection standards, OSHA is proposing to exempt slaughtering facility platforms from OSHA's guardrail requirements where toeboards or similar means which reduce the likelihood that employees would slide off or fall off the surface of the exposed perimeter have been provided, and where employees have been trained to recognize the hazards of the workplace. This proposed paragraph would formalize OSHA Instruction STD 1–1.7, October 30, 1978.

Proposed paragraph (b)(3) exempts the working side of loading rack platforms used for access to tank cars, trucks or similar equipment from the fall protection requirements of proposed § 1910.27(b). OSHA believes that the exemption is appropriate because tank, truck and car configurations vary so much it is infeasible to set uniform guardrail design requirements. OSHA also notes that permanent guardrail placement makes loading or unloading operations more difficult, if not more hazardous. Therefore, OSHA proposes to exempt the working side of loading rack platforms from the perimeter protection requirements of proposed § 1910.27(b), where employees have been trained to recognize and avoid the hazards of their work. In addition, OSHA proposes that loading rack platform walkways be at least 18 inches (46 cm) wide. Should OSHA require a minimum width for loading rack platform walkways other than 18 inches (46 cm)? Please submit minimum width recommendations, along with appropriate justification.

Proposed paragraph (b)(4) exempts loading docks, teeming tables, and similar locations from the perimeter guarding requirements of proposed § 1910.27(b), where guardrails or other types of fall protection are infeasible because they would prevent the performance of normal work procedures and might create a greater hazard than that which would be present in their absence. Therefore, OSHA proposes that in the situations where employees have been trained to recognize and avoid potential fall hazards, such as the open edge of a loading dock, employers would not have to provide guardrails.

In paragraph (b)(5), OSHA proposes to provide requirements for qualified climbers. Proposed § 1910.23(a)(2) provides that ladders which are climbed two or fewer times a year are not required to have ladder safety devices, wells or cages where their installation and maintenance would present greater hazards than having qualified climbers use a ladder without fall protection. As defined in proposed § 1910.21(b), qualified climbers are employees, who by the nature of their employment and training, routinely climb fixed ladders, step bolts or similar climbing devices attached to structures.

There are several hundred thousand triangulation towers, telecommunication towers, electrical power transmission towers, chimneys and similar stuctures in the United States that are climbed so infrequently that permanent installation and maintenance of ladder safety devices would be unnecessarily costly. In addition, employees responsible for the installation, repair and maintenance of cages, wells and ladder safety devices, would be exposed to fall hazards for longer periods of time than they would be if a qualified climber climbed the structure without fall protection. OSHA believes that because of the hazards encountered during installation and continued periodic maintenance, the installation at and maintenance of fall protection systems on infrequently climbed structures increases rather than reduces the hazard to employees who climb these structures, if they have been adequately trained, with retraining as necessary, to ensure that employees still have the required skills and abilities. In addition, as noted above, such climbers must be physically capable, as demonstrated through observations of actual climbing activities or by physical examinations, and must routinely climb these structures as part of their job. Proposed § 1910.32(b)(5) requires that qualified climbers who have reached their work positions be protected with fall prevention systems which comply with proposed § 1910.28.

Under existing § 1910.27, ladder safety devices or cages are required only on fixed ladders. In some cases, employers have intentionally removed fixed ladders from towers or have not installed fixed ladders on new towers to avoid installing cages or ladder safety

devices. When access to these towers is necessary, employees are required to climb the structural members of the tower. OSHA believes that it is safer to have qualified climbers climb fixed ladders rather than the structure itself.

Climbers who meet the qualifications proposed in paragraph (b)(5) are considered skilled workers capable of performing climbing activities without the need for ladder safety devices, cages or wells in limited circumstances. Therefore, OSHA is proposing to exempt ladders and step bolts from having ladder safety devices on structures such as triangulation, telecommunication, electrical power transmission and similar towers, poles, and structures, as well as stacks and chimneys which are climbed two or fewer times a year by qualified climbers. OSHA has been asked to increase the maximum allowable number of climbs per fixed ladder without ladder safety devices, wells or cages to twelve per year for qualified climbers. Please see Issue 11 for this discussion.

Appendices to Subpart D.

OSHA proposes to add three non-mandatory appendices to subpart D to provide compliance guidelines for each of the sections contained in this proposal, and to provide a list of references for further information which may be useful in implementing this standard.

Other Revisions to Part 1910.

The reorganization of subpart D necessitates changes in subparts F, N and R of the current General Industry Standards (Part 1910) so that sections of those subparts which reference either specific sections of existing subpart D, or ANSI standards, or which provide no guidance on the standard of care to be followed, will, instead, reference the appropriate new sections of proposed subpart D. These changes which are presented at the end of this proposal, do not substantially affect the requirements of these subparts.

V. Summary of the Preliminary Regulatory Impact and Regulatory Flexibility Analysis

Introduction and Regulatory History

In accordance with Executive Order No. 12291 (46 FR 13193, February 19, 1981) OSHA has prepared a Preliminary Regulatory Impact and Regulatory Flexibility Analysis of the Proposed subparts D and I of 29 CFR Part 1910. This analysis describes the costs of compliance, the expected benefits, the nonregulatory environment, and the technological and economic feasibility of the proposed provisions and compares them to the corresponding existing provisions.

The existing subpart D of 29 CFR Part 1910 contains safety specifications for walking and working surfaces, including ladders, stairs, guardrails, floors, and ramps in general industry. This regulation does not cover the construction, agriculture, mining, and maritime industries. Subpart D was promulgated in 1971 under section 6(a) of the Occupational Safety and Health (OSH) Act, incorporating consensus standards adopted by the American National Standards Institute (ANSI). The pertinent ANSI standards, in some cases, set specifications for the design, manufacture, use and maintenance of safe equipment and systems on walking and working surfaces. While ANSI standards tend to focus on particular common work activities, subpart D regulates all walking and working surfaces. Accordingly, there are ANSI requirements adopted by OSMA which have been given much wider application in subpart D than would have been contemplated by ANSI. As a result, some employers are technically in violation of standards which, as written, did not apply to them.

Revisions to subpart D were proposed by OSHA in 1973, but after reviewing comments received in response, OSHA decided that more data was needed to assist OSHA in drafting a revised subpart D. Therefore, in 1976, OSHA withdrew the 1973 proposal and initiated a major research and data collection effort. Studies were conducted on the ergonomics of work surfaces, on fall protection systems, on the nature and frequency of accidents, and on the causes and distributions of injuries and fatalities. OSHA also solicited data from the public and held public hearings at various locations around the country. The data accumulated through those efforts form the basis for this proposal.

Proposed revisions to subpart I, Personal Protective Equipment, which add safety criteria for fall protection systems, are to be promulgated concurrently with the proposed subpart D. The proposed subpart I provisions do not impose the duty to use fall protection equipment and are only effective after provisions in other subparts are modified to reference the revised subpart I directly. Thus, to the extent that the use of such equipment is required by the proposed subpart D regulation, the costs and benefits of the proposed subpart I specifications are attributed to proposed subpart D and included in this analysis.

Significance of Risk and Nonregulatory Environment

OSHA estimates that over 24 million workers are employed in industries significantly affected by the requirements of subpart D, and that about 105,000 injuries and fatalities occur annually that directly involve surfaces covered by subpart D. For purposes of this analysis, injuries include only those causing absence from work for at least one shift. In addition, OSHA estimates that these accidents result in about 132 fatalities annually. OSHA has determined that many employees face a significant risk from the hazards of working surfaces. OSHA believes that, to the extent feasible, the safety requirements of the proposed subpart D will reduce workers' risk and maximize the number of prevented accidents.

Proposed subpart D is an outgrowth of the existing subpart D regulation, which basically addresses the same hazards. OSHA believes that while compliance with the existing regulation has improved employees' safety, compliance with the proposed rule would be significantly more protective. OSHA has evaluated the potential impacts of full compliance with the existing and proposed regulations, using current industry practice as the baseline. The proposed regulation offers lower compliance costs as well as increased safety levels. OSHA has determined that the proposed subpart D is the most cost effective alternative for significantly reducing the hazards to employees of walking and working surfaces.

The most important fact supporting the need for a mandatory standard is that adequate safety levels are currently not being provided and, as a result, many preventable injuries and fatalities are occurring. The inadequacy of nonregulatory alternatives is due, in part, to the inadequacy of information; employees are often at a disadvantage with respect to knowledge about exposure to risk. Further, as a portion of the costs of accidents is borne by third parties, such as insurance programs, individual firms maximizing profits will provide less safety than if they faced the true cost/benefit tradeoff. Despite various efforts by the insurance industry to create incentives for employers to increase safety on the job, the costs of accidents for individual employers remain largely externalized.

Technological Feasibility

The proposed subpart D provisions are all technologically feasible. OSHA

has determined that the technology and equipment necessary to meet the proposed requirements is currently available to industry. Many firms already comply with the proposed safety requirements, and the proposed changes in the subpart D regulation generally bring OSHA requirements into line with what is considered to be sound industrial safety practice.

Many of the provisions of the existing and proposed subpart D standards set specifications, such as for height, strength, or visibility of equipment. The existing standard is more specification-oriented than the proposed standard and, as a result, is often repetitive. In addition, there are gaps in the existing coverage for certain surfaces and some surfaces are not addressed at all. The proposed standard uses more performance-oriented language and consolidates and updates existing provisions.

Some proposed provisions are based on consensus standards developed by the American National Standards Institute (ANSI). The proposed regulation allows employers to choose between alternative compliance strategies, thus increasing the permissable range of technologically feasible options and encouraging cost effective use of resources. Some restrictions on dimensions are made more flexible under the proposed standard, facilitating compliance without reducing the protection of employee safety and health.

Proposed subpart D also includes some new provisions and adds requirements for some surfaces. Most of these provisions relate to maintenance of equipment, work practices, and the training and qualifications of employees. Technological feasibility is not in question for these requirements as they are in common practice in industry today. The remaining provisions that do add specific structural requirements are not technology forcing but specify design or safety criteria that are readily achievable with current technology. Therefore, with the exception of the requirements for manhole and manway diameters in proposed provision § 1910.22(a)(4), employers would be required to comply with the "new" provisions within 60 days of the effective date of the rules. Under proposed § 1910.22(a)(4), employers would have a year from the effective date of the final rule to begin constructing manholes and manways of the required diameter. When appropriate, to avoid unreasonably disrupting operations, the proposed regulation grandfathers existing situations.

Benefits

The benefits from revising subpart D will be the reduction of injuries and fatalities among employees affected. OSHA has determined that under full compliance with each standard, proposed subpart D would provide increased safety and would be more effective in preventing accidents than the existing standard.

Approximately 105,000 lost-workday injuries and 132 fatalities attributable to walking and working surfaces occur every year in industries covered by subpart D. OSHA believes that full compliance with the proposed standard would prevent up to 84,000 injuries and up to 106 fatalities. This is 15,750 injuries and 20 fatalities more than would be prevented by full compliance with the existing standard, as summarized in Table A. The distribution of accidents by work surface is shown in Table B. The benefits of preventing these accidents involve monetary savings to industries, employees, and society as well as nonquantifiable benefits.

TABLE A.—FATALITIES AND INJURIES PREVENTABLE BY FULL COMPLIANCE WITH THE PROPOSED AND EXISTING STANDARDS (BASELINE: CURRENT INDUSTRY PRACTICE)

Type of accident	Estimated number of accidents preventable with full compliance		
	Under proposed rule	Under existing rule	Improvement due to increased effectiveness of new rule
Fatalities	106	86	20
Injuries	84,000	68,250	15,750

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

TABLE B.—DISTRIBUTION OF FATALITIES AND INJURIES BY WORK SURFACE IN AREAS COVERED BY SUBPART D

Work surface involved	Estimated annual		Estimated annual	
	Injuries	Percent	Fatalities	Percent
Floor	53,970	51.4	29	22.0
Ramp	735	0.7	1	0.6
Roof	420	0.4	15	11.0
Platform	8,715	8.3	9	7.0
Walkway	5,355	5.1	6	4.3
Stairs	13,965	13.3	15	11.2
Ladder	11,025	10.5	25	19.0
Scaffold	8,400	8.0	25	18.6
Other	2,415	2.3	8	6.3
Total	105,000	100	132	100

Source: U.S. Dept. of Labor, OSHA, Office of Regulatory Analysis.

OSHA has estimated that the potential savings of hospital and other medical costs may be up to $500 million. Total savings will be substantially higher after productivity losses, hiring and training costs, and administrative costs due to accidents are considered. Further significant benefits include the saving of litigation costs and foregone earnings and the value to employees of a reduction in the accident rate. Finally, the avoidance of pain and suffering associated with injuries and fatalities represents a large nonquantifiable benefit.

The potential benefits of the proposed subpart D can only become real benefits to the extent of actual compliance with the regulation. While the existing regulation has low compliance levels in some areas due to inappropriate or infeasible requirements, full compliance with the proposed regulation is feasible and cost effective. Proposed provisions would be more flexible and would allow employers to use alternative compliance approaches when appropriate. Also, compliance with the training requirements of the proposed regulation may increase compliance with other requirements related to work practices. OSHA expects that compliance with the proposed regulation will not be a significant burden for any industry and that substantial improvements in protection of employee safety and health will result.

Costs of Compliance

In order to present a more complete view of the nature of the costs of compliance with the proposed regulation, OSHA estimated the costs of full compliance with both the existing and proposed regulations, using current industry practice as the baseline.

Full compliance with the existing standard would have an estimated annualized cost of over $3.7 billion above current expenditures, while full compliance with the proposed standard would have an estimated annualized cost of $137.4 million above current expenditures. The cost of the proposed standard includes approximately $6.2 million for provisions that are substantially different from those in the existing standard. Virtually every firm regulated under 29 CFR part 1910, General Industry, has walking or working surfaces and thus is potentially affected by subpart D regulations. OSHA notes, however, that many firms, such as those that use only office space, either comply with or are not affected by existing and proposed requirements.

The majority of the costs attributed to full compliance with the existing standard are for fall protection requirements. As written, the requirements are unnecessarily rigid and cost-ineffective in many cases. For example, the existing standard permits only the use of fixed guardrails for the protection of employees from most fall hazards. The proposed standard requires the use of alternative safety systems in situations where guardrails are infeasible. Proposed § 1910.28 presents requirements for personal fall protection devices as one alternative. The proposed revisions to subpart I set the criteria that must be met when such devices are used. In addition, proposed § 1910.28 provides that employers could protect employees through the use of "designated areas" where the use of guardrails or personal fall protection systems was inappropriate. OSHA estimates that permitting the use of alternatives to guardrails would save industry millions of dollars in compliance costs. OSHA also believes that this approach would require employers to provide protection in situations where the existing regulations do not, in effect, require protection.

The proposed standard also defines and permits the use of "qualified climbers" for work on fixed ladders that are climbed rarely. OSHA believes that there are many such ladders for which the installation of fall protection would be infeasible and would expose workers installing and maintaining cages, wells, or ladder safety devices to a greater fall hazard than that which would be prevented.

While the primary impact of the proposed rule is to eliminate unreasonably high compliance costs through prospective application of certain requirements and increased flexibility in the choice of compliance approach, the proposed standard also creates some new costs. Most of those costs would be incurred when complying with the training requirements in proposed §§ 1910.23(b)(1), 1910.27(b)(2)(ii), 1910.31(b)(4) and 1910.32. OSHA believes that the imposition of those burdens is appropriate because training is an important factor in accident prevention that is not required by the existing standard.

Many of the specifications which appear in the proposed (and existing) standard are already widely complied with and have been accepted as standard safety practice by industry and trade associations. These are basic safety considerations that should be and have been incorporated in design specifications, building codes, and consensus standards. The proposed subpart D regulation would ensure that commonly followed safety criteria are legally binding.

Manufactured products, such as ladders, step bolts, manhole steps, scaffolds, and other equipment, generally meet or exceed proposed OSHA specifications. Other proposed OSHA specifications, such as for stairs or guardrails, are fundamental requirements for safety that are reflected in existing structures and current industry practices.

OSHA citation records and data collected by contractors indicate that some cases of noncompliance with proposed (and existing) safety requirements exist. Thus, although employers complying with the existing standard would be in compliance with the proposed standard, the costs of achieving full compliance with the proposed standard from a baseline of current industry practice include costs of correcting violations of existing requirements.

Areas identified by OSHA that may generate such costs include: installing cages, wells, or ladder safety devices on fixed ladders; replacing unsafe stairways; and providing guardrails or other fall protection for open-sided floors and surfaces as required. A breakdown of these estimated costs is given in Table C.

TABLE C.—ESTIMATED RETROFIT AND REPAIR COSTS TO ACHIEVE FULL COMPLIANCE WITH UNCHANGED AND SIMILAR SUBPART D PROVISIONS

Provision	Annualized cost [1] (dollars millions)
Ladders	23.4
Step Bolts/Manhole Steps	.3
Stairs	20.8
Guardrail Specifications	7.8
Scaffolds	6.2
Wall Openings	2.1
Ladder Stands	.3
Open-sided Floors and Other Surfaces	54.7
Floor Holes	7.5
Other	8.1
Total	131.2

[1] Using a 10-percent-discount rate over 10 years.
Source: Office of Regulatory Analysis, OSHA.

OSHA does not intend to require widespread retrofitting of existing structures; OSHA has grandfathered existing situations where safety would not be unduly compromised and has addressed specific situations separately as necessary. The proposed rule replaces overly restrictive specifications in the existing rule with performance requirements which give employers greater flexibility in providing safe work surfaces. OSHA believes that all employers should be able to comply with the proposed requirements and employers that have followed generally accepted industry safety practices would not experience higher costs as a result of this rule. OSHA requests comments regarding this preliminary finding and any unique situations where employers may face significant compliance problems as a result of this rule.

Tables D and E show the breakdown of the total costs of the proposed standard, including costs attributable to noncompliance with commonly accepted safety criteria, by provision and by SIC code of industry sectors likely to be affected.

TABLE D.—COSTS OF COMPLIANCE FOR EXISTING AND PROPOSED SUBPART D PROVISIONS BASELINE: CURRENT INDUSTRY PRACTICE

Provision	Annualized cost of compliance ($000's)		Comments
	Existing	Proposed	
Floor loading	4,100	870	Proposed does not require signs in every area.
Repair/assembly pits:			
Guardrails	(1)	0	Existing not feasible.
Marking area/training	0	595	Proposed required safety equipment and training.
Loading racks:			
Guardrails	(1)	0	Existing not feasible.
Training	0	257	Proposed requires safety training.
Loading docks/teeming tables:			
Guardrails	(1)	0	Existing not feasible.
Training	0	246	Proposed requires safety training.

TABLE D.—COSTS OF COMPLIANCE FOR EXISTING AND PROPOSED SUBPART D PROVISIONS BASELINE: CURRENT INDUSTRY PRACTICE—Continued

Provision	Annualized cost of compliance ($000's)		Comments
	Existing	Proposed	
Slaughtering facility platforms:			
Guardrails	(1)	0	Existing violates FDA sanitation requirements.
Training	0	0	Proposed included in current safety training.
Portable ramps/bridging devices for materials handling:			
Guardrails	(1)	0	Existing obstructs work operations.
Training	0	308	Proposed requires safety training.
Alternative fall protection:			
Guardrails	1,937,000	0	Existing requires fixed guardrails for all fall hazards.
Personal fall protection or designated areas	0	3,585	Proposed allows alternative protection when appropriate.
Fixed ladders rarely used:			
Cages/safety devices	1,586,000	0	Existing requires cages on most fixed ladders.
Qualified climber training	0	352	Proposed allows use of qualified climbers when appropriate.
Similar and unchanged provisions: Retrofit and repair needed for full compliance with basic safety criteria and specifications (breakdown given in Table C).	135,200	131,200	Costs due to noncompliance with generally accepted industry/OSHA safety specifications. Proposed increases flexibility and allows modern-technology and work practices.
Total	3,662,300	137,413	

(1) Compliance theoretically possible but extemely costly.

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

TABLE E.—COSTS OF COMPLIANCE WITH EXISTING AND PROPOSED SUBPART D FOR SELECTED INDUSTRIES; BASELINE: CURRENT INDUSTRY PRACTICE

[Costs for existing standard do not include compliance with infeasible provisions]

SIC	Industry	Annualized costs of compliance ($000's)		
		Existing	Proposed	Net savings
20	Food	216,055	8,104	207,951
21	Tobacco	2,852	105	2,748
22	Textile	76,646	2,879	73,767
23	Apparel	58,388	2,193	56,196
24	Lumber	113,544	4,262	109,282
25	Furniture	24,915	934	23,981
26	Paper	64,094	2,403	61,692
27	Printing	102,513	3,842	98,671
28	Chemicals	71,321	2,679	68,642
29	Petroleum	13,314	496	12,818
30	Rubber	77,027	2,889	74,138
31	Leather	7,797	296	7,502
32	Stone	56,677	2,126	54,551
33	Primary metals	107,647	4,042	103,605
34	Fabricated metals	201,031	7,541	193,490
35	Machinery	153,864	5,778	148,086
36	Electric equipment	154,244	5,787	148,457
37	Transport equipment	158,618	5,949	152,669
38	Instruments	48,118	1,802	46,316
39	Misc. manufacturing	16,546	620	15,926
40	Railroad transport	41,461	1,554	39,907
41	Local transit	32,712	1,230	31,483
42	Trucking/warehousing	228,608	8,581	220,027
44	Water transit	21,872	820	21,052
45	Air transit	71,512	2,679	68,833
46	Pipelines	1,714	76	1,637
48	Communications	122,483	4,595	117,888
49	Electric service	92,242	3,461	88,781
51	Nondurables	363,073	13,624	349,449
73	Business services	782,252	29,346	752,906
82	Educational services	179,159	6,721	172,437
	Total	3,662,300	137,413	3,524,887

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

Economic Feasibility and Regulatory Flexibility

OSHA has evaluated the economic feasibility of the proposed subpart D and has determined that none of the affected industry groups would face a significant economic impact. OSHA compared costs of compliance with revenues for the industries judged to be most heavily impacted to determine the potential effect on prices if these costs were fully passed through to consumers. OSHA found that compliance costs are below 0.01% of revenues for most industries and below 0.1 of revenues for all industries. Thus, compliance costs will have a negligible effect on industry sales and pricing behaviour.

OSHA also compared compliance costs with industry profits to evaluate

the maximum effect the proposed regulation might have on the profitability of industries if none of the costs could be recouped by raising prices. For most industries, the costs represent less than 0.1% of profits; for no industry are costs more than 1.0% of profits. Thus, OSHA concludes that the proposed regulation is economically feasible.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), OSHA has determined that the proposed standard would not have a significant impact upon a substantial number of small entities. The costs imposed by the proposed standard do not involve significant economies of scale, large capital expenditures, or substantial administrative capacity. OSHA believes that small businesses will not be put at a disadvantage relative to large companies by complying with the proposed regulation. Rather, as for large businesses, the proposed regulation offers considerable advantages over the existing regulation.

Environmental Assessment

The proposed subpart D regulation has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the Guidelines of the Council on Environmental Quality (40 CFR parts 1500–1517), and the Department of Labor's NEPA procedures (29 CFR part 11). As a result of this review, OSHA has determined that the proposed regulation will have no significant environmental impact.

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VII. OMB Approval Under the Paperwork Reduction Act

This proposal does not contain any collection of information. Therefore, approval under the Paperwork Reduction Act is unnecessary.

VIII. State Plan Standards

The 25 states and territories 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 standard. These 25 are: 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. Until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate in these states.

IX. Recordkeeping

This proposal contains no recordkeeping requirements.

X. Federalism

This proposed regulation has been reviewed in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions which would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act) expresses Congress' clear intent to preempt State laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSHA Act, a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions (See section 18(c)(2) of the OSH Act).

The Federal standard on walking and working surfaces addresses hazards which are not unique to any one State or region of the country. Nonetheless, States with occupational safety and health plans approved under section 18 of the OSHA Act will be able to develop their own State standards to deal with any special problems which might be encountered in a particular State. Moreover, because this standard is written in general, performance-oriented terms, there is considerable flexibility for State plans to require, and for affected employers to use, methods of compliance which are appropriate to the working conditions covered by the standard.

In brief, this proposed regulation addresses a clear national problem related to occupational safety and health in general industry. Those States which have elected to participate under section 18 of the OSH Act are not preempted by this standard, and will be able to deal with any special conditions within the framework of the Federal Act while ensuring that the State standards are at least as effective as that standard.

XI. Public Participation.

Comments. Interested persons are invited to submit written data, views, and arguments with respect to this proposal. These comments must be postmarked by July 9, 1990, and submitted in quadruplicate to the OSHA Docket Officer, Docket S-041, U.S.

Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue NW., Washington, DC 20210. Written submissions must clearly identify the issues or specific provisions of the proposal which are addressed and the position taken with respect to each issue or provision. The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding. The preliminary regulatory impact assessment and the exhibits cited in this document will be available for public inspection and copying at the above address. OSHA invites comments concerning the conclusions reached in the regulatory impact assessment.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

Public hearing. OSHA will hold an informal public hearing to begin at 10:00 a.m. on September 11, 1990, if any hearing requests are received by the Agency. The hearing would be held in the Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Hearing requests must be postmarked by July 9, 1990.

Requests for hearing. Under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing on those objections. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objections must include the name and address of the objector;
2. The objections must be postmarked on or before July 9, 1990;
3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefore;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if an interested person requests a public hearing.

Notice of intention to appear. If a hearing is requested, any interested person desiring to participate at the hearing, including the right to question witnesses, must file, in quadruplicate, a notice of intention to appear. The notice of intention to appear must be postmarked by August 8, 1990, and addressed to Mr. Tom Hall, Division of Consumer Affairs, Room N3649, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8615. The notice of intention to appear must contain the following:

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 required for the presentation;
4. The specific issues that will be addressed; and
5. A statement of the position that will be taken with respect to each issue addressed.

Filing of testimony and evidence before the hearing. Any party requesting more than 10 minutes for presentation at the hearing or who will present documentary evidence, must provide in quadruplicate, the complete text of its testimony, including all documentary evidence to be presented at the hearing. These materials must be postmarked no later than August 8, 1990, and sent to Tom Hall, Division of Consumer Affairs, at the address given above.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In 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 the above requirements, may be limited to a 10 minute presentation and may be requested to return for questioning at a later time. 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 who presides at the hearing.

Notices of intention to appear, testimony and evidence, will be available for inspection and copying at the Docket Office, Docket S–041, Room N2625, 200 Constitution Avenue NW., Washington, DC 20210.

Conduct and nature of the hearing. The hearing is scheduled to commence at 10:00 a.m. on September 11, 1990. At that time, any procedural matters relating to the proceeding will be resolved. The informal nature of the rulemaking hearing to be held 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 crucial issues, it is clear that the proceeding shall remain informal and legislative in type. The intent, in essence, is to provide an opportunity for effective oral presentation by interested persons which can be carried out expeditiously and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

The hearing will be conducted in accordance with 29 CFR part 1911. The presiding officer, an Administrative Law Judge, will have the powers necessary or 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 presentation 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 person who has participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of a final standard.

If no hearing requests are submitted by interested persons by the deadlines set forth above, no hearing will be held. OSHA will then publish a notice in the **Federal Register** indicating that there will be no hearing. The Agency will also contact all persons who submitted comments in response to this proposal, to inform them of this fact.

The proposal will be reviewed in light of all written submissions and testimony received as part of the rulemaking record. Decisions on the provisions of a final standard will be made by the Assistant Secretary based on the entire record of the proceeding.

List of Subjects in 29 CFR Part 1910

Guardrails, Handrails, Ladders, Occupational safety and health, Protective equipment, Safety, Safety nets, Scaffolds, Stairs, Walking and working surfaces.

Authority

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(b) and 8(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911, OSHA proposes to amend 29 CFR part 1910, subpart D as set forth below.

Signed at Washington, DC this 30th day of March, 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart D of part 1910 is proposed to be revised as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), and 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable. Subpart D is also issued under 29 CFR part 1911.

2. In subpart D, §§ 1910.21 through 1910.32 would be revised, and Appendices A, B, and C would be added to read as follows:

Subpart D—Walking-Working Surfaces

Sec.

Subpart D—Walking and Working Surfaces

§ 1910.21 Scope, application and definitions.

(a) *Scope and application.* This subpart covers all walking and working surfaces that are used by employees, except as follows:

(1) This subpart does not apply to surfaces that are an integral part of self-propelled, motorized mobile equipment, other than platforms hoisted or lifted by powered industrial lift trucks which are covered by paragraph (e) of § 1910.31.

(2) This subpart does not apply to powered exterior building maintenance platforms covered in subpart F of part 1910.

(3) This subpart does not cover fall hazards from the exposed perimeters of entertainment stages and rail station platforms.

(b) *Definitions.*

Allowable unit stress means the maximum stress allowed to be applied as specified by recognized national codes and standards such as the American National Standards Institute (ANSI), the American Society of Testing and Materials (ASTM), and the National Fire Protection Association (NFPA).

Alternating tread stairs means a series of steps usually attached to a center support rail in an alternating manner so that a user of the stairs normally does not have both feet on the same level.

Authorized person means an employee who, due to the requirements of work duties, is authorized by the employer to be present in a particular work area.

Boatswains' chair means a single-point adjustable suspension scaffold consisting of a seat or sling designed to accommodate one employee in a sitting position.

Body belt (safety belt) means a strap with means for securing it around the waist or body and for attaching it to a lanyard, lifeline, or deceleration device.

Body harness means a design of straps which is secured about the employee in a manner so as to distribute the arresting forces over at least the thighs, shoulders, and pelvis, with provisions for attaching a lanyard, lifeline, or deceleration device.

Bridging device means a surface used to span the gap between a loading dock and a vehicle or between vehicles. It may be fixed or portable, adjustable, powered or unpowered. It may also be referred to as a car plate or dockboard.

Combination ladder means a portable ladder capable of being used as a stepladder or as a single or extension ladder. It may also be capable of being used as a trestle ladder or a stairwell ladder. Its components may be used as single ladders.

Design factor means the ratio of the ultimate failure strength of a member or piece of material or equipment to the actual working stress or intended safe load.

Designated area means a space which has a perimeter barrier erected to warn employees when they approach an unprotected side or edge, and serves also to designate an area where work may be performed without additional fall protection.

Equivalent means alternate designs, materials, or methods which the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

Failure means a load refusal, breakage, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

Fall or fall hazard means the act or circumstances that could result in the possibility of slipping or tripping on or falling off a surface.

Fixed ladder means a ladder, including individual rung ladders, that is permanently attached to a structure, building, or equipment. It does not include ship's stairs or manhole steps.

Guardrail system means a vertical barrier, normally consisting of, but not limited to, an assembly of toprails, midrails, and posts, erected to prevent employees from falling to lower levels.

Handrail means a rail used to provide employees a handhold for support.

Hole means an opening more than two inches (5.1 cm) in its least dimension in a floor, roof, or other surface.

Individual rung ladder means a ladder consisting of rungs individually attached to a structure, building, or piece of equipment. It does not include manhole steps installed in manholes.

Ladder means a device typically used to gain access to a different elevation consisting of two or more structural members crossed by rungs, steps, or cleats.

Ladder cage means a barrier surrounding or nearly surrounding the

climbing area of a ladder. It fastens to the ladder's side rails, to one side rail, or to other structures.

Ladder safety device means a support system which will stop or limit the speed of an employee's fall from a ladder.

Lean-to scaffold means a supported scaffold which is kept erect by tilting it toward and resting it against a building or structure.

Lower level means those areas to which an employee could fall. Such areas include ground levels, floors, roofs, ramps, runways, excavations, pits, tanks, materials, water, equipment, and similar surfaces.

Manhole means an access through which an employee gains entry to a work area or to equipment below a surface or behind a vertical partition such as a vessel wall.

Manhole steps means a series of steps individually attached or set into the walls of a manhole structure. They are not considered to be an individual rung ladder.

Manually propelled elevating work platform means a vertically adjustable work platform which may be towed, skidded or manually moved horizontally or the base structure may remain stationary.

Manway means an opening through which employees access vessels and equipment.

Maximum intended load means the total load of all employees, equipment, tools, materials, transmitted loads, wind loads and other loads reasonably anticipated to be applied.

Midrail means the rail located approximately midway between the top rail and the toeboard or work surface of a guardrail system.

Mobile elevating work platform means a portable platform that can be elevated and moved about on wheels or casters.

Mobile ladder stand means a mobile fixed-size self-supporting ladder consisting of a wide flat tread ladder in the form of stairs. The assembly may include handrails, guardrails and toeboards. It may also be referred to as a ladder stand.

Mobile scaffold means a portable caster or wheel-mounted supported scaffold. It may also be referred to as a mobile work platform.

Platform means a work surface elevated above the surrounding work area.

Platform unit means the individual wood planks, fabricated planks, fabricated decks, and fabricated platforms such as ladder-type and light metal-type, which comprise the platforms and walkways of a scaffold.

Portable ladder means a ladder that can readily be moved or carried, usually consisting of side rails joined at intervals by steps, rungs, cleats, or rear braces.

Qualified climber means an employee who, by virtue of physical capabilities, training, work experience and job assignment, is authorized by the employer to routinely climb fixed ladders, step bolts or similar climbing devices attached to structures.

Qualified person means a person designated by the employer who is knowledgeable about and familiar with all relevant manufacturers' specifications and recommendations; is capable of identifying existing or potential hazards in specific surroundings or working conditions which may be hazardous or dangerous to employees; and has been trained for the specific task assigned. When work is to be supervised by a qualified person, the qualified person shall have the necessary authority to carry out the assigned work responsibilities.

Ramp means an inclined surface between different elevations for the passage of employees, vehicles, or both.

Riser means the upright member of a step situated at the back of a lower tread and near the leading edge of the next higher tread.

Safety net means a non-rigid barrier supported in such a manner as to catch employees who have fallen off a work surface and bring them to a stop before contacting surfaces or structures below the net which might otherwise injure them.

Scaffold means any temporary elevated or suspended platform, and its supporting structure, used for supporting employees or materials or both, except this term does not include crane or derrick suspended personnel platforms.

Ship's stairs means a stairway equipped with treads and stair rails with a slope greater than 50 degrees from the horizontal. It is sometimes referred to as a "ship's ladder."

Shore scaffold means a supported scaffold which is kept erect by placing it against a building or structure and holding it in place with props.

Single-point adjustable suspension scaffold means a suspension scaffold consisting of a platform suspended by one rope from an overhead support and equipped with means to permit the movement of the platform to desired work levels.

Slip-resistant surface means a surface that is capable of resisting the sliding motion on the contact surface of an object or an employee's shoe or foot.

Spiral stairway means a stairway having a spiral structure attached to a supporting column.

Stair means a series of steps used to ascend or descend between levels, and having four or more risers installed at an angle equal to or less than 50 degrees from the horizontal.

Stair rail or "stair rail system" means a vertical barrier erected along the open-side of a stairway to prevent employees from falling to lower levels. The top surface of a stair rail system may also be a handrail.

Step means any combination of risers and treads which may be part of a stair.

Step ladder means a self-supporting portable ladder, non-adjustable in length, with flat steps and a hinged back.

Step-bolt means a bolt or rung attached at intervals along a structural member and used for foot placement during climbing or standing. Step bolts may also be called "pole steps."

Structurally supported means supported by structural components such as pillars, piers, lintels, beams and joists. It does not include slabs or floors placed on a grade.

Tieback means an attachment from a structural member to a supporting device.

Toeboard means a low protective barrier placed to prevent the fall of materials to a lower level, or when used without a guardrail, to prevent an employee's feet from slipping over the edge of a surface.

Tread means the horizontal member of a step.

Two-point suspension scaffold (swing stage) means a suspension scaffold consisting of a platform supported by hangers (stirrups) suspended by two ropes from overhead supports and equipped with means to permit the raising and lowering of the platform to desired work levels.

Ultimate failure means the collapse of the structure or, where applicable, a component thereof.

Unprotected sides and edges means any side or edge of a surface, except at entrances to points of access, where there is no wall or guardrail system.

Walking and working surface means any surface, within the scope of this standard, on which employees perform or gain access to their job duties or upon which employees are required or allowed to walk or work while performing assigned tasks.

Wall opening means an opening at least 30 inches (76 cm) high and 18 inches (46 cm) wide in any wall or partition through which employees can fall to a lower level.

§ 1910.22 General requirements.

(a) *Surface conditions and clearances.* (1) Surfaces shall be designed, constructed and maintained free of recognized hazards that can result in death or serious injury to employees.

(2) When surfaces cannot be maintained free of hazards, such as snow, ice or oil, that can result in death or serious injury to employees, employees shall be provided with a means to avoid or minimize their exposure to them.

(3) A minimum free clearance of 18 inches (46 cm) shall be provided for employee passage around or between obstructions.

(4) Manways or manholes built on or after (insert date one year after effective date of the final rule in the **Federal Register**) leading to sewers, non-pressurized tanks, atmospheric vessels and enclosures, and other confined spaces shall be at least 24 inches (61 cm) in diameter.

(b) *Application of loads.* (1) All surfaces shall be designed, constructed and maintained to support their maximum intended load. The maximum intended load shall not be exceeded.

(2) The employer shall ensure that employees involved in warehousing or storage activities know the intended load limits for structurally supported surfaces in the areas where they work.

(c) *Access and egress.* The employer shall ensure that employees are provided with and use a safe means of access to, and egress from, one surface to another.

(d) *Inspection, maintenance, and repair.* (1) The employer shall ensure through regular and periodic inspection and maintenance that walking and working surfaces are in safe condition for employee use.

(2) The employer shall ensure that all hazardous conditions which are discovered are corrected, repaired, or temporarily guarded to prevent employee use. Repairs shall be made in a manner that will restore the walking and working surface to a safe condition for employee use.

(3) Only qualified persons shall be permitted to inspect, maintain or repair walking and working surfaces except for the incidental cleanup of non-toxic materials.

§ 1910.23 Ladders.

(a) *Scope and application.* This section covers all ladders, except that:

(1) This section does not apply to ladders which are used only for firefighting or rescue operations, or to those ladders which form an integral part of machinery; and

(2) Fixed ladders that are used only by qualified climbers, as defined in § 1910.32(b)(5), are not required to be equipped with ladder safety devices, wells or cages provided the following requirements are met:

(i) The installation and maintenance of the ladder safety devices, wells or cages present a greater hazard than having a qualified climber use a fixed ladder without this protection, and

(ii) The ladder is climbed two or fewer times per year.

(b) *General requirements.* (1) Employers shall ensure that all employees who use ladders with a working height of six feet (1.82 m) or more receive the necessary training, such as how to inspect ladders, and use such ladders properly.

(2) Ladders shall be used only for the purposes for which they were designed.

(3) Non-self-supporting ladders shall be used at an angle such that the horizontal distance from the top support to the foot of the ladder is approximately one-fourth of the working length of the ladder (the distance along the ladder between the foot and top support).

(4) When ladders are used for access to an upper landing surface, the ladder siderails shall extend at least three feet (.9 m) above the upper landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, the ladder shall be secured at the top and a grasping device, such as a grabrail, shall be provided to assist employees in mounting and dismounting the ladder.

(5) Ladders shall be used only on stable and level surfaces unless secured to prevent their accidental displacement. Non-self-supporting ladders shall not be used on slippery surfaces unless secured or provided with slip-resistant feet to prevent accidental displacement.

(6) Single rail ladders shall not be used.

(7) Ladders shall not be moved, shifted or extended while occupied by employees.

(8) Ladders placed in any location where they can be displaced by other activities or traffic, such as in passageways, doorways, or driveways, shall be secured to prevent accidental displacement, or a barricade, such as through the use of traffic cones, shall be used to keep the activities or traffic away from the ladder.

(9) Ladders with structural or other defects shall be immediately tagged with a danger tag reading "Out of Service," "Do Not Use," or similar legend in accordance with § 1910.145, and shall be withdrawn from service until repaired.

(10) All ladder repairs shall be made by a qualified person trained and familiar with the design and the proper procedures for repairing defective components.

(11) Ladders shall be inspected for visible defects prior to the first use each workshift, and after any occurrence which could affect their safe use.

(12) The top of a non-self-supporting ladder shall be placed with the two rails supported unless it is equipped with a single support attachment.

(13) Emergency escape ladders shall comply with all applicable requirements of this section except those requiring fall protection systems.

(14) The top of a stepladder shall not be used as a step.

(c) *Design, construction, maintenance and inspection.* (1) Portable ladders shall be capable of supporting, without ultimate failure, the following loads:

(i) Each non-self-supporting ladder: At least four times the maximum intended load applied or transmitted to the ladder in a downward and vertical direction when the ladder is placed at a 75½ degree angle from the horizontal.

(ii) Each self-supporting ladder: At least four times the maximum intended load in a fully opened position on a level surface.

(2) Ladders designed in accordance with ANSI A14.1–1982, ANSI A14.2–1982, and ANSI A14.5–1982 are deemed to be in compliance with the requirements of paragraph (c)(1) of this section for the type of ladder to be used. The working loads corresponding to the duty ratings of portable ladders that pass the applicable ANSI test requirements shall be as follows:

Duty rating	Ladder type	Working load	
		(Pounds)	(Kg)
Extra heavy duty	IA	300	136.2
Heavy duty	I	250	113.5
Medium duty	II	225	102.2
Light duty	III	200	90.8

(3) The design of combination ladders shall be such that the ladder will be capable of meeting the requirements in paragraph (c)(1) or (c)(2) of this section for stepladders when in the stepladder position, and for extension ladders when in the extension ladder position.

(4) The maximum intended load used for the design of portable ladders shall be at least 200 pounds (90.6 kg).

(5) The combined weight of the employee using the portable ladder and any tools and supplies carried by the

employee shall not exceed the maximum intended load of the ladder.

(6) Fixed ladders shall be capable of supporting at least two loads of at least 250 pounds (114 kg) each, concentrated between any two consecutive attachments, plus anticipated loads caused by ice buildup, winds, rigging, and impact loads resulting from the use of ladder safety devices. The number and position of additional concentrated loads of 250 pounds (114 kg) each, determined from anticipated usage of the ladder, shall also be included in determining the capabilities of fixed ladders. Each step or rung shall be capable of supporting at least a single concentrated load of 250 pounds (114 kg) applied in the middle of the step or rung.

(7) Ladder rungs and steps shall be parallel, level, and uniformly spaced when the ladder is in position for use.

(8) Ladder rungs and steps shall be spaced not less than six inches (15 cm) apart, nor more than 12 inches (31 cm) apart as measured along the ladder siderails.

Exception to paragraph (c)(8) of this section: End frames of scaffolds and ladders in elevator shafts shall have rungs and steps spaced not less than six inches (15 cm) apart, nor more than 16½ inches (41 cm) apart, as measured along the ladder siderails.

(9) Ladder rungs and steps shall have a minimum clear width of 16 inches (41 cm) for individual rung and fixed ladders, 12 inches (30 cm) for portable metal ladders and portable reinforced plastic ladders, and 11½ inches (29 cm) for portable wood ladders, as measured between the ladder siderails.

Exception to paragraph (c)(9) of this section: Narrow rungs, which are not designed to be stepped on, on the tapered ends of window washer ladders, fruit pickers' ladders, and similar ladders are exempt from the minimum rung width requirement.

(10) Wood ladders shall not be coated with any opaque covering, except for identification or warning labels which may be placed on one face only of a side rail.

(11) Metal ladders shall be protected against corrosion.

(12) The minimum toe clearance between the center line of ladder rungs and steps and any obstructions behind the ladder shall be seven inches (18 cm).

Exception to paragraph (c)(12) of this section: Toe clearances of no less than four and one-half inches (11.4 cm) are acceptable when a specific work operation renders a seven inch (17.8 cm) clearance infeasible.

(13) The minimum perpendicular clearance between the center line of fixed ladder rungs and steps and any obstruction on the climbing side of the ladder shall be 30 inches (76 cm).

Exception to paragraph (c)(13) of this section: When unavoidable obstructions are encountered, the minimum perpendicular clearance between the centerline of fixed ladder rungs and steps and the obstruction on the climbing side of the ladder may be reduced to 24 inches, (61 cm) provided that a deflection device is installed to guide employees around the obstruction.

(14) Fixed ladders shall be equipped with personal fall protection systems in accordance with subpart I of this part, or with cages or wells, wherever the length of any fixed ladder exceeds 24 feet (7.3 m), or wherever the top of the ladder is at a distance greater than 24 feet (7.3 m) above lower levels.

(15) Cages and wells provided for fixed ladders shall be designed to permit easy access to or egress from the ladder which they enclose. The cages and wells shall be continuous throughout the length of the fixed ladder except for access, egress and other transfer points. Cages and wells shall be designed and constructed to contain employees in the event of a fall, and to direct them to a lower landing.

(16) The length of continuous climb for any fixed ladder equipped only with a cage or well shall not exceed 50 feet (15.2 m). When ladder safety devices are also used with cages or wells, the length of continuous climb may exceed 50 feet (15.2 m).

(17) Fixed ladders with continuous lengths of climb greater than 150 feet (45.7 m) shall be provided with rest platforms at least every 150 feet (45.7 m). The rest platforms shall provide a horizontal surface of at least 18 inches by 24 inches (46 cm by 61 cm) and have at least the same strength as required for the fixed ladder.

(18) Except where portable ladders are used to access fixed ladders, ladders shall be offset with a landing platform between each ladder when two or more separate ladders are used to reach a work area. Landing platforms shall provide a horizontal surface of at least 24 inches by 30 inches (61 cm by 76 cm) and have at least the same strength as the ladders.

(19) Ladder surfaces shall be free of puncture or laceration hazards.

(20) Fixed individual rung ladders shall be constructed to prevent the employee's feet from sliding off the end.

(21) The distance from the centerline of fixed ladder grab bars to the nearest permanent object in back of the grab bars shall be no less than four inches (10 cm).

(22) A ladder that might contact uninsulated energized electrical equipment shall have nonconductive siderails.

(23) Ladders having a pitch in excess of 90 degrees from the horizontal shall not be permitted, except for fixed ladders used in conical sections of manholes.

(24) The step-across distance from the centerline of the steps or rungs of a fixed ladder to the nearest edge of the structure, building, or equipment accessed shall not exceed 12 inches (30 cm).

(25) Ladders and ladder sections, unless so designed, shall not be tied or fastened together to provide longer length. Ladders and ladder sections shall not have their length increased by other means unless specifically designed for the means employed.

(26) A metal spreader or locking device shall be provided on each stepladder or combination ladder when used in the stepladder mode to hold the front and back sections securely in an open position.

§ 1910.24 Step bolts and manhole steps.

(a) *Scope and application.* This section covers step bolts and manhole steps used on structures such as, but not limited to, towers, stacks, conical manhole sections, and vaults. This section does not apply to individual rung ladders.

(b) *General requirements.* (1) Step bolts and manhole steps shall be continuous and spaced uniformly, not less than six inches (15 cm) nor more than 18 inches (46 cm) apart.

(2) The minimum clear step width of step bolts shall be four and one-half inches (14.4 cm). The minimum clear step width of manhole steps shall be 10 inches (25.4 cm).

(3) The minimum toe clearance for manhole steps shall be four inches (11.1 cm) from the point of embedment on the wall to the outside face of the step. The toe clearance in the center of the manhole step shall be a minimum of four and one-half inches (11.4 cm) measured to the outside face of the step.

(4) The minimum toe clearance for step bolts shall be seven inches (17.8 cm). Where obstructions cannot be avoided, toe clearances may be reduced to four and one-half inches (11.4 cm).

(5) Step bolts and manhole steps shall be designed to prevent the employee's foot from slipping or sliding off the end of the step bolt or manhole step.

(6) All manhole steps and step bolts installed after (insert date 60 days after the effective date of the final rule in the **Federal Register**) and used in corrosive environments, shall be constructed of, or coated with, a material that will retard corrosion of the step or bolt.

(7) All manhole steps installed on or after (insert date 60 days after the effective date of the final rule in the **Federal Register**) shall be provided with slip-resistant surfaces such as, but not limited to, corrugated, knurled, or dimpled surfaces.

(c) *Design, construction, maintenance, and inspection.* (1) *Step bolt design.* Each step bolt shall be capable of withstanding, without failure, at least four times the intended load to be applied to the bolt.

(2) *Design of manhole steps installed before* (insert date 60 days after the effective date of the final rule in the **Federal Register**). Manhole steps installed before (insert date 60 days after the effective date of the final rule in the **Federal Register**) shall be capable of supporting their maximum intended load.

(3) *Design of manhole steps installed after* (insert date 60 days after the effective date of the final rule in the **Federal Register**). The employer shall ensure that manhole steps installed on or after (insert date 60 days after the effective date of the final rule in the **Federal Register**) shall meet the following requirements:

(i) The manhole steps shall be capable of withstanding and remaining solidly secured after being subjected to a separate application of a horizontal pull out load of 400 pounds (1780 N), and a vertical load of 800 pounds (3650 N).

(ii) The manhole steps shall be capable of sustaining the vertical test load without developing a permanent set greater than one-half inch (12.7 mm).

(iii) The loads shall be applied over a width of three and one-half inches (8.9 cm) centered on the step, and applied at a uniform rate until the required load is reached.

(iv) No cracking or fracture of the step nor spalling of the concrete shall be visible.

(4) *Maintenance and inspection.* Step bolts and manhole steps shall be maintained in a safe condition and visually inspected prior to each use.

(5) *Component replacement.* Step bolts which are bent greater than 15 degrees below the horizontal shall be removed and replaced with bolts that meet the requirements of this section. Manhole steps that are bent to such an extent as to reduce the step's projection from the wall to less than four inches (1.1 cm) shall be removed and replaced with a step meeting the requirements of this section, or with a climbing device meeting the requirements of this subpart.

§ 1910.25 Stairs.

(a) *Scope and application.* This section covers fixed stairs, spiral stairs, ship's stairs and alternating tread type stairs. It does not apply to stairs on mobile equipment; to articulated stairs that may be installed on floating roof tanks, waterfront dock facilities or access facilities to mobile equipment at angles which change with the rise and fall of the floating support or various heights of mobile equipment; or to stairs forming an integral part of machinery. It also does not apply to stairs used only for an emergency means of egress, which are covered by subpart E of this part.

(b) *General requirements.* (1) Stairs with four or more risers shall be provided with at least one handrail. A stair rail system shall be provided on all unprotected sides or edges of stairways with a fall hazard of four feet (1.2 m) or more.

(2) Handrails and stair rails shall meet the applicable requirements in § 1910.28(c). Stair rail systems may also serve as handrails when properly installed.

(3) The sides and edges of stair landings with a fall hazard of four feet (1.2 m) or more, unless otherwise enclosed, shall be provided with guardrail systems meeting the requirements of § 1910.28.

(4) Stairs shall be capable of supporting, without failure, at least five times their maximum intended load.

(5) All stairs installed before (insert date 60 days after the effective date of the final rule in the **Federal Register**) shall have a minimum vertical clearance of six feet, eight inches (2.05 m). The vertical clearance for all stairs (except spiral stairs) installed on or after (insert date 60 days after the effective date of the final rule in the **Federal Register**) shall be a minimum of seven feet (2.1 m).

(6) Stairs shall be installed with uniform riser heights and tread depths between landings.

(c) *Fixed stairs.* (1) Fixed stairs shall be installed at angles up to 50 degrees from the horizontal.

(2) Riser heights on fixed stairs shall be from six and one-half inches to nine and one-half inches (16.5 to 24.1 cm).

(3) Fixed stairs shall have a minimum width of 22 inches (55.9 cm) between vertical barriers.

(4) Fixed stairs with closed risers shall have a minimum stair tread depth of eight inches (20.3 cm).

(5) Fixed stairs with open risers shall have a minimum tread depth of six inches (15.2 cm).

(6) Stairway landings and platforms measured in the direction of travel shall be at least 22 inches (55.9 cm) wide, and not less than 30 inches (76 cm) in length.

(d) *Spiral stairways.* (1) The clear width of the stairs shall not be less than 26 inches (66 cm).

(2) The height of the riser shall not exceed nine and one-half inches (24.1 cm).

(3) The minimum headroom above spiral stairways shall be six feet, six inches (198 cm).

(4) Treads shall have a minimum depth of seven and one-half inches (19.1 cm) at a point 12 inches (30.5 cm) from the narrowest edge.

(5) All treads shall be identical.

(6) Where doors or gates open directly onto spiral stairways, landings shall be provided meeting the requirements of paragraph (c)(6) of this section.

(e) *Ship's stairs installed on or after* (insert date 60 days after the effective date of the final rule in the **Federal Register**). (1) Ship's stairs shall be installed at a slope between 50 degrees and 70 degrees from the horizontal.

(2) Risers shall be open; treads shall be at least four inches (10 cm) in depth, 18 inches (46 cm) in width, and have a vertical rise between tread surfaces of six and one-half to 12 inches (16 to 30 cm).

(3) Handrails meeting the requirements of § 1910.28 shall be installed on both sides of ship's stairs.

(f) *Alternating tread type stairs.* (1) Alternating tread type stairs shall have a series of steps between 50 and 70 degrees from the horizontal.

(2) Handrails shall be provided on both sides of alternating tread type stairs.

(3) The width between handrails shall be from 17 to 24 inches (43 to 61 cm).

(4) Alternating tread type stairs shall be equipped with slip-resistant surfaces on the treads.

(5) The tread shall have a minimum depth of eight and one-half inches (22 cm).

(6) The tread shall be at least seven inches (18 cm) wide at the nosing.

(7) Landings or platforms shall meet the requirements in paragraph (c)(6) of this section.

§ 1910.26 Ramps and bridging devices.

(a) *General requirements.* (1) Ramps and bridging devices shall be designed, constructed and maintained to support their maximum intended loads.

(2) Ramps and bridging devices used for the passage of vehicles shall be designed, constructed and maintained to prevent vehicles from running off the edge.

(3) There shall be a clearly designated and separated walkway for foot passage

outside of the vehicle lane when ramps and bridging devices are used for the simultaneous passage of pedestrians and motorized vehicles except when pedestrians can precede or follow a vehicle at a safe distance.

(4) Ramps and bridging devices shall be secured to prevent their displacement while employees are on them. Vehicles, such as freight cars, onto which a ramp or bridging device has been placed, shall be prevented from moving, by such means as chocks or sand shoes, while the ramp or bridging device is being used by employees.

(5) A safe means of handling portable ramps and bridging devices, such as handholds or grab handles, shall be provided for employee use.

(6) Ramps and bridging devices constructed of two or more planks shall have the planks securely connected together to prevent displacement.

(b) *Specific requirements.* (1) *Fixed ramps.* (i) Each ramp used by employees that has a ramp angle greater than 20 degrees from the horizontal shall be provided with handrails meeting the requirements of § 1910.28.

(ii) The employer shall assure that the angle of ramps used by employees does not exceed 30 degrees from the horizontal.

(iii) Ramps which have a fall hazard of four feet (1.2 m) or more shall be provided with a stair rail system or equivalent fall protection system meeting § 1910.28.

(2) *Portable or elevating ramps and bridging devices.* (i) When one or both ends of a portable or elevating ramp or bridging device are not secured to the vehicle or dock, there shall be an overlap of at least four inches (10.2 cm) onto the unattached surface or surfaces.

(ii) Fall protection systems are not required for ramps or bridging devices when they are being used exclusively for material handling operations with motorized equipment, when:

(*a*) Employees engaged in those operations are exposed to fall hazards less than 10 feet (3 m); and,

(*b*) Those employees have been trained to recognize and avoid the hazards involved with this work. This training shall consist of instructions in the proper placement and securing of the ramps and bridging devices, securing of vehicles, and the proper use of material handling equipment.

§ 1910.27 Work surfaces.

(a) *Scope and application.* (1) *Scope.* This section covers floors, ramps, roofs and similar walking and working surfaces, unless they are specifically covered elsewhere in this subpart.

(2) *Application.* This section does not apply to the following surfaces:

(i) Scaffolds covered in § 1910.30.

(ii) Landings on stairs which are covered in § 1910.25.

(iii) Platforms which are covered in § 1910.31.

(b) *General requirements.* (1) Employees exposed to unprotected sides or edges of surfaces that present a falling hazard of four feet (1.2 m) or more to a lower level or floor holes shall be protected by a fall protection system meeting the requirements of § 1910.28.

(2) Employees on surfaces which are less than four feet (1.2 m) above a lower level, but are above or adjacent to dangerous equipment, materials or operations, shall be protected by a fall protection system meeting the requirements of § 1910.28 to prevent their falling into or onto the hazardous areas.

(3) Employees who are exposed to falling through a covered opening in a surface that presents a fall hazard of four feet (1.2 m) or more to a lower level, and employees who are exposed to falling through skylights, shall be informed of the potential hazard and be protected by one of the following:

(i) The surface shall be designed, covered or reinforced to carry the intended load; or

(ii) Employees shall be protected by a fall protection system in accordance with § 1910.28.

(4) A floor hole less than one foot (30.5 cm) in its least dimension (the shortest distance from the edge of the work surface or toeboard to the object going through the work surface) provided for passage of machinery, piping, or other equipment that may expand, contract, vibrate and/or move in a similar manner, need only be guarded by a toeboard or equivalent means to prevent the feet of employees from entering the hole or tools from falling through the opening and onto employees below.

Note: See § 1910.28(e) for all other floor holes.

(5) Floor hole guards shall be kept in place at all times, except when the nature of work operations require their removal, and where alternative means of protection have been provided.

(6) Employers shall install an appropriate guard, such as a toeboard which complies with § 1910.28, on the perimeter of a walking or working surface, when employees below that surface might be exposed to falling material.

§ 1910.28 Fall protection systems.

(a) *General Requirement*—(1) *Guardrail use.* Employers shall provide a guardrail system as the primary fall protection system for all walking and working surfaces regulated under this subpart unless the use of a guardrail system is infeasible. When the use of a guardrail system is infeasible, the employer shall provide an appropriate alternative fall protection such as personal fall protection systems, hole covers, safety nets, etc. which complies with the requirements of this section.

(2) *Exceptions:* Employers that comply with paragraph (d) of this section need not use guardrail systems.

(b) *Guardrail systems and toeboards.* Requirements for suspension scaffold fall protection systems are contained in § 1910.30. All other guardrail systems and their components shall meet the following criteria:

(1) *Top rails.* The top rail or member of a guardrail system shall be capable of withstanding, without failure, a force of at least 200 pounds (890 N) applied within two inches (5 cm) of the top edge of the rail in any downward or outward direction at any point along the top edge. For guardrail systems installed before (insert date 60 days after the effective date of the final rule in the **Federal Register**) when the 200 pound (890 N) test load is applied in a downward direction, the top edge of the guardrail shall not be less than 36 inches (91 cm) above the guarded surface level. For guardrail systems, other than those which comply with paragraph (b)(3)(iii) of this section installed on or after (insert date 60 days after the effective date of the final rule in the **Federal Register**) when the 200 pound (890 N) test load is applied in a downward direction, the top edge of the guardrail shall not be less than 39 inches (1 m) above the guarded surface level. No permanent deformation is permitted in the system when the force is removed.

(2) *Midrails.* (i) Midrails, screens, mesh, intermediate vertical members, solid panels, or equivalent structural members shall be provided between the top rail of the guardrail system and the work surface.

(ii) Midrails and equivalent structural members shall be capable of withstanding, without failure, a force of at least 150 pounds (667 N) applied in any downward or outward direction at any point along the midrail. No permanent deformation is permitted in the system when the force is removed.

(iii) Midrails and other intermediate members shall be positioned so that the openings in the guardrail system are a maximum of 19 inches (48 cm) in their least dimension.

(3) *Height criteria.* (i) The top member of guardrail systems installed before

(insert date 60 days after the effective date of publication of the final rule in the Federal Register) shall be at least 36 inches (91 cm) above the work surface under all conditions.

(ii) The height of the top rail or equivalent component of guardrail systems installed on or after (insert date 60 days after the effective date of the final rule in the Federal Register) shall be at least 42 inches (1.1 m) above the walking or working surface. Employers may build up the walking and working surface provided the requirements of paragraph (b)(1) of this section are met.

(iii) As an alternative to complying with paragraphs (b)(3)(i) and (b)(3)(ii) of this section, employers may reduce the height of the top surface of a guardrail system to no less than 30 inches (76 cm) at any point, provided the sum of the depth (horizontal distance) of the top edge, and the height of the top edge (vertical distance from the work surface to the top edge of the top member), is at least 48 inches (1.2 m).

(4) *Surfaces of guardrails.* Guardrail systems shall be so surfaced as to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing which could cause an employee to fall.

(5) *Size criteria.* Top rails and midrails shall be at least one-quarter inch (0.6 cm) in outside diameter or thickness.

(6) *Access openings.* Employers may use movable guardrail sections using such materials as gates, non-rigid members and chains to provide access when opened and guardrail protection when closed, provided the criteria in paragraphs (b)(1) through (b)(5) of this section. Toeboards are not required in access openings.

(7) *Toeboard requirements* (i) Toeboards shall be capable of withstanding, without failure, an outward force of at least 50 pounds (222 N) applied at any point in the direction of the exposed perimeter.

(ii) Toeboards shall be at least three and one-half inches (8.9 cm) in vertical height from their top edge to the level of the work surface.

(iii) Toeboards shall not be placed more than one-half inch (1.3 cm) above the work surface. They shall be solid or have openings not over one inch (2.5 cm) in their greatest dimension.

(c) *Handrail and stair rail systems*—(1) *Strength criteria.* Handrails and the top rails of stair rail systems shall be capable of withstanding, without permanent deformation or a loss of support, a force in any downward or outward direction at any point along the top edge, of at least 200 pounds (890 N) applied within two inches (5 cm) of the top edge of the rail.

(2) *Height criteria.* (i) The height of handrails installed before (insert date 60 days after date of the final rule in the Federal Register) shall not be less than 30 inches (76 cm) nor more than 42 inches (1.1 m) from the top of the handrail to the surface of the tread in line with the face of the riser at the forward edge of the tread.

(ii) The height of handrails installed on or after (insert date 60 days after the effective date of the final rule in the Federal Register) shall not be more than 37 inches (94 cm) nor less than 30 inches (76 cm) when measured in a manner consistent with the method described in paragraph (c)(2)(i) of this section.

(iii) The height of stair rail systems installed before (insert date 60 days after the effective date of the final rule in the Federal Register) shall not be less than 30 inches (76 cm) from the upper surface of the tread. This distance shall be measured in a vertical direction at the intersection of the riser face and tread surface, or in the case of open risers, at the forward edge of the tread surface.

(iv) The height of stair rail systems installed on or after (insert date 60 days after the effective date of the final rule in the Federal Register) shall be not less than 36 inches (91 cm) when measured in a manner consistent with the method described in paragraph (c)(2)(iii) of this section.

(v) A stair rail installed before (insert date 60 days after the effective date of the final rule in the Federal Register) may also serve as a handrail when the height of the top edge is not more than 42 inches (1.1 m) nor less than 36 inches (91 cm) when measured at the forward edge of the tread surface.

(vi) A stair rail installed on or after (insert date 60 days after the effective date of the final rule in the Federal Register) may also serve as a handrail when the height of the top edge is not more than 37 inches (94 cm) nor less than 36 inches (91 cm) when measured at the forward edge of the tread surface.

(3) *Finger clearance.* The minimum clearance between handrails, including the top edge of stair rail systems serving as handrails, and any obstructions shall be one and one-half inches (4 cm).

(4) *Surfaces.* Handrail and stair rail systems shall be surfaced to prevent injury to employees from punctures or lacerations, and to prevent snagging of clothing.

(5) *Openings in stair rails.* Openings in a stair rail system shall be a maximum of 19 inches (48 cm) in their least dimension.

(6) *Handhold.* Handrails shall have the shape and dimension necessary to provide a firm handhold for employees.

(7) *Projection hazards.* Ends of stair rail systems and handrails shall not present a projection hazard.

(d) *Designated areas*—(1) *General requirements for use.* Employers may establish designated areas which comply with the provisions of this paragraph as an alternative to installing guardrails, where employers demonstrate that employees within the designated areas are not exposed to fall hazards. In addition, the following conditions and requirements must be met in order to use designated areas in lieu of other fall protection measures:

(*a*) The work must be of a temporary nature, such as maintenance on roof top equipment.

(*b*) Designated areas shall be established only on surfaces that have a slope from horizontal of 10 degrees or less.

(*c*) The designated area shall consist of an area surrounded by a rope, wire or chain and supporting stanchions erected in accordance with the criteria in paragraphs (d)(2) through (d)(5) of this section.

(2) *Strength criteria.* (i) After being erected with the line (such as rope, wire or chain) attached, stanchions shall be capable of resisting, without tipping over, a force of at least 16 pounds (71 N) applied horizontally against the stanchion. The force shall be applied 30 inches (76 cm) above the work surface and perpendicular to the designated area perimeter, and in the direction of the unprotected side or edge;

(ii) The line shall have a minimum breaking or tensile strength of 500 pounds (2.2 kN), and after being attached to the stanchions, shall be capable of supporting, without breaking, the loads applied to the stanchions as prescribed in paragraph (d)(2)(i) of this section; and

(iii) The line shall be attached at each stanchion in such a way that pulling on one section of the line between stanchions will not result in slack being taken up in adjacent sections before the stanchion tips over.

(3) *Height criteria.* The line shall be installed in such a manner that its lowest point (including sag) is no less than 34 inches (86 cm) nor more than 39 inches (1 m) from the work surface.

(4) *Visibility criteria.* The line forming the designated area shall be clearly visible from any unobstructed location within the designated area up to 25 feet (7.6 m) away, or at the maximum distance a worker may be positioned away from the line, whichever is less.

(5) *Location criteria.* (i) The stanchions shall be erected as close to the work area as is permitted by the task.

(ii) The perimeter of the designated area shall be erected no less than six feet (1.8 m) from the unprotected side or edge.

(iii) When mechanical equipment is being used, the line shall be erected not less than six feet (1.8 m) from the unprotected side or edge which is parallel to the direction of mechanical equipment operation, and not less than 10 feet (3.1 m) from the unprotected side or edge which is perpendicular to the direction of mechanical equipment operation.

(iv) Access to the designated area shall be by a clear path, formed by two lines, attached to stanchions, which meet the strength, height and visibility requirements of this paragraph.

(e) *Holes.* Covers for holes in floors, roofs and other walking and working surfaces shall comply with the following provisions:

Note: See § 1910.27(b)(4) for floor holes provided for the passage of machinery, piping or other equipment.

(1) Covers located in roadways and vehicular aisles shall be capable of supporting, without failure, at least twice the maximum axle load of the largest vehicle expected to cross over the cover.

(2) All other covers shall be capable of supporting, without failure, the maximum intended load of employees, equipment and material to be applied to the cover at any one time, or 250 pounds (114 kg), whichever is greater.

(3) All covers shall be installed so as to prevent accidental displacement.

(f) *Personal fall protection systems.* All body belts and body harnesses and their associated fall protection systems shall meet the applicable requirements of subpart I of this part.

(g) *Restraint line systems.* Where, an employee is tethered, restraint line systems shall meet the applicable requirements of subpart I in order to prevent a fall from an unprotected side or edge or into an opening.

(h) *Safety net systems.* Safety net systems and their use shall comply with the following provisions:

(1) Safety nets shall be installed as close as practicable under the work surface on which employees are working, but in no case more than 30 feet (9.1 m) below such work surfaces.

(2) Safety nets shall be installed with sufficient clearance under them to prevent contact with the surface or structures below if subjected to an impact equal to that imposed under the required drop test.

(3) Safety nets shall extend outward from the outermost projection of the work surface as follows:

Vertical distance—(working level to horizontal plane of net)	Minimum required horizontal distance—(net outer edge to working surface edge)
Up to 5 feet (1.5 m)	8 feet (2.4 m).
More than 5 feet (1.5 m) up to 10 feet (3 m).	10 feet (3 m)
More than 10 feet (3 m)	13 feet (4 m).

(4) Safety nets and their installations shall be capable of absorbing the impact force of a drop test, consisting of a 400 pound (180 kg) bag of sand 30±2 inches (76±5 cm) in diameter dropped into the net from the highest work surface on which employees are to be protected. Each safety net and its installation shall be successfully drop-tested to meet this requirement at the job site before being use as a fall protection system.

Exception to paragraph (h)(4) of this section: When the employer can demonstrate that such a drop test is not practicable, the net installation may be used if a qualified person certifies that the installation meets the strength requirements of this paragraph (h)(4) and all other requirements of this paragraph (h).

(5) Safety nets which are in use shall be inspected weekly for mildew, wear, damage or deterioration, and shall be removed from service if their required strength has been substantially reduced.

(6) Any materials, scrap pieces or tools which may have fallen into the safety net shall be removed as soon as possible, but at least before the next work shift.

(7) The maximum size of each safety net mesh opening shall not exceed 36 square inches (232 cm^2), nor be longer than six inches (15 cm) on any side measured center-to-center of mesh ropes or webbing. All mesh crossings shall be secured to prevent enlargement of the mesh opening.

(8) Each safety net, or section of it, shall have a border rope or webbing with a minimum breaking strength of 5,000 pounds (22.2 kN).

(9) Connections between safety net panels shall be as strong as integral net components, and shall be spaced at intervals not more than six inches (15 cm) apart.

§ 1910.29 Wall openings.

(a) *Existing wall openings.* Existing wall openings shall be guarded by a fall protection system meeting the applicable requirements of § 1910.28 if their lower edge is less than 36 inches (91.4 cm) above a work surface, and if they present a hazard to employees of falling through and down more than four feet (1.2 m).

(b) *New wall openings.* Wall openings constructed on or after (insert date 60 days after the effective date of the final rule in the **Federal Register**) shall be guarded by a fall protection system meeting the applicable requirements of § 1910.28 if their lower edge is less than 39 inches (1 m) above a work surface, and if they present a hazard to an employee of falling through and down more than four feet (1.2 m).

(c) *Grab handles.* Wall openings shall be provided with accessible grab handles on each side of the opening whenever the work activity requires employees to work through an unprotected opening by reaching through or around the opening. Each grab handle shall be capable of withstanding a maximum horizontal pull-out force equal to two times the intended load, or 200 pounds (890 N), whichever is greater. In addition, employees shall be provided with a fall protection system meeting the requirements of § 1910.28.

§ 1910.30 Scaffolds.

(a) *Scope and application.* This section applies to two-point adjustable scaffolds, single-point adjustable suspension scaffolds, mobile manually propelled scaffolds, and boatswains' chairs and components when used in general industry. Any other type of scaffolds not specifically covered in this section shall meet the applicable requirements of 29 CFR part 1926, subpart L.

(b) *Restrictions.* The use of "lean-to" or "shore" scaffolds is prohibited.

(c) *General requirements.*—(1) *Scaffold installation and use.* Scaffold installation and use shall meet the following conditions:

(i) Ladders or makeshift devices shall not be used on top of scaffold platforms to increase the height at which employees work.

(ii) Scaffold suspension ropes or devices shall hang vertically without being pulled laterally unless specifically designed and intended for such use.

(iii) When employees on scaffolds are exposed to falling objects, overhead protection shall be provided in such a manner as to deflect or resist penetration of objects that are likely to fall onto the employees.

(iv) Scaffolds shall not be moved horizontally nor altered while they are in use or occupied by employees, except when a scaffold has been specifically designed for such use.

(v) Tools, materials and debris shall not be allowed to accumulate in quantities to cause a hazard.

(vi) Work is prohibited on scaffolds covered with snow, ice or other slippery material except as necessary for removal of such material.

(vii) Work on or from scaffolds is prohibited when winds are above 40 miles per hour (64.4 km/hr) unless the employer can establish that employees are protected from the effects of the wind's force and that the scaffold is properly secured against the wind loads imposed on it. Wind screens shall not be used unless the scaffold is designed for them and the scaffold is secured against wind loads imposed on it.

(viii) Scaffolds shall not be erected, used, or moved closer to exposed and energized power lines than as follows:

(*a*) For all lines of more than 50 kv, minimum clearance between the lines and all parts of the scaffold shall be 10 feet (3.1 m) plus 0.4 inch (1 cm) for each 1 kv over 50 kv, or twice the length of the line insulator, but never less than 10 feet (3.1.m);

(*b*) For all insulated lines between 300 volts and 50 kv, the minimum clearance between the lines and all parts of the scaffold shall be 10 feet (3.1 m);

(*c*) For all insulated lines of less than 300 volts, the minimum clearance between the lines and all parts of the scaffold shall be two feet (0.6 m);

(*d*) For all lines of any voltage which are uninsulated, the minimum clearance between the lines and all parts of the scaffold shall be 10 feet (3.1 m) for lines of 50 kv and less; and for lines more than 50 kv, 10 feet (31 m) plus 0.4 inch (1 cm) for each 1 kv over 50 kv, or twice the length of the line insulator, but never less than 10 feet (3.1 m).

(ix) Where material is being hoisted onto or near a scaffold, tag lines or other equivalent measures to control the hoisted load shall be utilized.

(2) *Suspension ropes.* (i) Suspension ropes shall be capable of supporting, without failure, at least six times the intended load applied or transmitted to that rope.

(ii) Suspension ropes supporting manually-powered suspended scaffolds shall be no less than one-fourth of an inch (.63 cm) diameter steel wire rope or equivalent. The minimum grade of wire rope shall be improved plow steel.

(iii) Suspension ropes supporting suspended powered scaffolds shall be no less than five-sixteenths of an inch (.79 cm) diameter wire rope or equivalent. The minimum grade of wire rope shall be improved plow steel.

(iv) Winding rope hoists shall contain at least four wraps of the suspension rope when the scaffold is at the lowest point of travel. In all other situations, the suspension ropes shall either be of such length that the scaffold can be lowered to the level below without the rope end passing through the hoist, or the rope end shall be configured or provided with a means to prevent its end from passing through the hoist.

(v) Ropes terminating at drums shall be attached to the drum by a positive mechanical means.

(vi) Wire suspension ropes shall not be joined together except by eye splicing with shackles, or by coverplates and bolts.

(vii) Swaged attachments or spliced eyes on wire suspension ropes shall be made only by the wire rope manufacturer or by a qualified person. The swaged attachments or spliced eyes made by a qualified person shall be at least equivalent to devices made by the rope manufacturer.

(viii) Wire rope clips shall be installed by a qualified person, retightened after initial loading, and be inspected and kept tight thereafter.

(ix) Suspension ropes shall be protected from exposure to open flames, hot work, corrosive chemicals or other destructive conditions.

(x) Ropes shall be regularly inspected and serviced. The use of repaired wire rope as suspension rope is prohibited, and defective suspension ropes shall not be used.

(3) *Strength.* Each scaffold and scaffold component, except suspension ropes and guardrail systems, shall be capable of supporting, without failure, its own weight and at least four times the maximum intended load applied or transmitted to that component. Scaffold components selected, built and loaded in accordance with Appendix A of this Subpart, will be deemed to meet this requirement.

(4) *Loading of scaffolds.* No scaffold shall be loaded in excess of its maximum intended load. The employer shall inform all employees working with scaffolds of the maximum intended load for the scaffold in use.

(5) *Coating of wood platforms.* Wood platform units shall not be covered with opaque coatings. Unit edges may be marked for purposes of identification. Periodic coating with a wood preservative, fire retardant or slip-resistant coating is permitted, so long as the coating does not obscure the top or bottom wood surface.

(6) *Erection and inspection.* Scaffolds shall be erected and used under the supervision of a qualified person in accordance with applicable manufacturers' recommendations. Scaffolds shall be inspected for visible defects prior to each day's use and after any occurrence which could affect a scaffold's structural integrity. Deficiencies shall be corrected before use.

(7) *Platform width.* Scaffold platform units shall be at least 18 inches (46 cm) wide.

(8) *Platforms.* Platforms at all working levels shall be fully planked or decked with platform units between the front uprights and the guardrail supports as follows:

(i) Platform units shall be placed as close as possible to adjacent units. Any space between adjacent units shall be no more than one inch (2.5 cm) except as necessary to fit around uprights when side brackets are used to extend the width of the platform.

(ii) Where full planking or decking cannot be obtained using standard width units, the platform shall be planked or decked as fully as possible; however, the remaining open space between the platform and guardrail supports shall not exceed nine and one-half inches (24 cm).

(9) *Positioning the front edge of a scaffold.* The front edge of all scaffold platforms shall be positioned as close as practical to the structure being worked, but not more than 14 inches (35 cm) from the face of the structure unless a guardrail system meeting the requirements of § 1910.28 is used. When scaffold frames cannot be positioned within this maximum distance, side brackets or other means may be used to extend the platform width to within 14 inches (35 cm) from the face of the structure being worked.

(10) *Protection of employees working below scaffolds.* Toeboards, overhead protection or other equivalent protection shall be provided to prevent tools or material from falling onto employees working below scaffolds.

(11) *Extension of platform units over supports.* Scaffold platform units, unless cleated or otherwise restrained by hooks or equivalent means at both ends, shall extend over their end supports no less than six inches (15 cm) and not more than 18 inches (46 cm). A unit may extend more than 18 inches (46 cm) over the end support when the unit is designed and installed to support employees on the extended area without tipping, or guarded to prevent access to the cantilevered ends.

(12) *Abutment of platforms.* On scaffolds where units are abutted to create a longer platform, each abutted end shall rest on a separate support, butt plate, or equivalent means of support.

(13) *Overlapping of platforms.* On scaffolds where platform units are

overlapped to create a longer platform, the overlap shall occur only over supports, and shall not be less than 12 inches (30.5 cm), unless the planks are nailed together or otherwise restrained to prevent movement.

(14) *Intermixing of components.* Scaffold components manufactured by different manufacturers shall not be intermixed unless the component parts fit together without force or modification, and the resulting scaffold meets the requirements of this section.

(15) *Ladders.* All ladders shall be located so as not to adversely affect the stability of the scaffold.

(16) *Access.* An access ladder, or equivalent safe access, shall be provided to scaffold platforms.

(17) *Gasoline-powered hoists.* Gasoline-powered hoists shall not be located on suspension scaffolds.

(18) *Listing of hoists.* Suspension scaffold mechanically-powered hoists and manually-powered hoists shall be of a type tested and listed by a nationally recognized testing laboratory. Refer to § 1910.7 for definition of nationally recognized testing laboratory.

(19) *Power-operated gears and brakes.* All power-operated gears and brakes on suspension scaffold hoists shall be guarded to prevent employee injury.

(20) *Automatic braking devices.* In addition to the normal operating brake, mechanically-powered hoists on suspension scaffolds shall have a braking device which engages automatically when the normal speed of descent of the hoist is exceeded.

(21) *Manually powered hoists.* Manually powered hoists shall require a positive crank force to descend.

(22) *Support surfaces for suspension scaffold support devices.* All suspension scaffold support devices such as outrigger beams, cornice hooks, parapet clamps, and similar devices, shall rest on surfaces capable of supporting the reaction forces imposed by the scaffold hoist operating at its maximum rated load.

(23) *Evaluating decks to support intended loads.* When an employer chooses to use outrigger beams in conjunction with a suspended scaffold, a qualified person shall evaluate the direct connections to roof and floor decks before suspension scaffold outrigger beams are used, in order to ensure that such decks are capable of supporting the loads to be imposed.

(24) *Inboard ends of outrigger beams.* The inboard ends of suspension scaffold outrigger beams shall be stabilized by bolts or other direct connections to the floor or roof deck, or they shall have their inboard ends stabilized by counterweights.

(i) Direct connections shall be evaluated before use by a qualified person who shall affirm, based on the evaluation, that the supporting surfaces are capable of supporting the loads to be imposed.

(ii) Counterweights shall be made of non-flowable solid material.

(iii) Counterweights shall be secured by mechanical means to the outrigger beams.

(iv) Counterweights shall not be removed from a scaffold until the scaffold is disassembled.

(v) Outrigger beams shall be secured by tiebacks equivalent in strength to the suspension ropes.

(vi) Tiebacks shall be secured to a structurally sound portion of the building or structure.

(vii) Tiebacks shall be installed parallel to the centerline of the beam.

(25) *Outrigger beams.* Scaffold outrigger beams:

(i) Shall be provided with stop bolts or shackles at both ends;

(ii) Shall be securely fastened together, with the flanges turned out when channel iron beams are used in place of I-beams;

(iii) Shall be installed with all bearing supports perpendicular to the beam centerline;

(iv) Shall be set and maintained with the web in a vertical position;

(v) Where a single outrigger beam is used, shall have the steel shackles or clevises with which the wire ropes or equivalent are attached to the outrigger beam placed directly over the hoisting machine;

(vi) Shall be made of structural metal or equivalent material; and,

(vii) Shall be restrained to prevent movement.

(26) *Suspension scaffold support devices.* Suspension scaffold support devices such as cornice hooks, roof hooks, roof irons, parapet clamps or similar devices shall be:

(i) Made of mild steel, wrought iron, or materials of equivalent strength;

(ii) Supported by bearing blocks; and

(iii) Secured against movement by tiebacks installed at right angles to the face of the structure whenever possible, and secured to a structurally sound portion of the structure. Vents, standpipes, other piping systems, and electrical conduit shall not be used as points of tie-off for tiebacks. Tiebacks shall be equivalent in strength to the hoisting rope.

(27) *Fall protection for suspension scaffolds.* Employees working on single-point suspension scaffolds and two-point suspension scaffolds shall be protected from falls in the following manner:

(i) All open sides and ends of the scaffolds shall be protected by barriers that meet the following:

(*a*) At least 36 inches (91 cm) in height;

(*b*) The top member of barrier shall withstand at least a 100 pound (444 N) force in any downward or outward direction;

(*c*) The midrails shall withstand at least a 75 pound (333 N) force in any downward or outward direction; and

(*d*) A standard toeboard meeting the requirements of § 1910.28 is also required when employees below are exposed to hazards from tools, equipment or other objects falling from the scaffold edges;

(ii) Employees on single level scaffolds (one working level) or the top surface of multilevel scaffolds shall be protected by a personal fall protection system meeting the requirements of subpart I, which is attached to either:

(*a*) A structure (anchorage point) not to the scaffold or the scaffold suspension means, or:

(*b*) A supplementary platform support line, or a scaffold member which can withstand an impact force of 5,000 pounds (22.2 kN) if supplementary platform support lines are used in conjunction with automatic safety locking devices capable of stopping the fall of the scaffold in the event any of the main suspension lines fail.

(iii) Multilevel platforms and scaffolds with overhead protection shall be provided with supplementary platform support lines and automatic safety locking devices capable of stopping the fall of the loaded platform in the event any of the main suspension lines fail. Employees shall be provided with a personal fall protection system meeting the requirements of subpart I of this part. Employees working below an obstruction shall be attached to a scaffold member capable of withstanding an impact force of 5,000 pounds (22.2 kN) or greater.

(d) *Two-point adjustable suspension scaffolds (swing stages)*—(1) *Platform unit width.* Platform units shall be no more than 36 inches (91 cm) wide, unless designed by a qualified person to be stable under the conditions of use.

(2) *Platform units.* Platform units shall be securely fastened to hangers (stirrups) by U-bolts or by other equivalent means. Light-metal type platforms shall be tested and listed by a nationally recognized testing laboratory.

(3) *Securing scaffolds.* Two-point adjustable suspension scaffolds shall be secured to prevent them from swaying. Window cleaners' anchorages shall not be used for this purpose.

(4) *Bridging scaffolds.* Scaffolds designed for use as two-point suspension scaffolds shall not be bridged or otherwise connected one to another during raising and lowering operations. Two-point suspension scaffolds designed for use in multi-point suspension systems may be bridged one to another if the bridge connections are articulated and the hoists properly sized.

(5) *Passage between scaffolds.* Passage may be made from one platform unit to another only when the platform units are at the same height, are abutted, and have walk-through stirrups specifically designed for this purpose.

(e) *Single-point adjustable suspension scaffolds*—(1) *Testing and listing.* Single-point adjustable suspension scaffolds including hoists, shall be of a type that is tested and listed by a nationally recognized testing laboratory.

(2) *Combining single-point adjustable suspension scaffolds.* When two single-point adjustable suspension scaffolds are combined to form a two-point suspension scaffolds, the resulting scaffold shall meet the requirements for two-point adjustable suspension scaffolds.

(f) *Mobile manually propelled scaffolds.*—(1) *Guarding against falls.* Employees on mobile scaffolds more than 10 feet (3 m) above lower levels shall be protected from falling to lower levels along all open sides and ends of the platform unit by a fall protection system meeting the requirements of § 1910.28.

(2) *Casters and wheels.* Caster stems and wheel stems shall be secured to prevent them from accidentally falling out of their mountings.

(3) *Supporting surfaces.* Mobile scaffolds shall only be used on surfaces that are rigid and capable of supporting the scaffold in a loaded condition. Unstable objects, such as barrels, boxes, loose bricks, or concrete blocks shall not be used to support the scaffolds.

(4) *Leveling.* Screw jacks or equivalent means shall be used when leveling of the scaffold is necessary.

(5) *Securing mobile scaffolds.* Mobile scaffolds being used in a stationary manner shall be secured against unintentional movement.

(6) *Moving mobile scaffolds.* The force used to move a mobile scaffold shall be applied as close to the base as practicable, but no more than five feet (1.5 m) above the supporting surface, and provisions shall be made to stabilize the scaffold to prevent tipping during movement. Surfaces over which the scaffold is to pass shall be free of obstructions and openings that may cause the scaffold to tip.

(7) *Riding mobile scaffolds.* Employees shall not be allowed to ride on scaffolds unless the following conditions are met:

(i) The surface over which the scaffold will pass shall be within three degrees of level, and free of pits, holes, and obstructions;

(ii) The maximum height to base width ratio of the scaffold during movement shall be two to one or less. Outrigger frames may be included as part of the base width dimension;

(iii) Outrigger frames, when used, shall be installed on opposite sides of the scaffold;

(iv) Tools and materials shall be secured to prevent movement or removed from the platform unit, or toeboards shall be installed on all sides of the scaffold;

(v) Employees shall not be on any part of the scaffold which extends outward beyond the wheels, casters, or other supports; and

(vi) Employees on the scaffold shall have advance knowledge of the movement.

(8) *Height to base ratios.* Scaffolds with height to base width ratios more than four to one shall be restrained by guying, tying, bracing, or other equivalent means sufficient to prevent tipping.

(9) *Preventing swaying and displacement.* Scaffold poles, legs, posts, and uprights shall be plumb, secure, and rigidly braced to prevent swaying and displacement.

(10) *Extending platform units beyond base supports.* Platform units shall not extend outward past the base supports of the scaffold unless outrigger supports or equivalent devices are used and will assure stability.

(g) *Boatswains' chairs.*—(1) *Chair strength.* The chair shall be of a size suitable for the intended purpose, and shall be of such strength to hold the intended live load, but not less than 250 pounds (1.1 kN) without failure.

(2) *Tiebacks.* Tiebacks, if used, shall be approximately perpendicular to the structure face.

(3) *Personal fall protection system.* Each employee shall be protected from falling by body belts or harnesses, lanyards and lifelines, separate from the chair support system. The personal fall protection system shall meet the requirements of subpart I of this part.

(4) *Tackle.* Boatswains' chair tackle shall be correctly sized for the rope being used and the rope shall be "eye" spliced. The breaking strength of the suspension rope shall be at least 4,400 pounds (19.5 kN).

(5) *Seat slings for heat producing processes.* The seat sling shall be constructed of at least three-eighths of an inch (9.5 cm) diameter wire rope when the employee using it is conducting a heat-producing process.

§ 1910.31 Mobile elevating work platforms, mobile ladder stands and powered industrial truck platforms.

(a) *Application.* This section applies to the design and installation of platforms used in conjunction with powered industrial trucks, and to mobile elevating work platforms and mobile ladder stands. The three types of equipment covered by this section shall be collectively referred to as "units".

(b) *General requirements.* (1) All units shall be designed, installed and maintained to support the maximum intended loads in any configuration that may be used.

(2) All units shall be given a visual inspection prior to use for defects that could cause employee injury. The employer shall ensure that the manufacturers' specifications for inspection and maintenance are met where applicable.

(3) Defective units shall be tagged "Do not use" or with a similar legend in accordance with § 1910.145, and removed from service until repaired by a qualified person.

(4) Employees shall be trained in the safe use of units before they are allowed to use them.

(5) Each unit shall be secured to prevent unintended motion while in use.

(6) The use of any device to achieve additional height on a unit is prohibited.

(7) All surfaces shall be free of hazards that can cause puncture or laceration injuries to employees.

(c) *Mobile elevating work platforms*—(1) *Minimum loading.* Units shall be capable of supporting at least 300 pounds (135 kg).

(2) *Structural safety factors.* (i) All load-supporting structural elements of the units shall have a structural safety factor of not less than two, based on the minimum yield strength of the material.

(ii) All load-supporting structural elements of units that are made of nonductile materials (such as cast iron or fiberglass) shall have a structural safety factor of not less than five, based on the allowable unit stress of the material.

(3) *Maximum platform height.* The maximum platform height of units that only elevate in the vertical plane, without any articulation, shall not exceed four times the minimum base dimensions unless the employer demonstrates that equivalent stability is provided. When greater heights are necessary, properly fitted outrigger

frames, guying or bracing shall be provided.

(4) *Platforms.* Unit platforms shall meet the following requirements:

(i) The minimum platform width shall be 18 inches (46 cm).

(ii) The platform shall be provided with a fall protection system meeting the requirements of § 1910.28.

(iii) Toeboards meeting the requirements of § 1910.28 shall be provided on all sides of the platform except across access openings.

(5) *Hydraulic or pneumatic systems.* All components of a hydraulic or pneumatic system, whose failure could result in free descent or an uncontrollable fall of the unit, shall have a bursting strength that exceeds the pressure attained when the system is subjected to the equivalent of four times the system's design factor. All other hydraulic components shall have a bursting strength of at least two times the design factor.

(6) *Safety factor for wire ropes and chains.* Where the platform is supporting its maximum intended load by a system of wire ropes, chains, or both, the safety factor of the wire rope or chain shall not be less than eight to one, based on the ultimate strength of the rope or chain in use.

(7) *Elevating assembly.* The elevating assembly shall be equipped and maintained so that it will not allow a free descent or an uncontrollable fall in the event of the assembly's failure. Any unit equipped with a powered elevating assembly shall be supplied with a clearly marked means for emergency lowering that is accessible from the ground level.

(8) *Outriggers and stabilizers.* Outriggers and stabilizers shall be constructed to prevent unintentional retraction.

(9) *Lateral movement.* The employer shall assure before and during lateral movement of units that:

(i) The platform has been lowered to base level;

(ii) Tools and materials on the platform have been secured from falling or have been removed;

(iii) Employees are off the platform; and

(iv) The area the unit is being moved through has a firm footing and is cleared of obstructions.

(10) *Lowering platforms.* The area surrounding the unit shall be cleared of employees and equipment before the platform is lowered.

(d) *Mobile ladder stands*—(1) *Strength.* Mobile ladder stands shall be capable of supporting at least four times their intended loading. The minimum design working load shall be calculated on the basis of one or more 200 pound (91 kg) persons, together with 50 pounds (23 kg) of equipment each for a combined weight of 250 pounds (114 kg) for each employee.

(2) *Maximum work surface height.* The maximum work surface heights of mobile ladder stands shall not exceed four times the least base dimension without additional support. When greater heights are needed, outrigger frames shall be employed to achieve this minimum base dimension, or the units shall be guyed or braced to prevent tipping.

(3) *Guardrails and railing systems.* (i) Units having more than five steps or 60 inches (1.5 m) in vertical height to the top step, but less than 10 feet (3 m), placed into service before (insert date 60 days after the effective date of the final rule in the **Federal Register**) shall have a railing system on all exposed sides and ends at least 29 inches (73.6 cm) high.

(ii) Units with a maximum work surface height of at least four feet (1.2 m), but less than 10 feet (3 m), placed into service on or after (insert date 60 days after the effective date of the final rule in the **Federal Register**) shall have a railing system on all exposed sides and ends at least 30 inches (76 cm) high.

(iii) All units placed into service before (insert date 60 days after the effective date of the final rule in the **Federal Register**) with a maximum work surface height of 10 feet (3 m) or higher, shall be protected on the exposed sides and ends with a guardrail system at least 36 inches (91 cm) high.

(iv) Units placed into service on or after (insert date 60 days after the effective date of the final rule in the **Federal Register**) and with a maximum work surface height of 10 feet (3 m) or greater, shall have a guardrail system and toeboards meeting the requirements of § 1910.28 of this subpart on all exposed sides and ends.

(v) Removable gates and non-rigid members such as chains or other means to provide access are permitted in guardrail systems and railing systems provided that the access openings are appropriately guarded when not in use. Toeboards are not required in access openings.

(4) *Handrails.* (i) Units having more than five steps, or units that are 60 inches (1.5 m) or greater in vertical height to the top step, placed into service before (insert 60 days after the effective date of the final rule in the **Federal Register**) shall be equipped with handrails that are at least 29 inches (73.6 cm) high (measured vertically from the center of the step) on both sides of its steps.

(ii) Units with a maximum work surface height of four feet (1.2 m) or more, placed into service on or after (insert 60 days after the effective date of the final rule in the **Federal Register**) shall be equipped with handrails meeting the requirements of § 1910.28 of the subpart on both sides of its steps.

(5) *Steps.* Steps shall be uniformly spaced and create a uniform slope, with a rise of not less than six and one-half inches (16.5 cm) nor more than 10 inches (25.4 cm); a depth of not less than seven inches (17.7 cm); and a minimum width of 16 inches (40.6 cm). The slope created by the steps shall be a maximum of 60 degrees measured from the horizontal.

(6) *Locking the unit.* Units shall be locked in position using at least two means of locking when units are in use. Swivel casters, if used, shall be provided with a positive lock on the swivel or wheel or both.

(7) *Riding on units.* Employees shall not ride on mobile ladder stands.

(e) *Powered industrial truck platforms.*—(1) *Platforms.* Platforms shall be secured to the lifting carriage or forks of the industrial truck.

(2) *Protection from moving parts.* Employees on a platform shall be protected from the moving parts of the truck.

(3) *Overhead protection.* Overhead protection shall be provided when employees are exposed to objects falling from above.

(4) *Minimum width.* The minimum width of the platform shall be 18 inches (46 cm).

(5) *Fall protection system.* Employees on platforms four feet (1.2 m) or more off the ground shall be protected by a fall protection system meeting the requirements of § 1910.28.

§ 1910.32 Special surfaces.

(a) *Scope and application.* This section regulates fall protection for the walking and working surfaces specified herein. The requirements in other sections of this subpart apply except when they conflict with the specific requirements in this section.

(b) *Specific requirements.*—(1) *Repair pits and assembly pits.* Repair pits and assembly pits over four feet (1.2 m) but less than 10 feet (3 m) deep need not be protected by a fall protection system meeting the requirements of § 1910.28, provided that the following requirements are met:

(i) Access within six feet (1.8 m) of the edge of the pit is limited to authorized employees;

(ii) Authorized employees shall be trained to recognize and avoid the

hazards involved with work around the pit area;

(iii) Floor marking in colors contrasting to that of the surrounding area shall be applied, or rope, wire or chain with support stanchions meeting the requirements of § 1910.28(d), or a combination of these, shall be placed at a distance of at least six feet (1.8 m) from the edges of the pits; and

(iv) Caution signs stating "Restricted area," "Authorized employees only," or a similar legend, and meeting the requirements of § 1910.145 of this part shall be used to limit entry into the area to authorized employees.

(2) *Slaughtering facilities platforms.* Where the placement of guardrails would cause carcasses being processed under Federal meat inspection regulations to contact working surfaces, the perimeter protection requirements in § 1910.27 do not apply, but the following requirements do apply:

(i) Access to the platform is limited to authorized employees only.

(ii) Toeboards meeting the requirements in § 1910.28(b)(7) or equivalent similar means shall be provided at these work locations to prevent employees from sliding off or falling off the exposed perimeter.

(iii) All of the other sides of platforms shall be guarded as required by § 1910.27 by a fall protection system meeting the requirements of § 1910.28.

(iv) Employees working on the unprotected side of a slaughtering platform shall be trained to recognize and avoid hazards, such as slippery surfaces, that are involved with their work and to understand the importance of the toeboard or other available protective devices.

(3) *Loading racks.* (i) The working side of loading rack platforms which are used for access to tank cars, tank trucks, or similar equipment, need not have fall protection meeting the requirements of § 1910.28.

(ii) All of the other sides of the loading rack shall be guarded as required by § 1910.27 by a fall protection system meeting the requirements of § 1910.28.

(iii) All runways shall be at least 18 inches (46 cm) wide.

(iv) Employees who may be exposed to fall hazards shall be trained to recognize and avoid hazards associated with this type of work.

(4) *Loading docks and teeming tables.* (i) Employers are not required to install guardrail systems on the working side of platforms such as loading docks and teeming tables, where the employer can demonstrate that the presence of guardrails would prevent the performance of work.

(ii) All of the other sides of the loading docks and teeming tables shall be guarded as required by § 1910.27 by a fall protection system meeting the requirements of § 1910.28.

(iii) Employers shall ensure that employees that may be exposed to fall hazards, are trained to recognize and avoid the hazards associated with this type of work such as, but not limited to, hot surfaces and securing trailers.

(5) *Qualified climbers.* As provided in § 1910.23(a)(2), ladders and step bolts on triangulation, telecommunication, electrical power towers and poles and similar structures, including stacks and chimneys, need not have ladder safety devices, cages or wells if only qualified climbers are permitted to use these ladders or step bolts. Such qualified climbers shall meet the following requirements:

(i) Qualified climbers shall be physically capable

(demonstrated though observations of actual climbing activities or by a physical examination) of performing the duties which may be assigned to them;

(ii) Qualified climbers shall have successfully completed a training or apprenticeship program that covered hands-on training for the safe climbing of ladders or step bolts and shall be retrained as necessary to ensure the necessary skills are maintained;

(iii) The employer shall ensure through performance observations, and formal classroom or on-the-job training that the qualified climber has the skill to safely perform the climbing;

(iv) Qualified climbers shall have climbing duties as one of their routine work activities; and

(v) Qualified climbers, when reaching their work position, shall be protected by a fall protection system meeting the requirements of § 1910.28.

Appendix A to Subpart D—Compliance Guidelines

Note: The following appendix to subpart D serves as a nonmandatory guideline to assist employers and employees in complying with these sections and to provide other helpful information. This appendix neither adds to nor detracts from the obligations contained in the OSHA standards.

Section 1910.22 General requirements

1. *Surface conditions.* The purpose of this section is to provide information to assist employers and employees to assure that walking and working surfaces are maintained free of hazards such as physical obstructions, debris, protruding nails or other fasteners or similar conditions, that could cause employees to slip, trip or fall.

Some hazards, such as snow, water, or ice, which by reason of recent weather or work operations may be present on workplace surfaces, present a slippery surface problem to employers. When these conditions cannot be eliminated completely, the employer can use alternatives such as slip-resistant footwear or handrails or stair rails to aid employees in maintaining their balance on the hazardous surfaces. Normally, slippery surfaces would occur only where snowfalls or freezing weather are of such frequency to make continued clearing or shoveling of workplace parking lots and sidewalks impractical, or where continuous use of water for washing down walking and working surfaces results in constantly slippery surfaces.

An effective housekeeping program may be used to minimize fall hazards where slippery surfaces are due to temporary or intermittent conditions. Absorbents can be used to clean up a spill where oily materials or corrosive liquids are accidentally spilled onto the floor.

2. *Slip-resistance.* A reasonable measure of slip-resistance is static coefficient of friction (COF). A COF of 0.5, which is based upon studies by the University of Michigan and reported in "Work Surface Friction: Definitions, Laboratory and Field Measurements, and a Comprehensive Bibliography," is recommended as a guide to achieve proper slip-resistance. A COF of 0.5 is not intended to be an absolute standard value. A higher COF may be necessary for certain work tasks, such as carrying objects, pushing or pulling objects, or walking up or down ramps.

Slip-resistance can vary from surface to surface, or even on the same surface, depending upon surface conditions and employee footwear. Slip-resistant flooring material such as textured, serrated, or punched surfaces and steel grating may offer additional slip-resistance. These types of floor surfaces should be installed in work areas that are generally slippery because of wet, oily, or dirty operations. Slip-resistant type footwear may also be useful in reducing slipping hazards.

3. *Mobile equipment.* Mobile equipment operated in walkways or passageways creates a hazard to employees similar to any vehicular traffic. Appropriate warnings should be utilized to alert employees that mobile equipment is being used. Warning signs or mirrors can be used at intersections of walkways or passageways. Flashing lights or audible devices can be mounted on vehicles to warn employees of the presence of vehicles.

Adequate clearance must be provided to permit safe use of walkways, passageways, and aisles by employees when mobile equipment is parked in walkways, passageways, or aisles, and left unattended. Attended means that the operator is within 25 feet (7.5 m) of the vehicle and can see it [see § 1920.178(m)(5)(ii)]. Normally, adequate clearance can be considered as a one-way free passage of 18 inches (46 cm) or greater. However, consideration should be given to the number of employees using the passage; whether traffic will be in both directions; and whether the passageway is part of a means of emergency egress. (See Subpart E—Means of Egress for specific requirements.)

4. *Application of loads.* Floor loading limitations would be of greatest concern to

those employers engaged in the warehousing or storage of goods and materials. Surfaces that should receive special attention so as not to be overloaded include ramps, lifting platforms, dockboards, scaffolds and ladders.

It is important that employees involved in materials handling be made aware of the loading limitations of any surface upon which they may work or walk. Floor loading of a work surface will vary according to the nature of the work performed. For example, a work surface used as an office would not need the continued control of floor loading that would be necessary if the space was used as a warehouse.

5. *Training.* Employees who are expected to inspect, maintain, and/or repair surfaces must be trained in the skills needed to perform their duties. They should also be aware of the strength of the materials with which they are working, and the load bearing capabilities of the equipment or surfaces they are expected to maintain.

Section 1910.23 Ladders

1. *Use of ladders.* Employees should be trained and retrained as necessary to use ladders in the manner for which the ladders were designed to be used. The majority of ladder accidents are apparently due to improper use, placement or selection. The reading and understanding of the hazard warnings and safety use instruction markings that are attached to recently manufactured portable ladders that meet the ANSI standards would be helpful in promoting employee safety.

A general guideline for proper ladder placement for nonself-supported portable ladders is to place the ladder so that the climber's hands would just touch the ladder when the arms are fully extended, and horizontal while the climber is standing straight facing the ladder with the climber's toes touching the side rails at the base of the ladder.

Employers should make sure that extensions placed on ladder siderails for leveling ladders during placement are installed so that the connectors are secured to the siderails and do not affect their strength. If the ladder is to be used for an extended period of time, it should be secured to the building or structure to prevent its accidental displacement. Employees should also be made aware that the use of individual sections of multisectional ladders as single ladders, and the use of self-supporting ladders in the non-self-supporting mode (e.g., a step ladder folded up and leaned against a wall) is not a safe practice since the ladders are not designed for this use and may slip. Extension ladders need to be equipped with positive locking devices to lock the ladder at the desired climbing length before they may be used.

Employees should not climb ladders while carrying objects in their hands. They should maintain a firm hold on the rungs or siderails and have the necessary objects attached to their belt via straps or loops or have the objects hoisted up by the use of a line once they have reached their work position.

Section 1910.24 Step Bolts and Manhole Steps

1. *Step bolts.* Step bolts are bolts connected to poles, towers, or similar structures for use in ascending or descending to different levels. They are normally installed in an alternating pattern on opposite sides of the structural member to be climbed. They are seldom installed directly on opposite sides from one another, except to establish a standing or rest position, although this is an acceptable method of installation.

An effective maintenance program is required to assure the adequacy of step bolts. For example, over a period of extended use, bolts may become bent or otherwise damaged and thus be unsafe to use. Bolts should be checked to assure that they remain in proper position. Since step bolts also serve as hand grips during climbing, they should be kept free of puncture or laceration hazards. It is also important to check the point of anchorage to the structure. Often, due to changing climatic conditions, anchorage nuts may loosen, or fatigue cracks may appear. These are early signs of premature failure of a bolt, and they must not be ignored. These unsafe conditions should be corrected quickly by repair or replacement.

2. *Manhole steps.* Because of the varied environmental conditions found below ground in manhole structures, special consideration should be given to the type and strength of the materials used to manufacture the step, in order to ensure good service life.

Employees climbing through conical sections of manholes may have to climb in positions not normally used because of the design of the conical section. For example, the standards for ladders prohibit climbing ladders where the climbing side of the ladder exceeds 90 degrees from the horizontal. However, in conical sections, the design of the section may be such that climbing at angles exceeding 90 degrees may be necessary for a short distance. If ladder or step offsets or extensions cannot be installed to provide a straight climb, employees should be made aware of the hazards of climbing on the conical sections.

Rungs and steps should be corrugated, knurled, dimpled, coated with skid-resistant material, or otherwise treated to minimize the likelihood of slipping.

Section 1910.25 Stairs

Numerous hazards can cause an employee to trip, slip, or fall on stairs. Good housekeeping principles should be followed at all times. Unnecessary obstructions, debris, tools or other loose objects should be kept out of the stairway.

Where carpeting is used on stairs, special attention should be given to the pattern or design on the carpet because some carpet/rug patterns make it difficult to detect the leading edges of the stair tread. It may be necessary to highlight the leading edge of the stair with a different textured material.

If any repairs are necessary, and the work requires the use of tools and materials which would create a hazard, the stairs should be closed to employees until the repairs are made.

There should be adequate lighting on stairways when stairs are in use. Lighting should be maintained and a periodic inspection of stairs should be conducted to assure adequate lighting.

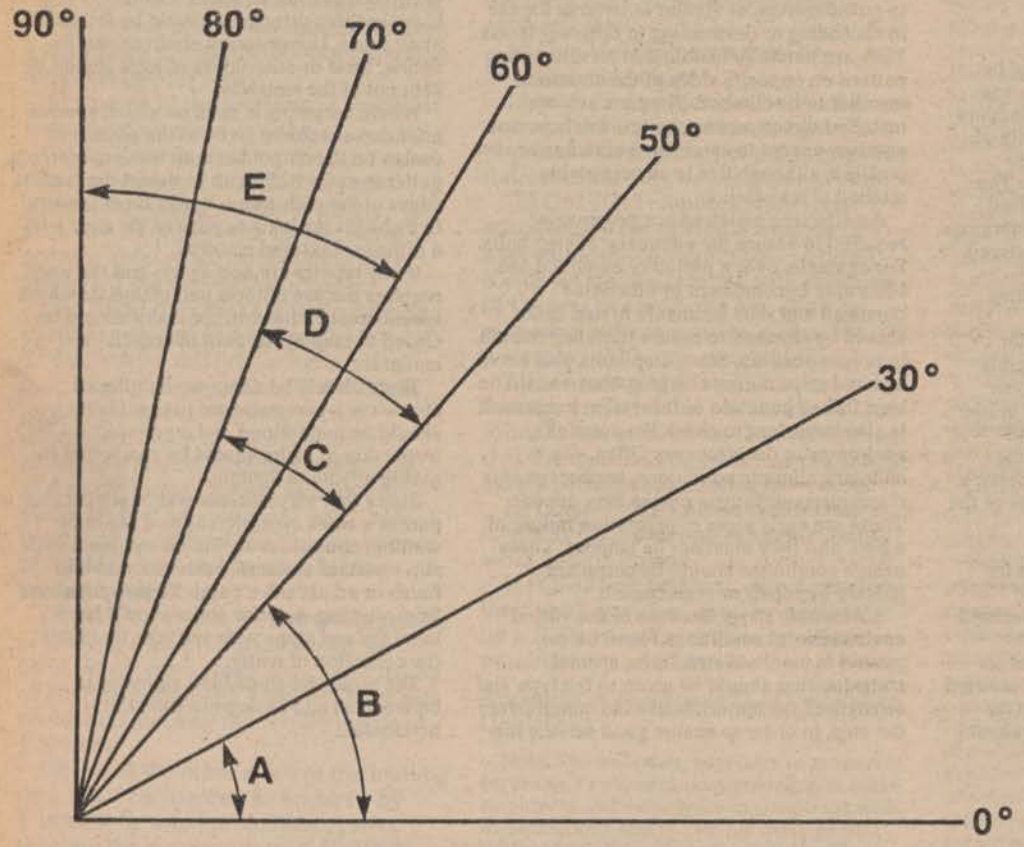
Stairs that may become wet or slippery as part of a work operation or as a result of weather conditions should be equipped with slip-resistant surfaces, such as a non-slip finish or an abrasive paint. To prevent shoes from slipping, exterior stairs should have landings and steps with surfaces that limit the collection of water.

The preferred slope for a stairway is between 30 and 35 degrees from the horizontal.

Figure D-1

Recommended Angles for Stairs, Ramps and Ladders

A -- Ramps	30° or less
B -- Typical Fixed Stair	50° or less
C -- Ship Stairs	50° to 70°
D -- Alternating Tread Stairs	50° to 70°
E -- Ladders	60° to 90°



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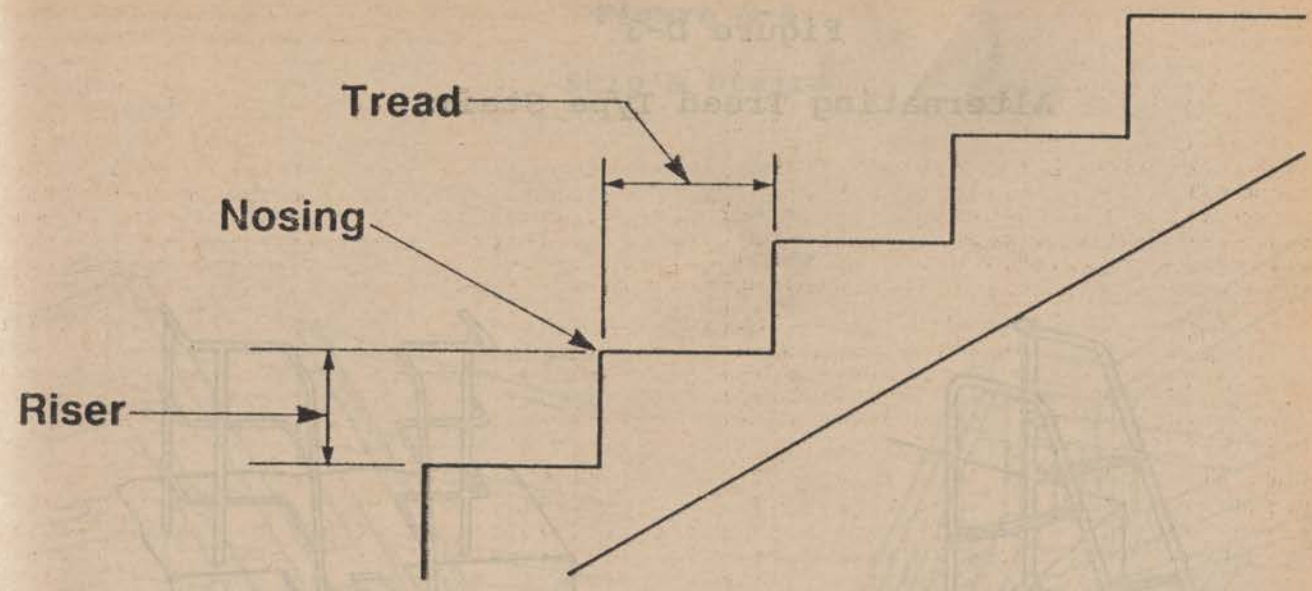


Dimensions of Typical Fixed Stair Steps:

Minimum Tread Width 22 in (55.9 cm)
Minimum Tread Depth 8 in (20.3 cm)
Riser Height 6½ in to 9½ in (16.5 cm to 24.1 cm)

Figure D-3

Alternating Tread Type Stairs

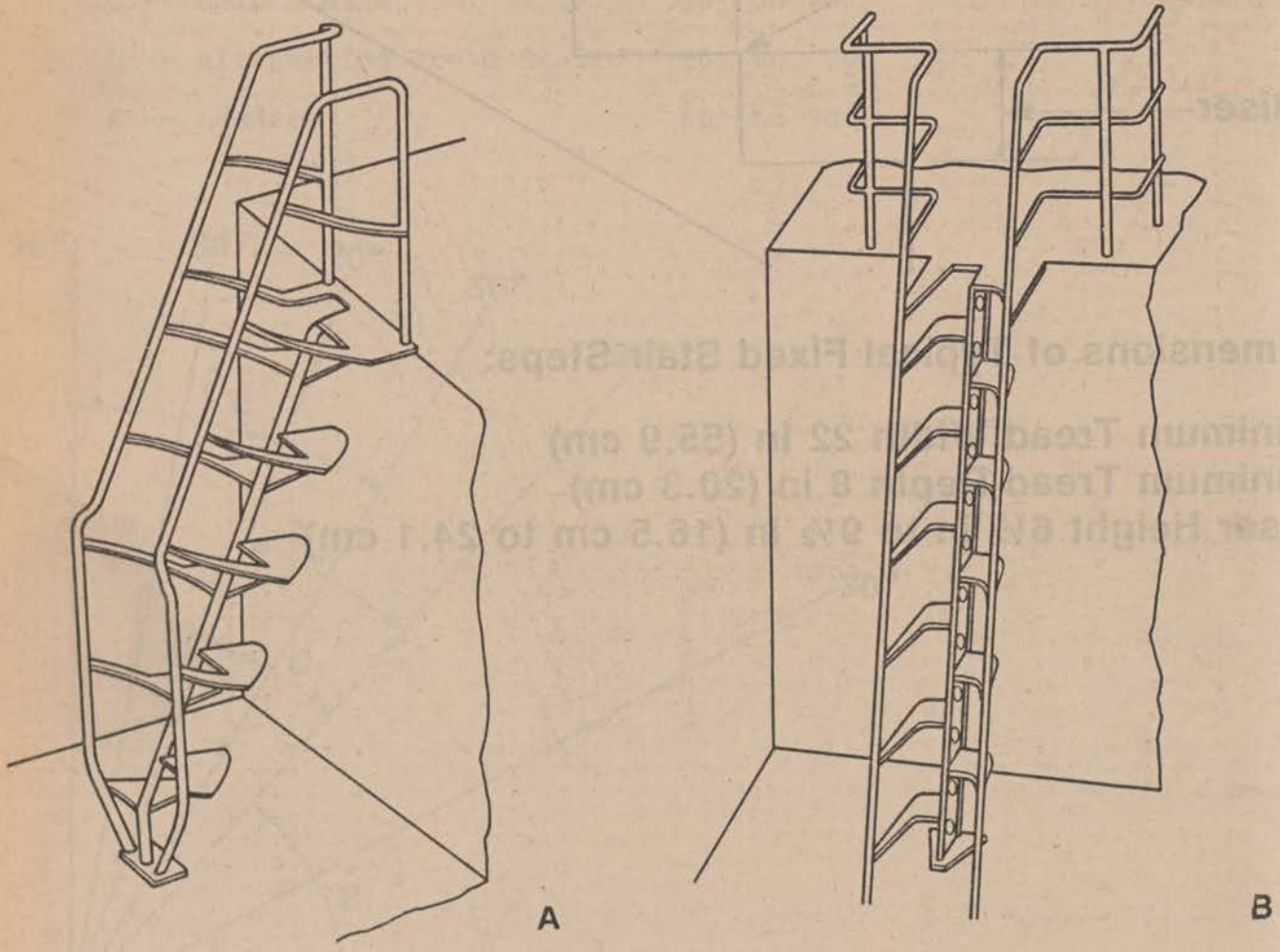
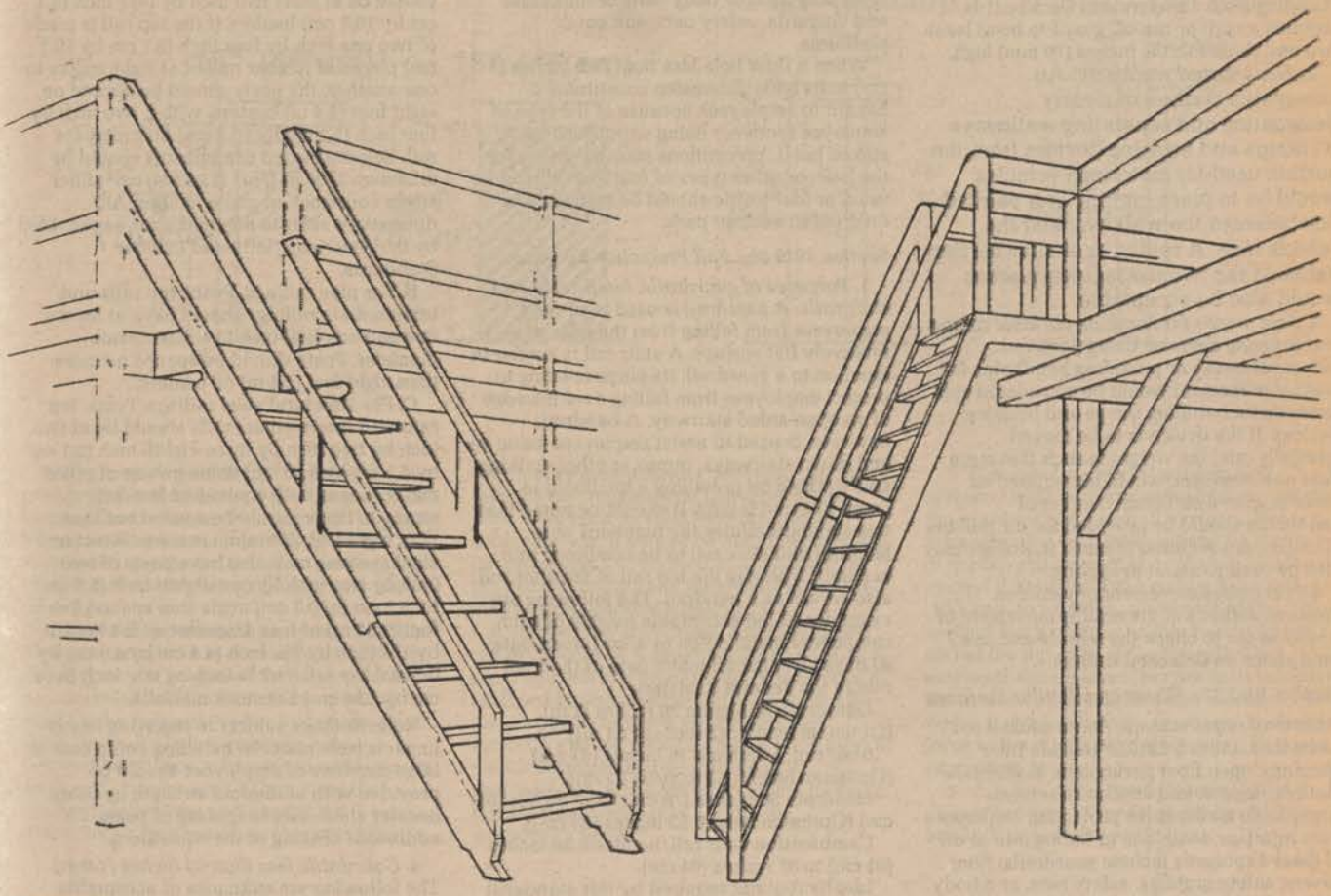


Figure D-4

Ship's Stairs



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Section 1910.26 Ramps and Bridging Devices

1. *Preventing vehicles from running off the edge of ramps and bridging devices.* An acceptable method of preventing vehicles from running off the edges of ramps and bridging devices is to attach a curb or a run-off guard to the edge. ASME/ANSI MH14.1, "Loading Dock Levelers and Dockboards," requires a curb or run-off guard to be at least two and three-fourths inches (70 mm) high.

2. *Designated walkway.* An acceptable method of clearly designating and separating walkways on ramps and bridging devices from the portion used for motorized vehicles would be to place curbing or a painted line between the walkway and the vehicle lane. A railing or similar barrier between the two passageways areas would also be acceptable.

3. *Safe means for handling portable ramps, and bridging devices.* Using powered industrial trucks or providing handholds for manual movement would be considered safe methods for handling ramps and bridging devices. If the device is to be moved manually, and the weight is such that more than one employee would be required to move it, then a sufficient number of handholds should be provided for the number of employees required to move it. Rollers may also be used to assist in moving.

4. *Preventing movement of vehicles.* Positive methods of preventing movement of a vehicle are to chock the wheels and use sand shoes on detached trailers.

Section 1910.27 Floors and Similar Surfaces

General requirements. Areas considered hazardous under § 1910.27 include floor openings, open floor perimeters, skylights, platform ledges, and similar structures. Acceptable methods for protecting employees from injury or death due to falling into or off of these exposures include guardrails, floor covers, safety gratings, safety nets, and body belts or harnesses used with lanyards. The employer is encouraged to utilize whatever device suits a specific hazard and which also meets the performance goal of fall prevention. Surfaces with slopes greater than 10 degrees from the horizontal need to be given special consideration when selecting the means of protecting employees from slips, trips, or falls. Factors that should be considered include the increased likelihood of a fall, the added momentum of the fall due to the effect of gravity, and the potential for an employee to fall or roll through the means of protection.

Acceptable means of protection for steep roofs may include body belts or harnesses and lanyards, safety nets, and catch platforms.

When a floor hole less than two inches (5 cm) in its least dimension constitutes a hazard to employees because of the type of employee footwear being worn, such as spiked heels, precautions such as covers for the hole, or other types of footwear should be used, or foot traffic should be restricted or diverted to another path.

Section 1910.28 Fall Protection Systems

1. *Purposes of guardrails, hand-rails, and stair rails.* A guardrail is used to protect employees from falling from the edge of a relatively flat surface. A stair rail is similar in function to a guardrail, its purpose being to protect employees from falling over the edge of an open-sided stairway. A handrail, however, is used to assist employees going up and down stairways, ramps or other walking and working by providing a handhold to grasp to avoid falling. It should be noted that this standard allows the functions of a handrail and stair rail to be combined into one unit, whereby the top rail of the stair rail also serves as a handrail. The following are examples of the acceptable heights of each component installed on or after (insert date 60 days after the effective date of the final rule in the **Federal Register**):

Guardrail: Minimum 39 inches (1 m). (Optimum height: 42 inches (1.1 m)).

Stair rail: Minimum 36 inches (91 cm). (Optimum height: 42 inches (1.1 m)).

Handrail: 30 inches (76 cm) to 37 inches (94 cm) (Optimum height: 33 inches (84 cm)).

Combination stair rail/handrail: 36 inches (91 cm) to 37 inches (94 cm).

Ideally (but not required by this standard) an open-sided stairway should have a 42 inch (1.1 m) stair rail, with a 33 inch (84 cm) handrail mounted on it.

2. *Examples of acceptable guardrail components.* The guardrail criteria contained in § 1910.28 is performance-oriented, and provides the employer with many options in materials to use in designing and installing a guardrail system. The following are several examples of guardrail systems considered acceptable by OSHA:

A. For wood railings: The posts should be of at least two inch by four inch (5.1 cm by 10.2 cm) lumber spaced not to exceed eight feet (2.4 m); the top and intermediate rails should be at least two inch by four inch (5.1 cm by 10.2 cm) lumber. If the top rail is made of two one inch by four inch (5.1 cm by 10.2 cm) pieces of lumber nailed at right angles to one another, the posts should be spaced on eight foot (2.4 m) centers, with a two inch by four inch (5.1 cm by 10.2 cm) intermediate rail. Selected wood components should be minimum 1500 lb-f/in^2 (1.03 kN/cm^2) fiber stress construction grade lumber. All dimensions refer to nominal sizes as provided by the American Softwood Lumber Standards.

B. For pipe railings: Posts, top rails and intermediate railings should have at least a one and one-half inch (3.8 cm) outside diameter. Posts should be spaced no more than eight feet (2.4 m) on centers.

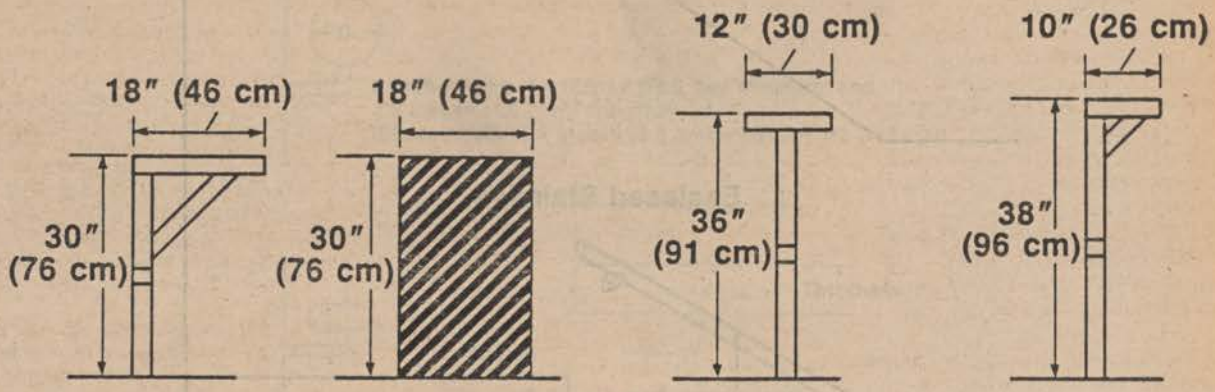
C. For structural steel railings: Posts, top rails and intermediate rails should be of two inch by two inch by three-eighth inch (5.1 cm by 5.1 cm by 0.95 cm) angle iron or of other metal shapes with equivalent bending strength. Posts should be spaced not more than eight feet (2.4 m) on centers. Structural steel systems may also have posts of two inch by two inch by one-eighth inch (5.1 cm by 5.1 cm by 0.3 cm) angle iron spaced five foot (1.52 m) or less on center with 1¾ inch by 1¾ inch by 3/16 inch (4.4 cm by 4.4 cm by 0.5 cm) top rail and ¼ inch by one inch (0.64 cm by 2.54 cm) bar stock midrails.

Note: Railings subject to receiving heavy impacts from material handling equipment or large numbers of employees should be provided with additional strength by using heavier stock, closer spacing of posts, additional bracing or the equivalent.

4. *Guardrails less than 39 inches (1.0 m).* The following are examples of acceptable guardrail systems where the height of the top edge of the guardrail may be reduced to as low as 30 inches (76 cm). Such alternatives could be used in hot-dip galvenizing operations or similar situations where employees need to work with hand tools over the guardrail system.

Figure D-5

Acceptable guardrail height/depth deminsions



5. *Openings in guardrails.* Openings in guardrails should be small enough to limit the spacing between guardrail members in any one direction to 19 inches (48 cm) or less. A 19 inch (48 cm) diameter ball or sphere can be used to measure spacing of irregularly shaped openings.

In the case of non-rigid guardrail systems, the opening criteria is considered met if the dimensions are proper while the system is not under load. If the size of the openings needs to be reduced, higher toeboards, wider midrails, multiple intermediate rails, perpendicular bars, x-bracing, panels, screen mesh, etc., can be used if they meet the strength, deflection, and permanent deformation requirements. This standard does not require midrails, provided the 19 inch (48 cm) requirement is met by some other way such as solid barriers, pickets, screening, etc. It should be noted that smaller openings may be required in areas used by the general public, and local building codes may require lesser dimensions.

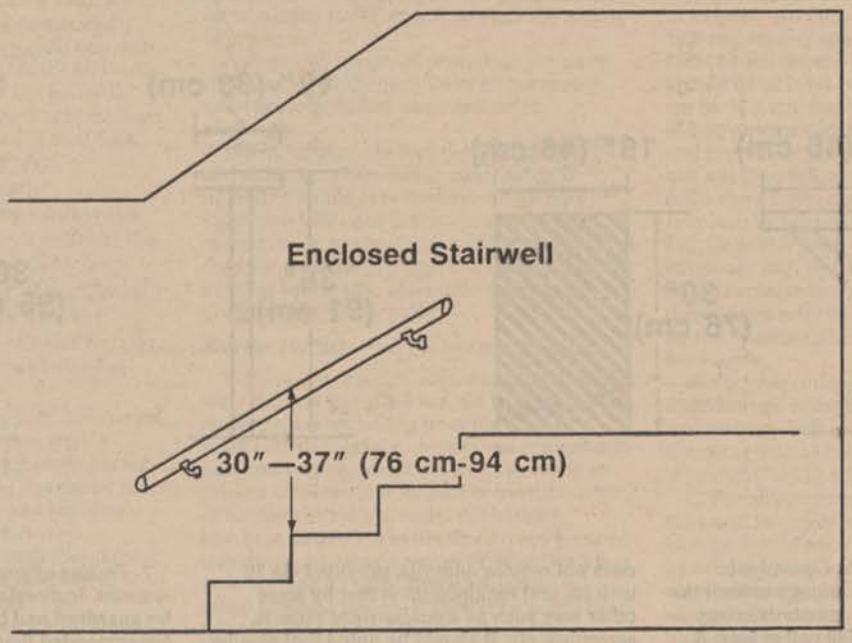
6. *Surfaces of guardrails.* An acceptable top rail would be a smooth surface such as a pipe, with normal pipe fittings or a smoothly surfaced lumber component. Examples of unacceptable top rails would be rough surfaced lumber, small diameter wire, steel or plastic banding, and guardrails with protruding objects such as splinters, nails, or bolts—all of which could injure an employee's hand.

7. *Testing of guardrail and handrail systems.* In developing and performing tests for guardrail and handrail systems, it is recommended that the test force be applied to the top rail or midrail over an area not to exceed four inches (10.1 cm) by four inches (10.1 cm). In addition, the center of the applied force must be within two inches (5.1 cm) of the top edge of the top rail. The employer should exercise care in determining the most critical locations and directions in which to apply the force (such as a horizontal force at the midpoint of the top rail between supporting posts).

8. *Handrail height requirements.* (a) A diagram of how to measure the height of a handrail is as follows:

Figure D-6

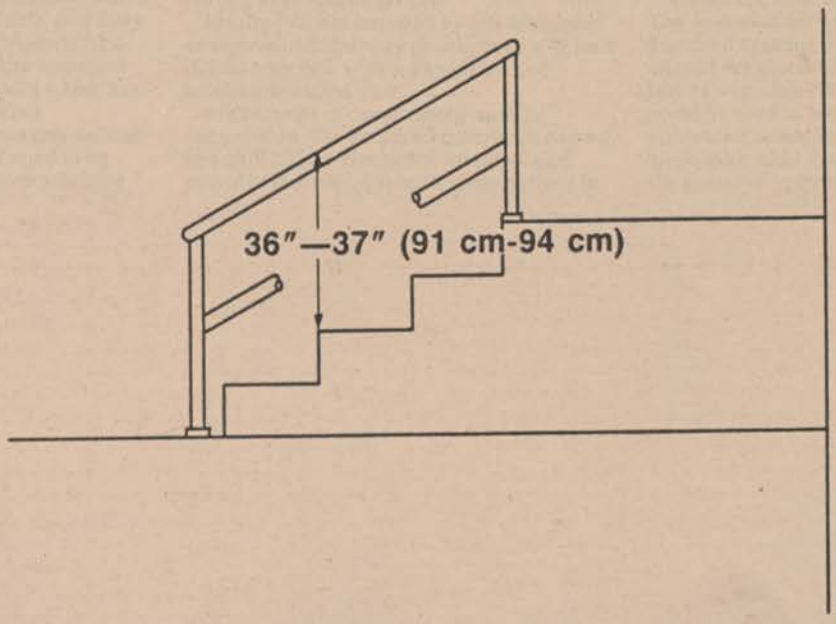
Typical Handrail Use



(b) An example of the top member of a stair railing which also serves as the handrail is shown below.

Figure D-7

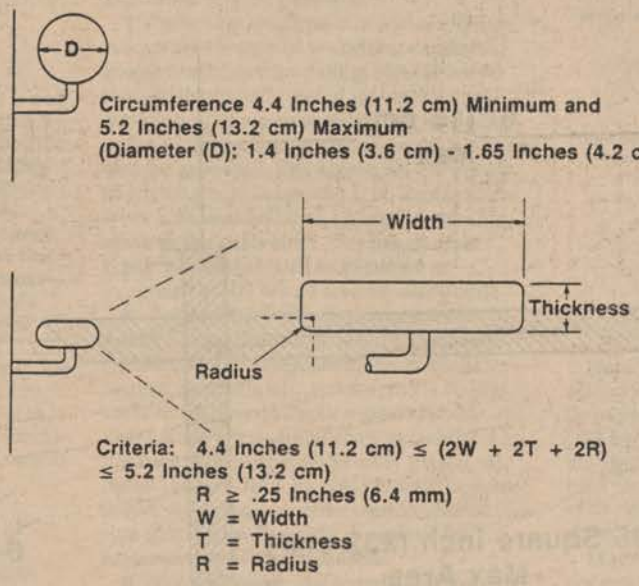
Combination Handrail and Stair Rail



9. *Handrail grip dimensions.* It is recommended that newly installed handrails be shaped and designed so that employees may use their hand grip to their best advantage. These designs permit the fingers to curl around the handrail to provide a firmer grip. The following are examples of acceptable handrail dimensions used to maximize an employee's grip.

Figure D-8

Recommended handrail grip diminsion

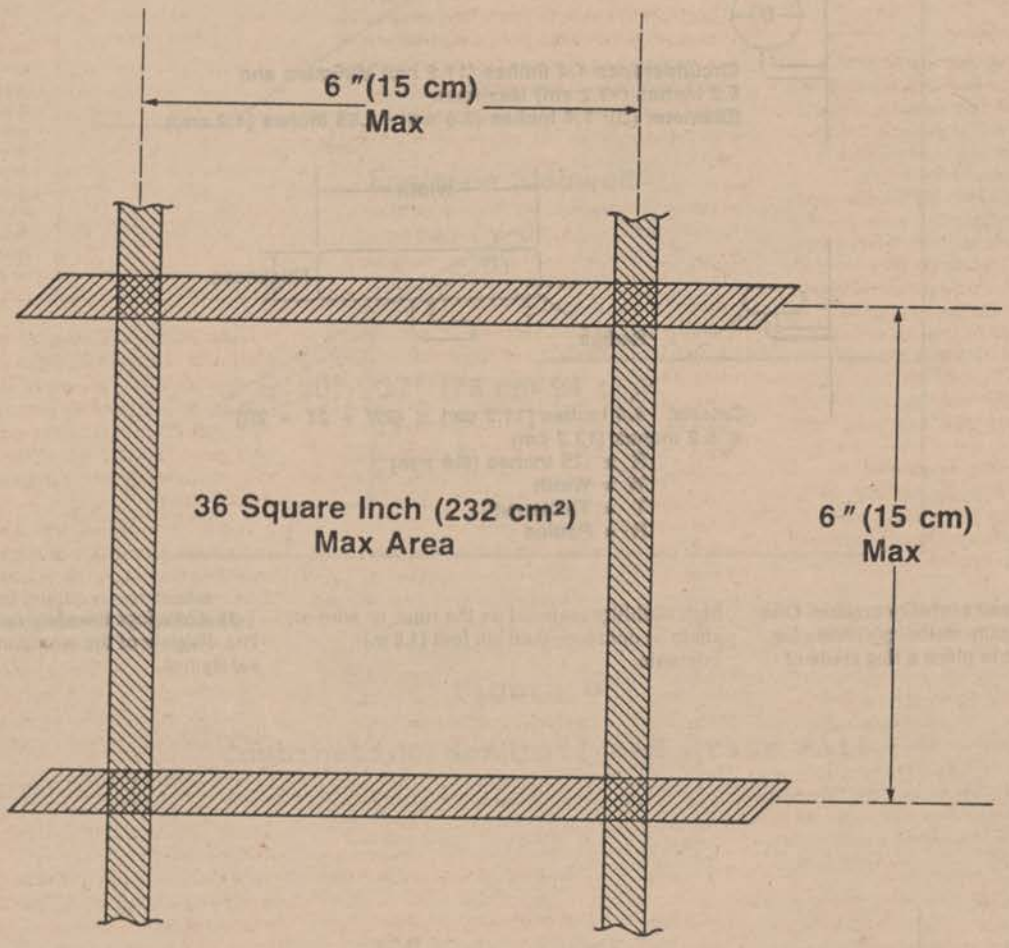


10. *Designated area visibility criteria.* One method for meeting the visibility criteria for designated areas is to place a flag made of high visibility material on the rope, or wire or chain at not more than six foot (1.8 m) intervals.

11. *Openings in safety nets.* The following is a diagram of the maximum opening in a safety net.

Figure D-9

Acceptable Safety Net Webbing (Openings)



12. *Safety net construction.* Unduly rigid material should not be used in the construction of safety nets. The use of such material could cause injuries due to the shock of a sudden stop. Elastic type materials such as nylon should be used instead of materials such as manila rope or wire rope.

13. *Safety net testing.* Most safety net designs are tested by the manufacturer. These tests are conducted on sample net panels in accordance with ANSI A10.11, "American National Standard Minimum Requirements for Safety Nets." Such testing assures the user of a suitable product. Since nets are installed in a wide variety of configurations, and provisions for proper attachments to the structure must be decided upon for each job site, each safety net installation should be tested at the work site. Such testing, as provided by the standard, consists of dropping a 400 pound (180 kg) bag of sand, 30±2 inches (76±5 cm) in diameter into the net from the highest work level to be protected by the net. Consideration should be given to testing the most critical portion of the net installation. In some cases a test at the job site may not be feasible, or it may expose employees and/or the general public to danger. In these cases the net installation must be certified to be safe by a qualified person.

Section 1910.29 Wall openings.

Wall openings are required to be protected to prevent employees from falling into or through the wall openings, and to prevent tools or other materials from falling onto employees below. Examples of acceptable systems for guarding are screens, barriers,

rails, guardrail systems, and half doors. These guards may be removable or hinged if access to the wall opening is necessary.

Windows on a stairway, landing, floor, platform, balcony, and other location could also be guarded by slats, grill work or other types of protection. Glass walls are not considered wall openings.

Section 1910.30 Scaffolds.

1. *General overview.* Section 1910.30 is not intended to require the building of scaffolds either in a specific manner or using a specific material. Scaffolds used in general industry are also used in the construction industry, and since they are essentially the same scaffolds, the requirements for similar types of scaffolds are essentially the same for the two industries. Therefore, if scaffolds meet the general industry standards they would meet the construction standards, and vice versa. Only the more common types of scaffolds that are used in general industry are specifically regulated by § 1910.30. If a particular type of scaffold is not covered in § 1910.30, the applicable requirements for the scaffold in 29 CFR part 1926, subpart L, are to be followed.

2. *Overhead protection.* Overhead protection can range from the wearing of hardhats by employees to full overhead planking, depending on the type of objects that can fall onto employees working on scaffolds.

3. *Lumber sizes.* Unless otherwise noted, stated lumber sizes are nominal. Nominal sizes refer to lumber sizes prior to dressing, as well as after dressing, even though the actual size of a piece of dressed lumber is less than its rough cut size. An example of nominal size would be a 2×4 inch (51×102 mm) piece of lumber. Traditionally, the lumber would be rough cut to 2×4 inches (51×102 mm). After dressing, the actual size is appropriately 1½×3½ inches (38×89 mm). Both the rough 2×4 inches (51×102 mm) and the dressed 1½×3½ inches (38×89 mm) lumber would be considered a nominal 2×4 inches (51×102 mm) size. Lumber References to lumber are not meant to limit the employer to the use of wood. The use of any material of equal or greater strength and durability is acceptable.

4. *Suspension rope.* Suspension ropes need to be visually inspected each day or each shift before use, and also when the rope has not been in use for prolonged periods, or after exposure to detrimental elements such as open flames, hot work, and corrosive chemicals. Proper service such as washing and treating rope after being exposed to adverse conditions, lubricating wire rope, and removing defective sections of rope, may be necessary to keep the rope in safe operating condition. Examples of defective rope include rope where there is severe localized abrasion or scraping; where there is evidence of heat damage; where there is a loss of more than one-third of the original diameter of the outside individual wires; or where there is kinking, crushing, bird caging, or other damage resulting in distortion of the rope structure.

5. *Nails used on scaffolds.* Nails used to construct scaffolds, should be driven full length, and should not be subjected to straight pulls.

6. *Snow and ice removal.* OSHA recommends that employees involved in removing snow and ice from scaffolds be protected from falls with body belts or harnesses and lanyards even though guardrails may be provided.

7. *Protecting employees below scaffolds.* Acceptable means of protecting employees below scaffolds from falling objects would include the installation of toeboards or the installation of a screen extending along the entire platform opening between the platform and the guardrail. The screen should consist of No. 19 gauge or heavier U.S. Standard wire, with one-half inch (1.2 cm) or smaller mesh or the equivalent. The use of other types of material such as plywood or expanded metal would also be acceptable.

8. *Tables.* The tables in this appendix relative to scaffolds are based on all load carrying timber members of the scaffold being a minimum of 1,500 lb-f/in² (1.03 kN/cm²) stress or construction grade lumber. All dimensions are nominal sizes as provided in the American Softwood Lumber Standards, dated January 1970. Except where otherwise noted, only rough or undressed lumber of the size specified will satisfy the minimum requirements of this standard.

9. *Wood planking.* All wood planking selected for scaffold plank use should be graded by rules established by the recognized independent inspection agency for the species of wood used. The maximum permissible spans for 2×10 inch (nominal) or 2×9 inch (rough) solid sawn wood planks should be as shown in the following table:

Maximum intended load (lb/ft²)	Maximum permissible span using full thickness undressed lumber (ft)	Maximum permissible span using nominal thickness lumber (ft)
25 (122 kg/m²)	10 (3 m)	8 (2.4 m)
50 (244 kg./m²)	8 (2.4 m)	6 (1.8 m)
75 (366 kg/m²)	6 (1.8 m)	

The minimum permissible span for 1¼×9 inch (3.2×22.9 cm) or wider wood plank of full thickness with a maximum intended load of 50 lb/ft² (244 kg/m²) should not exceed four feet (1.2 m).

10. *Fabricated planks and platforms.* Fabricated planks and platforms may be used in lieu of solid sawn wood planks. Maximum spans for such units should be as recommended by the manufacturer based on the maximum intended load being calculated as follows:

Rated load capacity	Maximum intended load
Light-duty	25 lb/ft² (122 kg/m²) applied uniformly over the entire span area.
Medium-duty	50 lb/ft² (244 kg/m²) applied uniformly over the entire span area.
Heavy-duty	75 lb/ft² (366 kg/m²) applied uniformly over the entire span area.

Rated load capacity	Maximum intended load
One-person	250 pounds (113 kg) placed at the center of the span [total 250 pounds (113 kg)].
Two-person	250 pounds (113 kg) placed 18 inches (46 cm) to the left and right of the center of the span [total 500 pounds (227 kg)].
Three-person	250 pounds (113 kg) placed at the center of the span and 250 pounds (113 kg) placed 18 inches (46 cm) to the left and right of center of the span [total 750 pounds (340 kg)].

Note: Platform units used to make scaffold platforms intended for light-duty use should be capable of supporting at least 25 lb/ft² (122 kg/m²) applied uniformly over the entire unit-span area, or a 250 pound (114 kg) point load placed on the unit at the center of the span, whichever load produces the greater shear force.

11. *Plank-type platform.* An example of an acceptable plank-type scaffold platform would be a platform composed of not less than nominal two × eight inch (7.6×20 cm) unspliced planks, properly cleated together on the underside, starting six inches (15.2 cm) from each end. Intervals between each cleat should not exceed four feet (1.2 m).

12. *Access.* Acceptable safe access to scaffold platforms could include one or more of the following:

(i) Ladders conforming to the requirements of § 1910.23. The ladders should not be placed in a manner to endanger employees on the scaffold.

(ii) Hook-on or attachable metal ladders specifically designed for use in conjunction with manufactured types of scaffolds.

(iii) Direct access from adjacent scaffolds, structures or personal hoists.

(iv) Ramps or runways and appropriate fall protection systems where applicable.

(v) Internal prefabricated scaffold rungs specifically designed by the manufacturer for use as a ladder.

(vi) Step or stair-type accessories such as ladder stands specifically designed for use with scaffolds.

13. *Counterweights.* The counterweights for suspension scaffolds should be solid, dead weight objects designed so that they will not lose their mass. Examples that may be used are: concrete blocks, steel plates or other non-flowable material.

14. *Body harnesses.* OSHA recommends that full body harnesses be used by employees instead of body belts. When subjected to an actual drop, the body harness distributes the shock more evenly over the body than does the body belt.

15. *Supplementary platform support lines.* Supplementary platform support lines may be used as points of attachments for personal fall protection systems on suspension scaffolds since they act as backups for the primary support lines. In effect, the

supplementary platform support lines serve as lifelines for the employees and do not make it necessary to require additional lifelines.

16. *Securing two-point suspension scaffolds.* In addition to direct connection to structures or buildings (except window cleaners' anchors) acceptable ways to prevent scaffold sway would include the use of angulated roping or static lines. Angulated roping is a system of platform suspension in which the upper wire rope sheaves or suspension points are closer to the plane of the structure or building face than the corresponding attachment points on the platform, thus causing the platform to press against the face of the structure or building. Static lines are independent lines secured at their top and bottom ends which are closer to the plane of the structure or building face than the outermost edge of the platform. By drawing the static lines taut, the platform is pushed against the face of the structure or building.

17. *Boatswains' chairs.* An acceptable size and strength for a boatswains' chair would be one made out of one inch (2.5 cm) or thicker wood with a 9 by 17 inch (22.9 by 43.2 cm) seat reinforced by cleats, and with bridle ropes passing through the seat and cleats and crossing diagonally beneath the seat. Seats smaller than 9 by 17 inches (22.9 by 43.2 cm) may be used when access to the work area or the work area itself necessitates a smaller boatswains' chair. Chairs may be made of materials other than wood provided they provide at least the same amount of safety as the wood chairs.

18. *Boatswains' chair rope.* An acceptable rope to be used with a boatswains' chair would be one-half inch (1.2 cm) nylon or polyester rope. Manila rope is not recommended because of its low strength, and susceptibility to deterioration that is difficult to detect by inspection.

Section 1910.31 Mobile work platforms, ladder stands, and powered industrial truck platforms

1. *Mobile work platforms and ladder stands.* Although not required by this standard, it is recommended that the employer insist on test data or a certification from manufacturers to assure that the mobile work platforms and ladder stands which the employer purchases meet the requirements of this standard.

2. *Safe operating instructions.* It is recommended that mobile elevating work platforms have instructions for safe operation displayed in a permanent and visible location, with at least the following information:

(i) Warnings, cautions, or restrictions for safe operation.

(ii) Make, model, serial number, and manufacturer's name and address.

(iii) Rated work load.

(iv) Maximum platform height.

(v) Normal voltage rating of the batteries if battery powered, or line voltage if A.C. powered.

(vi) Alternate statement of configurations and rated capacities, if applicable.

(vii) The level of electrical insulation of the work platform, if any.

3. *Standing and climbing on mobile work platforms.* Only systems that are specifically designed by a qualified person to be used with devices to increase working heights should be used when additional height is necessary. It is also recommended that when employees are climbing or descending work platforms, both hands be free to aid in climbing. Tools should be worn on a work belt or hoisted up and down by a line after the worker reaches the work position.

4. *Increasing platform heights.* Acceptable means, other than outriggers, that allow increasing the platform height of mobile ladder stands and platforms could include securing the units with chains or ropes to stabilize the units from tipping. The chains or ropes would have to have sufficient strength to hold the unit and the weight of the employee(s) as well as any other object that may be placed on it.

Section 1910.32 Special surfaces

1. *Training.* Training is an important factor for employee safety on all special work surfaces. As a minimum, the employer should institute a training program for employees to recognize and avoid the special hazards involved with the particular surface. Training should be conducted to give the employee a better understanding of the actual working conditions and hazards related to the specific hazard. Retraining may be necessary if an employee has been away from one of these activities for a prolonged period of time.

2. *Repair pits and assembly pits.* Repair pits and assembly pits are not only applicable to cars, trucks, and buses, but are also applicable to locomotives, subway and railroad cars and other operations where employees enter a pit and work on overhead objects. The use of a combination of floor markings and stanchions may be used around the exposed edges of the pits provided the overall system is continuous. Warning signs, if used to restrict entry to the pit area, do not necessarily need to be posted at the pit but may be posted in conspicuous locations around the pit area.

3. *Slaughtering facilities.* Acceptable alternative fall protection systems that can be used in slaughtering facilities instead of toeboards to prevent employee's from falling off the open side of the work platform would include the use of safety belts or harnesses and lanyards meeting the requirements of subpart I.

4. *Working sides of loading racks, loading docks, teeming tables, and similar locations.* Even though the working sides of loading racks, loading docks, teeming tables, and similar locations are exempt from the requirements of § 1910.27, it is recommended that safety belts or harnesses, or other fall protection be used whenever possible.

5. *Qualified climbers.* The qualified climber's physical condition should be such that climbing exercise will not impair health and safety. This ability can be determined by physical performance tests. A physical examination by a physician who is aware of the duties that the employee is expected to perform is acceptable. Successful completion of a training program for the type of structures that are to be climbed will also be considered as proof of the climber's physical capabilities.

It is recommended as a minimum that the training program for qualified climbers consist of classroom training and climbing training. The classroom training should consist of information on the structural characteristics, the types and significance of using safety equipment and the procedures for safe climbing. It should also include discussions of the risks involved with climbing structures and the activities to be performed on the structure, as well as discussions of emergency procedures, accident causes, and factors such as bad weather that tend to increase the risks involved in climbing.

Climbing training should consist of classroom type instruction followed by the individual observing an experienced climber performing one or more climbs on the type of structure for which the individual is being trained to climb. Actual climbing during training should be initiated under close supervision and with the use of redundant safety equipment. The rate of reduction in supervision and the use of safety equipment will be a matter of subjective judgment by the trainer. Climbers should only be permitted to work without fall protection once the employee has demonstrated the necessary ability and skill in climbing structures without fall protection.

Appendix B to Subpart D—National Consensus Standards

Note: The following appendix to subpart D serves as a nonmandatory guideline to assist employers and employees in complying with these sections and to provide other helpful information. This appendix neither adds to nor detracts from the obligations contained in the OSHA standards.

The following table lists the current national consensus standards which contain information and guidelines that would be considered acceptable in complying with the requirements in the specific sections of subpart D, to the extent that they do not conflict with the standard.

Subpart D	National Consensus Standard
§ 1910.23	ANSI A14.1, American National Standard for Safety Requirements for Portable Wood Ladders. ANSI A14.2, American National Standard for Safety Requirements for Portable Metal Ladders. ANSI A14.3, American National Standard for Safety Requirements for Fixed Ladders. ANSI A14.4, American National Standard for Safety Requirements for Job-Made Ladders. ANSI A14.5, American National Standard for Safety Requirements for Portable Reinforced Plastic Ladders.
§ 1910.24	ASTM C478, American Society for Testing and Materials Specifications for Precast Reinforced Concrete Manhole Sections.

Subpart D	National Consensus Standard
	ASTM A394, American Society for Testing and Materials Specifications for Quenched and Tempered Alloy Steel Bolts, Studs, and Other Externally Threaded Fasteners.
§ 1910.25	ANSI A64.1, American National Standard for Requirements for Fixed Industrial Stairs.
	ANSI/IES RP7, American National Standard Practice for Industrial Lighting.
§ 1910.26	ANSI MH14.1, American National Standard for Industrial Loading Dock Levelers and Dockboards.
§ 1910.27	ANSI A58.1, American National Standard for Minimum Design Loads for Buildings and Other Structure.
	ANSI A12.1, American National Standard for Safety Requirements for Floor and Wall Openings, Railings, and Toeboards.
§ 1910.28	ANSI A10.11, American National Standard for Construction and Demolition Operations—Personnel and Debris Nets.
	ANSI A10.14, American National Standard for Requirements for Safety Belts, Harnesses, Lanyards, Lifelines, and Drop Lines for Construction and Industrial Use.
	ANSI A12.1, American National Standard for Safety Requirements for Floor and Wall Openings, Railings, and Toeboards.
	ANSI A39.1, American National Standard for Safety Requirements for Window Cleaning.
§ 1910.29	ANSI A12.1, American National Standard for Safety Requirements for Floor and Wall Openings, Railings, and Toeboards.
§ 1910.30	ANSI A92.1, American National Standard for Manually Propelled Mobile Ladder Stands and Scaffolds (Towers).
	ANSI A10.8, American National Standard for Safety Requirements for Scaffolds.
§ 1910.31	ANSI A92.3, American National Standard for Manually Propelled Elevating Work Platforms.
	ANSI A92.1, American National Standard for Manually Propelled Mobile Ladder Stands.
§ 1910.32	None.

Appendix C to Subpart D—References for Further Information

Note: The following appendix to subpart D serves as a nonmandatory guideline to assist employers and employees in complying with these sections and to provide other helpful information. This appendix neither adds to nor detracts from the obligations contained in the OSHA standards.

The following references provide information which may be helpful in understanding and implementing these standards.

I. General References

A. "Accident Prevention Manual for Industrial Operations"; National Safety Council, 444 North Michigan Avenue, Chicago, Illinois 60611.

B. "The BOCA Basic Building Code"; Building Officials and Code Administrators, Inc., 1313 East 60th Street, Chicago, Illinois 60637.

C. "Southern Standard Building Code"; Southern Building Code Congress, 1116 Brown-Marx Building, Birmingham, Alabama 35203.

D. "Uniform Building Code Standards, Volume 1"; International Conference of Building Officials, 50 South Los Robles, Pasadena, California 91101.

E. "A History of Walkway Slip-Resistance Research at the National Bureau of Standards", Special Publication 565; National Bureau of Standards, National Technical Information Service, Springfield, Virginia 22151.

F. "A New Portable Tester for the Evaluation of the Slip-Resistance of Walkway Surfaces", Technical Note 953; National Bureau of Standards, National Technical Information Service, Springfield, Virginia 22151.

G. Miller, James et al. "Work Surface Friction: Definitions, Laboratory and Field Measurements, and a Comprehensive Bibliography"; The University of Michigan, Ann Arbor, Michigan 48109. (NTIS *PB 83–243634, PE 83–243626, PB 84–175926).

H. Chaffin, Don B. et al. "An Ergonomic Basis for Recommendations Pertaining to Specific Sections of OSHA Standard, 29 CFR Part 1910, Subpart D—Walking and Working Surfaces"; The University of Michigan, Ann Arbor, Michigan 48109.

I. "Accident Facts—1987 Edition"; National Safety Council, 444 North Michigan Avenue, Chicago, Illinois 60611.

J. Snyder, Richard G. "Occupational Falls"; The University of Michigan, Ann Arbor, Michigan 48109.

K. "Occupational Fatalities Related to Roofs, Ceilings and Floors as Found in Reports of OSHA Fatality/Catastrophe Investigations"; U.S. Department of Labor, Office of Statistical Studies and Analysis, 200 Constitution Avenue NW., Washington, DC 20210.

L. Ayoub, M. and Gary M. Bakken. "An Ergonomic Analysis of Selected Sections in Subpart D, Walking/Working Surfaces"; Texas Tech University, Lubbock, Texas 79409.

M. "An Overview of Floor-Slip-Resistance Research With Annotated Bibliography," Technical Note 895; National Bureau of Standards, National Technical Information Service, Springfield, Virginia 22151.

N. "Occupational Fatalities Related to Miscellaneous Working Surfaces as Found in Reports of OSHA Fatality/Catastrophe Investigations"; U.S. Department of Labor, Office of Statistical Studies and Analysis, 200 Constitution Avenue NW., Washington, DC 20210.

O. "A Bibliography of Coefficient of Friction Literature Relating to Slip Type Accidents"; Department of Industrial and Operations Engineering, College of Engineering, University of Michigan, Ann Arbor, Michigan 48104.

P. "Falls From Elevations Resulting in Injuries"; U.S. Department of Labor, Bureau of Labor Statistics, National Technical Information Service, Springfield, Virginia 22151.

II. Ladder References

A. Chaffin, Don B. and Terrence J. Stobbe. "Ergonomic Considerations Related to Selected Fall Prevention Aspects of Scaffolds and Ladders as Presented in OSHA Standard, 29 CFR Part 1910, Subpart D"; The University of Michigan, Ann Arbor, Michigan 48104.

B. "Occupational Fatalities Related to Ladders as Found in Reports of OSHA Fatality/Catastrophe Investigations"; U.S. Department of Labor, Office of Statistical Studies and Analysis, 200 Constitution Avenue NW., Washington, DC 20210.

C. "Survey of Ladder Accidents Resulting in Injuries"; U.S. Department of Labor, Bureau of Labor Statistics, National Technical Information Service, Springfield, Virginia 22151.

D. "Five Rules for Ladder Safety"; National Safety Council, 444 North Michigan Avenue, Chicago, Illinois 60611.

E. "A Consumer's Guide to the Safe Ladder Selection Care and Use"; U.S. Consumer Product Safety Commission, Washington, DC 20207.

F. "Portable Ladders"; Data Sheet 1–665–Rev. 82; National Safety Council, 444 North Michigan Avenue, Chicago, Illinois 60611.

G. "Safety Instructions for the Person Who Climbs to Work, the Care and Use of Fiberglass Ladders"; R. D. Werner Co., Inc., P.O. Box 580, Greenville, Pennsylvania 16125.

III. Stair References

A. Archea, John et al. "Guidelines for Stair Safety"; NBS Building of Science Series 120, National Bureau of Standards, National Technical Information Service, Springfield, Virginia 22151.

B. Carson, D. H. et al. "Safety on Stairs"; National Bureau of Standards, National Technical Information Service, Springfield, Virginia 22151.

C. Nelson, Gary S. "Engineering-Human Factors Interface in Stairway Treadriser Design"; Texas A&M University of Texas Agricultural Extension Service, College Station, Texas 77843.

IV. Scaffold References

A. "Occupational Fatalities Related to Ladders as Found in Reports of OSHA Fatality/Catastrophe Investigations"; U.S. Department of Labor, Office of Statistical Studies and Analysis, 200 Constitution Avenue NW., Washington, DC 20210.

B. "Analysis of Scaffolding Accident Records and Related Employee Casualties", NBSIR 79–1955; National Bureau of Standards, National Technical Information Service, Springfield, Virginia 22151. (NTIS *PB 80–161466).

C. "Scaffold Accidents Resulting in Injuries"; U.S. Department of Labor, Bureau of Labor Statistics, Washington, DC 20210.

D. "Ergonomics Considerations Related to Selected Fall Prevention Aspects of Scaffolds and Ladders as Presented in OSHA Standard, 29 CFR Part 1910, Subpart D"; The University of Michigan, Ann Arbor, Michigan 48104.

E. "Selected Occupational Fatalities Related to Powered, Two-Point Suspension Scaffolds/Powered Platforms as Found in

Reports of OSHA Fatality/Catastrophe Investigations"; U.S. Department of Labor, Office of Statistical Studies and Analysis, 200 Constitution Avenue NW., Washington, DC 20210.

V. Fall Protection References

A. "A Study of Personal Fall-Safety Equipment", NBSIR 76–1146; National Bureau of Standards, National Technical Information Service, Springfield, Virginia 22151.

B. "Guardrails for the Prevention of Occupational Accidents", NBSIR 76–1132; National Bureau of Standards, National Technical Information Service, Springfield, Virginia 22151.

C. *Investigation of Guardrails for the Protection of Employees from Occupational Hazards*, NBSIR 76–1139; National Bureau of Standards, National Technical Information Service, Springfield, Virginia 22151.

D. *A Model Performance Standard for Guardrails*, NBSIR 76–1131; National Bureau of Standards, National Technical Information Service, Springfield, Virginia 22151.

* National Technical Information Services (NTIS) Port Royal Rd., Springfield, Virginia 22151, Phone: (703) 487–4650.

3. The authority citation for subpart F of part 1910 is proposed to be revised as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable.

Sections 1910.67 and 1910.68 also issued under 29 CFR part 1911.

4. In § 1910.67, paragraph (c)(2)(v) would be revised to read as follows:

§ 1910.67 Vehicle-mounted elevating and platforms.

* * * * *

(c) * * *

(2) * * *

(v) A personal fall protection system which complies with subpart I of this part shall be worn and attached to the boom or basket when working from an aerial lift.

* * * * *

5. In § 1910.68, paragraph (b)(4), (b)(8)(ii) and (b)(12) would be revised to read as follows:

§ 1910.68 Manlifts.

* * * * *

(b) * * *

(4) *References to other codes and subparts.* The following codes, and subparts of this part, are applicable to this section. Safety Code for Mechanical Power Transmission Apparatus ANSI B15.1–1953 (R 1958) and subpart O; subpart S; and subpart D.

* * * * *

(8) * * *

(ii) *Construction.* The rails shall be standard guardrails with toeboards meeting the provisions in subpart D of this part.

* * * * *

(12) *Emergency exit ladder.* A fixed metal ladder accessible from both the "up" and "down" run of the manlift shall be provided for the entire travel of the manlift. Such escape ladders shall comply with subpart D of this part.

* * * * *

6. The authority citation for subpart N of part 1910 is proposed to be revised as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Section 1910.179 also issued under 29 CFR part 1911.

7. In § 1910.179, paragraph (c)(2) would be revised to read as follows:

§ 1910.179 Overhead and gantry cranes.

* * * * *

(c) * * *

(2) *Access to crane.* Access to the car and/or bridge walkway shall be by a conveniently placed fixed ladder, stairs, or platfom requiring no step over any gap exceeding 12 inches (30.5 cm). Fixed ladders shall be in conformance with subpart D of this part.

* * * * *

8. The authority citation for subpart R of part 1910 is proposed to be revised as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable.

Sections 1910.261, 1910.265, and 1910.268, also issued under 29 CFR part 1911.

9. In § 1910.261, paragraphs (a)(3)(ii), (a)(3)(iv), (a)(3)(v) and (a)(3)(vi) would be removed.

10. Paragraphs (b)(3), (c)(3)(i), (c)(15)(ii), (e)(4), (g)(2)(iii), (g)(8) (g)(13)(i), (h)(1), (j)(4)(ii), (j)(4)(iv), (j)(5)(i), (k)(6), (k)(13)(i) and (k)(15) of § 1910.261 would be revised to read as follows:

§ 1910.261 Pulp, paper and paperboard mills.

* * * * *

(b) * * *

(3) *Floors and platforms.* Floors, platforms, and work surfaces shall be maintained in accordance with subpart D of this part.

* * * * *

(c) * * *

(3) * * *

(i) Ladders and gangplanks with railings to boat docks shall comply with subpart D of this part, and shall be securely fastened in place.

* * * * *

(15) * * *

(ii) Where conveyors cross passageways or roadways, a horizontal platform shall be provided under the conveyor, extended out from the sides of the conveyor a distance equal to one and one-half times the length of the wood handled. The platform shall extend the width of the road plus two feet (.61 m) on each side, and shall be kept free of wood and rubbish. The edge of the platform shall be provided with toeboards or other protection to prevent wood from falling, in accordance with subpart D of this part.

* * * * *

(e) * * *

(4) *Runway to the jack ladder.* The runway from the pond or unloading dock to the table shall be protected with standard handrails and toeboards. Inclined portions shall have cleats or equivalent nonslip surfacing, and shall be in accordance with subpart D of this part. Protective equipment shall be provided for persons working over water.

* * * * *

(g) * * *

(2) * * *

(iii) The worker shall be provided with eye protection, a supplied air respirator and a personal fall protection system meeting the requirements of subpart I of this part during inspection, repairs or maintenance of acid towers. The line shall be extended to an attendant stationed outside the tower opening.

* * * * *

(8) *Chip and sawdust bins.* Steam or compressed-air lances, or other devices, shall be used for breaking down the arches caused by jamming in chip lofts. No workers shall be permitted to enter a bin unless provided with an attached personal fall protection system meeting the requirements of subpart I of this part, and with an attendant stationed at the bin.

* * * * *

(13)(i) Blow-pit openings preferably shall be on the side of the pit instead of on the top. Openings shall be as small as possible when located on top, and shall be provided with railings, in accordance with subpart D of this part.

* * * * *

(h) * * * (1) *Bleaching engines.* Bleaching engines, except the Bellmer type, shall be completely covered on the top, with the exception of one small opening large enough to allow filling, but too small to admit an employee.

Platforms leading from one engine to another shall have standard guardrails in accordance with subpart D of this part.

* * * * *

(j) * * *

(4) * * *

(ii) Guardrails shall be provided around beaters where tub tops are less than 42 inches (1.06 m) from the floor, in accordance with paragraph (b)(3) of this section and subpart D of this part.

* * * * *

(iv) When beaters are fed from the floor above, the chute opening, if less than 42 inches (1.06 m) from the floor, shall be provided with a guardrail system meeting the requirements of subpart D of this part or other equivalent enclosures. Openings for manual feeding shall be sufficient only for entry of stock, and shall be provided with at least two permanently secured crossrails or other fall protection systems that meet the requirements of subpart D of this part.

* * * * *

(5) * * *

(i) All pulpers having the top or any other opening of a vessel less than 42 inches (1.06 m) from the floor or work platform shall have such openings guarded by guardrail systems meeting the requirements of subpart D of this part or other equivalent enclosures. For manual changing, openings shall be sufficient only to permit the entry of stock, and shall be provided with at least two permanently secured crossrails, or other fall protection systems meeting the requirements of subpart D of this part.

* * * * *

(k) * * *

(6) *Steps.* Steps of uniform rise and tread with nonslip surfaces shall be provided at each press, conforming to subpart D of this part.

* * * * *

(13) * * *

(i) A guardrail complying with subpart D of this part shall be provided at broke holes.

* * * * *

(15) *Steps.* Steps or ladders complying with subpart D of this part and tread with nonslip surfaces shall be provided at each calender stack. Handrails and hand grips complying with subpart D of this part shall be provided at each calendar stack.

* * * * *

8. In § 1910.265, paragraphs (c)(3)(i), (c)(4)(v), (c)(5)(i), (c)(10), (d)(2)(ii)(*g*) and (f)(6) would be revised to read as follows:

§ 1910.265 Sawmills.

* * * * *

(c) * * *

(3) * * *

(i) *Floor and wall openings.* All floor and wall openings shall be protected as prescribed in subpart D of this part.

* * * * *

(4) * * *

(v) *Elevated platforms.* Where elevated platforms are used routinely on a daily basis, they shall be equipped with stairways or fixed ladders, conforming to subpart D of this part.

* * * * *

(5) * * *

(i) *Construction.* Stairways shall be constructed in accordance with subpart D of this part.

* * * * *

(10) *Ladders.* Ladders shall be installed and maintained as specified in subpart D of this part.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(*g*) Guardrails, walkways, and standard handrails shall be installed in accordance with subpart D of this part.

* * * * *

(f) * * *

(6) *Ladders.* A fixed ladder complying with the requirements of subpart D of this part or other adequate means shall be provided to permit access to the roof. Where controls and machinery are mounted on the roof, a permanent stairway with standard handrail shall be installed in accordance with the requirements of subpart D of this part.

* * * * *

9. In § 1910.268, paragraph (g)(1) would be revised, paragraph (g)(2) would be removed, and paragraph (h) would be revised to read as follows:

§ 1910.268 Telecommunications.

* * * * *

(g) *Personal climbing equipment.*—(1) *General.* Body belts and pole straps shall be provided and the employer shall ensure their use when work is performed at positions more than four feet (1.2 m) above the ground, on poles, and on towers, except as provided in paragraphs (n)(7) and (n)(8) of this section. Personal fall protection systems shall meet the applicable requirements set forth in subpart I of this part. The employer shall ensure that all climbing equipment is inspected prior to each day's use to determine that it is in safe working condition. Production samples of personal fall protection systems shall be certified by the manufacturer or a qualified person as having been tested in accordance with and as meeting the requirements of subpart I of this part as applicable.

* * * * *

(h) *Ladders.* Ladders, step bolts, and manhole steps shall meet the applicable requirements of subpart D of this part with the following exceptions:

(1) Portable wood ladders shall not be painted, but may be coated with a translucent non-conductive coating.

(2) Rolling ladders used in telecommunication centers shall have a minimum inside width between siderails of at least eight inches (20.3 cm).

[FR Doc. 90-7800 Filed 4-9-90; 8:45 am]

BILLING CODE 4510-26-M

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29 CFR Part 1910

[Docket No. S-057]

RIN 1218-AA48

Personal Protective Equipment (Fall Protection Systems)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: OSHA is proposing to amend 29 CFR part 1910, subpart I—Personal Protective Equipment, by adding criteria pertaining to personal fall protection systems, including fall arrest systems (lifelines and lanyards, body belts and harnesses, deceleration devices, etc.); work positioning systems (lineman's body belts and pole straps, window cleaner's belts, etc.); travel restricting systems (tether lines, etc.); and fall protection systems for climbing (ladder safety devices, etc.). In another related notice of proposed rulemaking, OSHA proposes to amend the existing standards in 29 CFR part 1910, subpart D—Walking and Working Surfaces to require and allow the use of personal fall protection systems which meet these new criteria. These two proposed rulemakings, because of their interdependency with regard to personal fall protection systems, are being propose concurrently. OSHA believes that the use of proper fall protection systems can protect employees from injury and death due to falls to different elevations. Existing standards in subpart D—Walking and Working Surfaces refer to or require the use of such systems, but provide little or no information to identify what criteria these systems must meet in order to provide employee safety. This proposal will clarify what criteria is acceptable.

Also, OSHA proposes to include three Appendices in subpart I to include test methods and procedures as well as other useful information concerning personal fall protection systems.

DATES: Comments must be postmarked by July 9, 1990. Hearing requests must be postmarked by July 9, 1990.

Notices of intention to appear, testimony and documentary evidence. Notices of intention to appear, testimony and documentary evidence for the hearing must be postmarked by August 8, 1990.

Public hearing. If OSHA receives requests for a hearing from the public, OSHA will commence a hearing on September 11, 1990.

ADDRESSES: *Comments and requests for a hearing.* Comments and requests for a hearing to be submitted in quadruplicate to the Docket Officer, Docket No. S–057, U.S. Department of Labor, Room N–2634, 200 Constitution Avenue NW., Washington, DC 20210.

Notices of intention to appear, and testimony and documentary evidence. Notices of intention to appear at the hearing, and testimony and documentary evidence which will be introduced into the hearing record, must be submitted in quadruplicate to Mr. Tom Hall, Division of Consumer Affairs, Room N3649, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210.

Public hearing. If requested by the public, a hearing will be held in Washington, DC, beginning September 11, 1990, at 9:30 a.m. in the Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: *Proposal.* Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8151.

Public hearing. Mr. Tom Hall, Division of Consumer Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3649, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8615.

The author of this proposed rulemaking is Chappell D. Pierce, Directorate of Safety Standards Programs, Occupational Safety and Health Administration.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1910.132 through 1910.140 of subpart I, Personal Protective Equipment, were promulgated by OSHA from established Federal Standards and National Consensus Standards in 1971, under section 6(a) of the Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 655 (a)). Subpart I covers all personal protective equipment in general, and contains specific requirements and criteria for eye and face protection, respiratory protection, head protection, foot protection, and electrical protective devices. No comprehensive criteria are currently included in subpart I for personal fall protection systems, although such systems are required by various standards in part 1910, for example, subparts D, F and R. The existing standards provide very few criteria for the system itself. For instance, paragraph 1910.28(g)(9), which addresses two-point suspension scaffolds, states, in part: "Each workman shall be protected by a safety lifebelt attached to a lifeline. The lifeline shall be securely attached to substantial members of the structure (not scaffold), or to securely rigged lines, which will safely suspend the workman in case of a fall." Paragraph 1910.28(j)(4), which addresses boatswain's chairs, contains an identical provision. This proposal addresses the strength and performance of these systems so as to define clearly what is meant by these existing provisions. These usage requirements, however, will remain unaffected by this proposal, until such time as they are specifically revised to reference the new criteria being proposed in this notice, as is being done in the concurrent subpart D—Walking and Working Surfaces proposal.

Information received in response to OSHA's request for information on subpart D—Walking and Working Surfaces (38 FR 24300, 41 FR 17102), which includes requirements pertaining to floor and wall openings and holes, and scaffolding, has indicated that there is a need to provide safety criteria which must be met by lifelines, lanyards, body belts and harnesses, work positioning systems, travel restricting systems, and climbing device systems. The injury information cited in the discussion below of work injury reports on fall injuries illustrates examples of systems in use which have failed to provide the necessary protection for workers. OSHA believes that systems meeting the criteria contained in this proposal will provide the necessary protection for workers.

OSHA is proposing such criteria for personal fall protection systems, using performance-oriented language, which would apply when they are specifically referenced by provisions in the accompanying subpart D proposal. In addition, a number of test methods and procedures have been developed which may be used by manufacturers and employers to demonstrate compliance with the criteria presented in this rulemaking. These test methods and procedures are included in Appendix C.

The criteria (covering proper use and inspection of equipment) and test methods are derived from various sources, including American National Standards A10.14 and A39.1; British, Canadian and French Standards; a draft standard developed through the International Standards Organization; and a National Bureau of Standards (NBS) technical report, NBSIR 76–1146, "A Study of Personal Fall-Safety Equipment", (June 1977) (Reference 15). Based on meetings held with the Fall Protection Group of the Industrial Safety Equipment Association (ISEA), and the results of testing done by some of their members to refine the draft proposed criteria and test methods for personal fall protection systems, OSHA believes that many equipment manufacturers are currently using the criteria and test methods which are included in this proposal, and that equipment is available and being used by employees that meets the proposed standard. OSHA requests comments as to the current situation in industry regarding the availability and use of equipment which meets the criteria in this proposal.

One purpose of this proposal is to provide criteria and test methods for personal fall protection systems to enable the employer to determine that a system is strong enough to provide the necessary fall protection, and that the system will not injure the employee by stopping the fall with a force that is beyond human injury tolerance. The ability of the human body to tolerate the arresting force imposed on it by a fall protection system is not directly addressed by any of OSHA's current standards with the exception of the fall protection provisions in the Powered Platforms for Building Maintenance; Final Rule (54 FR 31456).

With the exception of using these systems for additional employee protection while using suspended scaffolds, the existing OSHA standards only recognize the use of guardrails and physical barriers for employee protection against falls. Another purpose of this proposal, when applied in conjunction with the accompanying subpart D proposal, is to recognize the use of personal fall protection systems as an effective means for employee protection in situations where the use of guardrails is not feasible. OSHA believes that by allowing the use of

personal fall protection systems as an alternative to guardrails in these situations, employers will be able to provide the necessary fall protection without having to expose other employees to fall hazards while erecting a guardrail. OSHA believes that this will result in improved safety for employees, as well as allow the employer more flexibility in complying with the OSHA standards.

This proposal's requirements do not prescribe *when* personal fall protection equipment must be used. Such requirements are included in the accompanying subpart D—Walking and Working Surfaces proposal. A corresponding economic impact analysis for the use of personal fall protection systems is also included with the subpart D—Walking and Working Surfaces proposal.

Similar criteria for personal fall arrest systems were included in Appendix C of OSHA's final rulemaking for powered platforms for building maintenance, 29 CFR 1910.66, subpart F (54 FR 31408, July 28, 1989), which prescribed when personal fall protection systems must be used with powered platforms. Similar criteria for personal fall arrest and positioning systems were also included in OSHA's proposed rulemaking for fall protection in the Construction Industry, 29 CFR 1926.502, subpart M (51 FR 42718, November 25, 1986). In addition, informal public hearings were held on these OSHA proposals on February 19–21, 1986 and March 22–23, 1988, respectively. Information received in those rulemakings relative to personal fall arrest and positioning systems has been included in this rulemaking record and has been used to develop and support this proposal (References 31 and 32). OSHA has also proposed criteria for personal fall protection equipment in its Shipyard Standards (53 FR 48091, November 29, 1988) which will be coordinated with this General Industry proposal.

II. Hazards Involved

Falls to a lower level resulting in fatalities and serious injuries pose a significant risk to employees. Accident data available to OSHA indicate that employee injuries which are associated with falls to a different work level comprise a significant portion of all work related injuries. The magnitude of the injury problem is documented by a wide range of accident data, including the following: Burreau of Labor Statistics (BLS) work injury reports on ladders and scaffolds and falls from elevations: OSHA fatality/catastrophe reports on oil/gas well drilling, ladders, scaffolds, roofs, ceilings and floors, and miscellaneous working surfaces; a National Bureau of Standards (NBS) report on personal fall-safety equipment; a BLS estimate of the number of fall related injuries occurring nationally; an excerpt from the BLS Supplementary Data System (SDS) data for the State of California; and a report on injuries occurring in the State of New York. (References 5, 6, 7, 8, 9. 10, 11, 15, 19, 21, 22, 26 and 29.) The following discussion is based largely on these reports. This information, for the most part, includes injuries and fatalities which have occurred in the construction industry and the maritime industry, as well as in general industry. These data are included to profile the problem of fall hazards. As mentioned previously, this proposal is one of a number of actions which OSHA is proposing to address the cause of accidental injuries which result from falls. Other proposals in the construction (51 FR 42680) and maritime standards (53 FR 48092) have been proposed to address fall hazards in these industries.

A Bureau of Labor Statistics (BLS) study, "1985 SDS Current Cases Involving Disability," indicates that in 1985 over 83,000 injuries that involved one or more lost work days in the 23 states participating in the survey, resulted from falls from an elevation. The injuries represent over seven percent of the over one million total injuries involving disability in these states. Another BLS study, "Occupational Injuries and Illnesses in the United States by Industry, 1985," BLS Bulletin 2278, May 1987, indicated that falls to the same or different levels accounted for nine percent of all deaths of employees in workplaces with 11 or more employees. Nearly 3 of 5 of the deaths occurred in non-construction work activities. OSHA has estimated therefore, based on those reports, that over 300 deaths and thousands of injuries resulted from falls alone in the year 1985 (References 14 and 30).

A Bureau of Labor Statistics (BLS) survey in an earlier year of all industries of 25 states and one territory indicates that there were 169,442 injuries involving walking and working surfaces. These injuries represented 13.5 percent of the total injuries reported. The survey also indicates that falls to a different level are a significant sub-category, accounting for 6.2 percent of the total lost time injuries reported (Reference 21).

The State of California reported 56,613 injuries in one year involving walking and working surfaces (all industries), which accounted for 19.2 percent of the total number of injuries that year. Of these injuries, 24,179 involved falls to a different level (Reference 26).

A five-year all industry summary of closed compensation cases in the State of New York indicates that 120,682 injuries were associated with walking and working surfaces. Falls to a different level represented 33.3 percent of the 120,682 working surface injuries (Reference 22).

A BLS all industry work injury report survey of scaffold accidents (25% of which were in non-construction work) provides information on how individual accidents occurred, and what type of equipment was involved. The survey indicates that falls from scaffolds account for 80 percent of the injuries included in the study. Of particular interest, the survey also shows that only two percent of the injured workers were wearing safety belts or harnesses. In most of these cases, even where the safety belts or harnesses were worn, they were not tied off properly (Reference 5).

Another BLS all industry work injury report on fall injuries (Reference 29) indicates that 74 (10 percent) of the workers surveyed were provided with belts, but were still injured, primarily because three-fourths of these workers were not attached to lifelines or structures. The report indicated 59% of the injured were in non-construction industries. Of the 16 workers who were actually using personal fall protection at the time of their falls, 10 were wearing safety belts tied off with lanyards, while six were using safety belts with pole straps. Four of the 16 workers indicated that fall protection equipment stopped their falls, although each sustained a back injury. One of the four commented that his protective equipment prevented a fall of approximately 50 feet.

The BLS report further states that fall protection devices failed to stop the fall of the other 12 workers. Five workers fell while using pole straps. Of these five, three were climbing utility poles and 'gaffed out' when their climbing spikes failed to hold; one attached his pole strap to a hook which gave out; and the fifth said his safety belt broke. Of the remaining seven workers who were using fall protection, one fell 10 feet to the ground because his lanyard was too long. Another worker hooked his lanyard to a pole on a scaffold which broke when he fell against it, and one worker fell after he hooked his belt directly to a structure without fully closing the hook. Three of the workers who unsuccessfully used safety belts and lanyards did not indicate which part of the system failed.

OSHA also prepared a report (construction and general industries), "Occupational Fatalities Related to Scaffolds as Found in Reports of OSHA Fatality/Catastrophe Investigations," which provides some causal information about specific serious accidents (Reference 9). The report covers a four year period and indicates that 386 reports were received by OSHA involving working surfaces. Of these, 82 (21 percent) were identified as separate incidents, resulting in 86 deaths. All accidents discussed above involved falls to a different elevation. In addition, suspended scaffold equipment failures (usually as a result of improper operation procedures), lack of proper guardrails, and non-use of fall protection systems (lifeline, lanyard and safety belt) were identified in the report as problem areas. The report states, "Almost all of the workers died because of failure to use or use properly personal protective equipment and scaffold guarding." Several accidents involved failures of personal fall protection due to improper use. For example, in one case a lifeline broke after the employee fell 40 feet; in another, the employee slipped through a body belt.

Other OSHA fatality/catastrophe reports covering construction and general industries (roofs, ceilings, floors and miscellaneous working surfaces) also document the need for proper use and maintenance of personal fall protection systems (References 10 and 19). Two of the reported accidents involved the failure of window cleaners' belts. In another, a telephone employee fell out of his body belt.

In summary, the accident data outlined above support the need for the proper design and use of fall protection systems. OSHA notes that even after allowing for the reduction in reported injury and death in the studies conducted after OSHA promulgated and began to enforce its standards, compared to those conducted before OSHA, the risk of employee exposure to hazards associated with falling to or from walking and working surfaces remains significant.

Employee protection against fall hazards can be provided by several means, including guardrails, nets and personal protective equipment. In this proposal, OSHA is proposing to revise Subpart I to include criteria for personal fall protection equipment to ensure that personal fall protection systems operate and are used safely. The subpart D proposal will address requirements for guardrails and safety nets. OSHA believes that the proposed criteria for personal fall protection equipment will significantly reduce the number of worker injuries and fatalities by recognizing the use of such equipment as a means of protection from falls to a lower level, and by assuring that such equipment will perform properly and not cause injury to an employee.

The current OSHA General Industry standards only recognize the use of guardrails for employee protection against falls. In many cases the installation and use of guardrails is not feasible, and personal fall protection is the only practical means for employee protection. One purpose of this proposal is to encourage the use of personal fall protection as an effective measure for employee protection from fall hazards. It should be recognized that this proposal contains only the criteria to be met by personal fall protection equipment, and does not impose the duty to use such equipment. The Subpart D-Walking/Working Surfaces proposal, which is being proposed concurrently, includes requirements for using the equipment. Requirements to use personal fall protection equipment contained in other subparts of the General Industry standards will remain unaffected until such time as these subparts are revised to reference specifically the criteria in Subpart I.

OSHA is proposing performance-oriented criteria for personal fall protection systems to allow flexibility in the design of the equipment. In those limited instances in which part 1910 does currently provide requirements for safety belts and lifelines, such as § 1910.66(d)(8) (safety belts and lifelines for powered platforms), OSHA has determined that the proposed provisions do not conflict with the present rules. In addition, when these current safety belt and lifeline requirements are revised by other OSHA proposals, OSHA may simply delete those requirements and reference the new provisions in this proposal, if the record for the other proposals supports identical criteria for personal fall protection equipment.

III. Summary and Explanation of the Proposed Standard

OSHA proposes to add four new sections in subpart I, Personal Protective Equipment, to cover personal fall protection equipment. Section 1910.128 contains definitions and general provisions applicable to all personal fall protection systems which are contained in §§ 1910.129 through 1910.131. The general provisions contain design criteria common to components used in all systems, as well as general inspection and training requirements.

Section 1910.129 covers personal fall arrest systems. This section will cover equipment such as body belts, body harnesses, lifelines, deceleration devices (i.e., rope grabs and rip-stitch lanyards) and lanyards.

Section 1910.130 covers positioning device systems. This equipment is used to support an employee in a work position, and includes lineman's body belts and pole straps, window cleaners' belts, saddle belts, rebar belts and chain assemblies, and restraint lines.

Section 1910.131 covers personal fall protection systems which are designed to protect employees during the climbing of ladders, towers, etc. This section includes criteria for ladder safety devices, limited velocity descent devices, and automatic pay-out and self-retracting lifelines.

In addition to adding these four new sections, OSHA proposes to add non-mandatory appendices to subpart I to provide information which will help the employer in selecting and using the equipment in workplace situations. One of these appendices, Appendix C, includes test methods for personal fall protection systems. The following discussion provides a more detailed explanation of the proposed provisions.

Section 1910.128 Definitions and General Requirements for Personal Fall Protection Systems

OSHA proposes to add a new section, § 1910.128, in Subpart I, Personal Protective Equipment, which contains definitions and general provisions for elements of personal fall protection systems which are common to the three types of systems contained in this proposal. Sections 1910.129, 1910.130 and 1910.131 contain the performance criteria for personal fall arrest systems, positioning systems, and systems used for protection during climbing, respectively.

Existing OSHA standards call for the use of these systems. However, OSHA believes that the current standards do not provide adequate criteria for the performance which these systems must provide. OSHA is proposing to define these systems more clearly, and to provide proper criteria for their performance. The following is an explanation of the definitions and general requirements contained in § 1910.128.

Proposed paragraph (a) notes that § 1910.128 establishes definitions for terms used in § 1910.128 through § 1910.131, together with training and inspection requirements (paragraphs 1910.128 (c)(14) and (c)(15)), and the criteria for components, such as body belts and lifelines, which are applicable to all fall protection systems.

Proposed paragraph (b) defines key words used in the proposed standard. Although most of the proposed definitions are straightforward, several of them warrant further discussion and explanation.

"Deceleration device" is defined as that type of personal fall arrest system and its components which dissipate a substantial amount of energy during a fall arrest by means other than the simple stretching of a rope or line. It includes all devices (such as rope grabs, rip stitch lanyards, special woven lanyards, automatic-self retracting lifelines) other than a rope, wire, chain or webbing lanyard.

"Personal fall arrest system" is defined as the system and components that are used to arrest the fall of employees who have fallen from a work surface. This type of system differs from a positioning device system in that the primary purpose of the personal fall arrest system is to arrest safely an employee who has fallen, while positioning device systems are used primarily to help to prevent a fall.

"Personal fall protection system for climbing activities" is a system which is designed to protect an employee while ascending or descending. It is primarily used for ladder safety, but may also be used while climbing structural members and step bolts. This system either stops an employee from falling or controls the employee's falling speed.

"Positioning device system" is defined as a system which is used to support or aid an employee in working with both hands free at a given elevated surface, such as a wall or window sill. Again, the primary difference between a positioning device system and a personal fall arrest system is that the positioning device supports an employee to prevent a fall, while a personal fall arrest system is used to stop the descent of an employee who has actually fallen from an elevated surface. This explains why workers connected to personal fall arrest systems encounter higher forces than workers attached to positioning device systems, and underscores why the criteria for personal fall arrest systems are more stringent than those for positioning device systems.

"Qualified person" is defined as a person with a recognized degree or professional certificate and extensive knowledge and experience in the subject field who is capable of design, analysis, evaluation and specifications in the subject work, project or product. This definition is used in conjunction with the requirements of paragraphs (c)(9) and (c)(10) of § 1910.128, which address the proper design, installation and use of horizontal lifelines and anchorages. This is the same definition for "qualified person" which is used in § 1910.66, Appendix C, of the powered platform standard.

"Restraint line" is defined as a device which is attached between the employee and an anchorage to prevent the employee from walking or falling off an elevated surface. It has been treated as a "positioning device system" in the proposed standard, although its function is somewhat different. It does not support an employee at an elevated surface, but, rather, prevents the employee from leaving the elevated surface or work position. The forces encountered with a restraint line system are much less than those experienced with a fall arrest system, and are similar to those encountered with a positioning device system.

Proposed paragraph (c) contains the general provisions applicable to all personal fall protection systems.

In paragraphs (c)(1) and (c)(2), OSHA is proposing that connectors used in personal fall protection systems be made of materials equivalent to or better than drop forged, pressed, or formed steel, and that the materials be protected from corrosion. In addition, the surfaces and edges of connectors are to be smooth. These requirements are intended to ensure that connectors retain the necessary strength characteristics for the life of the fall protection system and under expected use conditions, and that the surfaces and edges do not cause damage to the attached belt or lanyard.

Paragraph (c)(3) specifies the strength criteria for lanyards, and vertical lifelines. These limits are based on the general requirement, taken from the ANSI A10.14–1975 Standard, that a personal fall arrest system have an arresting force not to exceed 10 times gravity. Assuming a worker design weight of 250 pounds (113 kg), the maximum permitted force would be 2,500 pounds (11.1 kN) (250×10=2,500). Applying a safety factor of at least two for the components of the personal fall arrest system, these components must then have a minimum strength of 5,000 pounds (22.2 kN), which is the basis for the strength requirements for these components. (The test methods contained in Appendix A may be used to demonstrate that the assembled personal fall arrest system also maintains a safety factor of at least two.) Paragraphs (c)(5) and (c)(6) contain similar strength criteria, requiring that self-retracting lifelines and lanyards (which do not automatically limit free fall distance to two feet (0.61 m) or less) be capable of sustaining a minimum load of 5,000 pounds (22.2 kN), and that dee-rings and snap-hooks be capable of sustaining a minimum load of 5,000 pounds (22. kN). Paragraph (c)(4) would require the components of self-retracting lifeline/lanyard devices to sustain a load of 3,000 pounds (13.3 kN) with the lifeline or lanyard in the fully extended position. The lower strength requirement of 3,000 pounds (13.3 kN) is based on permitting a very limited free fall distance while maintaining a safety factor of at least two.

In paragraph (c)(7), OSHA is proposing that dee-rings and snap-hooks be proof-tested to a minimum tensile load of 3,600 pounds (16 kN) without cracking, breaking or taking permanent deformation. This proof test would assure a safety factor of at least two to one. Comments and testimony received on Appendix D of OSHA's powered platform proposal (Reference 31), discussed whether or not 100 percent proof-testing (testing each part before use) of snap-hooks and dee-rings is necessary to assure that the proposed requirement for a tensile strength of 5,000 pounds (22.2 kN) is met. OSHA's intent is to require that snap-hooks and dee-rings not fail to a degree that they will not sustain a load of 5,000 pounds (22.2 kN). Thus, permanent deformation of the components is allowed during sample testing at 5,000 pounds (22.2 kN) provided that the part can still support the load. Commenters were not concerned with this strength requirement, but rather that heat treating and other manufacturing processes be properly followed. It was recommended that proof-testing of 100 percent of these components be added to the strength requirement to assure that the strength requirement is met, since it was the commenters' experience that the heat treating and other manufacturing processes used for these parts did not always result in the desired strength of the parts (which when proof-tested showed some parts to be only half their intended strength). OSHA agreed with the recommendations provided during the powered platform rulemaking and required 100 percent testing of snap-hooks and dee-rings in the final rule Because of expressed concerns and the performance nature of this proposal OSHA is proposing in paragraph (c)(7) that dee-rings and snap-hooks be proof tested to a minimum tensile load of 3,600 pounds (16 kN) without cracking, breaking, or permanent deformation but it does not specify 100% proof testing.

In paragraph (c)(8), OSHA is proposing requirements for snap-hook design. Many comments and much

testimony were received on Appendix D of OSHA's powered platform proposal (Reference 31) relative to snap-hook design. Many commenters recommended that only locking snap-hooks be allowed due to the possibility of non-locking snap-hooks accidentally becoming disengaged during use. A number of accidents involving accidental disengagement ("roll-out") were cited in support of this position. Other commenters argued that locking snap-hooks would not always prevent "roll-out." In addition, they pointed out that non-locking snap-hooks can be used safely as long as they are used properly. In particular, it was explained that a non-locking snap-hook must be matched with a dimensionally compatible attachment. Several commenters expressed the opinion that a locking snap-hook may also disengage if used with an incompatible connection. There is no evidence suggesting that locking snap-hooks have accidentally disengaged. In addition, comments and testimony received clearly supported a position that locking snap-hooks were superior to non-locking snap-hooks in minimizing "roll-out" accidents.

OSHA believes that the powered platform record shows that non-locking snap-hooks can be used safely with dimensionally compatible attachments and that, if dimensionally incompatible attachments are used, locking snap-hooks will perform significantly better than non-locking snap-hooks in minimizing the possibility of roll-out. (A dimensionally compatible combination is one where the diameter of the dee-ring to which a snap-hook is attached is greater than the inside length of the snap-hook measured from the bottom (hinged end) of the snap-hook keeper to the inside curve of the top of the snap-hook, so that no matter how the dee-ring is positioned or moves (rolls) with the snap-hook attached, the dee-ring can not touch the outside of the keeper so as to depress it open.) In addition, OSHA believes that locking snap-hooks can be designed to prevent "roll-out" even if connected to incompatible attachments. Therefore, OSHA is proposing in paragraph (c)(8) that snap-hooks either have compatible dimensions in relation to the member to which they are connected so as to prevent unintentional disengagement of the snap-hook by depression of the snap-hook keeper by the connected member, or that they shall be a locking type snap-hook designed to prevent disengagement of the snap-hook by the contact of the snap-hook keeper with the connected member.

Comments were also received during the proceedings on OSHA's powered platform proposal concerning horizontal lifelines, and anchorages. These comments were concerned with the difficulty of designing horizontal lifelines which could support 5,000 pounds (22.2 kN) per employee, and with the margin of safety in the proposed requirement for anchorage strength. Several of these commenters recommended that anchorages and horizontal lifelines be selected or designed by a qualified person. It was recommended that the strength of anchorages be a minimum of twice the potential dynamic loading force if certified by a qualified person, and 5,000 pounds (22.2 kN) strength if not certified. It was also recommended that horizontal lifelines be designed by qualified persons. OSHA agrees in principle with these comments and is proposing in paragraph (c)(9) that horizontal lifelines be designed, installed and used, under the supervision of a qualified person, as a part of a complete personal fall arrest system which maintains a safety factor or at least two. In paragraph (c)(10), OSHA proposes that anchorages be capable of supporting a minimum load of 5,000 pounds (22.2 kN) per employee attached, or be designed, installed and used, under the supervision of a qualified person, as part of a complete personal fall arrest system which maintains a safety factor of at least two. Paragraph (c)(11) proposes that restraint lines have a minimum breaking strength of 3,000 pounds (13.3 kN). A National Bureau of Standards (NBS) report (Reference 15) recommends a breaking strength in excess of 2,000 pounds (8.9 kN). OSHA believes that a breaking strength of 3,000 pounds (13.3 kN) is reasonable in view of the strengths and sizes of rope which are commercially available, and the wear and tear expected during use.

In paragraph (c)(12), OSHA is proposing that lifelines and carriers not be made of natural fiber rope. The NBS report (Reference 15) advises against its use due to unpredictable deterioration.

In paragraph (c)(13), OSHA is proposing that snap-hooks not be connected to each other. This provision would prohibit a method of attaching snap-hooks which is known to be unsafe because snap-hooks may accidentally disengage during use. This provision is based on paragraph 3.2.3.2 of ANSI A10.14–1975.

In paragraph (c)(14), OSHA is proposing that personal fall protection systems or components be used only for employee protection. The purpose of this provision is to avoid deterioration of the equipment which can be caused by improper uses and types of loads.

In paragraph (c)(15), OSHA is proposing that personal fall protection systems and their components which have been subjected to impact loading be removed from service, and that they not be used again until the system has been inspected and determined by a competent person to be undamaged and suitable for reuse. Impact loading weakens the fall protection system, and also, particularly in the case of lanyards, greatly reduces the energy absorbing characteristics of the system. Thus, if the system were to be used a second time, without inspection, higher forces could be transmitted to the employee and the system. This might result in injury to the employee. This requirement is based on paragraph 3.3.8 of ANSI A10.14–1975.

In paragraph (c)(16), OSHA is proposing that the employer train employees who use these systems to be knowledgeable concerning the application limits of the system; the proper hook-up, anchoring, and tie-off techniques; methods of use; and proper methods for inspection and storage. OSHA believes that employees must be thoroughly trained in all aspects of the system in order for the fall protection system to be capable of providing the necessary protection.

Proposed paragraph (c)(17) contains the provisions applicable to inspections of personal fall protection systems. In this paragraph, OSHA is proposing that the fall protection system be visually inspected for defects or damage prior to each use, and that defective or damaged equipment be removed from service if its strength properties may have been weakened. This inspection need not involve testing nor impact loading of the system.

Section 1910.129 Personal Fall Arrest Systems

OSHA is proposing to add a new section, § 1910.129, in subpart I, Personal Protective Equipment, to provide criteria for personal fall arrest systems. Existing OSHA standards, including standards currently under revision, such as those for walking/working surfaces, call for the use of such equipment as safety belts, lifelines and lanyards. However, OSHA believes that the current standards provide inadequate guidance regarding what OSHA would consider to be an acceptable fall arrest system.

Therefore, OSHA is proposing performance-oriented criteria for personal fall arrest systems to address this concern. The following discussion explains the provisions of the proposed

standard. In addition, OSHA raises a number of issues at the end of this discussion to encourage interested persons to provide further information which the Agency can use in developing the final rule.

Proposed paragraph (a) Scope and application, provides that proposed § 1910.129 applies only when referenced by a specific OSHA standard. Proposed § 1910.129 covers systems used for arresting the free fall of an employee, including body belts, body harnesses, lanyards, deceleration devices, lifelines and their associated components. These systems are referred to in ANSI A10.14–1975 as "Class I" and "Class III" systems. The requirements in proposed § 1910.129 are not intended to apply to positioning device systems and ladder safety devices, as that equipment is covered in proposed §§ 1910.130 and 1910.131 respectively, as discussed below. Proposed paragraph (b) contains the system performance criteria for personal fall arrest systems. A significant volume of testimony and comments was received during the proceedings on OSHA's powered platform proposal concerning the criteria for system performance. It was pointed out that the draft International Standards Organization (ISO) standard on personal fall equipment (Reference 20) would effectively bar the use of body belts in fall arrest systems, and allow only body harnesses.

The record for the powered platform rulemaking also included recommendations for limits on the use of body belts. Those recommendations suggested two approaches: (1) Imposing a force limit, expressed in pounds, on the use of body belts; and (2) allowing body belts to be used only for free falls of up to a specified distance, commonly two feet (0.6 m).

OSHA has decided, based on its review of the pertinent comments and testimony, that body belts may be used when the fall arrest system of which they are a part limits the maximum arresting force on an employee to 900 pounds (4 kN), and has proposed this limitation in paragraph (b)(1)(i). OSHA believes that this provision will protect employees against significant injury stemming from the use of body belts, and that a total ban on the use of body belts is unnecessary.

OSHA believes that body belts are safe, when they are properly used by trained personnel, and when they comply with the restrictions in this standard. Evidence concerning the injury potential of using body belts, OSHA believes, relates either to improper use, or to use under preventable unsafe conditions. For example, commenters characterized the experiments of Dr. Maurice Amphoux as showing that the use of body belts is damaging, because the loads are concentrated on one strap (Reference 24). These studies found that prolonged suspension could result in injury. However, considering the provision for prompt rescue (proposed paragraph (c)(6)), and other testimony showing that body belts have been used safely, OSHA believes that body belts are not inherently dangerous.

Systematically gathered evidence on the injury potential of body best use, based on actual use analysis, has not been available to OSHA. Fall protection has been provided for the most part by the use of body belts rather than harnesses, so many participants in the powered platform proceeding were able to testify about their knowledge both of the performance of belts and of the inherent safety of using belts. A representative of two unions whose members use powered platforms, testified that body belts are used, just about exclusively, in the State of New York on powered platforms (Reference 31). The union representative further stated that in his over 30 years of experience he did not know of any fatality caused by the use of a body belt. Other participants testified of incidents where body belts allegedly caused injury, but first-hand knowledge was lacking. The union representative also noted that there was worker resistance to the use of body harnesses because they "find them very, very cumbersome."

As stated above, OSHA has determined that body belt use must not exceed certain arrest force limitations. At the time of the powered platform proposal, OSHA believed that body belts may be safely used up to a force limit of 10 times the worker's weight or 1,800 pounds (8 kN), whichever is less. OSHA based this proposed limitation on ANSI standard A10.14–1975 and an NBS Report (Reference 15).

Various participants in the powered platform proceedings supported different limitations: The Industrial Safety Equipment Association (ISEA) supported OSHA's proposed arresting force limitation of not more than 10 times gravity or 1,800 pounds (8 kN), whichever is less. The U.S. Technical Advisory Group (ISO/TC94) (USTAG) recommended that body belts be permitted only for work positioning and climbing protection. Even with such a limitation on use, USTAG recommended that the maximum arrest force for body belts not exceed 900 pounds. USTAG stated that "empirical data from impact loading of humans and animals suggests that the injury threshold may be in the neighborhood of 10 g's or even lower depending on (many variables)" (Reference 31). USTAG referred to British standards which restrict the use of body belts to five g's for a 180 pound (82 kg) person (the equivalent of 900 pounds (4 kN) of force).

Based on the powered platform record, OSHA agrees with USTAG that a maximum arresting force of 1,800 pounds (8 kN) is acceptable when using a body harness, but not acceptable when using a body belt. OSHA, therefore, is proposing in paragraphs (b)(1)(i) and (b)(1)(ii) of this standard, the USTAG recommendation of a maximum arresting force of 900 pounds (4 kN) for body belts, and 1,800 punds (8 kN) for body harnesses. OSHA encourages interested parties to submit their documented views on this subject in response to the issues raised at the end of this section.

In paragraph (b)(1)(iii), OSHA is proposing that a personal fall arrest system bring an employee to a complete stop, after any free fall, within a deceleration distance of 42 inches (1.1 m), excluding lifeline elongation distance. This distance is in addition to the maximum six foot (1.83 m) distance of free fall (see paragraph (c)(3) below), and is based on a requirement contained in the British and Canadian standards (References 3 and 4), for rope grab devices, and self-retracting lifelines—two types of personal fall arrest systems. OSHA requests comments as to the appropriateness of applying this 42 inch (1.1 m) distance limitation for all personal fall arrest systems used in the U.S., and regarding the availability of systems which currently meet this proposed requirement.

In paragraph (b)(1)(iv), OSHA is proposing that a fall arrest system have sufficient strength to withstand twice the potential impact energy of an employee free falling a distance of six feet (1.8 m), or the free fall distance permitted by the system, whichever is less. This means that the system will not fail if subjected to twice the design shock load. For example, a harness to be used by an employee as part of a personal fall protection system which just meets the permitted arresting force allowed in the standard for harnesses must be able to withstand an impact force of 3,600 pounds (16 kN) which is twice the 1,800 pounds (8 kN) potential arresting force of the employee using the system. This safety factor for strength is recommended in Dr. Chen Wang's article, "Free-Fall Restraint Systems" (Reference 12), for shear and tensile strength. In addition, it may be derived

from the strength criteria contained in the ANSI A10.14 standard using the maximum permitted arrest force of 10 times gravity and a design weight of 250 pounds (113 kg). OSHA believes that this extra margin of strength is necessary to account for normal wear and deterioration during the useful life of the system. In normal usage, personal fall arrest systems will experience arresting forces well below the design shock load because the free fall distance will usually be less than six feet (1.8 m), and because a lifeline which will absorb energy is often used. Thus the proposed margin of safety would generally be three to five times the actual arresting force.

In paragraph (b)(2)(i), OSHA is proposing that personal fall arrest systems which are tested and meet the criteria contained in Appendix C be deemed to be in compliance with the proposed requirements of paragraphs (b)(1)(i) through (b)(1)(iv) of this section. The purpose of this provision is to provide a method which may, but need not, be used to evaluate the acceptability of a system for use by employees having a combined person and tool weight of less than 310 pounds (140 kg). OSHA has included this maximum weight value so that the acceptable limits inherent in the specified test methods for strength and force will not be exceeded. In addition, OSHA is proposing to add paragraph (b)(2)(ii), which states that systems used for employees having combined person and tool weights of 310 pounds (140 kg) or greater may be considered as meeting paragraphs (b)(1)(i) through (b)(1)(iv) provided that the criteria and protocols are modified appropriately to provide proper protection for these heavier weights. The test methods in Appendix C can be used for evaluating systems for use with these heavier weights by increasing the test weights, reducing the permitted arresting force limits, or other appropriate modifications to account for the heavier worker weights.

Proposed paragraph (c) contains the provisions applicable to the care and use of personal fall arrest systems. In paragraph (c)(1), OSHA is proposing a requirement that snap-hooks, unless of a locking type designed for the following connections, shall not be connected directly to the following: webbing, rope or wire rope; to each other; to a dee-ring to which another snap-hook or other connector is attached; to a horizontal lifeline; or to any object which is incompatibly shaped or dimensioned for a proper connection. This provision would prohibit methods of attachment which may be unsafe because snap-hooks can accidentally disengage during use. This provision is based on paragraph 3.2.5 of ANSI A10.14–1975.

In paragraph (c)(2), OSHA is proposing that devices used to connect to a horizontal lifeline which may become a vertical lifeline (such as a horizontal lifeline on a scaffold becoming vertical if the scaffold support at one end fails) be capable of locking in either direction on the lifeline, since it is imperative that the device lock and function if either end of the horizontal lifeline support fails.

In paragraph (c)(3), OSHA is proposing that the system be rigged such that an employee can neither free fall more than six feet (1.8 m), nor contact any lower level during arrest of a fall. This provision is included because the system strength and deceleration criteria are based on this maximum free fall distance, and so that an employee will not strike a lower level before the system stops the fall.

In paragraph (c)(4), OSHA is proposing requirements for the acceptable locations of the attachment point for body belts and body harnesses. These requirements are necessary because the human body is more susceptible to injury from deceleration forces applied to the front of the body belt or harness. The acceptable deceleration force limits are based on application of the forces on one of the three optimum locations specified in this paragraph: On or behind the hips; above the waist in the back; or above the head. The rationale for specifying those locations receives more detailed coverage in the NBS report (Reference 15).

In paragraph (c)(5), OSHA is proposing that each employee be attached to a separate lifeline when vertical life lines are used. OSHA recognizes that it is inherently unsafe to use a single vertical lifeline to tie off two or more employees performing separate tasks. Movement by one employee could cause the lifeline to be pulled to one side. This could, in turn, cause other employees to lose balance. In addition, if one employee did fall, movement of the lifeline during the arrest of the fall would very likely cause other employees connected to the lifeline to fall.

In paragraph (c)(6), OSHA is proposing that employers provide for prompt rescue of employees in the event of a fall, or assure that employees are able to rescue themselves. If an employee is able to self-rescue after a fall, the employer would meet this requirement. The intent of this provision is that the employer evaluate the potential for fall arrest, and that rescue support be provided in a timely manner to avoid long periods of post-fall suspension.

In paragraph (c)(7), OSHA is proposing that lifelines be protected against being cut or abraded since such damage reduces the strength of the lifelines and could cause them to fail during use.

Non-madatory Appendices A, B, and C accompany the proposed standard in order to provide information and examples of test methods which employers may find useful when applying the proposed provisions to workplace situations.

Issue Relative to Personal Fall Arrest Systems

1. OSHA has relied heavily upon the Powered Platform Docket (No. S–700A) (Reference 31) for the requirements in this proposal relative to personal fall arrest systems. OSHA believes that the requirements for personal fall arrest systems used by employees on powered platforms should be the same as those for personal fall arrest systems used by employees in other occupations. Therefore, OSHA is proposing essentially the same requirements for personal fall arrest systems in this standard as are included in the powered platform standard for these systems. Should the requirements for personal fall arrest systems be the same regardless of where the system is used? Should there be some differences in the requirements for systems used by employees on powered platforms, and the requirements in this proposed standard for all other employees? Should these proposed requirements, when finalized, supersede the requirements in Appendix C of the Powered Platform Standard?

Section 1910.130 Positioning Device Systems

OSHA is proposing to add a new section, § 1910.130, in subpart I, Personal Protective Equipment, to include coverage for positioning device systems (work positioning systems and travel restricting systems), such as lineman's body belts, pole straps, window cleaners' belts, saddle belts, ladder belts, rebar belts and chain assemblies, restraint lines, and their associated components. This section includes general performance criteria for all positioning device systems, followed by provisions which only apply to specific types of systems. The existing OSHA standards provide little or no guidance to employers whose employees use these types of equipment, although many employees use such equipment

daily. OSHA proposed to provide performance-oriented criteria for positioning device systems to fill this void in coverage.

Positioning device systems differ from personal fall arrest systems in that positioning device systems are used to support an employee in a work position, while personal fall arrest systems are used to stop an employee safely after a fall from a work level. Since the forces involved in supporting an employee are not as great as the forces involved in arresting a fall, the strength and force requirements for positioning device systems are generally less stringent than the requirements for personal fall arrest systems.

Proposed paragraph (a) states the scope and application of § 1910.130. This section covers work positioning systems and travel restricting systems, referred to in ANSI A10.14–1975 as "Class II" and "Class IV" systems. Boatswain's chairs, which are covered in part 1910, subpart D, are not addressed by this proposal. Section 1910.130 would apply only where specifically referenced by other OSHA standards.

Proposed paragraph (b) contains the system performance criteria for the various types of positioning device systems.

Paragraph (b)(1) proposes that a window cleaner's positioning system be capable of withstanding without failure a drop test consisting of a six foot (1.8 m) drop of a 250 pound (113 kg) weight. In addition, the system must limit the initial arresting force to not more than 2,000 pounds (8.89 kN) with a duration not to exceed two milliseconds. Subsequent arresting forces, produced due to "bouncing" during arrest of the fall, shall not exceed 1,000 pounds (4.45 kN). A test method is contained in Appendix C which can be used to evaluate the extent to which a given positioning device system meets this requirement. These criteria, which are also contained in ASME/ANSI A39.1a–1988 (Reference 33), are more stringent than the arresting force criteria for other positioning devices. This is because a window cleaner's positioning system allows for free falls of up to six feet (1.8 m), whereas the other systems limit free fall to a lesser distance.

Paragraph (b)(2) proposes that all other positioning device systems be capable of withstanding without failure a drop test consisting of a four foot (1.2 m) drop of a 250 pound (113 kg) weight. This is essentially the same requirement for lineman's body belt systems as is contained in OSHA's telecommunications standards, § 1910.268(g)(ii)(G).

In paragraph (b)(3), OSHA is proposing that positioning device systems which are tested in accordance with Appendix C be considered in compliance with the provisions of § 1910.130 (b)(1) and (b)(2) above. As is the case with § 1910.129(b)(2) above, it should be noted that paragraph (b) of § 1910.130 does not require an employer to test equipment. However, whether employers perform the testing themselves or rely on the supplying manufacturer or others to test the equipment, OSHA will accept the methods of testing described in Appendix C as a means of determining that a system meets the strength and force requirements of paragraphs (b(1) and (b)(2).

Proposed paragraph (c) is applicable only to lineman's body belt and pole strap systems, and contains essentially the same requirements currently found in the telecommunications standard in § 1910.268(g)(2)(ii)(A)(*1*) through (g)(2)(ii)(D).

Paragraph (c)(1) proposes that all fabric used for pole straps shall be capable of withstanding an alternating current (A.C.) dielectric test of not less than 25,000 volts per foot (82,082 volts per meter) "dry" for three minutes without visible deterioration.

Paragraphs (c)(2) through (c)(5) contain criteria for electrical insulation properties, the belt cushion width, and liners for dee-rings.

Proposed paragraph (d) contains criteria which are applicable only to window cleaner's belts, anchorages and systems. These proposed requirements are based on ASME/ANSI A39.1a–1988, Safety Requirements for Window Cleaning (Reference 33), and address the design of the belt, the strength and installation of window anchors, and the use of window cleaner's positioning device systems, including minimum standing room for working from a window sill.

A concern has been expressed that proposed paragraph (d)(2) may be too restrictive by requiring that each window cleaning anchor and the structures to which they are attached support a 6,000 pound (26.5 kN) load. This proposed paragraph is based on a similar requirement in ASME/ANSI A39.1a–1988, as well as an earlier version of the consensus standard ANSI A39.1–1969. Therefore, window cleaning anchors should already be meeting the 6,000 pound (26.5 kN) requirement. OSHA requests comments as to whether existing buildings have window cleaning anchors that meet these standards and if not, what would be the cost of coming into compliance?

The following table indicates the paragraphs of the ANSI standard from which the proposed provisions were developed.

OSHA proposal	ASME/ANSI A39.1a–1988
(d)(1)	4.6.1.(a)(2)
(d)(2)	4.5.3.(d)(1) and 4.5.4
(d)(3)–(5)	4.1.1 and 4.3.2(a)
(d)(6)	4.3.2(d)
(d)(7)	3.7
(d)(8)	3.6
(d)(9)	4.3.2(c)
(d)(10)	4.3.2(f)

OSHA believes that these proposed criteria, in conjunction with the proposed performance criteria for positioning systems, and the general criteria for all personal fall protection systems (§ 1910.128), include all of the pertinent provisions in ASME/ANSI A39.1a–1988.

A non-mandatory appendix accompanies proposed § 1910.130, providing test methods and detailed information useful in applying the positioning device system standard.

Section 1910.131 Personal Fall Protection Systems for Climbing Activities

OSHA is also proposing to add a new section, § 1910.131, to provide coverage for personal fall protection systems for climbing activities. This section will cover ladder safety devices, limited velocity descent devices, automatic pay-out and self-retracting lifelines and associated components of the systems. Existing standards in Subpart D, § 1910.27, require the use of ladder cages and wells for employee protection, and do not allow employers sufficient flexibility to use other available methods or criteria for providing protection to employees during climbing activities. OSHA believes that the equipment covered by the proposed standard can provide employees who are climbing with protection equivalent to or superior to that provided by cages and wells. Proposed § 1910.131 would provide performance-oriented criteria for these alternative fall protection systems. These criteria will provide flexibility that is not found in the present standards.

Proposed paragraph (a) states the scope and application of § 1910.131. This section covers personal fall protection systems for climbing activities, including ladder safety devices, limited velocity descent devices, automatic pay-out and self-retracting lifelines, and associated components. This section would only

apply when specifically referenced by other OSHA standards.

Paragraph (b) contains the design criteria for system components.

In paragraph (b)(1), OSHA is proposing that personal fall protection systems for climbing activities permit the employee using the system to ascend or descend without continually having to manipulate any part of the system. The requirement is essentially the same as paragraph 7.3.1 of ANSI A14.3–1984, "Safety Requirements for Fixed Ladders," which includes provisions for ladder safety devices (Reference 17).

In paragraph (b)(2), OSHA is proposing that the maximum length of the connection between the carrier or lifeline and the point of attachment to the body belt not exceed nine inches (23 cm). This requirement is based on a recommendation contained in Drs. Chaffin and Stobbe's report, "Ergonomic Considerations Related to Selected Fall Prevention Aspects of Scaffolds and Ladders as Presented in OSHA Standard 29 CFR Part 1910, Subpart D" (Reference 18), which indicates that this distance is needed to ascend and descend a ladder in a position that is not awkward.

In paragraph (b)(3), OSHA is proposing that personal fall protection systems for climbing activities limit the descending velocity of an employee to seven feet per second (2.1 m/sec) or less within two feet (.61 m) after a fall occurs. A NBS report (Reference 15) suggests a maximum descent rate for descent devices of 15 feet per second for an uninjured employee, and 10 feet per second (3.1 m/sec) for an injured employee. OSHA is proposing a more conservative rate of seven feet per second (2.1 m/sec) for this type of fall protection system since the ladder may injure an employee during descent. OSHA believes that, in addition to providing protection from the force of the fall, this descent rate would enable an employee to regain control on the ladder or would allow for emergency egress at a reasonable and safe speed. OSHA's proposal represents the speed attained when an object falls approximately one foot (30.5 cm). OSHA requests comments as to the appropriateness of this descent speed.

In paragraph (b)(4), OSHA is proposing that mountings for rigid carriers be attached at each end of the carrier, with intermediate mountings spaced along the entire length of the carrier. These requirements for ladder safety devices are contained in ANSI A14.3–1984 (Reference 17).

Paragraph (b)(5) provides that mountings for flexible carriers be attached at each end of the carrier and that when the system is exposed to wind, cable guides be installed at a minimum spacing of 25 feet (7.6 m) and a maximum spacing of 40 feet (12.2 m) along the entire length of the carrier to prevent wind damage to the system. These requirements for ladder safety devices are contained in ANSI A14.3–1984 (Reference 17).

In paragraph (b)(6), OSHA is proposing that the design and installation of mountings and cable guides not reduce the design strength of the ladder. These requirements for ladder safety devices are contained in ANSI A14.3–1984 (Reference 17).

Paragraph (c) contains the system performance criteria for personal fall protection systems for climbing activities. In paragraph (c)(1), OSHA proposes that ladder safety devices and their support systems (such as a ladder to which they are attached) be capable of withstanding, without failure, a drop test consisting of an 18 inch (.41 m) drop of a 500 pound (226 kg) weight. Again, these are the requirements for ladder safety devices contained in ANSI A14.3–1984 (Reference 17).

In paragraph (c)(2), OSHA is proposing that all other personal fall protection systems for climbing activities be capable of withstanding, without failure, a drop test consisting of a four-foot (1.2 m) drop of a 250 pound (113 kg) weight. This is the same requirement which OSHA is proposing for positioning device systems. OSHA believes that these test criteria are proper because the limited free fall distance (up to two feet (.6 m)) permitted by systems for climbing results in forces similar to those imposed on the employee by positioning device systems. The requirements are more stringent than for ladder safety devices, however, because ladder safety devices have a connction link limited to nine inches (23 cm). OSHA requests that interested persons provide comments and recommendations on these proposed criteria, as well as on suggested test methods and procedures.

Three non-mandatory appendices accompany this proposal in order to provide further information useful in complying with the fall protection standard.

The references listed below, as well as other information which has been used to prepare and support this proposal, are available for public inspection and copying at the Docket Office at the address given previously.

IV. References

1. American National Standards Institute (ANSI). "American National Standard Requirements for Safety Belts, Harnesses, Lanyards, Lifelines, and Drop Lines for Construction and Industrial Use." (ANSI A10.14–1975). New York, NY: ANSI, 1975.

2. American National Standards Institute. "American National Standard Safety Requirements for Window Cleaning." (ANSI A39.1–1969). New York, NY: ANSI, 1969.

3. British Standards Institution (BSI). "Specification for Self-locking Safety Anchorages for Industrial Use." (BS 5062), London, England: BSI, 1973.

4. Canadian Standards Association (CSA). "Fall-Arresting Devices, Personnel Lowering Devices and Life Lines." (CSA Standard Z259.2), Ontario, Canada: CSA, 1979.

5. Bureau of Labor Statistics (BLS). "Work Injury Report-Scaffold Accidents." Washington, DC: BLS, 1978.

6. Bureau of Labor Statistics (BLS). "Work Injury Reports-Ladder Accidents." Washington, DC: BLS, 1978.

7. Occupational Safety and Health Administration (OSHA). "Selected Occupational Fatalities Related to Oil/Gas Well Drilling Rigs as Found in Reports of OSHA Fatality/Catastrophe Investigations." Prepared by the Office of Statistical Studies and Analysis, Washington, DC: OSHA, 1979.

8. Occupational Safety and Health Administration (OSHA). "Occupational Fatalities Related to Ladders as Found in Reports of OSHA Fatality/Catastrophe Investigations." Prepared by the Office of Statistical Studies and Analysis, Washington, DC: OSHA, 1979.

9. Occupational Safety and Health Administration (OSHA). "Occupational Fatalities Related to Scaffolds as Found in Reports of OSHA Fatality/Catastrophe Investigations." Prepared by the Office of Statistical Studies and Analysis, Washington, DC: OSHA, 1979.

10. Occupational Safety and Health Administration (OSHA). "Occupational Fatalities Related to Roofs, Ceilings and Floors as Found in Reports of OSHA Fatality/Catastrophe Investigations." Prepared by the Office of Statistical Studies and Analysis, Washington, DC: OSHA, 1979.

11. National Bureau of Standards (NBS). "Analysis of Scaffolding Accident Records and Related Employee Casualties." Washington, DC: NBS, January 1980.

12. Wang, Chen H., "Free-Fall Restraint Systems." "Professional Safety". Pp. 9–14. February 1977.

13. Siri, William, "A Rope Length from Eternity." "Belaying the Leader." R.M. Leonard, The Sierra Club, San Francisco: 1965.

14. Bureau of Labor Statistics (BLS). "1985 SDS Current Cases Involving Disability." Washington, DC: BLS, unpublished tables, 1988.

15. National Bureau of Standards (NBS), NBSIR 76–1146 "A Study of Personal Fall-Safety Equipment." Washington, DC: NBS, June 1977.

16. Sulowski, Andrew C., "Selecting Fall Arresting Systems." "National Safety News," October 1979, Pp. 55–62, Chicago, Illinois: National Safety Council, 1979.

17. American National Standards Institute (ANSI). "American National Standard for

Ladders-Fixed-Safety Requirements." (ANSI A14.3–1984). New York, NY: ANSI, 1984.

18. Chaffin, Don B. and Terrance J. Stobbe, "Ergonomic Considerations Related to Selected Fall Prevention Aspects of Scaffolds and Ladders as Presented in OSHA Standard 29 CFR 1910 Subpart D." Ann Harbor, Michigan: The University of Michigan, September 1973.

19. Occupational Safety and Health Administration (OSHA). "Occupational Fatalities Related to Miscellaneous Working Surfaces as Found in Reports of OSHA Fatality/Catastrophe Investigations." Washington, DC: OSHA, April 1982.

20. International Standards Organization (ISO), Secretariat Association Francaise de Normalisation (AFNOR). "Personal Fall Arresting Systems and Components." (ISO/TC 94/SC4 N50E). New York, NY: ANSI, 1983.

21. Bureau of Labor Statistics (BLS). "National Estimates of Injuries from SDS Data". Unpublished report, Washington, DC: BLS, November 1980.

22. New York State Department of Labor. "Summary Tabulations Characteristics and Costs of Work Injuries in New York State—All-Industry Report 1966–1970". Volume II, p. 55, New York, NY: 1972.

23. Occupational Safety and Health Administration (OSHA). "Selected Occupational Fatalities Related to Powered, Two-Point Suspension Scaffolds/Powered Platforms as found in Reports of OSHA Fatality/Catastrophe Investigations". Prepared by the Office of Statistical Studies and Analysis, Washington, DC: OSHA, March 1983.

24. Noel, Georges; Amphoux, M., et al, "Safety Equipment in Construction and Public Works Transportation". (NO. 362) Technical Institute for Construction and Public Works. Montreuil, France: 1978.

25. Hearon, Bernard F. and Brinkley, James W., "Fall Arrest and Post-Fall Suspension: Literature Review and Directions for Further Research". (AFAMRL–TR–84–021). Air Force Aerospace Medical Research Laboratory, Wright-Patterson AFB, Dayton, Ohio: 1984.

26. Bureau of Labor Statistics (BLS) "Supplementary Data System, 1976 State of California (Excerpt)". Washington, DC: BLS, 1976.

27. Sulowski, Andrew C., "Assessment of Maximum Arrest Force". "National Safety News", March 1981, Pp 55–58, Chicago, Illinois: National Safety Council, 1981.

28. British Standards Institution (BSI). "Specification for Industrial Safety Belts, Harnesses and Safety Lanyards". (BS 1397), London, England: BSI, 1979.

29. Bureau of Labor Statistics (BLS). "Injuries Resulting from Falls from Elevations." Washington, DC: BLS, 1984.

30. Bureau of Labor Statistics (BLS). "Occupational Injuries and Illnesses in the United States by Industry, 1985". Washington, DC: BLS, 1985.

31. Occupational Safety and Health Administration (OSHA). "Docket No. S–700A, Powered Platforms for Exterior Building Maintenance". Washington, DC: OSHA, 1988.

32. Occupational Safety and Health Administration (OSHA). "Docket No. S–206, Safety Standards for Fall Protection in the Construction Industry". Washington, DC: OSHA, 1988.

33. American Natural Standards Institute. "Safety Requiremetnts for Window Cleaning". (ASME/ANSI A39.1a–1988). New York, NY: ANSI, 1988.

V. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Certification for the Proposed 29 CFR 1910.128, 129, 130 and 131 (Subpart I)

In accordance with Executive Order No. 12291 (46 FR 13193, February 17, 1981) OSHA has analyzed the economic impacts of these proposed subparts. Based upon the Executive Order criteria, OSHA has determined that these proposed subparts would not constitute a "major" action.

Proposed subpart I of part 1910 contains the performance criteria that personal fall protection systems must meet in order to be acceptable to OSHA for use under 29 CFR part 1910. The provisions of subpart I would be effective only after the provisions for personal fall protection systems in part 1910 are modified to reference subpart I directly (as is the case in the concurrent subpart D—Walking and Working Surfaces proposal). If these modifications were not made, then the provisions in subpart I would not have effect. Thus, any costs of compliance associated with personal fall protection systems would occur only within the context of these other Part 1910 modifications and any resultant costs would be more appropriately attributable to the subparts requiring or allowing the use of personal fall protection systems. The subpart D—Walking and Working Surfaces proposal contains the Regulatory Impact Assessment relative to the use of personal fall protection systems which meet the criteria contained in subpart I.

Pursuant to the Regulatory Flexibility Act of 1980 (P.L. 96–353, 94 Stat. 1164 [5 U.S.C. 601 et seq.]), OSHA has assessed the impact of the proposed regulation and concludes that it would not have a significant adverse impact on a substantial number of small entities.

OSHA requests public comment on the impact of this proposal and any comments submitted will be carefully considered and incorporated into the final Regulatory Impact Assessment and Regulatory Flexibility Analysis or Certification.

VI. OMB Approval Under the Paperwork Reduction Act.

This proposal does not contain any collection of information. Therefore, approval under the Paperwork Reduction Act is unnecessary.

VII. State Plan Standards

The 25 states and territories 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 standard. These 25 states are: 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. Until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

VIII. Federalism

This proposed regulation has been reviewed in accordance with Executive Order 12612 regarding Federalism. This order requires that agencies, to the extent possible, refrain from limiting state policy options, and consult with states prior to taking any action only when there is clear constitutional authority and the presence of a problem of national scope. The order provides for preemption of state law only if there is a clear congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act of 1970 (OSH Act) expresses Congress' clear intent to preempt state laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a state can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as Federal Standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions (See section 18(c)(2) of the OSH Act).

This regulation is drafted so that employees in every state would be protected by general, performance-oriented standards. To the extent that there are state or regional peculiarities caused by the terrain, the climate or other factors, states would be able, under the OSH Act, to develop their own state standards to deal with any special problems. And, under the Act, if a state develops an approved state program, it could make additional

requirements in its standards. Moreover, the performance nature of this proposed standard, of and by itself, allows for flexibility by states and employers to provide as much safety as possible using varying methods consonant with conditions in each state.

In short, there is a clear national problem related to occupational safety and health concerning falls. Those states which have elected to participate under the statute would not be preempted by this proposed regulation and would be able to address special, local conditions within the framework provided by this performance-oriented standard.

IX. Public Participation

Comments. Interested persons are requested to submit written data, views and arguments concerning this proposal. These comments must be postmarked by July 9, 1990, and submitted in quadruplicate to the Docket Officer, Docket No. S–057, U.S. Department of Labor, Room N–2634, 200 Constitution Avenue, NW., Washington, DC 20210.

Written submissions must clearly identify the specific provisions of the proposal which are addressed, and specific recommendations are encouraged on each issue raised by the proposal.

All data received within the specified comment period will be made a part of the record. Data, views and arguments that are submitted will be available for public inspection and copying at the above Docket Office address. OSHA invites comments concerning the conclusions reached in the regulatory impact assessment.

Public hearing. OSHA will hold an informal public hearing to begin at 10:00 a.m. on September 11, 1990, if any hearing requests are received by the Agency. The hearing would be held in the Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Hearing requests must be postmarked by July 9, 1990.

Under section 6(b)(3) of the OSH Act and 29 CFR § 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objection must include the name and address of the objector;
2. The objections must be postmarked by July 9, 1990.
3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may of course make these objections or recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" separately if the interested person desires to request an oral hearing.

Notice of intention to appear. Persons desiring to participate at the hearing, including the right to question witnesses, must file, in quadruplicate, a notice of intention to appear. The notice of intention to appear must be postmarked by August 8, 1990, and addressed to Mr. Tom Hall, Division of Consumer Affairs, Room N3649, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8615. The notice of intention to appear must contain the following:

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 required 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;

Filing of testimony and evidence before the hearing. Any part requesting more than 10 minutes for presentation at the hearing or who will present documentary evidence, must provide in quadruplicate, the complete text of its testimony, including all documentary evidence to be presented at the hearing. These materials must be postmarked no later than August 8, 1990, and sent to Mr. Tom Hall, Division of Consumer Affairs, at the address given above. Each submission will be reviewed in light of the amount of time requested in the notice in intention to appear. In 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 the fact. Any part who has not substantially complied with the above requirements, may be limited to a 10 minute presentation and may be requested to return for questioning at a later time. 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 who presides at the hearing.

Notices of intention to appear, testimony and evidence, will be available for inspection and copying at the Docket Office, Docket S–026, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210.

Conduct and Nature of the hearing. The hearing is scheduled to commence at 10:00 a.m. on September 11, 1990. At that time, any procedural matters relating to the proceeding will be resolved. The informal nature of the rulemaking hearing to be held 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, it is clear that the proceeding shall remain informal and legislative in type. The intent, in essence, is to provide an opportunity for effective oral presentation by interested persons which can be carried out expeditiously and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

The hearing will be conducted in accordance with 29 CFR part 1911. The presiding officer, an Administrative Law Judge, will have the powers necessary or 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 presentation 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 person who has participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of a final standard.

If no hearing requests are submitted by interested persons by the deadlines set forth above, no hearing will be held

OSHA will then publish a notice in the **Federal Register** indicating that there will be no hearing. The Agency will also contact all persons who submitted comments in response to this proposal, to inform them of this fact.

The proposal will be reviewed in light of all written submissions and testimony received as part of the rulemaking record. Decisions on the provisions of a final standard will be made by the Assistant Secretary based on the entire record of the proceeding.

List of Subjects in 29 CFR Part 1910

Body belts, Body harnesses, Fall protection, Fall protection systems, Ladders and scaffolds, Lifelines, Occupational safety and health, Personal protective equipment, Safety.

Authority

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 6(b) and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR part 1911, it is proposed to amend 29 CFR part 1910, subpart I, as set forth below.

Signed at Washington, DC, this 30th day of March 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart I of part 1910 is proposed to be amended as follows:

Authority: Sec. 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), and 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable. Subpart I is also issued under 29 CFR part 1911.

2. Sections 1910.128, 1920.129, 1910.130 and 1910.131, and Appendices A, B, and C are proposed to be added to subpart I to read as follows:

* * * * *

Subpart I—Personal Protective Equipment

Sec.

§ 1910.128 Definitions and general requirements for personal fall protection systems.

(a) *Scope and application.* (1) This section establishes definitions and general performance criteria for all personal fall protection systems. Additional requirements for the different types of personal fall protection systems are contained in §§ 1910.129, 1910.130, and 1910.131 of this subpart.

(2) This section applies only where referenced by a specific OSHA standard.

(b) *Definitions*

Anchorage means a secure point of attachment for lifelines, lanyards, or deceleration devices, and which is independent of the means of supporting or suspending the employee.

Belt terminal means an end attachment of a window cleaner's positioning system used for securing the belt or harness to single or double-headed anchors.

Body belt means a strap with means both for securing about the waist and for attaching to a lanyard, lifeline, or decelaration device.

Body harness means a design of straps which may be secured about the employee in a manner to distribute the fall arrest forces over at least the thighs, pelvis, waist, chest and shoulders with means for attaching it to other components of a personal fall arrest system.

Buckle means any device for holding the body belt or body harness closed around the employee's body.

Carrier means the track of a ladder safety device consisting of a flexible cable or rigid rail which is secured to the ladder or structure by mountings.

Competent person means a person who is capable of identifying hazardous or dangerous conditions in any personal fall arrest system or any component thereof, as well as in their application and use with related equipment.

Connector means a device which is used to couple (connect) parts of the system together. It may be an independent component of the system, such as a carabineer, or it may be an integral component of part of the system (such as a buckle or dee-ring sewn into a body belt or body harness, or a snap-hook spliced or sewn to a lanyard or self-retracting lanyard).

Deceleration device means any mechanism, such as rope grabs, rip-stitch lanyards, specially-woven lanyards, tearing or deforming lanyards, automatic self retracting lifelines/lanyards, etc., which serve to dissipate a substantial amount of energy during a fall arrest, or otherwise limit the energy imposed on an employee during fall arrest.

Deceleration distance means the additional vertical distance a falling employee travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which the deceleration device begins to operate. It is measured as the distance between the location of an employee's body belt or body harness attachment point at the moment of activation (at the onset of fall arrest forces) of the deceleration device during a fall, and the location of that attachment point after the employee comes to a full stop.

Double-head anchor means two anchor heads in the window frame on each side of a window, being used simultaneosly and not singly, as part of a window cleaner's positioning system.

Equivalent means alternative designs, materials or methods to protect against a hazard which the employer can demonstrate will provide an equal or greater degree of safety for employees then the methods, materials or designs specified in the standard.

Free fall means the act of falling before the personal fall arrest system begins to apply force to arrest the fall.

Free fall distance means the vertical displacement of the fall arrest attachment point on the employee's body belt or body harness between onset of the fall and just before the system begins to apply force to arrest the fall. This distance excludes deceleration distance, lifeline and lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before they operate and fall arrest forces occur.

Ladder belt means a belt which may be attached to a fixed ladder or a secured portable ladder while the employee is performing work from the ladder.

Ladder safety device means a device, other than a cage or well, designed to help prevent accidental falls from ladders, or to limit the length of such falls. A ladder safety device usually consists of a carrier, safety sleeve, and body belt or harness.

Lanyard means a flexible line of rope, wire rope, or strap which generally has

a connector at each end for connecting the body belt or body harness to a deceleration device, lifeline, or anchorage.

Lifeline means a component consisting of a flexible line for connection to an anchorage at one end to hand vertically (vertical lifeline), or for connection to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage.

Lineman's body belt means a belt which consists of a belt strap and dee-rings, and may include a cushion section or a tool saddle.

Personal fall arrest system means a system used to arrest an employee in a fall from a working level. It consists of an anchorage, connectors, a body belt or body harness and may include a lanyard, deceleration device, lifeline, or suitable combinations of these.

Personal fall protection system means a personal fall arrest system, a positioning device system, or a personal fall protection system for climbing activities which protects a worker from falling, or safely arrests a worker's fall, should a fall occur.

Personal fall protection system for climbing activities means a system worn or attached to an employee designed to prevent an employee from being injured should the employee fall while ascending or descending.

Pole strap means a strap used for supporting the employee while working on poles, towers, or platforms. Snap-hooks on each end are provided for attachment to dee-rings on the lineman's body belt.

Positioning device system means a system of equipment or hardware which, when used with its body belt or body harness, allows an employee to be supported on an elevated vertical surface, such as a wall or windowsill, and work with both hands free.

Qualified person means one with a recognized degree or professional certificate and extensive knowledge and experience in the subject field who is capable of design, analysis, evaluation and specifications in the subject work, project, or product.

Restraint (tether) line means a line from an anchorage or between anchorages, to which the employee is secured in such a way as to prevent the employee from walking or falling off an elevated work surface.

Rope grap means a deceleration device which travels on a lifeline and automatically frictionally engages the lifeline and locks so as to arrest the fall of an employee. A rope grab usually employs the principle of inertial locking, cam/lever locking, or both.

Saddle belt means a belt which has additional straps for supporting an employee in a sitting position at a work station.

Safety sleeve means the moving component with locking mechanism of a ladder safety device which travels on the carrier and connects the carrier to the body belt or harness.

Self-retracting lifeline/lanyard means a deceleration device which contains a drum-wound line which may be slowly extracted from, or retracted onto, the drum under slight tension during normal employee movement, and which, after onset of a fall, automatically locks the drum and arrests the fall.

Single-head anchor means one anchor head in the window frame on each side of the window used for attaching each end (belt terminal) of a window cleaner's strap.

Snap-hook means a connector comprised of a hook-shaped member with a normally closed keeper, or similar arrangement, which may be opened to permit the hook to receive an object and, when released, automatically closes to retain the object. Snap-hooks may generally be one of two types:

(1) The locking type with a self-closing, self-locking keeper which remains closed and locked until unlocked and pressed open for connection or disconnection, or

(2) The non-locking type with a self-closing keeper which remains closed until pressed open for connection or disconnection.

Tie-off means the act of an employee, wearing personal fall protection equipment, to connect directly or indirectly to an anchorage. It also means the condition of an employee being connected to an ancohrage.

Window cleaner's belt means a belt which consists of a waist-belt, an integral terminal runner or strap, and belt terminals.

Window cleaner's positioning system means a system which consists of a window cleaner's belt secured to window anchors.

(c) *General requirements.* (1) Connectors shall be drop forged, pressed or formed steel, or made of equivalent materials.

(2) Connectors shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to interfacing parts of the system.

(3) Lanyards and vertical lifelines which tie-off one employee shall have a minimum breaking strength of 5,000 pounds (22.2 kN).

(4) Self-retracting lifelines and lanyards which automatically limit free fall distance to two feet (0.61 m) or less shall have components capable of sustaining a minimum static tensile load of 3,000 pounds (13.3 kN) applied to the device with the lifeline or lanyard in the fully extended position.

(5) Self-retracting lifelines and lanyards which do not limit free fall distance to two feet (0.61 m) or less, ripstitch lanyards, and tearing and deforming lanyards shall be capable of sustaining a minimum tensile load of 5,000 pounds (22.2 kN) applied to the device with the lifeline or lanyard in the fully extended position.

(6) Dee-rings and snap-hooks shall be capable of sustaining a minimum tensile load of 5,000 pounds (22.2 kN).

(7) Dee-rings and snap-hooks shall be proof-tested to a minimum tensile load of 3,600 pounds (16 kN) without cracking, breaking, or taking permanent deformation.

(8) Snap-hooks shall be dimensionally compatible with the member to which they are connected so as to prevent unintentional disengagement of the snap-hook by depression of the snap-hook keeper by the connnected member, or shall be a locking type snap-hook designed to prevent disengagement of the snap-hook by the contact of the snap-hook keeper by the connected member.

(9) Horizontal lifelines shall be designed, installed, and used under the supervision of a qualified person, as part of a complete personal fall arrest system, which maintains a safety factor of at least two.

(10) Anchorages, including single- and double-head anchors, shall be capable of supporting at least 5,000 pounds (22.2 kN) per employee attached, or shall be designed, installed, and used under the supervision of a qualified person as part of a complete personal fall protection system which maintains a safety factor of at least two.

(11) Restraint lines shall be capable of sustaining a tensile load of at least 3,000 pounds (13.3 kN).

(12) Lifelines and carriers shall not be made of natural fiber rope.

(13) Snap-hooks shall not be connected to each other.

(14) Personal fall protection systems and their components shall be used only for employee fall protection.

(15) Personal fall protection systems or their components subjected to impact loading shall be immediately removed from service and shall not be used again for employee protection unless inspected and determined by a

competent person to be undamaged and suitable for reuse.

(16) Before using personal fall protection systems, and after any component or system is changed, employees shall be trained in the application limits of the equipment, proper hook-up, anchoring and tie-off techniques, methods of use, and proper methods of equipment inspection and storage.

(17) Personal fall protection systems shall be inspected prior to each use for mildew, wear, damage, and other deterioration. Defective components shall be removed from service if their function or strength has been adversely affected.

Section 1910.129 Personal fall arrest systems.

(a) *Scope and application.* (1) This section establishes performance criteria and care and use requirements for personal fall arrest systems. It applies only where referenced by a specific OSHA standard.

(b) *System performance criteria.* (1) Personal fall arrest systems shall, when stopping a fall:

(i) Limit maximum arresting force on an employee to 900 pounds (4 kN) when used with a body belt;

(ii) Limit maximum arresting force on an employee to 1,800 pounds (8 kN) when used with a body harness;

(iii) Bring an employee to a complete stop and limit maximum deceleration distance an employee travels to 3.5 feet (1.07 m); and

(iv) Shall have sufficient strength to withstand twice the potential impact energy of an employee free falling a distance of six feet (1.8 m), or the free fall distance permitted by the system, whichever is less.

(2)(i) When used by employees having a combined person and tool weight of less than 310 pounds (140 kg), personal fall arrest systems which meet the criteria and protocol contained in § 1910.129 of Appendix C shall be considered as complying with the provisions of paragraphs (b)(1)(i) through (b)(1)(iv) of this section.

(ii) When used by employees having a combined tool and body weight of 310 pounds (140 kg) or more, personal fall arrest systems which meet the criteria and protocols contained in § 1910.129 of Appendix C may be considered as complying with the provisions of paragraphs (b)(1)(i) through (b)(1)(iv) of this section, provided that the criteria and protocols are modified appropriately to provide proper protection for such heavier weights.

(c) *Care and use.* (1) Unless of a locking type designed for the following connections, snap-hooks shall not be engaged:

(i) Directly to webbing, rope or wire rope;

(ii) To each other;

(iii) To a dee-ring to which another snap-hook or other connector is attached;

(iv) To a horizontal lifeline; or

(v) To any object which is incompatibly shaped or dimensioned in relation to the snap-hook such that unintentional disengagement could occur by the connected object being able to depress the snap-hook keeper and release itself.

(2) Devices used to connect to a horizontal lifeline which may become a vertical lifeline shall be capable of locking in either direction on the lifeline.

(3) Personal fall arrest systems shall be rigged such that an employee can neither free fall more than six feet (1.8 m), nor contact any lower level.

(4) Personal fall arrest systems shall be worn with the attachment point of the body belt located in the center of the wearer's back, and the attachment point of the body harness located in the center of the wearer's back near shoulder level, or above the wearer's head.

(5) When vertical lifelines are used, each employee shall be provided with a separate lifeline.

(6) The employer shall provide for prompt rescue of employees in the event of a fall or shall assure that employees are able to rescue themselves.

(7) Lifelines shall be protected against being cut or abraded.

Section 1910.130 Positioning device systems.

(a) *Scope and application.* This section establishes additional application and performance criteria for positioning device systems. It applies only where referenced by a specific OSHA standard.

(b) *System performance criteria.* (1) A window cleaner's positioning system shall be capable of withstanding without failure a drop test consisting of a six foot (1.83 m) drop of a 250 pound (113 kg) weight. The system shall limit the initial arresting force to not more than 2,000 pounds (8.89 kN), with a duration not to exceed two milliseconds. The system shall limit any subsequent arresting forces imposed on the falling employee to not more than 1,000 pounds (4.45 kN).

(2) All other positioning device systems shall be capable of withstanding without failure a drop test consisting of a four foot (1.2 m) drop of a 250 pound (113 kg) weight.

(3) Positioning device systems which meet the tests contained in § 1910.130 of Appendix C, shall be deemed in compliance with the provisions of paragraphs (b) (1) and (2) of this section.

(c) *Lineman's body belt and pole strap systems.* The following additional provisions shall apply to a lineman's body belts and pole strap systems:

(1) All materials used for pole straps shall be capable of withstanding an alternating current (A.C.) dielectric test of not less than 25,000 volts per foot (82,020 volts per meter) "dry" for three minutes, without visible deterioration.

(2) Materials shall not be used if leakage current exceeds one milliampere when a potential of 3,000 volts is applied to electrodes positioned 12 inches (30.5 cm) apart.

(3) In lieu of alternating current (A.C.), direct current (D.C.) may be used to evaluate the requirements of § 1910.130(c) (1) and (2). The D.C. voltage used shall be two times the A.C. voltage used for these tests.

(4) The cushion part of the lineman's body belt shall be at least three inches (7.6 cm) in width.

(5) Suitable copper, steel, or other liners shall be used around the bars of dee-rings where they are attached to body belts to prevent weakening of the body belt due to wear and tear.

(d) *Window cleaner's belts, anchorages and systems.* The following additional provisions shall apply to window cleaner's belts, anchorages and systems.

(1) The belt shall be designed and constructed so that belt terminals will not pass through their fastenings on the belt or harness should one terminal become loosened from its window anchor. The length of the runner from terminal tip to terminal tip shall be eight feet (2.44 m) or less.

(2) The anchors on a building to which the belt is to be fastened shall be installed in the side frames of the window or in the mullions at a point not less than 42 inches (106.7 cm) nor more than 51 inches (129.5 cm) above the window sill. Each anchor, and the structure to which it is attached, shall be capable of supporting a minimum load of 6,000 pounds (26.5 kN).

(3) Rope which has sustained wear or deterioration materially affecting its strength may not be used.

(4) Anchors whose fastenings or supports are damaged or deteriorated shall be removed or rendered unusable by detachment of the anchor head(s).

(5) An installed single or double-head anchor may not be used for any purpose other than attachment of a window cleaner's belt.

(6) Both belt terminals shall be attached to separate single or double-

head anchors during the cleaning operation.

(7) Cleaning work is not permitted on a sill or ledge on which there is snow, ice, or any other slippery condition, nor on a weakened or rotted sill or ledge.

(8) A window cleaner may work from a windowsill only if a minimum standing room in relation to slope is provided as follows:

(i) When the sill width is at least four inches (10.1 cm), work is permitted with a slope of the sill from horizontal up to 15 degrees;

(ii) For slopes between 15 and 30 degrees from horizontal, but in no case greater than 30, the minimum acceptable sill width is four inches (10.1 cm), plus 0.4 inches (1.0 cm) for every degree of slope greater than 15 degrees.

(9) The window cleaner shall attach at least one belt terminal to a window anchor before climbing through the window opening. The belt shall not be completely disconnected from both anchors until the employee is back inside the window opening.

(10) The window cleaner shall not pass from one window to another while outside the building, but shall return inside and repeat the belt terminal attachment procedure for each window as described in paragraph (d)(9) of this section.

Section 1910.131 Personal fall protection systems for climbing activities.

(a) *Scope and application.* This section establishes additional application and performance criteria for personal fall protection systems for climbing activities. It applies only where referenced by a specific OSHA standard.

(b) *Design criteria for systems components.* (1) Personal fall protection systems for climbing activities shall permit the employee using the system to ascend or descend without continually having to hold, push or pull any part of the system, leaving both hands free for climbing.

(2) The connection between the carrier or lifeline and the point of attachment to the body belt or harness shall not exceed nine inches (23 cm) in length.

(3) Personal fall protection systems for climbing activities shall be activated within two feet (.61 m) after a fall occurs, in order to limit the descending velocity of an employee to seven feet/sec (2.1 m/sec) or less.

(4) Mountings for rigid carriers shall be attached at each end of the carrier, with intermediate mountings, as necessary, spaced along the entire length of the carrier, to provide the strength necessary to stop employee falls.

(5) Mountings for flexible carriers shall be attached at each end of the carrier. When the system is exposed to wind, cable guides utilized with a flexible carrier shall be installed at a minimum spacing of 25 feet (7.6 m) and a maximum spacing of 40 feet (12.2 m) along the entire length of the carrier, to prevent wind damage to the system.

(6) The design and installation of mountings and cable guides shall not reduce the design strength of the ladder.

(c) *System performance criteria.* (1) Ladder safety devices and their support systems shall be capable of withstanding without failure a drop test consisting of an 18 inch (.41 m) drop of a 500 pound (226 kg) weight.

(2) All other personal fall protection systems for climbing activities shall be capable of withstanding without failure a drop test consisting of a four foot (1.2 m) drop of a 250 pound (113 kg) weight.

Appendix A to Subpart I—Personal Fall Protection Systems

Note.—The following appendix to §§ 1910.128–1910.131 of subpart I serves as a non-mandatory guideline to assist employers and employees in complying with these sections and to provide other helpful information. This appendix neither adds to nor detracts from the obligations contained in the OSHA standards.

Section 1910.128 Personal fall protection systems.

The following information generally applies to all personal fall protection systems.

1. *Selection and use considerations.* The kind of personal fall protection system selected should match the particular work situation, and any possible free fall distance should be kept to a minimum. Many systems are generally designed for a particular work application, such as a lineman's body belt and pole strap, a rebar belt and chain assembly, or a window cleaner's belt. Consideration should be given to the particular work environment. For example, the presence of acids, dirt, moisture, oil, grease, etc., and their effect on the system, should be evaluated. Hot or cold environments may also have an adverse affect on the system. Wire rope should not be used where an electrical hazard is anticipated. As required by the standard, consideration must also be given to having means available to rescue an employee should a fall occur, since the suspended employee may not be able to reach a work level independently.

Where lanyards, connectors, and lifelines are subject to damage by work operations, such as welding, chemical cleaning, and sandblasting, protection of the component, or other securing systems should be used. Unless designed for use in a personal fall arrest system, linemen's pole straps should not be used as lanyards. Chest harnesses should not be used where there is a possibility of any free fall. The employer should fully evaluate the work conditions and environment (including seasonal weather changes) before selecting the appropriate personal fall protection system. Once in use, the system's effectiveness should be monitored. In some cases, a program for cleaning and maintenance of the system may be necessary.

2. *Testing Considerations.* Before purchasing a personal fall protection system, an employer should insist that the supplier provide information about the system based on its performance during testing of the system using recognized test methods so that the employer will know that the system meets the criteria in this standard. Otherwise, the employer will not know if the equipment is in compliance unless samples he has purchased are tested. Appendix C contains test methods which are recommended for evaluating the performance of any system. Not all systems need to be tested; the performance of a system can often be based on data and calculations derived from testing of similar systems, provided that enough information is available to demonstrate similarity of function and design.

3. *Component compatibility considerations.* Ideally, a personal fall protection system is designed, tested, and supplied as a complete system. However, it is common practice for lanyards, connections, lifelines, deceleration devices, body belts and body harnesses to be interchanged since some components wear out before others. The employer and employee should realize that not all components are interchangeable. For instance, a lanyard should not be connected between a body belt (or harness) and a deceleration device of the self-retracting type since this can result in additional free fall for which the system was not designed. In addition, positioning device components, such as pole straps, ladder hooks and rebar hooks, should not be used in a fall arrest system unless they meet the requirements of § 1910.129. Also, a ladder hook may not be used with a dee-ring, nor in a system which would permit any significant free fall distance (more than two feet (0.61 m)). Rebar hooks should be sized and used to be compatible with the size of rebar to which they will be attached. Any substitution or change to a personal fall protection system should be fully evaluated or tested by a competent person to determine that it meets the standard, before the modified system is put in use.

4. *Employee training considerations.* OSHA recommends that before the equipment is used, employees should be trained in the application limits; proper anchoring and tie-off techniques, including determination of elongation and deceleration distance; methods of use; and inspection and storage of the system. Careless or improper use of the equipment can result in serious injury or death. Employers and employees should become familiar with the material in this standard and appendix, as well as manufacturers' recommendations, before a system is used. Of uppermost importance is the reduction in strength caused by certain tie-offs (such as using knots, typing around

sharp edges, etc.) and maximum permitted free fall distance. Also to be stressed are the importance of inspections prior to use, the limitations of the equipment, and unique conditions at the worksite which may be important in determining the type of system to use.

5. *Instruction considerations.* Employers should obtain comprehensive instructions from the supplier as to the system's proper use and application, including, where applicable:

a. The force measured during the sample force test;

b. The maximum elongation measured for lanyards during the strength test;

c. The deceleration distance measured for deceleration devices during the force test;

d. Caution statements on critical use limitations;

e. Application limits;

f. Proper hook-up, anchoring and tie-off techniques, including the proper dee-ring or other attachment point to use on the body belt and harness for fall arrest;

g. Proper climbing techniques;

h. Methods of inspection, use, cleaning, and storage; and

i. Specific lifelines which may be used.

This information should be provided to employees during training.

6. *Inspection considerations.* OSHA recommends that personal fall protection systems must be regularly inspected. Any component with any significant defect, such as cuts, tears, abrasions, mold, or undue stretching; alterations or additions which might affect its efficiency; damage due to deterioration; contact with fire, acids, or other corrosives; distorted hooks or faulty hook springs; tongues unfitted to the shoulder of buckles; loose or damage mountings; non-functioning parts; or wearing or internal deterioration in the ropes must be withdrawn from service immediately, and should be tagged or marked as unusable, or destroyed.

Section 1910.129 Personal fall arrest systems.

1. *Special considerations.* As required by the standard, when personal fall arrest systems are used, special consideration must be given to rescuing an employee should a fall occur. The availability of rescue personnel, ladders or other rescue equipment should be evaluated. In some situations, equipment which allows employees to rescue themselves after the fall has been arrested may be desirable.

2. *Tie-off considerations.* Employers and employees should at all times be aware that the strength of a personal fall arrest system is based on its being attached to an anchoring system which does not significantly reduce the strength of the system (such as an eye-bolt/snap-hook anchorage). Therefore, if a means of attachment is used that will reduce the strength of the system, that component should be replaced by a stronger one, but one that will also maintain the appropriate maximum deceleration characteristics. The following is a listing of some known strength reduction situations.

a. *Tie-off using a knot in the lanyard or lifeline (at any location).* The strength of the line can be reduced by 50 percent, or more, if a knot is used. Therefore, a stronger lanyard or lifeline should be used to compensate for the knot, or the lanyard length should be reduced (or the tie-off location raised) to minimize free fall distance, or the lanyard or lifeline should be replaced by one which has an appropriately incorporated connector to eliminate the need for a knot.

b. *Tie-off around a "H" or "I" beam or similar support.* Strength can be reduced as much as 70 percent by the cutting action of the beam edges. Therefore, the employer should either provide a webbing lanyard or a wire core lifeline around the beam to protect the lanyard or lifeline from the beam edges, or greatly minimize the potential free fall distance.

c. *Tie-off around rough or sharp surfaces.* This practice reduces strength drastically. Such a tie-off is to be avoided; an alternate means should be used such as a snap-hook/dee-ring connection, a tie-off apparatus (steel cable tie-off), an effective padding of the surfaces, or an abrasion-resistant strap around the supporting member.

d. *Horizontal lifelines.* Horizontal lifelines, depending on their geometry and angle of sag, may be subjected to greater loads than the impact load imposed by an attached component. When the angle of horizontal lifeline sag is less than 30 degrees, the impact force imparted to the lifeline by an attached lanyard is greatly amplified. For example, with a sag angle of 15 degrees the force amplification is about 2:1, and at five degrees sag it is about 6:1. Depending on the angle of sag, and the line's elasticity, the strength of the horizontal lifeline and the anchorages to which it is attached should be increased a number of times over that of the lanyard. Extreme care should be taken in considering a horizontal lifeline for multiple tie-offs. The reason for this is that in multiple tie-offs to a horizontal lifeline, if one employee falls, the movement of the falling employee and the horizontal lifeline during arrest of the fall may cause other employees to also fall. Horizontal lifeline and anchorage strength should be increased for each additional employee to be tied-off. For these and other reasons, the design of systems using horizontal lifelines must only be done by qualified persons. Testing of installed lifelines and anchors prior to use is recommended.

e. *Eye-bolts.* It must be recognized that the strength of an eye-bolt is rated along the axis of the bolt, and that its strength is greatly reduced if the force is applied at right angles to this axis (in the direction of its shear strength). Care must also be exercised in selecting the proper diameter of the eye to avoid creating a roll-out hazard (accidental disengagement of the snap-hook from the eye-bolt).

f. *Knots.*-Due to the significant reduction in the strength of the lifeline (in some cases, as much as a 70 percent reduction), the sliding hitch knot should not be used except in situations where no other available system is practical. The one and one sliding hitch knot should never be used because it is unreliable in stopping a fall. The two and two, or three and three knot (preferable) may be used in special situations; however, care should be taken to limit free fall distance to a minimum because of reduced lifeline strength.

g. *Vertical lifeline considerations.* As required by the standard, each employee must have a separate lifeline when the lifeline is vertical. The reason for this is that in multiple tie-offs to a single lifeline, if one employee falls, the movement of the lifeline during the arrest of the fall may pull other employees' lanyards, causing them to fall as well.

h. *Planning considerations.* One of the most important aspects of personal fall protection systems is fully planning the system *before* it is put into use. Probably the most overlooked component is planning for suitable anchorage points. Such planning should ideally be done before the structure or building is constructed so that anchorage points can be incorporated during construction for use later for window cleaning or other building maintenance. If properly planned, these anchorage points may be used *during* construction, as well as afterwards.

i. *Snap-hook considerations.* Although not required by this standard for all connections, locking snap-hooks designed for connection to any object (of sufficient strength) are highly recommended in lieu of the non-locking type. Locking snap-hooks incorporate a positive locking mechanism in addition to the spring loaded keeper, which will not allow the keeper to open under moderate pressure without someone first releasing the mechanism. Such a feature, properly designed, effectively prevents roll-out from occurring.

As required by the standard, the following connections must be avoided (unless properly designed locking snap-hooks are used) because they are conditions which can result in roll-out when a non-locking snap-hook is used:

- Direct connection of a snap-hook to a horizontal lifeline.
- Two (or more) snap-hooks connected to one dee-ring.
- Two snap-hooks connected to each other.
- A snap-hook connected back on its integral lanyard.
- A snap-hook connected to a webbing loop or webbing lanyard.
- Improper dimensions of the dee-ring, rebar, or other connection point in relation to the snap-hook dimensions which would allow the snap-hook keeper to be depressed by a turning motion of the snap-hook.

j. *Free fall considerations.* The employer and employee should at all times be aware that a system's maximum arresting force is evaluated under normal use conditions established by the manufacturer, and in no case using free fall distance in excess of six feet (1.8 m). A few extra feet of free fall can significantly increase the arresting force on the employee, possibly to the point of causing injury. Because of this, the free fall distance should be kept at a minimum, and, as required by the standard, in no case greater than six feet (1.8 m). To assure this, the tie-off attachment point to the lifeline or anchor should be located at or above the connection point of the fall arrest equipment to the belt or harness. (Since otherwise additional free fall distance is added to the length of the

connecting means (i.e. lanyard)). Attaching to the working surface will often result in a free fall greater than six feet (1.8 m). For instance, if a six foot (1.8 m) lanyard is used, the total free fall distance will be the distance from the working level to the body belt (or harness) plus the six feet (1.8 m) of lanyard length. Another important consideration is that the arresting force which the fall system must withstand also goes up with greater distances of free fall, possibly exceeding the strength of the system.

k. *Elongation and deceleration distance considerations.* Other factors involved in a proper tie-off are elongation and deceleration distance. During the arresting of a fall, a lanyard will experience a length of stretching or elongation, whereas activation of a deceleration device will result in a certain stopping distance. These distances should be available with the lanyard or device's instructions and must be added to the free fall distance to arrive at the total fall distance before an employee is fully stopped. The additional stopping distance may be very significant if the lanyard or deceleration device is attached near or at the end of a long lifeline, which may itself add considerable distance due to its own elongation. As required by the standard, sufficient distance to allow for all of these factors must also be maintained between the employee and obstructions below, to prevent an injury due to impact before the system fully arrests the fall. In addition, a minimum of 12 feet (3.7 m) of lifeline should be allowed below the securing point of a rope grab type deceleration device, and the end terminated to prevent the device from sliding off the lifeline. Alternatively, the lifeline should extend to the ground or the next working level below. These measures are suggested to prevent the worker from inadvertently moving past the end of the lifeline and having the rope grab become disengaged from the lifeline.

l. *Obstruction considerations.* The location of the tie-off should also consider the hazard of obstructions in the potential fall path of the employee. Tie-offs which minimize the possibilities of exaggerated swinging should be considered. In addition, when a body belt is used, the employee's body will go through a horizontal position to a jack-knifed position during the arrest of a fall. Thus, obstructions which might interfere with this motion should be avoided or a severe injury could occur.

m. *Other considerations.* Because of the design of some personal fall arrest systems, additional considerations may be required for proper tie-off. For example, heavy deceleration devices of the self-retracting type should be secured overhead in order to avoid the weight of the device having to be supported by the employee. Also, if self-retracting equipment is connected to a horizontal lifeline, the sag in the lifeline should be minimized to prevent the device from sliding down the lifeline to a position which creates a swing hazard during fall arrest. In all cases, manufacturers' instructions should be followed.

Section 1910.130 Positioning device systems.

1. *Other information.* The following American National Standard is a helpful guideline for window cleaner's positioning device systems:

a. ASME/ANSI A39.1—Safety Requirements for Window Cleaning. In addition to information on the design and use of window cleaner's belts and anchors, other window cleaning procedures are outlined.

2. *Marking.* It is recommended that body belts and pole straps, not designed for use with personal fall arrest systems (not meeting the requirements of § 1910.129) and all chest harnesses, be marked to indicate that they are for use only in positioning device systems.

Appendix B to Subpart I—References for Further Information

Note.—The following appendix to §§ 1910.128–1910.131 of subpart I serves as a non-mandatory guideline to assist employers and employees in complying with these sections and to provide other helpful information. This appendix neither adds to nor detracts from the obligations contained in the OSHA standards.

The following references provide information which may be helpful in understanding and implementing Subpart I.

1. "American National Standard Safety Requirements for Fixed Ladders," ANSI A14.3–1982. American National Standards Institute, 1430 Broadway, New York, New York 10018.

2. "American National Standard Safety Requirements for Window Cleaning," ASME/ANSI A39.1a–1988. American National Standards Institute, 1430 Broadway, New York, New York 10018.

3. Chaffin, Don B. and Terrence J. Stobbe. "Ergonomic Considerations Related to Selected Fall Prevention Aspects of Scaffolds and Ladders as Presented in OSHA Standard 29 CFR Part 1910 Subpart D." The University of Michigan, Ann Arbor, Michigan 48104, September 1979. Available from: U.S. Department of Labor, OSHA, 200 Constitution Avenue, NW., Washington, DC 20210.

4. "A Study of Personal Fall-Safety Equipment," NBSIR 76–1146. National Bureau of Standards (NBS), U.S. Department of Commerce, Washington, DC 20234. Available from: National Technical Information Service (NTIS), Springfield, Virginia 22151.

5. Sulowski, Andrew C. "Selecting Fall Arresting Systems," Pp. 55–62. "National Safety News," October 1979, National Safety Council, 425 N. Michigan Avenue, Chicago, Illinois 60611.

6. Sulowski, Andrew C. "Assessment of Maximum Arrest Force," Pp. 55–58. "National Safety News," March 1981, National Safety Council, 425 N. Michigan Avenue, Chicago, Illinois 60611.

Appendix C to Subpart I—Test Methods and Procedures for Personal Fall Protective Systems

Note.—The following appendix to §§ 1910.128–1910.131 of subpart I serves as a non-mandatory guideline to assist employers and employees in complying with these sections and to provide other helpful information. This appendix neither adds to nor detracts from the obligations contained in the OSHA standards.

This appendix contains test methods for personal fall protection systems which may be used to determine if they meet the system performance criteria specified in §§ 1910.129 and 1910.130.

Section 1910.129 Test methods for personal fall arrest systems.

1. *General.* The following sets forth test procedures for personal fall arrest systems as defined in § 1910.129.

2. *General test conditions.*

a. Lifelines lanyards and deceleration devices should be attached to an anchorage and connected to the body-belt or body harness in the same manner as they would be when used to protect employees.

b. The anchorage should be rigid, and should not have a deflection greater than .04 inches (1 mm) when a force of 2,250 pounds (10 kN) is applied.

c. The frequency response of the load measuring instrumentation should be 120 HZ.

d. The test weight used in the strength and force tests should be a rigid, metal cylindrical or torso-shaped object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm).

e. The lanyard or lifeline used to create the free fall distance should be supplied with the system, or in its absence, the least elastic lanyard or lifeline available to be used with the system.

f. The test weight for each test should be hoisted to the required level and should be quickly released without having any appreciable motion imparted to it.

g. The system's performance should be evaluated, taking into account the range of environmental conditions for which it is designed to be used.

h. Following the test, the system need not be capable of further operation.

3. *Strength test.*

a. During the testing of all systems, a test weight of 300 pounds plus or minus five pounds (135 kg plus or minus 2.5 kg) should be used. (See paragraph 2.d. above.)

b. The test consists of dropping the test weight once. A new unused system should be used for each test.

c. For lanyard systems, the lanyard length should be six feet plus or minus two inches (1.83 plus or minus 5 cm) as measured from the fixed anchorage to the attachment on the body belt or body harness.

d. For rope-grab-type deceleration systems, the length of the lifeline above the centerline of the grabbing mechanism to the lifeline's anchorage point should not exceed two feet (0.61 m).

e. For lanyard systems, for systems with deceleration devices which do not automatically limit free fall distance to two feet (0.61 m) or less, and for systems with deceleration devices which have a connection distance in excess of one foot (0.3 m) (measured between the centerline of the lifeline and the attachment point to the body belt or harness), the test weight should be rigged to free fall a distance of 7.5 feet (2.3 m) from a point that is 1.5 feet (46 cm) above the anchorage point, to its hanging location (six feet below the anchorage). The test weight should fall without interference, obstruction,

or hitting the floor or ground during the test. In some cases a non-elastic wire lanyard of sufficient length may need to be added to the system (for test purposes) to create the necessary free fall distance.

f. For deceleration device systems with integral lifelines or lanyards which automatically limit free fall distance to two feet (0.61 m) or less, the test weight should be rigged to free fall a distance of four feet (1.22 m).

g. Any weight which detaches from the belt or harness should constitute failure for the strength test.

4. *Force test.* a. *General.* The test consists of dropping the respective test weight specified in 4.b.(i) or 4.c.(i) once. A new, unused system should be used for each test.

b. *For lanyard systems.* (i) A test weight of 220 pounds plus or minus three pounds (100 kg plus or minus 1.6 kg) should be used. (See paragraph 2.d., above.)

(ii) Lanyard length should be six feet plus or minus two inches (1.83 plus or minus 5 cm) as measured from the fixed anchorage to the attachment on the body belt or body harness.

(iii) The test weight should fall free from the anchorage level to its handling location (a total of six feet (1.83 m) free fall distance) without interference, obstruction, or hitting the floor or ground during the test.

c. *For all other systems.* (i) A test weight of 220 pounds plus or minus three pounds (100 kg plus or minus 1.6 kg) should be used. (See paragraph 2.d., above.)

(ii) The free fall distance to be used in the test should be the maximum fall distance physically permitted by the system during normal use conditions, up to a maximum free fall distance for the test weight of six feet (1.83 m), except as follows:

(A) For deceleration systems which have a connection link or lanyard, the test weight should free fall a distance equal to the connection distance (measured between the centerline of the lifeline and the attachment point to the body belt or harness).

(B) For deceleration device systems with integral lifelines or lanyards which automatically limit free fall distance to two feet (0.61 m), or less, the test weight should free fall a distance equal to that permitted by the system in normal use. (For example, to test a system with a self-retracting lifeline or lanyard, the test weight should be supported and the system allowed to retract the lifeline or lanyard as it would in normal use. The test weight would then be released and the force and decelaration distance measured.)

d. *Failure.* A system fails the force test if the recorded maximum arresting force exceeds 1,260 pounds (15.6 kN) when using a body belt, and/or exceeds 2,520 pounds (11.2 kN) when using a body harness.

e. *Distances.* The maximum elongation and deceleration distance should be recorded during the force test.

5. *Decelaration device tests.*—a. *General.* The device should be evaluated or tested under the environmental conditions (such as rain, ice, grease, dirt, type of lifeline, etc.) for which the device is designed.

b. *Rope-grab-type deceleration devices.* (i) Devices should be moved on a lifeline 1,000 times over the same length of line a distance of not less than one foot (30.5 cm), and the mechanism should lock each time.

(ii) Unless the device is permanently marked to indicate the type of lifelines which must be used, several types (different diameters and different materials), of lifelines should be used to test the device.

c. *Other-self-activating-type deceleration devices.* The locking mechanisms of other self-activating-type deceleration devices designed for more than one arrest should lock each of 1,000 times as they would in normal service.

Section 1910.130 Test methods for positioning device systems.

1. *General.* The following sets forth test procedures for positioning device systems as defined in § 1910.130.

2. *Test conditions.*

a. The fixed anchorage should be rigid and should not have a deflection greater than .04 inch (1 mm) when a force of 2,250 pounds (10 kN) is applied.

b. For lineman's body belts and pole straps, the body belt should be secured to a 250-pound (113 kg) bag of sand at a point which simulates the waist of an employee. One end of the pole strap should be attached to the rigid anchorage and the other end of the body belt. The sand bag should be allowed to free fall a distance of four feet (1.2 m). Failure of the pole strap and body belt should be indicated by any breakage or slippage sufficient to permit the bag to fall free to the ground.

c. For window cleaner's belts, the complete belt should withstand a drop test consisting of a 250-pound (113 kg) weight falling free for a distance of six feet (1.83 m). The weight should be a rigid object with a girth of 38 inches plus or minus four inches (96 cm plus or minus 10 cm). The weight should be placed in the waistband with the belt buckle drawn firmly against the weight, as when the belt is worn by a window cleaner. One belt terminal should be attached to a rigid anchor and the other terminal should hang free. The terminals should be adjusted to their maximum span. The weight fastened in the freely suspended belt should then be lifted exactly six feet (1.83 m) above its "at rest" position and released so as to permit a free fall of six feet (1.83 m) vertically below the point of attachment of the terminal anchor. The belt system should be equipped with devices and instrumentation capable of measuring the duration an magnitude of the arrest forces. Failure of the test should consist of any breakage or slippage sufficient to permit the weight to fall free of the system. In addition, the initial and subsequent arresting forces should be measured and should not exceed 2,000 pounds (8.5 kN) for more than two milliseconds for the initial impact, nor exceed, 1,000 pounds (4.5 kN) for the remainder of the arrest time.

d. All other positioning device systems (except for restraint line systems) should withstand a drop test consisting of a 250-pound (113 kg) weight falling free for a distance of four feet (1.2 m). The weight should be the same as described in paragraph (b)(3), above. The body belt or harness should be affixed to the test weight as it would be to an employee. The system should be connected to the rigid anchor in the manner that the system would be connected in normal use. The weight should be lifted exactly four feet (1.2. m) above its "at rest" position and released so as to permit a vertical free fall of four feet (1.2 m). Failure of the system should be indicated by any breakage or slippage sufficient to permit the weight to fall free to the ground.

[FR Doc. 90–7807 Filed 4–9–90; 8:45 am]

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federal register

Tuesday
April 10, 1990

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135

Special Flight Rules in the Vicinity of the Grand Canyon National Park; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 25149; SFAR No. 50-2]

RIN 2120-AC70

Special Flight Rules in the Vicinity of the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule.

SUMMARY: On June 2, 1988, the FAA published a final rule which established certain restrictions on the operation of aircraft in the vicinity of the Grand Canyon National Park. This action corrects certain discrepancies between the technical boundary descriptions of the Grand Canyon Special Flight Rules Area and certain flight-free zones within that area and the boundary of the Grand Canyon National Park. The effective date of this rule will be coincident with the effective date of the new Las Vegas Sectional Aeronautical Chart.

DATES: *Effective date:* April 5, 1990.

Expiration date: Special Federal Aviation Regulation (SFAR) No. 50-2 expires on June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Richard K. Kagehiro, Air Traffic Rules Branch, ATO-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, APA-200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3479. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

On May 27, 1988, the FAA issued a final rule for the operation of aircraft in the airspace above the Grand Canyon up to an altitude, but not including, 14,500 feet above mean sea level (MSL), with an effective date of September 22, 1988. SFAR No. 50-2 (53 FR 20264, June 2, 1988), revised prior flight regulations in the vicinity of the Grand Canyon National Park to comply with legislation requiring additional flight regulations based on the recommendations of the U.S. Department of the Interior. The final rule substantially adopted the recommendations submitted by the Secretary of the Interior to the FAA in accordance with section 3 of Pub. L. 100-91.

After consulting the National Park Service (NPS), the FAA determined that certain minor discrepancies exist between the boundary descriptions of the Grand Canyon Special Flight Rules Area (SFRA) and certain flight-free zones, specified in SFAR No. 50-2, and the current NPS boundary description of the Grand Canyon National Park. As a result, the technical descriptions of the Grand Canyon SFRA and the flight-free zones were reviewed for accuracy. This amendment corrects the discrepancies in those boundary descriptions identified by that review.

The Rule

This amendment revises section 1 of SFAR 50-2 by changing one latitudinal coordinate of the northern boundary description of the Grand Canyon SFRA to coincide with the current boundary of the Grand Canyon National Park. Section 4(c) of SFAR No. 50-2 is similarly revised to change the boundary description of the Shinumo Flight-Free Zone. An editorial correction to section 4(d) describing the Toroweap/Thunder River Flight-Free Zone is made by changing the word "northeast" to "northwest." Additionally, certain coordinates in the technical description of the Toroweap/Thunder River Flight-Free Zone are revised to correspond to the current park boundary.

Without this revision to the technical boundary descriptions specified in SFAR 50-2, certain portions of airspace overlying the Grand Canyon National Park would not be within the lateral confines of the Grand Canyon SFRA. Exclusion of this airspace from the Grand Canyon SFRA would result in the nonapplicability of SFAR 50-2 operating restrictions within that airspace. The restrictions established by SFAR 50-2 were in response to certain environmental and noise-reduction concerns and were consistent with the intent of legislation and the recommendations of the Department of the Interior. The effective date of this amendment will be coincident with the publication of the new Las Vegas Sectional Aeronautical Chart.

Since this amendment is corrective in nature and does not establish additional operating requirements or modify any existing requirements, I find that the notice and public procedure under 5 U.S.C. 553(b) are unnecessary. For the same reasons, I find that good cause exists for making this rule effective in less than 30 days after publication so as to coincide with the publication of the Las Vegas Sectional Aeronautical Chart.

Environmental Review

An environmental assessment of SFAR No. 50-2 and a Finding of No Significant Impact have been placed in the rules docket. Since this amendment does not alert the conclusions in that document, the FAA has concluded that further environmental assessment is unnecessary.

Economic Evaluation

Because the economic impact of this amendment is so minimal, a regulatory evaluation is unnecessary. For the same reason, the FAA certifies that the amendment will not have a significant effect on a substantial number of small entities.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this amendment is not major under Executive Order 12291. In addition, the FAA certified that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is not considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11024; February 26, 1979).

List of Subjects

14 CFR Part 91

Aircraft, Aviation safety, Grand Canyon.

14 CFR Part 135

Aviation safety, Air taxis, Commercial operators.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 91 and 135 of the Federal

Aviation Regulations (14 CFR parts 91 and 135), Special Federal Aviation Regulation No. 50–2 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by P.L. 100–223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; (P.L. 100–202); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

2. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

3. SFAR 50–2 is amended by revising section 1 and sections 4 (c) and (d). The introductory text of section 4 is republished for the convenience of the reader.

SFAR No. 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ.

Section 1. Applicability. This rule prescribes special operating rules for all persons operating aircraft in the following airspace, designated as the Grand Canyon National Park Special Flight Rules Area:

That airspace extending upward from the surface up to but not including 14,500 feet MSL within an area bounded by a line beginning at lat. 36°09'30" N., long. 114°03'00" W.; northeast to lat. 36°14'00"., long. 113°09'50" W.; thence northeast along the boundary of the Grand Canyon National Park to lat. 36°24'47" N., long. 112°52'00" W.; to lat. 36°30'30" N., long. 112°36'15" W.; to lat. 36°21'30" N., long. 112°00'00" W.; to lat. 36°35'30" N., long. 111°53'10" W.; to lat. 36°53'00" N., long. 111°36'45" W.; to lat. 36°53'00" N., long. 111°33'00" W.; to lat. 36°19'00" N., long. 111°50'50" W.; to lat. 36°17'00" N., long. 111°42'00" W.; to lat. 35°59'30" N., long. 111°42'00" W.; to lat. 35°57'30" N., long. 112°03'55" W.; thence counterclockwise via the 5-statute mile radius of the Grand Canyon Airport reference point (lat. 35°57'09" N., long 112°08'47" W.) to lat. 35°57'30" N., long. 112°14'00" W.; to lat 35°57'30" N., long. 113°11'00" W.; to lat. 35°42'30" N., long. 113°11'00" W.; to lat. 35°38'30" N., long. 113°27'30" W.; thence counterclockwise via the 5-statute mile radius of the Peach Springs VORTAC to lat. 35°41'20" N., long. 113°36'00" W.; to lat. 35°55'25" N., long 113°49'10" W.; to lat. 35°57'45" N., long. 113°45'20" W.; thence northwest along the park boundary to lat. 36°02'20" N., long. 113°50'15" W.; to lat. 36°00'10" N., long., 113°53'45" W.; thence to the point of beginning.

* * * * *

Section 4. Flight-free zones. Except in an emergency or if otherwise necessary for safety of flight, or unless otherwise authorized by the Flight Standards District Office for a purpose listed in section 3(b), no person may operate an aircraft in the Special Flight Rules Area within the following areas:

* * * * *

(c) *Shinumo Flight-Free Zone.* Within an area bounded by a line beginning at lat. 36°04'00" N., long. 112°16'40" W.; northwest along the park boundary to a point at lat. 36°12'47" N., long. 112°30'53" W.; to lat. 36°21'15" N., long. 112°20'20" W.; east along the park boundary to lat. 36°21'15" N., long. 112°13'55" W.; to lat. 36°14'40" N., long. 112°11'25" W.; to the point of origin. The area between the Thunder River/Toroweap and Shinumo Flight-Free Zones is designated the "Fossil Canyon Corridor."

(d) *Toroweap/Thunder River Flight-Free Zone.* Within an area bounded by a line beginning at lat. 36°22'45" N., long. 112°20'35" W.; thence northwest along the boundary of the Grand Canyon National Park to lat. 36°17'48" N., long. 113°03'15" W.; to lat. 36°15'00" N., long. 113°07'10" W.; to lat. 36°10'30" N., long. 113°07'10" W.; thence east along the Colorado River to the confluence of Havasu Canyon (lat. 36°18'40" N., long. 112°45'45" W.;) including that area within a 1.5-nautical-mile radius of Toroweap Overlook (lat. 36°12'45" N., long. 113°03'30" W.) to the point of origin; but not including the following airspace designated as the "Tuckup Corridor": at or above 10,500 feet MSL within 2 nautical miles either side of a line extending between lat. 36°24'47" N., long. 112°48'50" W.; and lat. 36°17'10" N., long. 112°48'50" W.; to the point of origin.

* * * * *

Issued in Washington, DC, on April 4, 1990.

James B. Busey,

Administrator.

[FR Doc. 90–8140 Filed 4–4–90; 4:33 pm]

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federal register

Tuesday
April 10, 1990

Part IV

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 207

Consolidation of Reporting Requirements for Waterborne Commerce Statistics Into a Single Section of the Navigation Regulations; Proposed Rule With Request for Comments

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

Proposed Rule for Consolidation of Reporting Requirements for Waterborne Commerce Statistics Into a Single Section of the Navigation Regulations

AGENCY: Corps of Engineers, Army Department, DOD.

ACTION: Proposed rule with request for comments.

SUMMARY: This rule corrects and consolidates reporting requirements for waterborne commerce statistics, including passengers, tonnage, freight, and other data, into a single section (33 CFR 207.900) of the Navigation Regulations of the Army Corps of Engineers. It also standardizes and simplifies the reporting requirements. It further updates the penalties for not reporting, or for reporting inaccurate information. These changes were necessitated by the Water Resources Development Act of 1986.

DATES: Written comments must be received on or before May 10, 1990. If this proposal is adopted as a final rule, the proposed effective date will be 30 days after publication of the final rule in the Federal Register.

ADDRESSES: Submit written comments, in duplicate, to the Chief of the Waterborne Commerce Statistics Center, P.O. Box 61280, New Orleans, Louisiana 70161–1280, or deliver them to the Waterborne Commerce Statistics Center, Room 171, Prytania Street and Leake Avenue, New Orleans, Louisiana between the hours of 7:30 a.m. and 4 p.m., Monday through Friday. Comments received and other materials relevant to this notice may be inspected at the Center during these same hours. An appointment may be required for inspection so please call ahead to confirm availability and to avoid any conflicts with inspections by other interested parties. A reasonable fee may be charged for any copying services.

FOR FURTHER INFORMATION CONTACT: David L. Penick, at the above address, or by telephone at (504) 862–1404. In Washington, DC, contact David Lichy at (202) 355–3052.

SUPPLEMENTARY INFORMATION:

Legal Authority

The legal authority for the collection, compilation, and publication of waterborne commerce statistics by the Army Corps of Engineers is the River and Harbor Act of September 22, 1922 (42 Stat. 1043), as amended, and codified in 33 U.S.C. 555. This Congressional directive provides:

"Owners, agents, masters and clerks of vessels and other craft plying upon the navigable waters of the United States, and all individuals and corporations engaged in transporting their own goods upon the navigable waters of the United States, shall furnish such statements relative to vessels, passengers, freight and tonnage as may be required by the Secretary of the Army: *Provided,* That this provision shall not apply to those rafting logs except upon a direct request upon the owner to furnish specific information.

Every person or persons offending against the provisions of this section shall, for each and every offense, be liable to a fine of not more than $5,000, or imprisonment not exceeding two months, to be enforced in any district court in the United States within whose territorial jurisdiction such offense may have been committed. In addition, the Secretary may assess a civil penalty of up to $2,500, per violation, against any person or entity that fails to provide timely, accurate statements required to be submitted pursuant to this section by the Secretary."

Vessel, origin, destination, commodity, and tonnage data have been collected from vessel operating companies by the Corps since 1922.

Background

The waterways and ports of the United States handle approximately one billion tons of domestic cargo, five hundred million tons of imported cargo, and four hundred million tons of exported cargo annually. The effective and efficient movement of this cargo is critical to the economy of the local region and the United States as a whole.

Where economically justified, it is a primary mission of the Army Corps of Engineers to assure that navigation projects are properly maintained and ready to facilitate these movements by new project construction or improvements to existing projects. Thus, accurate and reliable waterborne commerce statistics are essential to the Crops' mission. These data provide the requisite information necessary for accurate cost-benefit analyses to determine new project feasibility and to establish funding priorities for the operation and maintenance of existing projects.

Our annual dredging budget is allocated, as a first priority, to those projects with the lowest dredging costs per ton of cargo carried. If the reported tonnage is inaccurate, then our dredging funds may not be optimally distributed to maximize benefits to the national economy. Similarly, new navigation projects and major project rehabilitations may not be properly scheduled or adequately justified if the economic data and needs analysis are based upon inaccurate or incomplete information.

Information Collected

The Army Corps of Engineers maintain two types of data bases regarding commodity and vessel movements on the waterways and channels of the United States. These are known as Waterborne Commerce Statistics (WCS) and the Lock Performance Monitoring System (LPMS). Each data base, the WCS and the LPMS, provide the Crops and others with the information needed for an understanding of the complex relationships between the physical system, and the commercial vessels and/or commodities moving on that system. Although these data bases may appear similar, they are in fact quite different and should be considered as designed and used by the Corps and others as complements.

For example, the LPMS pertains directly to navigation system management and collects, monitors, and analyzes data regarding the use and operation of Federally owned and operated locks and canals. It determines the sizing and timing of replacements, facilities rehabilitation or maintenance actions, and determines operation procedures and closures. LPMS requires data about the number of vessels, barges, and tows which move through each lock chamber or canal and about the operation time required for each vessel or tow.

Other pertinent data, such as traffic delays, are also collected which might affect the availability of the lock chamber or canal and their operating procedures. These data are collected by the pilot, lockmaster, or canal operator on ENG Forms 3102b and 3102c. Unlike WCS, the LPMS does not collect the specific barge identity, detailed commodity types (only categories), precise tonnages (only estimates), or origin and destination information.

On ENG Form 3925 and 3925b, WCS data include vessel name and number, if any, which is the key data element of that system because it tracks the vessel even when it is inactive for a given month. At a few locks, vessel specific data for LPMS may be collected occasionally on ENG Form 3102d to provide a simple check on vessel routing

and verification of the information provided to the Army Corps of Engineers on ENG Forms 3925 and 3925b. Also, ENG Forms 3931 and 3932 are used for an annual inventory of vessels available for carriage of domestic commerce and vessel characteristics.

Data Utilization

The WCS and the LPMS data bases are the sole government sources for information in the United States on domestic waterborne commerce and lock or canal operation. The Army Corps of Engineers is the agency charged with collection of these data due to its responsibility for the planning, design, construction, rehabilitation, operation, and maintenance of the inland waterway system, the Great Lakes, and the channels of the coastal ports.

The aggregate data collected under these programs are published in the annual publication, *Waterborne Commerce of the United States, Parts 1–5, Lock Performance Monitoring System Quarterly Reports,* and *Waterborne Transportation Lines of the United States.* Each data base and publication provide essential information for an understanding of the utilization of our Nation's navigation systems and the fleet using these systems. In all, these data bases provide essential information to those with responsibilities over the physical system or to those involved in shipping or moving commodities on the Nation's waterways.

Data Release Policy

The Army Corps of Engineers' policy on the release of waterborne commercial statistics can be found in 33 CFR 209.320 and will be followed throughout the collection and publication process of these data bases. Data released by the Corps to state and local government agencies, private companies, and the general public are done in accordance with the Paperwork Reduction Act (44 U.S.C. 3507), the Trade Secrets Act (18 U.S.C. 1905), and the Water Resources Development Act of 1986 (Pub. L. 99–662), which amended the River and Harbor Act of 1922 (33 U.S.C. 555).

Need for Proposed Action

In general, vessel operating companies are currently required each month to report their commercial vessel movements on the navigable waters of the United States, along with other pertinent information specified on ENG Form 3925 or ENG Form 3925b, for each company vessel or fleet of vessels, which operates or is available for operation. This allows tracking of the specific vessel from point of origin to ultimate destination, and indicates times of active and inactive vessel usage for each operating company. It also provides information on commodity movement from the point of loading on the water to the point of unloading on the water.

Further, the master, captain, or pilot of vessels which pass through Corps' locks or canals are required to provide the data identified on ENG Forms 3102b, 3102c, or 3102d, or data dictated by the lockmaster or canal operator, for other statistical purposes. Currently, failure to provide this information may result in denial of passage through the lock or canal and in a fine or imprisonment.

The present reporting requirements for these data are contained in various sections of the Corps' Navigation Regulations (33 CFR Part 207) according to the individual structure, waterway, or harbor. These sections were adopted over time by numerous publications in the **Federal Register** under statutory guidance contained in 33 U.S.C. 555.

The current section subparagraphs contain inconsistent, nonexistent, or nonuniform reporting requirements, which are corrected by this proposed rule. When final, the single section (33 CFR 207.900) will be substituted for all former reporting requirements on the navigable waters of the United States, or the locks and canals operated by the Army Corps of Engineers. In addition, this proposed rule implements changes mandated by Congress in the Water Resources Development Act of 1986 (Pub. L. 99–662).

Section 1402, (Pub. L. 99–662) instituted the collection of a Harbor Maintenance Tax for the establishment of a Harbor Maintenance Trust Fund to be used by the Federal Government to partially fund channel maintenance by the Corps. This statutory requirement for vessel operating companies to report shipper information has been in effect since April 1, 1987. The U.S. Customs Service is the Federal agency responsible for the collection of this tax and has updated regulations in 19 CFR parts 3, 24, 146, and 178 to implement this tax collection.

Even though the shippers (*i.e.*, those who pay the freight charges) are required to actually pay the Harbor Maintenance Tax under 19 CFR 24.24(e), vessel operating companies are required to report on ENG Form 3925 the names and Internal Revenue Service or Social Security numbers of the shipper of the cargo which is subject to the tax under 19 CFR 24.24(e). The Corps will then provide these data to the U.S. Customs Service for the purpose of monitoring and enforcing the collection of the tax.

This proposed rule by the Army Corps of Engineers adopts and implements the referenced law at the national level for all ENG Forms submitted to the Corps by vessel operating companies. The proposed changes do not modify the current requirements for preparation and submission of these ENG Forms.

No increase in costs is expected as a result of complying with the described changes, and the monitoring, recordkeeping, and reporting requirements have been determined to be insubstantial by the Army Corps of Engineers. Because there are no economic effects of these changes, the preparation of a detailed economic impact assessment is not required.

The information collection requirements of these changes are also considered to be no different than those currently required by the River and Harbor Act and other Corps procedures. Thus, the public reporting burden resulting from the proposed change is estimated to be the same or unchanged from existing requirements.

Enforcement Policy

Notice is given that every means at the disposal of the Army Corps of Engineers will be utilized to monitor and enforce these regulations when they become final.

Administrative Procedures

Implementation of 33 U.S.C. 555 requires that the Army Corps of Engineers adopt an administrative procedure for contesting a proposed civil penalty order. We have recently adopted Class I Administrative Penalty Provisions under the Clean Water Act [33 U.S.C. 1319(g)(1)] which will provide such a procedure. These provisions were published as a final rule in 54 FR 50708–50712 on December 8, 1989.

Because it is reasonable to maintain an agency-wide and uniform procedure for the notice and assessment of civil penalties, those regulations have been incorporated by reference to the maximum extent possible. This was done to avoid unnecessary detail in this regulation regarding such procedures. Further, those specific provisions required by the Clean Water Act regarding public notification, comment period, and state coordination have been explicitly excluded from use in the proceedings under this regulation.

The proceeding will be initiated by the Chief of the Waterborne Commerce Statistics Center who will issue a proposed civil penalty order. This order will describe the violation, the amount

examples are listed in the instructions of the proposed penalty, and the applicable provisions of 33 CFR part 326. Requests for a hearing will be sent by the recipient to the Director, Water Resources Support Center. The nature of any administrative hearing or proceeding may be either oral or on the record. However, it is anticipated that most of the proceedings will be based upon the written record of the parties. In some cases, an oral hearing may be more appropriate and required. A final decision on the order will be issued by the Director of the Water Resources Support Center.

Classification

The Assistant Secretary of the Army for Civil Works has reviewed this action and hereby certifies that it is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small businesses or other entities. Further, the Department of the Army has determined that these regulations will not affect the use or value of private property and, therefore, do not require a Takings Implication Assessment under Executive Order 12630. This proposed rule also has been determined not to be a major rule under Executive Order 12991, and a Regulatory Impact Analysis (RIA) Statement will not be prepared since the proposed changes will not result in significant adverse economic effects identified in the Executive Order as a grounds for a finding of major action. The collection of information contained in this proposed rule has been cleared by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and assigned control numbers 0702–0001 and 0702–0008.

Public Comments Requested

Any small business or other interested party may file written comments, objections, or suggestions on any aspect of this proposed rule within the 30-day time period for public comment.

List of Subjects in 33 CFR Part 207

Navigation regulations

For the reasons set out in the preamble, title 33, chapter II of the Code of Federal Regulations is proposed to be amended as follows.

PART 207—[AMENDED]

1. The authority citation for part 207 is revised to read as follows:

Authority: Secs. 4 and 7 of 28 Stat. 362; 40 Stat. 266; 42 Stat. 1043; and 33 U.S.C. 1, 554, and 555 (as amended by Sec. 919 of the Water Resources Development Act of 1986.

§§ 207.9, 207.20, 207.50, 207.100, 207.160, 207.180, 207.249, 207.275, 207.300, 207.390, 207.420, 207.460, 207.470, 207.590, 207.640, 207.680, 207.718, 207.750 [Amended]

2. The contents of the following paragraphs are removed, and the removed paragraph numbers are designated as being [Reserved]:

Sections 207.9(k), 207.20(m), 207.50(m), 207.100(q), 207.160(c), 207.180(c), 207.180(d)(13), 207.249(a), 207.275(q), 207.300(t), 207.390, 207.420(b)(17), 207.460(a)(15), 207.470(o), 207.590(m)(7), 207.640(a)(19), 207.680(c), 207.718(u), 207.750(a)(2), and 207.750(b)(7).

3. Add § 207.900 to read as follows:

§ 207.900 Collection of navigation statistics.

(a) *Definitions.* For the purpose of this regulation the following terms are defined:

(1) Navigable waters of the United States means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. (See 33 CFR Part 329 for a more complete definition of this term.)

(2) Offenses and Violations mean:

(i) Failure to submit a required report.

(ii) Failure to provide a timely, accurate, and complete report.

(iii) Failure to submit monthly listings of idle vessels or vessels in transit.

(iv) Failure to submit a report required by the lockmaster or canal operator.

(3) Leased or chartered vessel means a vessel that is leased or chartered when the owner relinquishes control of the vessel through a contractual agreement with a second party for a specified period of time and/or for a specified remuneration from the lessee. Commercial movements on an affreightment basis are not considered a lease or charter of a particular vessel.

(4) Person or entity means an individual, corporation, partnership, or company.

(5) Timely means vessel and commodity movement data must be received by the Waterborne Commerce Statistics Center within 30 days after the close of the month in which the vessel movement or nonmovement takes place.

(6) Commercial vessel means a vessel used in transporting by water, either merchandise or passengers for compensation or hire, or in the course of business of the owner, lessee, or operator of the vessel.

(7) Reporting situation means a vessel movement by an operator that is required to be reported. Typical on the various ENG Forms. Five typical movements that are required to be reported by vessel operating companies include the following examples: Company A is the barge owner, and the barge transports corn from Minneapolis, MN to New Orleans, LA, with fleeting at Cairo, IL.

(i) *Lease/Charter:* If Company A leases or charters the barge to Company B, then Company B is responsible for reporting the movements of the barge until the lease/charter expires.

(ii) *Interline Movement:* A barge is towed from Minneapolis to Cairo by Company A, and from Cairo to New Orleans by Company B. Since Company A is the barge owner, and the barge is not leased. Company A reports the entire movement of the barge with an origin of Minneapolis and a destination of New Orleans.

(iii) *Vessel Swap/Trade:* Company A swaps barge with Company B to allow Company B to meet a delivery commitment to New Orleans. Since Company A has not leased/chartered the barge, Company A is responsible for filing the report. Company B is responsible for filing the report on the barge which is traded to Company A. The swap or trade will not affect the primary responsibility for reporting the individual vessel movements.

(iv) *Re-Consignment:* Barge is reconsigned to Mobile, AL. Company A reports the movements as originating in Minneapolis and terminating in Mobile. The point from which barge is re-consigned is not reported, only points of loading and unloading.

(v) *Fleeting:* Barge is deposited at a New Orleans fleeting area by Company A and towed by Company B from fleeting area to New Orleans area dock for unloading. Company A, as barge owner, reports entire movements from Minneapolis to the unloading dock in New Orleans. Company B does not report any barge movement.

(b) Implementation of the waterborne commerce statistics provisions of the River and Harbor Act of 1922, as amended by the Water Resources Development Act of 1986 (Pub. L. 99–662), mandates the following.

(1) *Filing Requirements.* Except as provided in paragraph (b)(2) of this section, the person or entity receiving remuneration for the movement of vessels or for the transportation of goods or passengers on the navigable waters is responsible for assuring that the activity report of commercial vessels is timely filed.

(i) For vessels under lease/charter agreements, the lessee or charterer of any commercial vessel engaged in

commercial transportation will be responsible for the filing of said reports until the lease/charter expires.

(ii) The vessel owner, or his designated agent, is always the responsible party for ensuring that all commercial activity of the vessel is timely reported.

(2) The following Vessel Information Reports are to be filed with the Army Corps of Engineers, at the address specified on the ENG Form, and are to include:

(i) *Monthly Reports.* These reports shall be made on ENG Forms furnished upon written request of the vessel operating companies to the Army Corps of Engineers at the following address: U.S. Army Corps of Engineers, Waterborne Commerce Statistics Center, Post Office Box 61280, New Orleans, Louisiana 70161–1280.

(A) All movements of domestic waterborne commercial vessels shall be reported, including but not limited to: dry cargo ship and tanker moves, loaded and empty barge moves, towboat moves, with or without barges in tow, fishing vessels, movements of crew boats and supply boats to offshore locations, tugboat moves and movements of newly constructed vessels from the shipyard to the point of delivery.

(B) Vessels idle during the month must also be reported.

(C) Notwithstanding the above requirements, the following waterborne vessel movements need not be reported:

(*1*) Movements of recreational vessels.

(*2*) Movements of fire, police, and patrol vessels.

(*3*) Movements of vessels exclusively engaged in construction (*e.g.,* piledrivers and crane barges). *NOTE,* however, that movements of supplies, materials, and crews to or from the construction site must be timely reported.

(*4*) Movements of dredges to or from the dredging site. However, vessel movements of dredged material from the dredging site to the disposal site must be reported.

(*5*) Specific movements granted exemption in writing by the Waterborne Commerce Statistics Center.

(D) ENG Forms 3925 and 3925b shall be completed and filed by vessel operating companies each month for all voyages or vessel movements completed during the month. Vessels that did not complete a move during the month shall be reported as idle or in transit.

(E) The vessel operating company may request a waiver from the Army Corps of Engineers, and upon written approval by the Waterborne Commerce Center, the company may be allowed to provide the requisite information of paragraph (b)(2)(i)(D), on computer printouts, magnetic tape, diskettes, or alternate medium approved by the Center.

(F) Harbor Maintenance Tax information is required on Eng Form 3925 for cargo movements into or out of ports that are subject to the provisions of Section 1402 of the Water Resources Development Act of 1986 (Pub. L. 99–662).

(*1*) The name of the shipper of the commodity, and the shipper's Internal Revenue Service number or Social Security number, must be reported on the form.

(*2*) If a specific exemption applies to the shipper, the shipper should list the appropriate exemption code. The specific exemption codes are listed in the directions for ENG Form 3925.

(*3*) Refer to 19 CFR part 24 for detailed information on exemptions and ports subject to the Harbor Maintenance Tax.

(ii) *Annual Reports.* Annually an inventory of vessels available for commercial carriage of domestic commerce and vessel characteristics must be filed on ENG Forms 3931 and 3932.

(iii) *Transaction Reports.* The sale, charter, or lease of vessels to other companies must also be reported to assure that proper decisions are made regarding each company's duty for reporting vessel movements during the year. In the absence of notification of the transaction, the former company of record remains responsible until proper notice is received by the Corps.

(iv) *Reports to Lockmasters and Canal Operators.* Masters of self-propelled non-recreational vessels which pass through locks and canals operated by the Army Corps of Engineers will provide the data specified on ENG Forms 3102b, 3102c, and/or 3102d to the lockmaster, canal operator, or his designated representative in the manner and detail dictated.

(c) *Penalties for Noncompliance.* The following penalties for noncompliance can be assessed for offenses and violations.

(1) *Criminal Penalties.* Every person or persons violating the provisions of this regulation shall, for each and every offense, be liable to a fine of not more than $5,000, or imprisonment not exceeding two months, to be enforced in any district court in the United States within whose territorial jurisdiction such offense may have been committed.

(2) *Civil Penalties.* In addition, any person or entity that fails to provide timely, accurate, and complete statements or reports required to be submitted by this regulation may also be assessed a civil penalty of up to $2,500 per violation under 33 U.S.C. 555, as amended.

(3) *Denial of Passage.* In additon to these fines, penalties, and imprisonments, the lockmaster or canal operator can refuse to allow vessel passage.

(d) *Enforcement Policy.* Every means at the disposal of the Army Corps of Engineers will be utilized to monitor and enforce these regulations.

(1) To identify vessel operating companies that would be reporting waterborne commerce data, The Corps will make use of, but is not limited to, the following sources.

(i) Data on purchase and sale of vessels.

(ii) U.S. Coast Guard vessel documentation and reports.

(iii) Data collected at Locks, Canals, and other facilities operated by the Corps.

(iv) Data provided by terminals on ENG Form 3926.

(v) Data provided by the other Federal agencies including the Internal Revenue Service, Customs Service, Maritime Administration, Department of Transportation, and Department of Commerce.

(vi) Data provided by ports, local facilities, and state or local governments.

(vii) Data from trade journals and publications.

(viii) Site visits and inspections.

(2) *Notice of Violation.* Once a reporting violation is determined to have occurred, the Chief of the Waterborne Commerce Statistics Center will notify the responsible party and allow 30 days for the reports to be filed after the fact. If the reports are not filed within this 30-day notice period, then appropriate civil or criminal actions will be undertaken by the Army Corps of Engineers, including the proposal of civil or criminal penalties for noncompliance. Typical cases for criminal or civil action include, but are not limited to, those violations which are willful, repeated, or have a substantial impact in the opinion of the Chief of the Waterborne Commerce Statistics Center.

(3) *Administrative Assessment of Civil Penalties.* Civil penalties may be assessed in the following manner.

(i) *Authorization.* If the Chief of the Waterborne Commerce Statistics Center finds that a person or entity has failed to comply with any of the provisions specified herein, he is authorized to assess a civil penalty in accordance with the Class I penalty provisions of 33 CFR part 326. Provided, however, that the procedures in 33 CFR part 326 specifically implementing the Clean

Water Act [33 U.S.C. 1319(g)(4)], public notice, comment period, and state coordination, shall not apply.

(ii) *Initiation.* The Chief of the Waterborne Commerce Statistics Center will prepare and process a proposed civil penalty order which shall state the amount of the penalty to be assessed, describe by reasonable specificity the nature of the violation, and indicate the applicable provisions of 33 CFR 326.

(iii) *Hearing Requests.* Recipients of a proposed civil penalty order may file a written request for a hearing or other proceeding. This request shall be as specified in 33 CFR 326 and shall be addressed to the Director of the Water Resources Support Center, Casey Building, Fort Belvoir, Virginia 22060–5586, who will provide the requesting person or entity with a reasonable opportunity to present evidence regarding the issuance, modification, or revocation of the proposed order. Thereafter, the Director of the Water Resources Center shall issue a final order.

(4) *Additional Remedies.* Appropriate cases may also be referred to the local U.S. Attorney for prosecution, penalty collection, injunctive, and other relief by the Chief of the Waterborne Commerce Statistics Center.

Dated: March 1, 1990.

Robert W. Page,

Assistant Secretary of the Army, (Civil Works).

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

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Part V

Department of Agriculture

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program: Child Nutrition and WIC Reauthorization Act Amendments; Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program: Child Nutrition and WIC Reauthorization Act Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rulemaking implements a number of changes to the Summer Food Service Program (SFSP) which was mandated by the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147). These changes; (1) Make eligible to serve as SFSP sites those meal providers which conduct a regularly scheduled food service primarly for homeless children; (2) allow private nonprofit organizations to serve as SFSP sponsors, subject to certain conditions; (3) require State agencies to conduct outreach efforts to potentially eligible private nonprofit organizations in Fiscal Years 1990 and 1991; (4) require State agencies to provide ongoing training and technical assistance to these oganizations to ensure their compliance with Program requirements; and (5) make college and university sponsors participating in the National Youth Sports Program's drug awareness activities during the academic year eligible to participate in the SFSP on a year-round basis. In addition, the Reauthorization Act authorizes the Secretary to reserve money from each fiscal year's appropriation to use in conducting additional training and monitoring of private nonprofit organization. Finally, this rulemaking corrects several errors which appeared in the text of the final 1989 SFSP regulations published on April 27, 1989 (54 FR 18200). These technical corrections are necessary to provide administering agencies and the public with a fully corrected version of 7 CFR part 225.

DATES: This interim rulemaking is effective April 10, 1990. To be assured of consideration, comments must be postmarked on or before October 31, 1990.

ADDRESSES: Comments should be addressed to Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302. All written submissions will be available for public inspection at this location Monday through Friday, 8:30 a.m.–5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eadie or Mr. James C. O'Donnell at the above address or by telephone at (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to this review, Betty Jo Nelsen, the Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the additional reporting burden included in this interim rulemaking at § 225.8(e) is not effective until it has been approved by the Office of Management and Budget (OMB). This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 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, and final rule-related notice published at 48 FR 29115, June 24, 1983).

This rule implements the provisions of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147, enacted November 10, 1989) related to the SFSP. The implementation of these provisions is detailed in section 102 of that statute. Section 102(b)(1) requires all SFSP provisions of Public Law 101–147 except those concerning the academic-year National Youth Sports Program (NYSP) to be implemented through regulations by February 1, 1990. Further, section 102(b)(1) specifically authorizes the Secretary to issue these regulations without providing for prior notice and comment. Section 102(b)(2) makes the NYSP provisions effective October 1, 1989, and requires the Secretary to issue regulations regarding the academic-year NYSP by February 1, 1990. The remaining provisions in this rule are technical corrections of errors which appeared in the text of the 1989 SFSP regulations (published April 27, 1989, 54 FR 18200).

In light of the statutory exemption with respect to the provisions implementing Public Law 101–147 (with the exception of the NYSP provisions), the need to meet the February 1, 1990 implementation deadlines, and the nature of the technical corrections, this rule is being published without providing for prior notice and comment. For these reasons, the Administrator has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that prior notice and comment is impracticable, unnecessary and contrary to public interest and that good cause therefore exsits for publishing this rule without prior notice and public comment. For the same reasons, the Administrator has determined, in accordance with 5 U.S.C. 553(d)(2), that good cause exists for making the rule effective without a 30-day post-publication waiting period.

Background

The Summer Food Service Program (SFSP) is authorized by section 13 of the National School Lunch Act (42 U.S.C. 1761). Section 13(g) of that Act requires the Department to issue regulations for the Program each fiscal year. The SFSP regulations were last issued in their entirety on April 27, 1989 (54 FR 18200) when 7 CFR part 225 was completely reorganized.

On November 10, 1989, the President signed into law Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989 (Reauthorization Act). That act reauthorized the SFSP through Fiscal Year 1994 and included several provisions designed to make Program benefits more widely available to children. For the first time since passage of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Pub. L. 97–35), the Reauthorization Act allows private nonprofit organizations (other than private nonprofit residential camps, school food authorities, colleges and universities participating in the National Youth Sports Program (NYSP), and private nonprofit organizations in the 1989 demonstration project, all of which previously participated in the Program) to serve as SFSP sponsors, subject to certain conditions. Public Law 101–147 also mandated that State agencies conduct outreach efforts to potentially eligible private nonprofit organizations in Fiscal Years 1990 and 1991 and

implement expanded training and technical assistance programs for private nonprofit organizations. In addition, the Reauthorization Act made the first change to site eligibility in the Program since the OBRA of 1981 by adding to the categories of eligible sites those meal providers which "conduct a regularly scheduled food service primarily for homeless children". Finally, the Reauthorization Act made Program benefits available on a year-round basis to college and university sponsors participating in the NYSP's drug awareness and education activities during the academic year. These provisions are discussed in detail in the following preamble.

Section 102(b) of the Reauthorization Act establsihed a February 1, 1990 deadline for publishing regulations to implement these mandatory changes in the 1990 SFSP and further allowed the Department to publish these regulations without public comment. Commenters should therefore be aware that these provisions are mandatory, that the Department has no discretion in the timing of the implementation, and that these provisions will have the force of law in the 1990 SFSP. However, the Department has requested public comments on these interim regulations by October 31, 1990. This will allow commenters the opportunity to base their observations on their first-year's experience in implementing these regulations. Based on the number and nature of any public comments received, the Department will consider the possibility of publishing a final rulemaking at a later date.

1. Eligibility of Sites Serving Homeless Children

Under current law, sponsors must document that the SFSP sites they administer are camps or serve "areas in which poor economic conditions exist". To qualify as serving an area in which poor economic conditions exist, the sponsor must document that at least 50 percent of the children living in the area are eligible for free or reduced price meals. This percentage may be documented through the use of census tract, school food service, or other data. In addition, Program regulations allow a sponsor to run an "enrolled site" by taking household applications and demonstrating that at least 50 percent of the enrolled children are eligible for free or reduced price meals. Section 102(a)(1)(A) of the Reauthorization Act amended section 13(a)(3)(C) of the National School Lunch Act (NSLA) by making meal providers which "conduct a regularly scheduled food service primarily for homeless children" eligible to be sites in the SFSP. This change to the NSLA makes such meal providers eligible to serve as SFSP sites without requiring them to be camps or to document that they will serve an "area in which poor economic conditions exist." Several aspects of these sites' participation in the SFSP are discussed in the lettered paragraphs which follow.

A. General Information on Homeless Feeding Sites' SFSP Participation

It is first important to note that the inclusion of meal providers to the homeless as SFSP sites during the normal months of Program operation (May through September) should *not* be confused with the demonstration project mandated by section 107(2) of the Reauthorization Act. That provision requires the Department to test the feasibility of providing year-round food service to homeless children under the age of six in emergency shelters. This demonstration project has no immediate effect on the operation of the SFSP.

It is also important to note that the provisions of the law did *not* establish a new type of eligible sponsor, for the definition of "service institution" (i.e., "sponsor") at section 13(a)(1)(B) of the NSLA has not been altered by this amendment. In other words, homeless meal providers themselves will not be eligible to sponsor the SFSP unless they: (1) Meet all of the conditions defining one of the currently-eligible categories of sponsor at § 225.2; or (2) meet all of the conditions (as discussed in section 2 of this preamble, below) defining the newly-eligible category of sponsors which are "private nonprofit organizations".

Furthermore, it is also important to recognize that Congress did not amend the definition of "children" in section 13(a)(1)(D) of the law. Therefore, this provision does *not* contemplate the payment of SFSP reimbursement for meals served to homeless adults who happen to be participating in the same meal service as homeless children. The law recognizes, however, that the providers of meals to homeless children often serve a varied clientele which almost certainly includes homeless adults and may also include non-homeless adults and children. Thus, congressional use of the word "primarily" in the phrase "a regularly scheduled food service primarily for homeless children" denotes the particular type(s) of homeless feeding facilities to which Congress intended to extend SFSP site eligibility and in which Congress wished to make benefits to homeless children available.

For example, according to a recent study of the portion of the homeless population which uses meal or shelter services ("Feeding the Homeless", Urban Institute, 1988), homeless families to end to eat far more of their meals in shelters than in soup kitchens and other types of homeless feeding facilities. This fact, coupled with congressional use of the phrase "primarily for homeless children", convinces the Department that Congress intended to extend site eligibility only to those facilities whose primary purpose is to provide meals to homeless family units. Thus, this rulemaking defines a "homeless feeding site" (i.e., a site made eligible by the Reauthorization Act to participate in the Program without reference to area eligibility or to being a camp) as a facility "whose primary purpose is to provide shelter and one or more meal services per day to homeless families and which is not a residential child care institution as defined in paragraph (c), definition of 'school' § 210.2 of the National School Lunch Program regulations." This definition will extend site eligibility to those facilities most likely to serve meals to homeless children, and will prevent residential child care institutions (which house children who are technically "homeless" and which already receive year-round benefits under the Nationl School Lunch Program [NSLP] from switching into the SFSP to receive the SFSP's higher reimbursements during the summer months.

The Department believes that it is also important to address the issue of feeding non-homeless children at a homeless feeding site. According to the Urban Institute study of homeless feeding cited above, some homeless feeding facilities provide meals to non-homeless individuals and families. These organizations generally define their purpose in broad terms and attempt to provide meals to all persons in need. Given the purpose and nature of food service at homeless feeding sites, the Department believes that Congress intended such sites to be able to claim reimbursement for all meals served to children, regardless of whether every child served was actually homeless. The Department's definition of homeless feeding sites as those facilities "whose primary purpose is to provide shelter and one or more meal services per day to homeless families" will prevent meals served to non-homeless children from making up a significant proportion of the meals claimed by such sites. Consequently, the rulemaking makes clear at §§ 225.14(d)(5) and 225.16(b)(2) that, when a meal provider meets the definition of "homeless feeding site" set forth above, it may claim reimbursement

for all meals served to children without attempting to differentiate between homeless and non-homeless children.

Finally, it must also be noted that this rulemaking exempts homeless feeding sites from several of the time restrictions on meal service set forth at § 225.16(c) of the regulations. Specifically, the Department does not believe that it would be feasible to require homeless feeding sites to observe the same rules governing the time between meal services or the duration of meal services (set forth at §§ 225.16(c) (1) and (2), respectively) which other types of sites are required to follow. The day-to-day variation in a homeless feeding site's clientele and the unpredictability of the times at which those clients would need meals would make such limits unworkable at homeless feeding sites. In addition, although this rule retains the requirement in § 225.6(c)(2)(i)(B) that, like any other type of site, homeless feeding sites specify a period of meal service (so that reviewers would know when the site should be monitored), it waives the prohibition set forth at § 225.16(c)(3) on claiming meals served outside of this period for homeless feeding sites.

Accordingly, this rulemaking amends § 225.2 by adding the new definition of "homeless feeding site" described above. In addition, § 225.6(c)(2)(ii), new § 225.6(c)(2)(iv), §§ 225.6(d)(1)(i), 225.14(c)(3), 225.14(d)(1), 225.14(d)(5), and new § 225.16(b)(2) have also been amended or added to make reference to homeless feeding sites, where appropriate; to differentiate these sites from existing types of sites (camps and area eligible sites) where necessary; to specify the requirements for determining site eligibility and the number of reimbursable meals served at each meal service; and to exempt homeless feeding sites from several of the time restrictions on meal service. The Department solicits commenters' input on other areas of the regulations which might also require clarification or references to the new sites as a result of this legislative change.

B. Financial Management Issues Relating to Homeless Feeding Sites

Several issues arise from the fact that the meal providers which "conduct a regularly scheduled food service primarily for homeless children" sometimes receive cash assistance or donated food under other Federal programs. The Department recognizes that, in this sense, homeless feeding sites will be unlike most other food service sites currently participating in the Program and that it may be more difficult for their largely volunteer staffs to meet some of the requirements imposed by the Program. However, in order to participate in the SFSP under its current legislative and regulatory mandates, it will be necessary for homeless meal providers to follow the requirements which currently exist with regard to recordkeeping and financial accountability. This is especially critical when homeless meal providers receive assistance under several Federal programs, thus increasing the possibility of inadvertent or intentional "double-claiming" of meals (i.e., claiming the same meal, or the same portion of the same meal, for reimbursement or other assistance under more than one Federal grant).

According to the homeless feeding study discussed previously ("Feeding the Homeless", Urban Institute, 1988), fully two-thirds of all meal providers to the homeless receive food donations under the Department's Food Distribution to Charitable Institutions Program (FDCIP). Under the regulations governing the FDCIP (7 CFR part 250, § 250.3), "charitable institutions" may not participate in both the FDCIP and any of the Child Nutrition Programs, including the SFSP. This prohibition is designed to prevent an SFSP sponsor from "double-claiming" meals as described above. However, this prohibition is not intended to categorically bar an organization from providing meal service under both the FDCIP and a Child Nutrition Program when the benefits of each Program are received by different sets of people. In other words, a homeless feeding site could continue to receive and use FDCIP commodities for the meals which it provided to adults while also receiving reimbursement and commodities under the SFSP for meals served to children, provided that the site's records were sufficient to establish that the site's allotment of FDCIP commodities was based only on the number of eligible adult meals served, while the site's SFSP commodity allotment was based only on the number of eligible children's meals served.

Another related issue arises in regard to the SFSP participation of homeless meal providers receiving grant assistance from the Federal Emergency Management Administration (FEMA) or other Federal agencies for the purchase of food or other purposes. Current SFSP regulations at § 225.15(a)(2) provide that SFSP sponsors "shall not claim reimbursement under parts 210, 215, 220, or 226 of this chapter, *or any other Federally-funded program,* for Program meals. * * *" (emphasis added). In addition, the regulations at §§ 225.2 (definition of "income accruing to the program") and 225.9(d) require that income accruing to the Program (i.e., funds used by a Program sponsor in support of its food service) must be deducted from combined operating and administrative costs. The import of these restrictions for homeless feeding sites participating in the SFSP merits further discussion in this preamble.

The provision at § 225.15(a)(2) is intended to categorically prohibit the claiming of a Program meal under more than one Federal program. This provision would not, however, preclude an SFSP sponsor from supplementing the SFSP meal reimbursement with monies from other non-Child Nutrition Programs for the same meal. This is because the Child Nutrition Programs (CNPs) provide reimbursement for meals served, whereas other Federal grants are generally less restrictive and provide assistance which could be used for food or for other purposes. In fact, sponsors of homeless feeding sites which receive funds from FEMA or other non-CNP Federal programs may continue to use these other Federal funds to purchase food, even for meals for which they claim reimbursement under the SFSP, and can operate more than one Federal program independently at the same site.

The only limitation on the use of such funds for SFSP costs is that which is set forth in the definition of "income accruing to the program" at § 225.2 and in the introductory paragraph of § 225.9(d). These provisions require SFSP sponsors to deduct Program income (all non-SFSP funds which support the food service) from combined operating and administrative costs to determine net costs. Net costs are then compared to meals times reimbursement rates for the purpose of calculating a sponsor's reimbursement. However, given that other Federal programs' grant funds are not likely to be restricted by law (as are SFSP operating costs) to the reimbursement of food costs, this restriction should not prove to be burdensome to homeless meal providers. In most cases, meal providers will be able to shift their non-FNS grant funds to the support of other functions which are not reimbursable under the SFSP, such as the service of adult meals.

The Department believes that it is important to emphasize the intent of last year's amendment of § 225.15(a)(2). The previous version of this provision (then found at § 225.19(j)) did not contain the proviso that NYSP funds may be used to supplement SFSP meal reimbursement. This amendment was interpreted by

some to mean that NYSP funds were the *only* type of non-FNS Federal funds which could ever supplement FNS funding under the SFSP. However, that amendment was merely intended to underscore the fact that NYSP funds could be used to supplement SFSP funding at NYSP feeding sites, subject to the limitations discussed above with regard to "income accruing to the Program."

Accordingly, this rulemaking revises § 225.15(a)(2): To clarify that homeless feeding sites may participate in both the SFSP and the Food Distribution Program to Charitable Institutions, provided that their records establish that the site's allotment of FDCIP commodities was based only on the number of eligible adult meals served, while the site's SFSP commodity allotment was based only on the number of eligible children's meals served; to emphasize the prohibition on the claiming of reimbursement for meals under more than one Child Nutrition Program; and to reflect the preceding discussion regarding the limits on the use of Federal funds to supplement SFSP meal reimbursements.

Because of the unique financial circumstances of many homeless meal providers, the Department believes that it is also appropriate to discuss here two further issues which could potentially cause confusion for State administering agencies or the sponsors of homeless feeding sites. First, according to the Urban Institute study cited above, approximately one-fifth of homeless meal providers depend entirely on donated food—from the FDCIP, food banks, individuals, corporations, and private charitable groups—for their current meal service. It must be emphasized that, while these organizations would be eligible to participate in the SFSP as feeding sites, sponsors would not be allowed to claim the value of these or other donated foods when calculating their operating costs unless they also deducted the value of donated foods used in children's meals from combined operating and administrative costs to determine net costs. It must also be emphasized that no portion of the SFSP funds paid to reimburse the provider for its meal service may be diverted to other uses such as the purchase of items not related to the food service.

Second, the Urban Institute study states that, in a few cases, homeless feeding sites collect cash payments, or are authorized to accept food stamps, from some of their meal recipients. Because section 13(f) of the NSLA requires that all sites except camps provide meals without charge to all children, homeless feeding sites may not collect cash payments or food stamps or receive any in-kind service for any meals served to Program participants. Therefore, the Department believes that, as part of the application process, it is necessary to require sponsors to submit, along with their site information sheets, a description of the method(s) used by the site to ensure that no cash payments, food stamps, or in-kind services are received for any Program meal served to children.

Accordingly, this rulemaking further amends new § 225.6(c)(2)(iv) to require that sponsors describe—for any site at which cash, food stamps, or services are received from any meal recipient—the method(s) used to ensure that no such payments or services are received for any Program meal served to children.

2. Readmission of Some Private Nonprofit Organizations to SFSP Sponsorship

Since the passage of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), private nonprofit organizations have not been allowed to be SFSP sponsors unless they were residential camps, colleges or universities participating in the NYSP, or school food authorities (SFAs). Section 213(b) of the Hunger Prevention Act of 1988 (Pub. L. 100–435) mandated the conduct of a demonstration project to determine the feasibility of again allowing other types of private nonprofit organizations to participate in the SFSP. These organizations' participation was limited by certain conditions which were designed to ensure only well-managed and fully capable private nonprofit organizations would participate in the demonstration.

Section 102(a)(1)(C) of the Child Nutrition and WIC Reauthorization Act amended section 13(a)(7) of the NSLA to allow private nonprofit organizations other than camps, SFAs, and NYSP participants to again be SFSP sponsors, subject to certain conditions. These conditions require the private nonprofit organization to: (1) Serve a total of no more than 2,500 children per day at no more than five urban or twenty rural sites; (2) Serve no more than 300 children at any approved meal service at any one site, unless granted a waiver by the State agency to serve up to 500 children at an approved meal service at a particular site; (3) Either be a self-preparation sponsor or purchase meals from a public facility (e.g., SFA, public hospital, state university) or a school participating in the National School Lunch Program; (4) Operate only in areas where an SFA or a governmental entity has not indicated by March 1 that it intends to operate the SFSP; (5) Exercise full control over the operation of the SFSP at all sites; (6) Provide ongoing year-round activities for children or families; (7) Demonstrate that it possesses adequate management and fiscal capacity to operate the SFSP; and (8) Meet applicable local and State health, sanitation, and safety standards.

Accordingly, this rulemaking amends the definition of "sponsor" at § 225.2 to include private nonprofit organizations; adds a definition of "private nonprofit organization" at § 225.2; revises § 225.15(g)(3) to incorporate the prohibition on private nonprofit organizations contracting with food service management companies; and adds new § 224.14(d)(7) to specify the conditions limiting private nonprofit organizations' participation as Program sponsors.

Readers of this preamble should note that, as a result of preliminary findings from the demonstration project which indicated that all of the requirements of the SFSP were not fully met by a number of private nonprofit organizations, Congress made some of the above conditions more restrictive than those imposed during the demonstration. In addition, the Reauthorization Act included additional language intended to limit the displacement of existing public sponsors (SFAs and governmental entities) by private nonprofit organizations and to establish special monitoring, application, and training requirements for these organizations. These new conditions and special requirements require further discussion in this preamble, as do some other aspects of private nonprofit organizations' participation in the Program. These issues are addressed in the lettered paragraphs below.

A. March 1 Date for "Indication of Interest"; One-Year Waiting Period for Administration of Sites Previously Sponsored by School Food Authorities or Governmental Entities; Outreach to Newly-Eligible Sponsors

The first of these issues involves the stipulation at section 13(a)(7)(B)(iii) of the NSLA that private nonprofit organizations may only operate in areas where an SFA or governmental entity has not "indicated" by March 1 that they intend to sponsor the SFSP. Since current regulations at § 225.6(b)(1) give sponsors until June 15 to submit their applications (unless an earlier deadline is established by the State agency), such "indication" could not reasonably be expected to be a part of the SFA's or governmental entity's formal application

for Program sponsorship. Rather, the law's language regarding an "indication of interest" necessitates that the State receive these potential sponsors' indication of interest far in advance of the deadline for receipt of Program applications.

In order to facilitate this process, the Department believes that it is necessary to require State agencies to formally solicit interest in participation from previous SFA and governmental sponsors of the Program. Under current regulations at § 225.6(a)(2), State agencies are required by February 1 to announce the Program's availability throughout the State; to compile a list of and contact potential sponsors who have not previously participated in the Program; and to actively seek eligible sponsors to serve rural and other specified areas. The Department believes that the law's provision regarding an "indication" of interest can best be implemented by requiring State agencies to contact the previous year's SFA and governmental sponsors no later than February 1 and to ask these potential sponsors to indicate in writing, no later than March 1: Their interest in again participating in the SFSP; their intention to serve the same sites they served in the prior year and a list of any sites which will be dropped; their interest in serving any new areas which they did not serve in the prior year's Program; and, for these areas, their geographical boundaries and, when possible, the location and estimated dates of operation and daily attendance of each proposed new site.

As a part of their solicitation of interest from these sponsors, the State agency is also required to determine the reasons for any SFA or governmental sponsor's intention *not* to serve an area which it had served in the prior year. This determination is necessary for compliance with section 102(a)(1)(C)(iii) of the Reauthorization Act. Section 102(a)(1)(C)(iii) amended section 13(a)(7)(C) of the NSLA to forbid private nonprofit organizations from sponsoring the Program in an area "where a school food authority or a local, municipal, or county government participated in the program before such organization applied to participate until the expiration of the 1-year period beginning on the date that such school food authority or local, municipal, or county government terminated its participation in the program." This prohibition was designed to minimize the potential displacement of experienced sponsors by private nonprofit organizations, and underscored the law's intent to readmit private nonprofit organizations to Program sponsorship in order to provide food service in previously *unserved* areas. This provision means that no private nonprofit organization may serve an area which was previously served by an SFA or governmental sponsor during the 12-month period starting on the last day of Program meal service at the site or in the area previously administered by the SFA or governmental sponsor.

Section 102(a)(1)(C)(iii) also amended section 13(a)(7)(C) of the NSLA to permit the State agency to waive this one-year restriction *only* if the State agency is convinced that the SFA or governmental entity "would have discontinued its participation in the program (in an area) regardless of whether a private nonprofit organization was available to participate in the program in such area." This provision limits State agencies to granting waivers of the one-year prohibition *only* when the State agency determines that the experienced sponsor is not discontinuing service to an area for mere convenience with the expectation that a new private nonprofit organization would serve that area.

After receiving responses from SFA and governmental sponsors, the State agency will then be required to target specific areas for outreach to private nonprofit organizations. It should be emphasized that the State agency should *not* have made its primary outreach efforts to private nonprofit organizations prior to this time. Although current regulations at § 225.6(a)(2) require State agencies to contract by February 1 "potential sponsors which have not previously participated in the Program", the Department believes that, consistent with the Reauthorization Act's language regarding an "indication of interest" from SFA and governmental sponsors and its clear intent to have private nonprofit organizations provide Program meal service in *previously unserved* areas, private nonprofit organizations may not be considered "potential sponsors" until after the State agency has received and analyzed the previous year's SFA and governmental sponsors' responses.

After the State agency has completed this analysis, it is expected that it will identify private nonprofit organizations which are potential sponsors in several ways—through responses to notices of the Program's availability placed by the State agency in major newspapers throughout the State and through contacts with public and private social service organizations operating at the State and county levels. Once these organizations are identified, State agencies will be required to formally solicit their interest in serving particular areas, just as had been previously done with the prior year's governmental and SFA sponsors. The Department believes that this process of formally contacting private nonprofit organizations to elicit their interest in serving as Program sponsors in unserved areas satisfies the outreach provisions mandated in section 102(a)(5) of the Reauthorization Act (which added a new subsection (p) to section 13 of the NSLA). Private nonprofit organizations interested in sponsoring the Program will be requested to provide in writing to the State agency, not later than April 25: Their interest in participating in the SFSP; the geographical area they propose to serve the approximate number of sites which they propose to serve; and, whenever possible, the location and estimated dates of operation and daily attendance of each proposed site.

After receiving the SFA, government, and private nonprofit organizations' indications of interest in serving particular areas, State agencies are then required to apply the "priority system" described in section 13(a)(4) of the NSLA and § 225.6(b)(5) of the regulations. That system is used to determine which sponsor will be permitted to serve a particular area when two or more sponsors wish to provide Program meal service in the same area. It must be noted that the priority system was amended by section 102(a)(1)(B) of the Reauthorization Act, and that this section of the Act placed the newly-eligible private nonprofit organizations *last* in the priority system, after all other types of eligible sponsors.

After applying the priority system and determining the reasons for any SFA or government sponsor's discontinuation of Program service to an area, the State agency is then required no later than May 1 to notify all private nonprofit organizations which responded to the State's outreach efforts of any area which they had proposed to serve but would not be allowed to include in their application for sponsorship. It should be stressed that this notification should *not* be construed as an approval of any particular feeding site for Program participation. Rather, it serves only to inform private nonprofit organizations interested in sponsoring the Program of the service areas which they are *not* allowed to include in their application. Formal approval of sites only occurs when the State agency approves the sponsor's application for Program participation.

Accordingly, this rulemaking amends current § 225.6(a)(2) and adds a new

paragraph, § 225.6(a)(3), to require that State agencies: (a) By February 1, compile a list of and formally contact potential sponsors (other than private nonprofit organizations), requesting SFA and governmetnal sponsors to indicate their interest in sponsoring the SFSP and in serving particular areas; and (b) after receiving the SFA and governmental sponsors' responses, contact private nonprofit organizations which may be eligible to become Program sponsors as a result of the passage of the Child Nutrition and WIC Reauthorization Act to inform them of their potential eligibility and to solicit their interest in serving particular areas which the State believes may be unserved during the current year's Program. New § 225.65(a)(3) also: Specificies the conditions under which State agencies may waive the one-year prohibition on private nonprofit organizations' serving a site or an area which was served by a school food authority or governmental sponsor at any time during the 12 months following the last day on which the previous sponsor provided Program meal service in that area; and requires that, no later than May 1, State agencies notify private nonprofit organizations of any service areas which they will not be allowed to include in their application for participation. Finally, this rulemaking amends the priority system set forth at § 225.6(b)(5) of the regulations to reflect the addition of private nonprofit organizations at the end of this priority listing under section 13(a)(4)(F) of the NSLA as amended by section 102(a)(1)(B) of the Reauthorization Act.

B. Management and Administration Plan (MAP) Requirements

The Department notes that it is aware of the requirements at section 13(n)(3) of the NSLA and at § 225.4(d)(3) of the regulations that State agencies must submit by February 15 of each year a management and administration plan (MAP) which includes the State's "best estimate" of the number and type of sponsors which will participate in the Program. The Department recognizes that this MAP deadline occurs prior to the deadlines for receiving an indication of potential sponsors' interest in participating in the Program and in serving particular areas, as discussed in section 2(A) of the preamble above. Thus, during the first year in which private nonprofit organizations are again allowed to sponsor the Program, it will be almost impossible for State agencies to provide accurate estimates of these organizations' potential Program participation. Therefore, the Department will not require State agencies to include in their 1990 MAPs estimates of private nonprofit organizations' participation in the Program.

Accordingly, this rulemaking amends § 225.4(d)(3) to clarify that, until fiscal Year 1991, State agencies are not required to estimate the impact of private nonprofit organizations' readmission to Program sponsorship in their MAP estimates of the number of sponsors, sites and children which will participate and the number of meals which will be served in the SFSP.

The Department believes that, in order to monitor the outreach to private nonprofit organizations, State agencies should be required to include in their MAPs a description of the efforts they have made to notify these organizations of their possible eligibility for Program sponsorship. The Department realizes, however, that the delay in passage of the Reauthorization Act and publication of these regulations makes it impossible for State agencies to comply with this requirement in their Fiscal Year 1990 MAPs. However, they are still required to conduct the outreach necessary to comply with the new requirements specified in § 225.6(a)(3) of these regulations for contacting private nonprofit organizations in order to satisfy the Reauthorizations Act's outreach mandate. Therefore, the requirement to include in its MAP specific information on a State agency's outreach efforts to private nonprofit organizations does not take effect until October 1, 1990.

Accordingly, this rulemaking amends § 225.4(d)(2) to add a requirement that, beginning in Fiscal Year 1991, State agencies include in their MAPs a description of their plans to inform private nonprofit organizations of their eligibility for Program sponsorship.

C. Private Nonprofit Organizations Which Sponsor Both Rural and Urban Sites

Another issue arising from the conditions imposed on private nonprofit organizations' participation involves the maximum number of sites and children which these organizations may serve. Section 102(a)(1)(C)(ii) of the Reauthorization Act amended section 13(a)(7)(B) of the NSLA to allow for the service of not more than 2,500 children per day, at not more than 5 urban or 20 rural sites, and the service of no more than 300 children at any approved meal service at any one site. The site limit of 300 may be waived and raised as high as 500 if a waiver is granted by the State agency "under standards developed by the Secretary".

Senator Leahy's comments in the *Congressional Record* (S 14016, October 24, 1989) which accompanied the final Senate version of the Reauthorization Act clarify that, in cases where a private nonprofit organization administers both rural and urban sites, the overall limit of 2,500 children per day still applies. However, these comments did not address the question of the total number of *sites* which a sponsor may serve when it operates in both rural and urban areas. The Department believes that it would be contrary to congressional intent to permit a private nonprofit organization which sponsors both rural and urban sites to operate more sites than it would if it were operating solely urban or rural sites. Therefore, this rule permits a private nonprofit organization to administer a maximum of 20 sites, of which no more than 5 may be urban. It should be noted here that a statement adopted by key members of the House and Senate concerning the final version of the Reauthorization Act supported use of the current definition of "rural" at § 225.2 to differentiate between rural and urban sites (*Congressional Record*, H 6860, October 10, 1989, and S 14020, October 24, 1989).

Accordingly, this rulemaking retains the definition of "rural" at § 225.2 and amends § 225.6(b)(6) to clarify that, when private nonprofit organizations apply to sponsor both rural and urban sites, it may serve a maximum of 20 sites, of which no more than 5 may be urban.

D. Waivers of the 300-Child Per Site Limit

While section 102(a)(1)(C)(ii)(I) of the Reauthorization Act (amending section 13(a)(7)(B)(i) of the NSLA) authorized waivers of the 300-child per site limit for private nonprofit organizations, the Department believes that the law contains a strong presumption in favor of sites which serve 300 or fewer children at any approved meal service at any one site. Thus, the Department believes that the 300-child limit should be waived only rarely and that the reasons for such waivers should be well-documented. Such documentation should consist of school food service, census tract, or other data which demonstrate that the sponsor is likely to serve more than 300 children at an approved meal service at any one site and that the sponsor is fully capable of managing a site of this size. In addition, no waiver may be granted unless the State agency is fully satisfied that other sites cannot serve any portion of the children over 300 which the private nonprofit organization proposes to

serve. It should be noted that the law provides that, even with a waiver, no site may serve more than 500 children at any approved meal service at any one site.

Accordingly, this rulemaking further amends § 225.6(b)(6) to specify the requirements pertaining to the waiver of the 300-child limit by the State agency.

E. Degree of Operational Control Over Sites

The next issue arising from the limitations on private nonprofit organizations' participation in the SFSP involves the degree of control which these organizations will be required to exercise over their sites. Section 13(a)(7)(B)(iv) of the NSLA requires private nonprofit organizations to "exercise full control and authority over the operation of the program at all sites under their sponsorship". The specificity of this language implies a degree of congressional concern over the relationship between private nonprofit organizations and their sites which is not present in most other parts of the law. The only instance in which the law previously made reference to the degree of control which sponsors have over sites involved the relationship between governmental sponsors and their sites. The Department believes that the law intends private nonprofit organizations to have a close degree of control over their sites which approximates the "direct operational control" currently required of government sponsors over their sites at section 13(a)(6) of the NSLA.

Accordingly, this rulemaking amends current §§ 225.6(c)(2)(viii) (redesignated § 225.6(c)(2)(x)) and 225.14(d)(4) to require that private nonprofit organizations exercise direct operational control over all of the sites which they administer.

F. Prohibition on Contracting With Commercial Food Service Management Companies

Another issue arising from the limitations on private nonprofit organizations' participation in the SFSP involves the prohibition in sections 13(a)(7)(B)(ii) and 13(l)(1) of the NSLA on private nonprofit organizations' contracting with commercial food service management companies (FSMCs). This limitation in section 13(a)(7)(B)(ii) originated in the demonstration project mandated by the Hunger Prevention Act of 1988, which required that private nonprofit organizations "use self-preparation facilities to prepare meals, or obtain meals from a public facility (such as a school district, public hospital, or State university)." Section 102(a)(1)(C)(ii)(II) of the Reauthorization Act made a slight change to this limitation by allowing private nonprofit organizations to also obtain meals from any "school participating in the school lunch program under this Act" (i.e., the NSLP); however, the Act retained the demonstration project's general prohibition on private nonprofit organizations obtaining meals from commercial FSMCs. Section 102(a)(3) of the Reauthorization Act also amended section 13(l)(1) of the NSLA to further underscore this prohibition. This prohibition raises several Program issuers requiring discussion in this preamble.

First, prior to the publication of this rulemaking, several State agencies indicated that some school food authorities with year-round FSMC contracts had expressed an interest in providing meals (in their capacity as "public facilities") to private nonprofit organizations participating in the 1990 SFSP. The Department believes that such arrangements would be legally precarious—the contracting party "providing the meals"(the SFA) would, in effect, be acting as an agent for a commercial FSMC which was actually providing the meals, even though it was not a signatory party to the contract. Thus, the SFA would be required to assume full liability for any errors committed by the commercial company, even though it would have little if any control over the FSMC's day-to-day operations.

More importantly, however, the Department is convinced that such a contract would be in contravention of the law's intent. The statements which accompanied the final versions of the House and Senate bills referred repeatedly to the earlier problems with fraud, waste, and abuse which occurred when private nonprofit organizations participated in the SFSP during the late 1970s and early 1980s. In fact, Senator Leahy quoted the November 1979 report from the Department's Office of Inspector General to Congress which stated in part that "the greatest obstacle to the successful operation of the Summer Feeding Program is the continued participation of large private sponsor/private vendor combinations." (*Congressional Record*, S14016, October 24, 1989). Thus, the Department is convinced that any contractual arrangements which resurrected these "private sponsor/private vendor combinations"—even if made through a public or private SFA as an intermediary agent—would violate the law's intent to prohibit commercial FSMCS from providing Program meals to private nonprofit organizations.

A second point requiring discussion involves the appropriate administrative rate earned by private nonprofit organizations for meals obtained from a public facility or a school participating in the NSLP. Under current regulations at §§ 225.2 (definition of "self-preparation sponsor") and 225.9(d)(iii), a sponsor is entitled to receive the higher self-preparation administrative rate for meals served at a site only when it does *not* obtain any unitized meals, with or without milk, from an FSMC for service at that site and does not obtain management services from an FSMC. Furthermore, the regulations at § 225.2 define a food service management company as "any commercial enterprise or nonprofit organization" which supplies unitized meals or management services to a sponsor. This definition further specifies that FSMCs may include public agencies or entities and nonprofit organizations. Thus, in accordance with these definitions, a private nonprofit organization which contracts with any public facility, SFA, or school for unitized meals or management services must be considered a "vended" sponsor and would earn the lower vended administrative rate for its meal service.

G. Special Requirements Pertaining to Private Nonprofit Organizations

As previously mentioned, several aspects of the Reauthorization Act reflect congressional concerns over past SFSP abuses involving private nonprofit organizations and over the preliminary results of the demonstration project readmitting such organizations to Program sponsorship. In addition to the new requirements placed on private nonprofit organizations as a condition of eligibility (e.g., the one-year waiting period discussed in section 2(A) of the preamble above), Pub. L. 101–147 also added several provisions designed to ensure that those private nonprofit organizations approved for Program sponsorship are fully capable of administering the Program in accordance with the regulations. Specifically, section 102(a)(5) of the Reauthorization Act amended section 13 of the NSLA by adding a new subsection, (q), which promulgates special requirements designed to avoid past problems of fraud and abuse by private nonprofit organizations serving as Program sponsors.

More specifically, new section 13(q)(2) of the NSLA has been added to deter participation by private nonprofit organizations incapable of properly

administering the Program. This new section requires that the Department and State administering agencies develop sponsor application forms and other pre-application materials for distribution to private nonprofit organizations which explain, in bold lettering, the criminal penalties for improper use of Program funds set forth in section 13(o) of the NSLA and the regulatory provisions for termination of Program sponsors.

Accordingly, this rulemaking adds a new paragraph, § 225.6(a)(5), which requires that sponsor application forms and other pre-application materials distributed to private nonprofit organizations include, in bold lettering, an explanation of the criminal penalties set forth at section 13(o) of the Act and the regulatory procedures for termination of sponsors.

New section 13(q)(3) of the NSLA also requires each State agency to establish, with the assistance of the Department, "an ongoing training and technical assistance program for private nonprofit organizations" which emphasizes Program regulations and accountability issues. In addition, new section 13(q)(4) of the Act allows the Department to reserve up to one-half of one percent of appropriated SFSP funds for developing and conducting additional training and monitoring of private nonprofit organizations. These two portions of the amended law clearly demonstrate congressional intent to implement expanded training for private nonprofit organizations. To this end, the Department intends to provide specific guidance to State agencies on the training needs of private nonprofit organizations.

There are, however, two portions of the existing Program regulations pertaining to State agency training responsibilities which require minor modification in this rulemaking as a result of the readmission of private nonprofit organizations to Program sponsorship. The current regulations at § 225.7(a) set forth general sponsor training requirements and mandate that State agencies take into account the differing needs of "sponsors or groups of sponsors" when developing such training. The Department believes that, even though the Department will specifically address the training needs of private nonprofit organizations in the aforementioned guidance, the regulations at § 225.7(a) should nevertheless underscore those accountability-related areas (e.g., proper meal counting techniques, meal pattern requirements, free and reduced price application requirements, restrictions on second meal service, prohibition on off-site meal consumption, timely and accurate claims submission, recordkeeping, etc.) which must be emphasized in the training of private nonprofit organizations.

Accordingly, this rulemaking amends § 225.7(a) by specifying several accountability-related issues which State agencies will be required to emphasize in their initial training of private nonprofit organizations.

The second minor modification to the existing training requirements involves the pre-approval visits described at § 225.7(d)(1) of the regulations. The current regulations at § 225.7(d)(1)(i) stipulate that, prior to the State agency's approval of an applicant sponsor which did not participate in the SFSP during the prior year, the State agency must conduct a "pre-approval visit" of such sponsors. These visits are designed to assess the applicant sponsor's ability to successfully administer the Program and to verify application information. The visits are also an opportunity for State agencies to provide pre-operational technical assistance to potential sponsors. Thus, since only a few private nonprofit organizations applying to sponsor the Program in 1990 will have participated in the 1989 SFSP as a sponsor (those which participated in the demonstration project), current regulations will require that all other private nonprofit organizations receive a "pre-approval visit" in 1990.

The Department believes that, in combination with the training requirements set forth at § 225.7(a) and the additional guidance being promulgated by the Department, these requirements provide an appropriate level of pre-operational training and technical assistance to private nonprofit organizations. The Department also wishes to emphasize that, in accordance with existing regulations set forth at § 225.7(d)(1)(ii), State agencies may also conduct pre-approval visits of those private nonprofit organizations which participated in the demonstration project in 1989 if the State agency believes that the applicant organization should be visited.

However, current regulations at § 225.7(d)(1)(iii) establish pre-approval visit requirements for certain *sites* as well. Specifically, pre-approval site visits are required when nonschool sites are expected to have an average daily attendance (ADA) of 300 or more and did not participate in the prior year's Program. Given that 300 is the *largest* number of meals which a private nonprofit organization may provide at an approved meal service without a special waiver, the Department believes that a different standard should be applied to pre-approval visits of new sites which a private nonprofit organization proposes to serve. The Department believes that requiring a pre-approval site visit for all private nonprofit organizations' sites with an expected attendance at an approved meal service of over 100 will provide an appropriate level of additional pre-operational training to private nonprofit organizations. Because few sites administered by private nonprofit organizations in fiscal year 1990 will have participated in the prior year's Program, this requirement will ensure that most of the larger sites administered by private nonprofit organizations will be subject to pre-approval visits in 1990.

Accordingly, this rulemaking adds a new paragraph, § 225.7(d)(l)(iv), which requires State agencies to conduct a pre-approval site visit when a private nonprofit organization proposes to serve a site which did not participate in the previous year's Program and which has an expected attendance at an approved meal service of more than 100.

Finally, new section 13(q)(l) of the NSLA requires the Secretary to establish a system under which the Secretary and each State agency monitor the compliance of private nonprofit organizations, in addition to the normal monitoring of sponsors. Based on the provision of the Reauthorization Act which allows the Department to reserve up to one-half of one percent of appropriated SFSP funds for the conduct of additional monitoring and training of private nonprofit organizations, and based on Senator Leahy's statements accompanying the final Senate version of the Reauthorization Act (*Congressional Record*, S 14017, October 24, 1989), the Department intends to concentrate the additional monitoring in a Federal monitoring system for private nonprofit organizations in th SFSP which will supplement the State agency monitoring of all sponsors which is required by these regulations.

Implementation of this Federal monitoring system will require that State agencies inform FNS as early as possible of the universe of private nonprofit organizations which will be participating in the SFSP in their State. This can best be accomplished by forwarding to the appropriate Regional Office of FNS, no later than May 1 of each year, a list of the private nonprofit organizations which responded to the State agency's solicitation of interest (see section 2(A) of this preamble, above) in sponsoring the Program. This

listing must include the names and addresses of each potential private nonprofit organization, the geographical area(s) and approximate number of sites they propose to serve and, whenever possible, the location and estimated dates of operation and daily attendance of each proposed site. In addition, when a private nonprofit organization is approved to participate as a Program sponsor, the State agency will be required to notify the appropriate Regional Office of FNS within five working days that the organization has been approved and to provide specific information regarding each of its approved sites, including: Their addresses, dates of operation, and estimated daily attendance; the duration, number, and type(s) of approved meal service; and whether the site is rural or urban, vended or self-preparation, enrolled or open, or is a homeless feeding site.

Accordingly, this rulemaking amends § 225.8 by adding a new paragraph (e), which requires that State agencies submit to the appropriate Regional Office of FNS, not later than May 1 of each year, a list of the names and addresses of each potential private nonprofit organization, the geographical area(s) and approximate number of sites they propose to serve, and, whenever possible, the location and estimated dates of operation and daily attendance of each proposed site. In addition, § 225.8(e) stipulates that, within five working days of approving a private nonprofit organization to sponsor the Program, the State agency shall notify the appropriate Regional Office and provide updated information regarding the organization's approved sites, including: Their addresses, dates of operation, and estimated daily attendance; the duration, number, and type(s) of approved meal service; and whether the site is rural or urban, vended or self preparation, enrolled or open, or is a homeless feeding site.

Because the Department had decided to conduct the additional monitoring required by Public Law 101–147 with Federal personnel, the Department contemplates no substantive expansion of current regulatory requirements with regard to State agency monitoring of private nonprofit organizations. Nevertheless, due to the limits which the Reauthorization Act imposes on the number of children per site, total children, and urban and rural sites which private nonprofit organizations are permitted to administer, the Department believes that the criteria for determining when and whether private nonprofit organzations are reviewed by the State agency must be modified in the regulations at § 225.7(d).

Current regulations at § 225.7(d)(2) establish minimum standards for the monitoring of sponsors and sites by State agencies during the course of Program operations. The timing of these monitoring requirements is based on whether the sponsor participated in the prior year and on the number of sites which the sponsor administers. Sponsors which administer 10 or more sites and which did not participate during the prior year must be reviewed during the first four weeks of Program operations. In addition, an average of 15 percent of these sponsors' sites must be reviewed during the first four weeks of Program operations.

The Department believes that, due to the legislative limits placed on the number of sites administered by private nonprofit organizations, it is necessary to make minor changes to the requirements specifying the State agency's monitoring responsibilities in the case of private nonprofit organizations. For example, were current requirements applied to the monitoring of private nonprofit organizations in 1990, no such organization administering only urban sites would be subject to State agency review during the first four weeks of Program operations since they are limited to a maximum of 5 sites. Thus, the Department believes that, in such cases, the criteria for determining whether a State agency review must be conducted during the first four weeks of operation must be modified slightly. This modification will ensure that a reasonable number of private nonprofit organizations administering urban sites alone will be reviewed by State agency personnel during these first, critical weeks of Program operation in 1990.

Likewise, because the total number of sites administered by private nonprofit organizations is likely to be lower than the number of sites administered by other types of Program sponsors, the Department believes that the regulations must clarify that, regardless of the percentage of a sponsor's sites being reviewed, at least one site must be reviewed for every sponsor reviewed. This regulatory change will resolve any questions which might arise regarding the proper application of the current requirement to review 10 or 15 percent of a sponsor's sites when that sponsor only administers one or two or three sites. For example, if a private nonprofit organization sponsoring three urban sites was subject to review, reviewing 15 percent of its sites might leave some State agencies uncertain as to whether any site reviews were required (because 15 percent of three sites rounds to zero).

Accordingly, this rulemaking amends § 225.7(d)(2) by requiring State agencies to review during the first four weeks of operation all private nonprofit organizations which administer solely urban sites (and at least 15 percent of their sites) when such sponsors did not participate in the prior year's SFSP and administer three or more sites. In addition, this rulemaking further amends § 225.7(d)(2) to specify that at least one of the sponsor's sites must be reviewed whenever the sponsor is subject to review.

3. Year-Round Participation by National Youth Sports Program Sponsors

Section 213 of the Hunger Prevention Act of 1988 (Pub. L. 100–435) amended section 13(a)(1)(B) of the NSLA to allow public and private nonprofit colleges and universities to participate in the SFSP as sponsors provided that they are currently participating in the National Youth Sports Program (NYSP) and meet the other requirements for Program sponsorship. Since public colleges and universities were already eligible to serve as governmental sponsors of the SFSP, the main impact of this legislation was to make eligible for Program sponsorship roughly 60 private colleges and universities participating in the NYSP during the summer months. This legislative change was implemented in the final 1989 SFSP regulations published on April 27, 1989.

Since the passage of the Hunger Prevention Act, Congress has authorized colleges and universities administering the NYSP to establish drug awareness and counseling programs with funds appropriated under the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, November 18, 1988). Approximately 45 colleges and universities are operating extended NYSP projects during the current academic year in order to maintain contact with the disadvantaged youths who participate in the NYSP during the summer months and who are considered to be "at risk" with regard to their potential for substance abuse and related problems. Under these circumstances, Congress felt that it was appropriate to extend SFSP meal benefits—which are available to most other Program sponsors only during the months May through September—to these colleges and universities during the months of October through April in order to support their anti-drug efforts during the academic year.

Accordingly, this rulemaking amends § 225.2 by adding definitions of "NYSP", "NYSP feeding site", and "academic-

year NYSP" to facilitate the more frequent references to the National Youth Sports Program and the new academic-year NYSP in the SFSP regulations resulting from this statutory amendment. In addition, this rulemaking further amends the definition of "sponsor" at § 225.2 and amends § 225.6(e)(1) to clarify the eligibility of NYSP sponsors during the months of October through April.

Section 102(a)(2)(B) of the Reauthorization Act amended section 13(c) of the NSLA to set forth a number of specific conditions attached to the participation of those NYSP sites during the academic year. In addition, section 102(b)(2) of the Reauthorization Act made academic-year benefits retroactively available to NYSP sponsors to October 1, 1989. The Department believes that these and other aspects of this new "academic-year" participation by NYSP sponsors in the SFSP merit separate discussion and clarification in the lettered paragraphs which follow.

A. Limits on Meal Reimbursements

Section 13(c)(2)(A) of the NSLA (as amended by section 102(a)(2)(B) of the Reauthorization Act) specifically limits academic-year NYSP sponsors to claiming only meals served to NYSP participants and to claiming SFSP reimbursement for no more than two meal services—either a meal and a snack or two meals—on any day of operation. In addition, it also prohibits NYSP sponsors from claiming reimbursement for more than 30 days of NYSP operation during the months of October through April.

Accordingly, this rulemaking adds new §§ 225.6(c)(2)(V), 225.9(d)(10), and 225.16(b)(3) and amends current § 225.9(d)(9) to specify the aforementioned limits on meal services provided by academic-year NYSP sponsors. In addition, the new definiton of "NYSP feeding site" at § 225.2 further emphasizes that, when sponsors administer a feeding site serving NYSP participants, only those enrolled participants may receive reimbursable Program meals at that site.

B. Continuity of Academic-Year Participation by NYSP Sponsors

Section 102(a)(2)(B) of the Reauthorization Act amends section 13(c)(2) of the NSLA to include several provisions designed to ensure continuity between the NYSP sponsor's participation in the SFSP during the normal months of Program operation (May through September) and their new "academic-year" (October through April) participation in the SFSP. These provisions stipulate: (1) That the same State agency which administers the SFSP during the months of May through September must administer the new NYSP academic-year portion of the Program; (2) that children participating in the NYSP during the academic year be eligible without submitting applications documenting their household's eligibility for Program benefits; and (3) that academic-year NYSP sponsors be eligible to participate in the SFSP without application.

The prohibition on alternate agencies administering the academic-year NYSP necessitates only minor modification to the existing regulations. In order to require that State agencies administering the SFSP during the summer months continue to do so during the academic year, the agreement between State agencies and FNS must stipulate that the State agency will administer the Program through eligible sponsors at any time during the fiscal year.

Accordingly, this rulemaking amends § 225.3(b) to require that the State agency which administers the SFSP during the summer months agree to administer the Program during the months of October through April as well.

Since these children must already apply to participate in the SFSP during the summer months in order to document the site's eligibility as an "enrollment program" (see paragraph (2), definition of "areas in which poor economic conditions exist", § 225.2), the Department believes that the requirement that children participating in the academic-year NYSP be eligible "without application" is intended to prohibit the taking of a *second* application from children participating in both the summer months and academic-year portions of the NYSP. Thus, the application of a child participating in the NYSP during the summer months would be valid throughout the academic-year phase of the Program as well (i.e., the application would be valid for the period May through April). These applications are compared to the income eligibility guidelines in effect on the preceding July 1 to determine whether at least 50 percent of the enrolled children are from households meeting the Program's income standards. Any site which had demonstrated its eligibility for the summer months (May through September) in this manner would then remain eligible for the academic-year phase of the NYSP without taking additional applications from NYSP participants. Those sites participating in the SFSP during the summer months only would continue to take free meal applications from children as they do currently in order to document site eligibility.

The only time children participating in the academic-year SFSP might be required to submit an application is if they are participating at a site which had not participated in the SFSP during the summer months (meaning that the site had not documented its eligibility as an "enrollment program" during the summer months). In this case, the site would be required to take enough applications to document the site's SFSP eligibility as an enrolled site for the academic-year phase of the Program. Sites taking applications from children during the academic year would, of course, compare these applications to the income guidelines published in the preceding July.

Accordingly, this rulemaking adds a new § 225.6(c)(2)(v) to require NYSP sponsors to certify that they will not take more than one application for free Program meals from children participating in both the academic-year and summer portions of the NYSP and that such applications shall be valid for a period commencing no earlier than May 1 and ending no later than April 30 of the following fiscal year.

With regard to the requirement that academic-year NYSP sponsors may participate "without application", the Department believes that this also means that NYSP sponsors may participate in both phases of the SFSP without making separate applications to and signing separate agreements with the State agency. As is the case with children participating in the NYSP, NYSP sponsors' applications shall be valid for no more than twelve months and for a period commencing no earlier than May 1 and ending no later than April 30 of the following fiscal year. Thus, NYSP sponsors anticipating that they would administer an academic-year program during the period October 1990–April 1991 would apply for year-round SFSP participation in applications for sponsorship submitted during the normal application cycle in the spring of 1990, in accordance with the deadline established in accordance with § 225.6(b)(1). The effect of this requirement to academic-year NYSP sites in Fiscal Year 1990 will be discussed in section 3(F) below, in which the procedures for academic-year NYSP sponsors' submission of retroactive claims is described.

However, as is the case with children, sponsors participating in the academic-year SFSP without having participated in the SFSP during the summer months

would be required to submit applications to participate in the Program. Such applications would be taken on a different cycle than the one described at § 225.6(b)(1), with an application deadline no later than September 15. In addition, such application would only be valid for the remainder of the academic-year portion of the SFSP.

Accordingly, this rulemaking amends § 225.6(b)(1) to establish a September 15 deadline for the submission of Program applications by NYSP sponsors wishing to participate in the academic-year portion of the SFSP without having participated in the previous summer's SFSP. In addition, this rulemaking further amends § 225.6(e)(1) to clarify that the academic-year NYSP sponsor's agreement to operate the Program will be valid for a 12-month period commencing no earlier than May 1 and ending no later than April 30 of the following fiscal year.

C. Reimbursements During Academic-Year Participation by NYSP Sponsors

Section 102(a)(2)(B) of the Reauthorization Act (amending section 13(c)(2)(C) of the NSLA) also mandates that academic-year NYSP participants in the SFSP receive different reimbursements for the meals served during the months of October through April. Lunches and suppers served during these months will be reimbursed at the rate for free lunches under the NSLP, while breakfasts and supplements served during these months will be reimbursed at the rate for free severe need breakfasts under the School Breakfast Program (SBP). Based on rates in effect for these programs as of July 1, 1989, this would mean that academic-year NYSP participants would receive meal reimbursements for lunches and suppers which were slightly lower than those which they received for these meals during the summer months. However, per meal reimbursements for breakfasts would be slightly higher during the academic year, and per meal reimbursements for supplements would be more than double the comparable reimbursement for supplements served during the summer months.

Accordingly, this rulemaking amends § 225.9(d) by adding a new paragraph, (d)(10), which specifies the reimbursement rate structure mandated for academic-year NYSP participants in the SFSP by the Child Nutrition and WIC Reauthorization Act. In addition, because section 102(a)(2)(B) of the Reauthorization Act describes only the payment of a single per meal reimbursement to academic-year sponsors (as opposed to the payment of separate operating and administrative reimbursements based on a comparison of costs and rates), this rulemaking also amends § 225.9(d) (6) and (7) to exempt academic-year NYSP sponsors from basing their claims for reimbursement on a comparison of costs to rates.

D. Meal Pattern for Breakfasts and Supplements

Section 102(a)(2)(B) of the Reauthorization Act also specified that the meals served by academic-year NYSP sponsors meet different meal patterns than those which normally pertain in the SFSP. Specifically, new sections 13(c)(2) (D)(i) (I) and (II) of the NSLA mandate that lunches and suppers served by academic-year NYSP sponsors must meet the meal pattern for lunches served in the NSLP while breakfasts served by such sponsors must meet the meal pattern for breakfasts served in the SBP.

With regard to breakfasts, the Department believes that the law requires compliance with the new, four-item meal pattern prescribed for the SBP in the School Lunch and Child Nutrition Act Amendments of 1986 (Pub. L. 99–500 and 591) and implemented in final regulations published on March 30, 1989 (54 FR 13045). However, the Department does not believe that the Reauthorization Act intended the implementation of the "offer-versus-serve" aspect of the SBP meal pattern which was mandated in the same law and regulations or the offer-versus-serve aspect of the NSLP meal pattern. Offer-versus-serve allows students in the School Programs to refuse a specified number of food items which they do not intend to consume while allowing school food authorities to claim full reimbursement for that meal. Such a provision has existed for years in the NSLP, and Congress felt that it could work just as well in the structured school setting of the SBP. However, given the limited number of days which academic-year NYSP sponsors will operate, their familiarity with SFSP feeding practices, and the intermittent nature of the academic-year NYSP, the Department is convinced that any introduction of offer-versus-serve provisions at this time would be both unwise and administratively untenable.

Accordingly, this rulemaking amends §§ 225.16(d) (1) and (2) by adding language which excepts academic-year NYSP sponsors from the normal SFSP meal patterns for breakfast, lunch, and supper. In addition, this rulemaking adds a new § 225.16(e) which incorporates by reference the appropriate meal pattern from 7 CFR parts 210 and 220 (without the "offer versus serve" aspect of these meal patterns) for these meals when served by NYSP sponsors during the months of October through April.

With regard to supplements, section 13(c)(2)(D)(ii) of the NSLA as amended by section 102(a)(2)(B) of the Reauthorization Act provides the Department with the latitude to adopt or modify the SBP meal pattern for application to meal supplements served by NYSP sponsors during the academic year. Given that the reimbursement rate mandated for supplements served by academic-year NYSP participants in the SFSP is the same as that for severe need breakfasts served at the free rate in the SBP, the Department believes that the provision of a supplement by academic-year NYSP participants which meets the SBP meal pattern (again, without the offer-versus-serve element) will provide the additional nutritional component intended by Congress and will justify the additional reimbursement provided to these sponsors' for their supplemental meal service by the Reauthorization Act.

Accordingly, this rulemaking amends § 225.16(d)(3) by adding language which excepts academic-year NYSP sponsors from the normal SFSP meal pattern for supplements. In addition, this rulemaking further amends new § 225.16(e) to require that, for meals served by NYSP sponsors during the months of October through April, supplements must meet the breakfast meal pattern (without "offer versus serve") as set forth in the SBP regulations.

E. Monitoring of Academic-Year NYSP Sponsors

Because sponsors of academic-year NYSP sites will, in most States, operate during months when no other sponsor in the State is participating in the SFSP, it is necessary to address briefly in this preamble and the regulatory text below the matter of how often such sponsors and their sites shall be monitored by State agencies. Some level of Program monitoring is always necessary to ensure accountability. In the case of these sponsors and sites, which will operate the Program under somewhat different rules during the summer months and the academic year, it will be especially important to ensure that a degree of oversight is maintained during the months of October through April. Nevertheless, due to the small number of academic-year sites operating and the minimal amount of SFSP reimbursement which their sponsors will earn (as a result of the 30-day limit on their operation), it would be inappropriate to require frequent monitoring of these

sites. Furthermore, given the delayed passage of the Reauthorization Act and the date of issuance of these interim regulations, the Department does not believe that it would be appropriate to *require* State agencies to conduct monitoring of academic-year sponsors before Fiscal Year 1991. However, the Department encourages State agencies to make every reasonable effort to conduct such monitoring during Fiscal Year 1990.

Accordingly, this rulemaking further amends § 225.7(d)(2) to require that, beginning on October 1, 1990, State agencies conduct at least one monitoring visit to each academic-year NYSP sponsor and at least one of their sites during the period October through April.

F. Retroactive Reimbursement to October 1, 1989

Section 102(b)(2) of the Reauthorization Act made retroactive to October 1, 1989 the eligibility of academic-year NYSP sponsors to receive SFSP benefits. Thus, although the Reauthorization Act was not signed into law until November 10, 1989, the approximately 45 colleges and universities which began administering the academic-year portion of the NYSP on October 1, 1989 may be eligible to retroactively claim SFSP reimbursement for the meals they have served to NYSP enrollees since that date.

This provision of the law will allow reimbursement to academic-year NYSP sponsors retroactive to October 1, 1989, *provided that:* (1) Free meal applications are on file to document the NYSP site's eligibility to participate in the Program; (2) meal counts by type (breakfast, lunch, supplement, and supper) are available; (3) food service revenue and expenditure records are sufficient to support the claim for reimbursement; (4) SFSP reimbursement does not duplicate other funding for the same meals; and (5) the meals claimed for reimbursement met all requirements of the SFSP meal pattern in terms of items and quantities served. The first and last of these requirements call for further explanation in this preamble.

With regard to the first requirement, the Department believes that, although NYSP sponsors were required to take applications last summer (in accordance with the definition of "Areas in which poor economic conditions exist" at § 225.2 and the site requirements set forth at § 225.6(c)(2)), they probably did not do so for this year's academic-year program based on the Reauthorization Act's stipulation that children participating in the academic-year NYSP may do so "without application". This is consistent with the Department's understanding of congressional intent with regard to the taking of a single application from households participating in both the summer and academic-year phases of the NYSP, as discussed in section 3(B) above. Thus, for the purpose of determining site eligibility for claiming retroactive reimbursements, the Department will require only that the site be able to document its participation in the 1989 SFSP (May through September 1989). Of course, academic-year sponsors and/or sites in the 1990 SFSP which did *not* participate in the 1989 SFSP would be required to document their site eligibility in order to claim retroactive reimbursement by taking enough applications to document that at least 50 percent of the children participating at each site came from households meeting the Program's income standards. As with the other household applications of NYSP participants, these applications would be valid only for the remainder of the academic year, through April 30, 1990.

With regard to the last requirement, the Department wishes to point out that the Reauthorization Act promulgated new rates of reimbursement and meal patterns for the academic-year NYSP. The Department does not believe that any of the meals claimed for retroactive reimbursement may be reimbursed at rates other than those authorized under the Reauthorization Act (i.e., the School Programs rates, as discussed in section 3(C) of this preamble, above) and incorporated in these regulations at § 225.9(d)(10). Furthermore, in accordance with the Reauthorization Act's explicit language at section 102(a)(2)(B) (amending section 13(c)(2)(C) of the NSLA), the Department will consider the meal pattern to have been met for any meal claimed retroactively by an academic-year NYSP sponsor only if that meal met the requirements of the new meal patterns incorporated by reference at § 225.16(e) of these regulations.

As discussed in section 3(B) above, beginning May 1, 1990 NYSP sponsors will need only sign a single agreement which will cover both the summer and academic-year phases of the NYSP. However, since at the time last summer's agreements were signed no authority for reimbursing academic-year NYSP sponsors existed, the State-sponsor agreements were not designed to include the academic-year phase. Therefore, any academic-year NYSP sponsor intending to claim reimbursement for the remainder of the academic year (through April 30, 1990) must sign a Program agreement covering this period.

In addition to the conditions set forth in the preceding paragraphs, the Department will also require that any academic-year NYSP sponsor claiming reimbursement for meals served prior to the execution of a Fiscal Year 1990 academic-year Program agreement between the State agency and the NYSP sponsor: (1) Execute such a Program agreement no later than 90 days after the publication of these regulations; (2) submit a claim for reimbursement for each month of operation for which retroactive claims are made; and (3) submit all claims for retroactive reimbursement within 30 days of the date the Program agreement is executed or the date set by § 225.9(d)(5), whichever date is later. To avoid confusion in the amendment of the regulatory text of 7 CFR part 225, all of the provisions pertaining to retroactive reimbursement have been set forth in § 225.18, "Miscellaneous Administrative Provisions", in a new paragraph, (i).

Accordingly, this rulemaking amends § 225.18 by adding a new paragraph, (i), which establishes the conditions under which academic-year NYSP sponsors may qualify for retroactive reimbursement of meals in the Fiscal Year 1990 academic-year phase of the SFSP.

4. Technical Corrections to SFSP Regulations

As mentioned in the "Summary" section above, this rulemaking also makes a number of technical corrections to the text of the final 1989 SFSP regulations which were published on April 27, 1989 (54 FR 18200). These technical corrections are necessary to provide administering agencies and the public with a fully corrected version of 7 CFR part 225. In most cases, these corrections involve minor typographical errors, misspellings, or the insertion of omitted words which do not affect Program policy. However, in several cases, more significant errors were made in the April 27, 1989 text which require correction in the regulatory text below and a brief explanation in this preamble.

First, several words in the definition of "sponsor" at § 225.2 which allude to Program meal requirements were inadvertently altered and are out of conformance with the statutory definition of "service institution" at section 13(a)(1)(B) of the NSLA. Specifically, the Act requires that eligible sponsors provide "food service *similar to* that made available to children" (emphasis added) in the School Lunch or School Breakfast Programs. The amended definition of

"sponsor" in the April 27, 1989 regulations states that sponsors must provide "food service which meets the *same* meal requirements as meals served to children" in the School Programs (emphasis added). This definition is out of conformance with the NSLA and requires correction in this rulemaking.

Second, the regulatory text published in the **Federal Register** on April 27, 1989 also included two errors in the Program meal patterns. These errors—which involved the minimum required serving size for cold dry cereal in the breakfast meal pattern at § 225.16(d)(1) and for cooked dry beans or peas in the supplemental food pattern at § 225.16(d)(3)—have been corrected in the amendatory language preceding § 225.16 in the regulatory text below.

Accordingly, this rulemaking makes a series of technical corrections to the regulatory text published on April 27, 1989, including an amendment to the definition of sponsor at § 225.2 to bring that definition into conformance with the statutory language at section 13(a) of the NSLA and corrections of errors in the breakfast and supplemental food patterns at § 225.16.

List of Subjects in 7 CFR Part 225

Food assistance programs, Grant programs-Health, Infants, and Children.

Accordingly, the Department amends 7 CFR part 225 as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

2. In § 225.2:

a. New definitions of "academic-year NYSP", "homeless feeding site", "NYSP", "NYSP feeding site" and "private nonprofit organization" are added in alphabetical order.

b. The definitions of "private nonprofit" and "sponsor" are revised.

The additions and revisions specified above read as follows:

§ 225.2 Definitions.

Academic-Year NYSP means that portion of the NYSP operating drug awareness and counseling programs during the months October through April, as authorized under Public Law 100-690, the Anti-Drug Abuse Act of 1988.

* * * * *

Homeless feeding site means a feeding site whose primary purpose is to provide shelter and one or more regularly scheduled meal services per day to homeless families and which is not a residential child care institution as defined in paragraph (c), definition of 'school', §210.2 of the National School Lunch Program regulations.

* * * * *

NYSP means the National Youth Sports Program administered by the National Collegiate Athletic Association.

NYSP feeding site means a site which qualifies for Program participation on the basis of free meal applications taken from enrolled children and at which all of the children receiving Program meals are enrolled in the NYSP.

* * * * *

Private nonprofit organization means an organization (other than private nonprofit residential camps, school food authorities, or colleges or universities participating in the NYSP) which meets the definition of "private nonprofit" in this section and which:

(a) Serves a total of not more than 2,500 children per day;

(b) Administers the Program at no more than five sites in any urban area or 20 sites in any rural area, with not more than 300 children being served at any approved meal service at any one site (or, with a waiver granted by the State in accordance with § 225.6(b)(6)(iii) of this part, not more than 500 children being served at any approved meal service at any one site);

(c) Either uses self-preparation facilities to prepare meals or obtains meals from a public facility (such as a school district, public hospital, or State university) or a school participating in the National School Lunch Program;

(d) Operates in areas where a school food authority or the local, municipal, or county government has not indicated by March 1 of the current year that such authority or unit of government will operate the Program in the current year (except that, if a school food authority or local, municipal, or county government has served that area in the prior year's Program, the private nonprofit organization may only sponsor the Program in that area if it receives a waiver from the State agency in accordance with § 225.6(a)(3)(iv)(B));

(e) Exercises full control and authority over the operation of the Program at all sites under its sponsorship;

(f) Provides ongoing year-round activities for children or families;

(g) Demonstrates that it possesses adequate management and the fiscal capacity to operate the Program; and

(h) Meets applicable State and local health, safety, and sanitation standards.

* * * * *

Sponsor means a public or private nonprofit school food authority, a public or private nonprofit residential summer camp, a unit of local, municipal, county or State government, a public or private nonprofit college or university currently participating in the NYSP, or a private nonprofit organization which develops a special summer or other school vacation program providing food service similar to that made available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program. In addition, "sponsor" may also mean a public or private nonprofit college or university which participates in the NYSP during the months of October through April and is approved to participate in the Program. Sponsors are referred to in the Act as "service institutions".

* * * * *

3. In § 225.3, paragraph (b) is amended by revising the second sentence and adding a new third sentence to read as follows:

§ 225.3 Administration.

* * * * *

(b) * * * With the exception of State agencies having academic-year NYSP sponsors, each State agency shall notify the Department by November 1 of the fiscal year regarding its intention to administer the Program. Those State agencies whose Program will include academic-year NYSP sponsors shall enter into an agreement with FNS by October 1 which shall cover the entire fiscal year and shall administer the Program for all eligible sponsors within the State during the agreement period. * * *

* * * * *

4. In § 225.4, paragraphs (d)(2) and (d)(3) are revised as follows:

§ 225.4 Program management and administration plan.

* * * * *

(d) * * *

(2) The State's plans for use of Program funds and funds from within the State to the maximum extent practicable to reach needy children, including the State's methods for assessing need, its plans and schedule for informing sponsors of the availability of the Program, and, beginning in Fiscal Year 1991, its plans for making efforts to inform private nonprofit organizations of their potential eligibility for Program sponsorship;

(3) The State's best estimate of the number and character of sponsors and sites to be approved, the number of

means to be served, the number of children who will participate, and a description of the estimating methods used by the State. Estimates of participation by private nonprofit organizations and their potential impact on the number of children and meals served need not be included in the plan until Fiscal Year 1991;

* * * * *

5. In § 225.6:

a. Paragraph (a)(2) is revised.

b. Paragraph (a)(3) is redesignated as paragraph (a)(4).

c. Two new paragraphs, (a)(3) and (a)(5), are added.

d. Paragraph (b)(1) is amended by revising the second sentence.

e. Paragraph (b)(5) is amended by removing the word "and" at the end of paragraph (b)(5)(iv), by removing the period at the end of paragraph (b)(5)(v) and adding in its place "; and", and by adding a new paragraph, (b)(5)(vi).

f. Paragraph (b)(6) is revised.

g. Paragraph (c)(2)(ii) is amended by adding the words "or a homeless feeding site" after the word "camp".

h. Paragraphs (c)(2)(iv)–(c)(2)(viii) are redesignated as paragraphs (c)(2)(vi)–(c)(2)(x) and two new paragraphs, (c)(2)(iv) and (v), are added.

i. Redesignated paragraph (c)(2)(x) is amended by adding, after the word "government," the words "or under § 225.14(b)(5) as a private nonprofit organization,".

j. Paragraph (d)(1)(i) is amended by adding the words "or a homeless feeding site" after the word "camp" and by removing the word "as" the first time it appears.

k. Paragraph (e)(1) is revised.

l. Paragraph (g)(1) is amended by removing the word "exemption" in the first sentence and adding in its place the word "exemptions".

m. Paragraph (g)(3) is amended by removing the word "statutes" and adding in its place the word "statutes".

n. Paragraph (h)(7) is amended by removing the words "§ 225.15(m)" and adding in their place the words "§ 225.15(g)(1)".

The revisions and additions specified above read as follows:

§ 225.6 State Agency responsibilities.

(a) * * *

(2) By February 1 of each fiscal year, each State agency shall announce the purpose, eligibility criteria, and availability of the Program throughout the State, through appropriate means of communication. As part of this effort, each State agency shall identify rural areas, Indian tribal territories, and areas with a concentration of migrant farm workers which qualify for the Program and actively seek eligible applicant sponsors to serve such areas. State agencies shall identify priority outreach areas in accordance with FNA guidance and target outreach efforts in these areas.

(3) Each State agency shall take the following steps to determine the eligibility of private nonprofit organizations to apply to sponsor the Program in particular areas:

(i) By February 1 each year, compile a list of potentially eligible sponsors (except potential sponsors which are private nonprofit organizations, discussed in paragraph (a)(3)(iii) of this section) which have not previously participated in the Program and contact them. These potential sponsors shall be encouraged to use their own facilities or the facilities of public or nonprofit private schools for the preparation, delivery, and service of meals under the Program.

(ii) By February 1 each year, when contacting the previous year's school food authority and governmental sponsors as required by paragraph (a)(3)(i) of this section, ask them to indicate in writing, no later than March 1, their interest in again serving as Program sponsors, in providing Program meals at the same sites which they served in the prior year, and in providing Program meals in new areas which they did not serve in the previous year. In addition, such entities shall be asked to list those sites or areas which they served in the prior year but do not intend to serve in the current year's Program. For each new area which these entities propose to serve, the school food authority or governmental sponsor shall describe the area's geographical boundaries and, whenever possible, the location and estimated dates of operation and daily attendance of each proposed new site. If such entities indicate their intention not to provide Program service at a site or in an area in which they sponsored the Program in the previous year, the State agency shall consult with the school food authority or unit of government to determine their reasons for discontinuing service at that site, and such reasons shall be accurately documented by the State agency;

(iii) Analyze the information collected as a result of the efforts described in paragraphs (a)(3)(i) and (a)(3)(ii) of this section and identify areas which apparently will be unserved in the current year's Program. After identifying potentially unserved areas, the State agency shall compile a list of potentially eligible private nonprofit organizations and contact them to ask that they provide, no later than April 25, a written indication of their interest in serving as Program sponsors, the geographical area(s) they propose to serve, and the approximate number of sites which they propose to serve. For each area which they propose to serve, the private nonprofit organization shall describe the area's geographical boundaries and, whenever possible, the location and estimated dates of operation and daily attendance of each proposed site. Private nonprofit organizations shall be advised that they are required to use their own facilities for meal preparation or to obtain meals from a public facility or a school participating in the National School Lunch Program; and

(iv) Analyze the information collected as a result of the efforts described in paragraphs (a)(3)(i)–(a)(3)(iii) of this section and, no later than May 1, notify private nonprofit organizations responding to the solicitation of interest described in paragraph (a)(3)(iii) of this section, of any sites which they would *not* be allowed to include in their formal application for Program sponsorships. This analysis shall be based upon:

(A) The State agency's application of the priority system described in paragraph (b)(5) of this section; and

(B) The ineligibility of private nonprofit organizations to sponsor the Program in an area where a school food authority or governmental sponsor had provided Program meal service during the previous 12 months. Such ineligibility may be waived by the State agency only if it is convinced (based on the contact described in paragraph (a)(3)(ii) of this section or, if the former sponsor did not respond, direct contact with the school food authority or governmental sponsor) that the school food authority or governmental sponsor would not have a particular area regardless of the potential availability of a private nonprofit organization to sponsor the Program in that area.

* * * * *

(5) In addition to the warnings specified in paragraph (a)(4) of this section, applications and pre-application materials distributed to private nonprofit organizations shall include, in bold lettering:

(i) The following criminal penalties and provisions established in section 13(o) of the National School Lunch Act (42 U.S.C. 1761(o)):

(A) Whoever, in connection with any application, procurement, recordkeeping entry, claim for reimbursement, or other document or statement made in connection with the Program, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any

false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or whoever, in connection with the Program, knowingly makes an opportunity for any person to defraud the United States, or does or omits to do any act with intent to enable any person to defraud the United States, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(B) Whoever being a partner, officer, director, or managing agent connected in any capacity with any partnership, association, corporation, business, or organization, either public or private, that receives benefits under the Program, knowingly or willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any benefits provided by this Program, or any money, funds, assets, or property derived from benefits provided by this Program, shall be fined not more than $10,000 or imprisoned for not more than five years, or both (but, if the benefits, money, funds, assets, or property involved is not over $200, then the penalty shall be a fine of not more than $1,000 or imprisonment for not more than one year, or both).

(C) If two or more persons conspire or collude to accomplish any act described in paragraphs (a)(5)(i) (A) and (B) of this section, and one or more of such persons do any act to effect the object of the conspiracy or collusion, each shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(ii) The procedures for termination from Program participation of any site or sponsor which is determined to be seriously deficient in its administration of the Program. In addition, the application shall also state that appeals of sponsor or site terminations shall follow procedures mandated by the State agency and shall also meet the minimum requirements of 7 CFR 225.13.

(b) * * *

(1) * * *. The State agency shall require that all applicant sponsors submit written applications for Program participation to the State agency by June 15 or, in the case of sponsors applying to administer the Program at academic-year NYSP sites when they did not participate in the previous summer's Program, by September 15. * * *

* * * * *

(5) * * *

(vi) Applicants which are private nonprofit organizations.

(6)(i) With the exception of private nonprofit organizations, the State agency shall not approve any applicant sponsor to operate more than 200 sites or to serve an average daily attendance of more than 50,000 children unless the applicant can demonstrate to the satisfaction of the State agency that it has the capability of managing a program of that size.

(ii) State agencies shall approve no applicant private nonprofit organization to administer more than 5 urban or 20 rural sites or to serve more than 2,500 children per day. In addition, no private nonprofit organization shall be approved to serve any site with an anticipated attendance of more than 300 children at any approved meal service at any one site. However, private nonprofit organizations may apply for a waiver of the limit on the number of children served at a site in accordance with paragraph (b)(6)(iii) of this section. In instances where the private nonprofit organization is approved to administer both rural and urban sites, it may serve a maximum of 20 sites, of which no more than 5 many be urban.

(iii) No applicant private nonprofit organization may apply for a waiver of the limits on the number of urban, rural, or total sites, or the total number of children served at each approved meal service at such sites, which are set forth in paragraph (b)(6)(ii) of this section. Such applicant private nonprofit organization may, however, apply for a waiver of the 300-child per site limit set forth at paragraph (b)(6)(ii) of this section. Such waiver application shall demonstrate to the satisfaction of the State agency, through the use of school food service, census tract, or other data, that more than 300 children are likely to be served at an approved meal service at a given site and that the sponsor is fully capable of managing a site of this size. In addition, State agencies shall grant such waivers only if they are satisfied that no other sponsor is capable of serving the children in excess of 300 which the applicant sponsor proposes to serve at a particular meal service and site. In no case may a State agency approve an applicant private nonprofit organization to serve more than 500 children at any approved meal service at any one site.

* * * * *

(c) * * *

(2) * * *

(iv) Along with its site information sheet for a homeless feeding site, information sufficient to demonstrate that the site is not a residential child care institution as defined in paragraph (c), definition of 'school', § 210.2 of the National School Lunch Program regulations, and that the site's primary purpose is to provide shelter and one or more meal services per day to homeless families. In addition, if cash payments, food stamps, or any in-kind service are required of any meal recipient at such site, sponsors shall describe the method(s) used to ensure that no such payments or services are received for any Program meal served to children.

(v) Along with its site information sheet for NYSP sites, sponsors shall certify: That all of the children who will receive Program meals are enrolled participants in the NYSP; that no child participating in the NYSP during both the summer months and the academic year shall be required to submit more than one application to participate in the summer and academic-year phases of the Program; and that such applications shall be valid for a period commencing no earlier than May 1 and ending no later than April 30 of the following fiscal year.

* * * * *

(e) * * *

(1) Operate a nonprofit food service during any period from May through September for children on school vacation; or, at any time of the year, in the case of sponsors administering the Program under a continuous school calendar system; or during the period from October through April under the academic-year NYSP. Sponsors participating in both the summer and academic-year phases of the NYSP shall be required to enter into one agreement with the State agency which shall be valid for a 12-month period commencing no earlier than May 1 and ending no later than April 30 of the following fiscal year;

* * * * *

6. In § 225.7:

a. Paragraph (a) is amended by adding a sentence at the end of the paragraph.

b. Paragraph (d)(1)(iii) is amended by adding the words, "With the exception of sites administered by private nonprofit organizations," at the beginning of the paragraph.

c. A new paragraph, (d)(1)(iv), is added.

d. Paragraph (d)(2) is revised.

The additions and revision specified above read as follows:

§ 225.7 Program monitoring and assistance.

(a) * * * In the training of private nonprofit organizations, State agencies shall give special emphasis to proper meal counting techniques, meal pattern requirements, free and reduced price application requirements, restrictions on

second meal service, the prohibition on off-site meal consumption, timely and accurate claims submission, and recordkeeping.

* * * * *

(d) * * *

(1) * * *

(iv) In the case of private nonprofit organizations, all proposed sites with an expected attendance at an approved meal service of 100 children or more which did not participate in the Program in the prior year.

(2) *Sponsor and site reviews.* The State agency shall review sponsors and sites to ensure compliance with Program regulations, the Department's nondiscrimination regulations (7 CFR part 15) and any other applicable instructions issued by the Department. In determining which sponsors and sites to review under this paragraph, the State agency shall, at a minimum, consider the sponsors' and sites' previous participation in the Program, their current and previous Program performance, and the results of any previous reviews of the sponsor and sites. Reviews shall be conducted as follows:

(i) State agencies conduct both a review of sponsor operations and review an average of 15 percent of the following sponsors' sites (with a minimum of one site reviewed per sponsor) during the first four weeks of operation:

(A) Private nonprofit organizations which administer only urban sites, when such sponsors did not participate in the prior year's SFSP and administer three or more urban sites;

(B) Other private nonprofit organizations which are determined by the State agency to need early reviews;

(C) Any sponsors, including private nonprofit organizations, which have 10 or more sites and which did not operate the Program in the prior year; and

(D) Other sponsors of 10 or more sites which are determined by the State agency to need early reviews.

(ii) Beginning in Fiscal Year 1991, State agencies shall conduct a review of academic-year NYSP sponsors, and at least one of their sites, during the period October through April.

(iii) In addition to the reviews specified in paragraphs (d)(2)(i) and (d)(2)(ii) of this section, the State agency shall also conduct the following reviews (with a minimum of one site reviewed per sponsor) at least once during the Program:

(A) For all remaining sponsors with 10 or more sites, an average of at least 15 percent of their sites; and

(B) For 70 percent of sponsors with fewer than 10 sites, an average of at least 10 percent of their sites.

* * * * *

7. In § 225.8, a new paragraph, (e), is added which reads as follows:

§ 225.8 Records and reports.

* * * * *

(e) No later than May 1 of each year, State agencies shall submit to the appropriate FNSRO a list of names and addresses of each potential private nonprofit organization, the geographical area(s) which such potential sponsors propose to serve, the approximate number of sites which they propose to serve and, whenever possible, the location and estimated dates of operation and daily attendance of each proposed site. Such listing shall be based on the information gathered and analyzed in accordance with § 225.6(a)(3) of this part. In addition, within five working days of approving a private nonprofit organization to participate in the Program, State agencies shall notify FNS of such approval and shall provide updated information for each of the private nonprofit organization's approved sites regarding the sites' locations, dates of operation, and estimated daily attendance; the duration, number, and type(s) of approved meal service at each site; and whether the site is rural or urban, vended or self-preparation, enrolled or open, or is a homeless feeding site.

8. In § 225.9:

a. The introductory text of paragraphs (d)(6) and (d)(7) is revised.

b. Paragraph (d)(9) is revised.

c. Paragraph (d)(10) is redesignated as paragraph (d)(11).

d. A new paragraph, (d)(10), is added.

The revisions and addition specified above read as follows:

§ 225.9 Program assistance to sponsors.

* * * * *

(d) * * *

(6) With the exception of academic-year NYSP sponsors, whose reimbursements are set forth in paragraph (d)(10) of this section, payments to a sponsor for operating costs shall equal the lesser of the following totals:

* * * * *

(7) With the exception of academic-year NYSP sponsors, whose reimbursements are set forth in paragraph (d)(10) of this section, payments to a sponsor for administrative costs shall equal the lowest of the following totals:

* * * * *

(9) Sponsors of camps shall be reimbursed only for meals served to children in camps whose eligibility for Program meals is documented. Sponsors of NYSP sites shall only claim reimbursement for meals served to children enrolled in the NYSP.

(10) Sponsors of NYSP sites operating during the academic year shall claim reimbursement for no more than 30 days of meal service for the period October through April. For meals served to children at NYSP sites during the months October through April, sponsors shall be reimbursed as follows:

(i) For each eligible lunch or supper served, the rate for lunches served free in the National School Lunch Program, as described in 7 CFR part 210, § 210.4(b).

(ii) For each eligible breakfast or supplement served, the rate for severe need breakfasts served free in the School Breakfast Program, as described in 7 CFR part 220, § 220.9(b).

* * * * *

§ 225.11 [Amended]

9. In § 225.11, paragraph (c)(3) is amended by removing the period at the end of the paragraph and adding in its place a semicolon and the word "and".

10. In § 225.14:

a. Paragraph (b)(3) is amended by removing the word "and".

b. Paragraph (b)(4) is amended by removing the period and replacing it with "; and".

c. A new paragraph, (b)(5), is added.

d. Paragraph (c)(3) is amended by adding the words "or a homeless feeding site" after the word "camp".

e. Paragraph (c)(6) is amended by adding the word "and" after the semicolon.

f. Paragraph (d)(1) is amended by adding the words "or a homeless feeding site" after the word "camp".

g. Paragraph (d)(4) is amended by adding, after the word "government", the words ", and sponsors which are private nonprofit organizations,".

h. New paragraphs (d)(5), (d)(6), and (d)(7) are added.

The additions specified above read as follows:

§ 225.14 Requirements for sponsor participation.

* * * * *

(b) * * *

(5) Private nonprofit organizations as defined in § 225.2.

* * * * *

(d) * * *

(5) If the sponsor administers homeless feeding sites, it shall document that the site is not a residential child

care institution as defined in paragraph (c), definition of 'school', § 210.2 of the National School Lunch Program regulations, and that the site's primary purpose is to provide shelter and meals to homeless families. In addition, sponsors of homeless feeding sites shall certify that such sites employ meal counting methods which ensure that reimbursement is claimed only for meals served to homeless and non-homeless children.

(6) If the sponsor administers NYSP sites, it shall ensure that applications have been taken to document the site's eligibility and that all children at such sites are enrolled participants in the NYSP.

(7) If the sponsor is a private nonprofit organization, it shall certify that it:

(i) Serves a total of not more than 2,500 children per day;

(ii) Serves no more than five sites in any urban area, or 20 sites in any rural area, with not more than 300 children being served at any approved meal service at any one site (or, with a waiver granted by the State in accordance with § 225.6(b)(6)(iii) of this part, not more than 500 children being served at any approved meal service at any one site);

(iii) Either uses self-preparation facilities to prepare meals or obtains meals from a public facility (such as a school district, public hospital, or State university) or a school participating in the National School Lunch Program;

(iv) Operates in areas where a school food authority or the local, municipal, or county government has not indicated by March 1 of the current year that such authority or unit of local government will operate the Program in the current year (except that, if a school food authority or local, municipal, or county government has served that area in the prior year's Program, the private nonprofit organization may only operate in that area if it receives a waiver from the State agency in accordance with § 225.6(a)(3)(iv)(B));

(v) Exercises full control and authority over the operation of the Program at all sites under its sponsorship;

(vi) Provides ongoing year-round activities for children or families;

(vii) Demonstrates that it possesses adequate management and the fiscal capacity to operate the Program; and

(viii) Meets applicable State and local health, safety, and sanitation standards.

11. In § 225.15:

a. Paragraph (a)(2) is revised.

b. Paragraph (g)(3) is amended by adding, after the word "sponsor", the words "except a private nonprofit organization".

c. Paragraph (g)(5)(xii) is amended by adding, after the semicolon, the word "and".

The revision specified above reads as follows:

§ 225.15 Management responsibilities of sponsors.

(a) * * *

(2) Sponsors shall not claim reimbursement under parts 210, 215, 220, or 226 of this chapter. In addition, sponsors administering homeless feeding sites shall ensure that, if such sites receive commodities as a "charitable institution" pursuant to part 250 of this chapter (§§ 250.3 and 250.41) during their participation in the Program, the site's records establish that its allotment of FDCIP commodities was based only on the number of eligible adult meals served, while the site's SFSP commodity allotment was based only on the number of eligible children's meals served. Sponsors may use funds from other Federally-funded programs to supplement their meal service but must, in calculating their claim for reimbursement, deduct such funds from total operating and administrative costs in accordance with the definition of "income accruing to the Program" at § 225.2 and with the regulations at § 225.9(d). Sponsors which are school food authorities may use facilities, equipment and personnel supported by funds provided under this Part to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

* * * * *

12. In § 225.16:

a. Paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(4) and (b)(5), respectively.

b. Two new paragraphs, (b)(2) and (b)(3), are added.

c. Redesignated paragraph (b)(4) is revised.

d. Paragraph (d)(1) is amended by adding the words "Except in the case of NYSP sponsors participating during the months of October through April," at the beginning of the paragraph and by removing from the Bread and Bread Alternates portion of the Breakfast meal pattern the words "Cold dry cereal—½ cup" and adding in their place the words "Cold dry cereal—¾ cup or 1 oz.".

e. Paragraph (d)(2) is amended by adding the words "Except in the case of NYSP sponsors participating during the months of October through April," at the beginning of the paragraph and, in footnote 5, by adding a semicolon after the word "enriched" the first time it occurs and by adding a semicolon after the word "flour".

f. Paragraph (d)(3) is amended by adding the words "Except in the case of NYSP sponsors participating during the months of October through April," at the beginning of the paragraph, by removing from the Meat and Meat Alternates portion of the Supplemental Food meal pattern the words "Cooked dry beans or peas—½ cup" and adding in their place the words "Cooked dry beans or peas—¼ cup", and, in footnote 3, by adding a semicolon after the word "flour".

g. Paragraphs (e) and (f) are redesignated as paragraphs (f) and (g), respectively.

h. A new paragraph, (e), is added.

The additions and revision specified above read as follows:

§ 225.16 Meal service requirements.

* * * * *

(b) * * *

(2) *Homeless Feeding Sites.* Sponsors of homeless feeding sites shall ensure that the site's primary purpose is to provide shelter and meals to homeless families and that such sites claim reimbursement only for meals served to homeless and non-homeless children. Homeless feeding sites are not subject to the time restrictions for meal service set forth at paragraphs (c)(1)–(3) of this section.

(3) *NYSP Sites.* Sponsors of NYSP sites shall only be reimbursed for meals served to enrolled NYSP participants at these sites. NYSP sites participating in the Program during the months of October through April shall claim reimbursement for no more than two meals or one meal and one supplement per day for not more than 30 days of meal service.

(4) *Restrictions on the number and type of meals served.* Food service sites other than camps, NYSP sites operation during the months of October through April, and sites which primarily serve migrant children may serve either: (i) One meal each day, a breakfast, a lunch, or supplement; or (ii) two meals each day, if one is a lunch and the other is a breakfast or a supplement.

* * * * *

(e) NYSP sponsors participating in the Program during the months of October through April shall ensure that meals served meet all of the requirements specified in this paragraph.

(1) At a minimum, a breakfast or a supplement shall contain the components and quantities specified for breakfasts in 7 CFR part 220, § 220.8(a)(1)–(2), grades K–12.

(2) At a minimum, a lunch or supper shall contain the components and quantities specified for lunches in 7 CFR

part 210, § 210.10 (c) and (d), Group IV (age 9 and older) and, when possible, the recommended quantities for children 12 and older.

* * * * *

13. In § 225.18:

a. Paragraph (e) is amended by removing the word "law" and adding in its place the word "laws".

b. Paragraph (g) is amended by adding the word "or," before the words "if such" the second time they appear.

c. A new paragraph, (i), is added.

The addition specified above reads as follows:

§ 225.18 Miscellaneous administrative provisions.

* * * * *

(i) *Special retroactivity provisions.* Notwithstanding any other provisions contained in this part, the following shall apply:

(1) State agencies shall provide reimbursement as set forth in § 225.9(d)(10) of this part, for meal service provided by any academic-year NYSP sponsor between October 1, 1989 and the date of the Fiscal Year 1990 academic-year Program agreement between the State agency and the academic year NYSP sponsor under the following conditions, *provided that:*

(i) The sponsor can document, for any meals claimed that:

(A) The NYSP site participated in the Program during the 1989 SFSP or, if the site did not participate in the 1989 SFSP, free meal applications are on file to document the site's eligibility during the Fiscal Year 1990 academic-year phase of the SFSP;

(B) Meal counts by type (breakfast, lunch, supplement, and supper) are available;

(C) Food service revenue and expenditure records are sufficient to support the claim for reimbursement;

(D) Program reimbursement does not duplicate other funding for the same meals;

(E) The meals claimed for reimbursement met the requirements of the appropriate meal patterns set forth at § 225.16(e) of this part in terms of items and quantities served; and

(ii) The Fiscal Year 1990 academic-year Program agreement between the State agency and the academic-year NYSP sponsor is executed no later than 90 days after the publication of the 1990 Program regulations; and any claims for reimbursement for meals served between October 1, 1989 and the date of said Program agreement are grouped by month and are received by the State agency no later than 30 days after the execution of the State-sponsor agreement or the date established by § 225.9(d)(5), whichever date is later.

§ 225.19 [Amended]

14. In § 225.19:

a. Paragraph (a) is amended by removing the word "State" and adding in its place the word "States".

b. Paragraph (b) is amended by removing the words "Puerto Rio" and adding in their place the words "Puerto Rico" and by removing the word "Agriculuture" and adding in its place the word "Agriculture".

c. Paragraph (c) is amended by removing the words "1100 Spring Street, NW., Atlanta, GA 30367" and adding in their place the words "77 Forsyth Street, SW, Suite 112, Atlanta, GA 30303".

d. Paragraph (g) is amended by removing the word "North" and adding in its place the word "Northern".

Dated: April 4, 1990.

Betty Jo Nelsen,

Administrator.

[FR Doc. 90-8171 Filed 4-5-90; 9:49 am]

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Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Improved Structural Requirements for Pressurized Cabins and Compartments in Transport Category Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 25567, Amdt. No. 25-71]

RIN 2120-AC44

Improved Structural Requirements for Pressurized Cabins and Compartments in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment upgrades the airworthiness requirements for pressurized compartments on transport category airplanes by (1) amending the criteria for evaluation of the secondary effects caused by openings in the pressure vessel, and (2) extending the area of consideration to include openings anywhere in any pressurized compartment. There are no changes to the sizes of the openings that must be considered. This amendment is a result of recent service experience and is intended to make the pressurized compartment load requirements less design-dependent and more objective. It requires evaluation of openings in any pressurized compartment and examination of the effects of differential pressure loads on any critical structure inside or outside the pressurized compartment.

EFFECTIVE DATE: May 10, 1990.

FOR FURTHER INFORMATION CONTACT: James Haynes, Airframe and Propulsion Branch (ANM-112), Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2113.

SUPPLEMENTARY INFORMATION:

Background

This amendment is based on Notice of Proposed Rulemaking (NPRM) No. 88-5, which was published in the Federal Register on March 16, 1988 (53 FR 8742). The notice proposed to upgrade the requirements concerning pressurized cabin and compartment design loads by requiring that the specified openings for rapid decompression evalution be considered in all compartments of the pressure vessel and that the effects of the differential pressure load be considered for any structure inside or outside the pressure vessel.

As discussed in the notice, § 25.365 "Pressurized cabin loads" was revised by Amendment 25-54 (effective October 14, 1980) to include a new requirement for the structural evaluation of the effects of rapid depressurization resulting from a specific size opening in the fuselage. This requirement was initially prompted by a transport airplane accident in which a failed door resulted in decompression and collapse of the floor with subsequent jamming of the flight controls and loss of the airplane. This accident raised concerns regarding the reliability of outward opening doors and the potential harm to the airplane from openings that may occur in the pressure vessel from a variety of causes including the detonation of bombs, mid-air collisions, and maintenance and production errors. These concerns resulted in proposal number 1051 of the Biennial Airworthiness Review of 1974-1975 which, in turn, resulted in the issuance of NPRM No. 75-31 (40 FR 29410; July 11, 1975).

In NPRM No. 75-31, the FAA proposed to amend the transport category airplane airworthiness standards to prevent floor failure, or any structural failure that would prevent continued safe flight and landing caused by the sudden release of pressure through an opening in any compartment at any approved operating altitude. This would have been accomplished by considering openings from bomb detonations, nonplug door failures, engine disintegrations, bird strikes, and any other eventualities. However, in the rule that was eventually adopted (Amendment 25-54; effective October 14, 1980), the requirement to consider compartment openings was limited to those openings caused by engine disintegration and other airplane or equipment failures. To account for other openings, the rule prescribed an opening of a computed size (based on a formula) in the passenger and cargo compartments. The evaluation of the effects was limited to partitions, floors and bulkheads within the pressurized cabin.

The final rule adopted in 1980 (Amendment 25-54) addressed the original concerns by: (1) Revising § 25.783, "Doors," to improve the standards for doors to the point that the failure of an outward-opening door was considered extremely improbable; and (2) requiring designs that prevent the collapse of floors and bulkheads in the event of an opening of a specific size in passenger and cargo compartments. The size of that opening was based on a formula involving the maximum cross-sectional area of the fuselage; however, the rule did not require the consideration of a size greater than 20 square feet.

The changes made to § 25.783 in 1980 were considered to have adequately addressed the occurrence of fuselage openings resulting from the opening of large doors; and the changes to § 25.365 were considered to have provided protection against the secondary effects of decompression resulting from other causes of fuselage openings. Although these changes were principally prompted by concerns over fuselage openings caused by the detonation of bombs during pressurized flight, the computed opening was considered large enough to cover other conceivable causes of fuselage openings. These included openings caused by structural failure resulting from corrosion, failure of rotating machinery, and errors in maintenance, production or operation.

The intent of the proposed change to § 25.365(e) in NPRM No. 75-31 was to provide some level of protection for the critical systems and components from the effects of decompression in the event of a fuselage opening that in itself may not cause the loss of the airplane. As adopted, the rule required an airplane to be designed to prevent the failure of floors and bulkheads in the event of an opening of a specified size. The physiological effects of decompression on the crew and passengers and the loss of structural integrity at the opening location, were not addressed in NPRM No. 75-31 or the resulting Amendment 25-54.

Section 25.365(e), as revised by Amendment 25-54, required that an airplane be designed to prevent the failure of floors, bulkheads and partitions that could result from a computed opening in any pressurized passenger or cargo compartment. The location of the computed opening was limited to these areas because they were considered the most likely locations for a bomb.

A requirement similar to that of § 25.365(e), as revised by Amendment 25-54, had already been issued in the form of an airworthiness directive (AD 75-15-05, Amendment 39-2262; 40 FR 29269; July 11, 1975) and made applicable to all wide body airplanes. This airworthiness directive resulted in the strengthening of the floors and in provisions for additional ventilation between compartments. It appears that the benefits of these requirements were realized in 1984 when a Boeing 747 airplane survived a 40 square foot opening from a bomb detonation.

Additional service experience since adoption of Amendment 25-54 indicates that the venting of pressure into normally unpressurized areas can cause secondary structural damage which in turn can lead to failure of critical flight control systems and components.

Furthermore, experience shows that all compartments of the airplane are subject to potentially survivable openings resulting from bomb detonation or the other events cited in NPRM No. 75–31.

In NPRM No. 88–5, the FAA proposed to upgrade the requirements to consider design loads on any structure, inside or outside the pressurized compartments, resulting from decompression through specified openings in any compartment. The proposal addressed only the secondary effects of the decompression loads on any structure and required each structure to withstand the loads if the failure of the structure could interfere with safe flight and landing. All effects on systems, equipment, or other structural components resulting from the secondary structural failures were to be evaluated.

A special requirement was provided for very small compartments where the required opening of the proposed § 25.365(e)(2) could not reasonably be expected to be confined to the small compartment. Instead of the computed opening, an opening of the maximum size expected to remain confined in the small compartment would be considered in the small compartment. As a separate condition, the small compartment would then be combined with an adjacent pressurized compartment and both considered as a single compartment for the maximum size opening specified by the formula. The cockpit would not be considered a small compartment for the purposes of the proposal.

Discussion of Comments

Comments were received from foreign and domestic airplane manufacturers, foreign government agencies, airplane operators and organizations representing pilots and flight engineers. The overwhelming majority of the commenters indicate support for the proposed changes, while some recommend additional or more stringent requirements and a few oppose certain provisions of the proposed rule. Many commenters recommend editorial, organizational, and clarifying comments which would result in a more understandable regulation.

Several commenters recommend that proposed § 25.365(h) be incorporated into new § 25.365(e) to simplify and improve the organization of the requirements. The FAA agrees, and the provisions of proposed paragraph (h) are incorporated into paragraph (e). Section 25.365(e) now applies to any structure, component, or part inside and outside the pressurized compartments. At the same time, the specific references to "bulkheads, floors, and partitions" in paragraph (e) are retained and moved from paragraph (e) to paragraph (g) to clarify the passenger protection aspects related to failure of these specific structures in occupied compartments regardless of whether the failure of these structures would interfere with safe flight and landing. Paragraph (g) is the more appropriate paragraph in which to address this concern since it already addresses the need for passenger protection from injury caused by the detachment of other parts under decompression conditions.

One commenter suggests that the reference to "any structure" might not be interpreted consistently to include components and supports for systems. To clarify that the rule applies to all structures that can be exposed to depressurization loads, including components and supports for systems, new § 25.365(e) now refers to "any structure, component, or part." The intent is to require that any structure, component, and part, the failure of which could interfere with continued safe flight and landing, be designed to withstand the differential pressure loads resulting from the release of pressure through openings in pressurized compartments. The evaluation includes not only the failure of the structure, component, or part, but also any subsequent failures that could result from the failure of that structure, component or part.

Several commenters recommend that the wording be revised to clarify that the loads resulting from the decompression events are ultimate load conditions. The FAA agrees and changes have been made to paragraph (f) to allow the resulting differential pressure loads to be considered as ultimate loads, provided that any resulting deformation does not interfere with continued safe flight and landing.

Several commenters suggest that the word "compartment" be used instead of "cabin" unless occupied compartments are intended. The FAA agrees, and changes have been made to the proposed paragraphs as well as to the title and other paragraphs of the rule to be consistent in the use of the word "compartment."

One commenter points out that the environmental qualification requirements for equipment that could be flight critical allow 15 seconds for decompression, while the current requirement as well as that in § 25.365 could result in a much shorter time interval. The commenter suggests that consideration be given to improving the equipment qualification standards for critical flight equipment. This would be beyond the scope of this rulemaking; however, the FAA is addressing this concern in separate actions.

One commenter proposes that, in view of the JAL accident of 1985, the FAA consider increasing the upper limit on the computed opening size set forth by the formula in § 25.365(e)(2). The commenter provided no information that would indicate that the depressurization criteria provided by this rule would have been ineffective in preventing that accident. The computed opening defined in § 25.365(e)(2), with the 20 square foot maximum limit, is considered adequate for current and future designs, and to increase the maximum size of this opening would be beyond the scope of the proposals. Furthermore, there are other opening criteria provided by the rule which have no maximum limit. The computed opening established by § 25.365(e)(2) is intended to require consideration of a minimum size opening regardless of the opening sizes derived from specified failure conditions. Sections 25.365(e)(1) and 25.365(e)(3) require the consideration of other openings which could result from airplane, engine, and equipment failures regardless of the size of those openings.

The same commenter also recommended expanding the scope of the rule to include consideration of the primary effects of the opening in the external hull. The FAA agrees that some consideration of the primary effects of openings may have merit as it relates to protection of systems from major structural damage. Government and industry studies regarding the protection of systems from major structural damage are currently being conducted and may result in additional rulemaking action. However, the intent of § 25.365(e), as revised by this amendment, is to establish differential pressure design loads. It addresses only the secondary effects of decompression loading conditions on other structures, components and parts regardless of where they may be located on the airplane.

One commenter suggests that in some circumstances flight loads imposed by decompression emergency conditions should be combined with the resulting differential pressure loads, provided that they could exist simultaneously. The FAA agrees, and paragraph (f) has been clarified to indicate that any differential pressure loads be combined with the loads arising from decompression emergency procedures in a rational and conservative manner.

One commenter opposes the inclusion of the cockpit as a compartment where the opening of § 25.365(e)(2) of the proposal is to be considered, since the

cockpit size on wide-body airplanes may not be proportional to fuselage size. The commenter suggests that separate criteria should be established for the cockpit. The FAA does not agree since the intent of the requirement is to establish structural design loads resulting from specified openings in the pressure vessel. The applicability of the decompression criteria to a specific compartment should not be determined by the use of that compartment as a cockpit. In addition, § 25.365(e)(2) already establishes a 20 square foot upper limit on the size of the computed opening, which can be feasible and potentially survivable for the cockpit of wide-body transports.

Only one commenter suggests that extending the computed opening to the cockpit might result in some economic impact. However, that commenter provides no data to support his claim. All other commenters, which include representatives of all U.S. manufacturers and operators, support the FAA contention that there would be no significant cost associated with this change.

Another commenter believes that openings in the center wing box should not be required since an opening at this location would cause immediate loss of the airplane. The FAA disagrees. The formula for the opening size results in opening areas proportional to airplane size that might reasonably be expected without loss of sufficient load carrying capability in the wing. Furthermore, the proposed § 25.365(e)(2) was not intended to address the primary effects of the opening (loss of strength, fuel leakage, fire hazard, etc.).

Regulatory Evaluation

Benefit-Cost Analysis

This regulatory evaluation examines the cost and benefit aspects of the final rule to establish improved structural requirements for pressurized cabins and compartments in transport category airplanes. The rule amends part 25 of the Federal Aviation Regulations (FAR). It will require evaluation of openings in any pressurized compartment and examination of the effects of differential pressure loads on any critical structure inside or outside of the pressurized cabin.

The rule is a result of an FAA review of the pressurized cabin load requirements.

The rule potentially impacts U.S. and foreign manufacturers that sell newly type certificated transport category airplanes in the U.S.

Costs

The FAA estimates the incremental cost of compliance that is expected to accrue from implementation of the rule to be minor. This assessment is based largely on information received from industry sources. According to the industry sources, the Japan Airlines (JAL) Flight 123 accident, which occurred in Japan in 1985 and represents one of the most tragic in aviation history, prompted increased world-wide safety awareness. This awareness, coupled with an anticipation of FAA rulemaking action related to the subject accident, provided most of the impetus behind the voluntary adoption of structural changes similar to those that will be required by this rule by manufacturers of transport category airplanes (including those designed expressly for executive transportation). Manufacturers of these airplanes reviewed their existing and future designs for possible flaws similar to those believed to have contributed to the JAL Flight 123 accident in 1985. Appropriate structural changes were made to some airplanes in the design stage and to some airplanes currently in use by operators. For these reasons, the FAA believes compliance with the rule will not impose any significant additional costs on manufacturers of transport category airplanes.

The belief that manufacturers of transport category airplanes will not incur significant costs as a result of this final rule has been reinforced by the fact that the FAA did not receive any negative comments from U.S. manufacturers or operators. The sole negative comment from a foreign manufacturer was not supported by cost data.

Benefits

The potential benefits of the rule represent the prevention of casualty losses (fatalities and to a lesser extent property damage) that would be expected to occur if the standards of this rule were not adopted.

Based largely on information received from industry sources, the FAA expects the rule to ensure that a sufficient level of safety will be maintained with openings of up to 20 square feet in size anywhere within the pressurized fuselages of transport airplanes. This effort will be accomplished by assuring that the current high level of voluntary measures continues with respect to newly type certificated aircraft. As a result of the voluntary measures, there is an unlikely chance of an accident occurring, which would be due to openings in the pressurized fuselages of transport airplanes, over the next 10 or more years. If, however, the rule were not adopted and newly type certificated transport category airplanes did not enjoy the level of safety presently achieved by voluntary measures, a number of aviation accidents involving such airplanes might occur over the next 10 years. Conservative monetary estimates of at least one of those accidents would amount to either a uniform stream of $13.8 million annually or a cumulative $85.4 million discounted at 10 percent over the next 10 years, in 1988 dollars, starting in 1990. These estimates are based on the occurrence of only one accident because it is not known how many accidents would occur over the next 10 years. Nevertheless, it is almost certain that at least one would occur.

Comparison of Costs and Benefits

This area of the evaluation summary presents a comparison of costs and benefits that could accrue over a period of 10 years as the result of implementation of this rule. The potential benefits of this rule are derived from the requirement that industry continue its current practices of addressing the problems identified in this rule and taking appropriate actions. This will greatly reduce the potential for the occurrence of an accident similar to or worse than the JAL Flight 123 disaster. Minimum benefits of $13.8 million annually or $85.4 million cumulative could be realized over the next ten years.

The costs associated with this rule are estimated to be minor since manufacturers have taken the initiative to implement most of the design changes necessary to meet the requirements contained in the rule. The FAA, therefore, considers this rulemaking action to be cost-beneficial.

The Regulatory Evaluation that has been placed in the Rule Docket contains additional information related to the costs and benefits that are expected to accrue from the implementation of this rule.

Final 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 and operators of

transport category airplanes would 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 others 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 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 rule has no impact on any manufacturer that is a "small entity."

Because this rule does 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 manufactuers, which sell their products in the United States, there will be no competitive trade advantage to either.

Federalism Implications

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

Conclusion

Because amending the structural requirements for pressurized compartments on transport category airplanes is not expected to result in a substantial cost, the FAA has determined that this amendment is not major as defined in Executive Order 12291. For the same reason, this amendment 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 amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. A copy of the regulatory evaluation prepared for this project may be examined in the Rules Docket or obtained from the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

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. Amend § 25.365, by revising the introductory paragraph and by revising paragraphs (c), (e), (f) and (g) to read as follows.

§ 25.365 Pressurized compartment loads.

For airplanes with one or more pressurized compartments the following apply:

* * * * *

(c) If landings may be made with the compartment pressurized, landing loads must be combined with pressure differential loads from zero up to the maximum allowed during landing.

* * * * *

(e) Any structure, component or part, inside or outside a pressurized compartment, the failure of which could interfere with continued safe flight and landing, must be designed to withstand the effects of a sudden release of pressure through an opening in any compartment at any operating altitude resulting from each of the following conditions:

(1) The penetration of the compartment by a portion of an engine following an engine disintegration;

(2) Any opening in any pressurized compartment up to the size H_o in square feet; however, small compartments may be combined with an adjacent pressurized compartment and both considered as a single compartment for openings that cannot reasonably be expected to be confined to the small compartment. The size H_o must be computed by the following formula:

$H_o = PA_s$

where,

H_o = Maximum opening in square feet, need not exceed 20 square feet.

$$P = \frac{A_s}{6240} + .024$$

A_s = Maximum cross-sectional area of the pressurized shell normal to the longitudinal axis, in square feet; and

(3) The maximum opening caused by airplane or equipment failures not shown to be extremely improbable.

(f) In complying with paragraph (e) of this section, the fail-safe features of the design may be considered in determining the probability of failure or penetration and probable size of openings, provided that possible improper operation of closure devices and inadvertent door openings are also considered. Furthermore, the resulting differential pressure loads must be combined in a rational and conservative manner with 1–g level flight loads and any loads arising from emergency depressurization conditions. These loads may be considered as ultimate conditions; however, any deformations associated with these conditions must not interfere with continued safe flight and landing. The pressure relief provided by intercompartment venting may also be considered.

(g) Bulkheads, floors, and partitions in pressurized compartments for occupants must be designed to withstand the conditions specified in paragraph (e) of this section. In addition, reasonable design precautions must be taken to minimize the probability of parts becoming detached and injuring occupants while in their seats.

Issued in Washington DC, on April 2, 1990.

James B. Busey,

Administrator.

[FR Doc. 90–8190 Filed 4–9–90; 8:45 am]

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federal register

Tuesday
April 10, 1990

Part VII

Environmental Protection Agency

40 CFR Part 61

NESHAPS for Radionuclides Reconsideration; Phosphogypsum; Proposed Rule and Notice of Limited Reconsideration of Final Rule and Determination of Compliance Waiver

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL 3753-7]

NESHAPS for Radionuclides Reconsideration; Phosphogypsum

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of limited reconsideration of final rule and determination of compliance waiver.

SUMMARY: Today's action announces the limited reconsideration by EPA of the portion of 40 CFR part 61, subpart R, National Emission Standards for Hazardous Air Pollutants, Radon Emissions from Phosphogypsum Stacks (54 FR 51654 December 15, 1989) that requires disposal of phosphogypsum in stacks or mines, thereby precluding alternative uses of the material. In light of this reconsideration and other factors described herein, EPA is also granting a limited compliance waiver that permits the continued agricultural use of phosphogypsum through the current growing season. EPA is establishing a 60-day comment period to receive information relating to the limited reconsideration. In this issue of the **Federal Register**, EPA is also noticing several proposed alternatives that address the subject matter of this limited reconsideration. (*See* the proposed rule printed elsewhere in this issue). A public hearing on these issues will be held.

DATES: *Effective date:* March 15, 1990.

The public hearing will be held on May 3 and 4, 1990. Written requests to present comments at the hearing must be submitted by April 25, 1990.

ADDRESSES: The hearing will be held at the Inforum Conference Center located at 205 Williams Street in Atlanta, GA.

Comments and requests to speak at the hearing should be submitted (in triplicate if possible) to the Central Docket (A-130), Environmental Protection Agency, Attention: Docket No. A-79-11, Washington, DC 20460. The docket may be inspected between the hours of 8 a.m. and 3 p.m. on weekdays. A reasonable fee may be charged for document copying.

FOR FURTHER INFORMATION CONTACT: Craig Conklin, Environmental Standards Branch, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460, (202) 475-9610.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1989, EPA promulgated (54 FR 51653 December 15, 1989), pursuant to its authority under section 112 of the Clean Air Act (the "Act"), 42 U.S.C. 7412, National Emission Standards for Hazardous Air Pollutants ("NESHAPs") controlling radionuclide emissions to the outdoor air from the following source categories: DOE Facilities, Licensees of the Nuclear Regulatory Commission and Non-DOE Federal Facilities, Uranium Fuel Cycle Facilities, Elemental Phosphorus Plants, Phosphogypsum Stacks, Underground Uranium Mines and the operation and disposal of Uranium Mill Tailings Piles. This action was undertaken pursuant to a voluntary remand and a schedule issued by the U.S. Court of Appeals for the D.C. Circuit in light of its earlier ruling in *NRDC, Inc.* v. *EPA*, 824 F.2d 1146 (D.C. Cir. 1987) (the *"Vinyl Chloride"* decision) which articulated requirements for standard-setting under section 112 of the Act.

The *Vinyl Chloride* decision set forth a decisionmaking framework for NESHAPs by which the Administrator exercises his judgment under section 112 in two steps: first, determine a "safe" or "acceptable" level of risk considering only health-related factors, and second, set a standard that provides an "ample margin of safety," in which costs, feasibility, and other relevant factors in addition to health may be considered but which is at least as stringent as the "safe" level. After proposing and receiving comments on several options by which to define "safe", the Administrator selected an approach, first announced in the final NESHAPs for certain benzene source categories (54 FR 38044 September 14, 1989) which created a presumption of acceptability for a risk level of approximately one in ten thousand to the maximum exposed individual, and a goal to protect the greatest number of persons possible to a lifetime risk level no higher than approximately one in one million. After evaluating existing emissions against this benchmark, other risk information is then considered and a final decision is made about what risk is acceptable. The Agency then considers other information in addition to the health-related factors and establishes the final NESHAP at the level which protects public health with an ample margin of safety.

B. The NESHAP for Radon Emissions From Phosphogypsum Stacks or Mines

Phosphogypsum is waste or any other form of byproduct that results from wet acid phosphorus production. Because phosphate ore contains a relatively high concentration of uranium and radium, phosphogypsum also contains these elements. Phosphogypsum, once created, is most typically disposed of in large (multi-acre) stacks or in the mines from which the phosphate ore was originally extracted.

During the rulemaking that resulted in promulgation on October 31, 1989, of the final 40 CFR part 61, subpart R, NESHAP for radon emissions from phosphogypsum, EPA performed a pile-by-pile risk assessment of radon releases from 58 phosphogypsum stacks located at 41 different facilities. The Final Phosphogypsum NESHAP is the product of application by the Administrator of the two part decision-making process articulated by the D.C. Circuit in the *Vinyl Chloride* decision, as summarized in part A above. Specifically, EPA decided that in order to control the dispersion of phosphogypsum and resultant release of radon gas to ambient air, the phosphogypsum, once created, must be disposed in stacks or mines. The radon emissions from these stacks or mines are limited to a level of 20 pCi/m^2-s. The portion of the rule mandating disposal reflects the EPA's concern that the radium-bearing phosphogypsum waste, if diffused throughout the country, would present a public health threat from radon gas emissions that would continue for generations given radium's 1630-year half-life, and that it would be impracticable for EPA to implement its regulation of such numerous and diffuse sources.

Because the phosphogypsum NESHAP, 40 CFR part 61, subpart R, was published on December 15, 1989, it became effective for existing facilities on March 15, 1990. Clean Air Act section 112(c)(1)(B)(i), 42 U.S.C. 7412(c)(B)(i). Individual facilities that are unable to achieve compliance at this time may apply to EPA, pursuant to 40 CFR parts 61.10-61.11, for a waiver permitting such facility a period of up to two years after March 15, 1990 to comply. In deciding whether to grant such waiver, EPA considers, among other things, the past practices of the facility, the ability of the facility to comply, the necessity for a waiver, and whether the waiver would present an imminent endangerment to public health. Owners or operators of phosphogypsum that desire a waiver and meet these criteria are invited to apply to the EPA Regional Office in which the phosphogypsum is or will be located. However, for owners or operators of phosphogypsum engaged in the sale and use of phosphogypsum solely for agricultural purposes, for the

current growing season individual waivers are not necessary as EPA is today granting a limited class waiver for that purpose. This class waiver is further discussed in part E below.

C. Industry Petitions

EPA has received petitions from The Fertilizer Institute ("TFI"), Consolidated Minerals, Inc. ("CMI"), and U.S. Gypsum Co. ("USG") to reconsider the portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, which requires disposal into stacks or mines of all phosphogypsum thereby preventing alternative uses of the material. In pertinent part, TFI contends that this provision (1) was adopted without proper notice and comment, (2) is contrary to the national policy favoring recycling and reuse of secondary materials, (3) effectively prevents any amount, no matter how small, from being used in the research and development of beneficial uses of the material, (4) is unnecessary because certain uses of phosphogypsum such as mixing with soil as a calcium replenisher does not cause significant risks, and (5) will cause irreparable harm to thousands of farmers.

CMI adds that this portion of the phosphogypsum NESHAP is arbitrary and capricious because it prevents the use or sale of any of the phosphogypsum produced by their particular industrial process. In particular, because their phosphate ore treatment method allegedly reduces the radium concentration in much of the resultant phosphogypsum such that "safe" levels of radon gas emissions to ambient air are ensured, CMI contends that EPA's prohibition on alternative use is unreasonable.

U.S. Gypsum's petition is consistent with CMI's in that it supports the phosphogypsum NESHAP only insofar as it pertains to *untreated* phosphogypsum; therefore, phosphogypsum that is treated so as to achieve "safe" levels of radium (the material that ultimately results in radon gas emissions to ambient air) should be allowed for agricultural use. USG believes that because there are safer alternative products available in the agricultural gypsum market that are economically viable, and because the technology to treat phosphogypsum is also available and viable, the alternative use of untreated phosphogypsum was properly prohibited by the NESHAP. Therefore, reconsideration is requested as to the ban on use of treated phosphogypsum and, additionally, to allow research and development of phosphogypsum purification technologies.

D. Notice of Limited Reconsideration

In accordance with section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B), EPA is granting limited reconsideration of the portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, which requires disposal of phosphogypsum in stacks or mines. Although the Agency has concluded that several of the issues raised by the petitioners merit reconsideration, EPA does not agree with all of the arguments or assertions raised. For example, EPA believes that its proposal, published at 54 FR 9612, *et seq.* (March 7, 1989), which included explicit regulatory language requiring that phosphogypsum be disposed in stacks or mines (implicitly prohibiting alternative uses), provided adequate public notice for the final rule. Indeed, comments from both industry and environmental groups on this very issue were submitted to EPA in response to that proposal. Nevertheless, reconsideration will afford an additional opportunity for public comment.

EPA is granting limited reconsideration in order to receive more information on the following: (1) the specific types of proposed alternative uses of phosphogypsum; (2) the current or anticipated feasibility of those alternative uses; (3) the research and development of processes which remove radium from phosphogypsum; (4) the health risks associated with either research and development or alternative uses; (5) the availability, cost, and effectiveness of substitutes for phosphogypsum; and (6) the proper definition of "phosphogypsum" in terms of its origin and its radium content. No comments that exceed the scope of these subjects will be considered by EPA.

E. Limited Class Waiver for Agricultural Use

Pursuant to the Agency's authority under Clean Air Act section 112(c)(1)(B)(ii), 42 U.S.C. 7412(c)(1)(B)(ii), and 40 CFR parts 61.10–61.11, a limited waiver from compliance with the work practice portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, is hereby granted for those owners or operators engaged in the distribution or use of phosphogypsum for agricultural purposes for the duration of the current growing season. This limited waiver is based upon the finding of the Administrator that such activity presents no imminent endangerment to public health, that the immediate prohibition of such use would cause great injury to many small farmers who rely upon phosphogypsum, and that it would be burdensome and impracticable to issue limited waivers to each affected owner or operator, and it is made in light of the scope of the simultaneously granted limited reconsideration of the phosphogypsum NESHAP. This limited waiver further recognizes that the requirement to dispose of phosphogypsum in stacks or mines does not require emissions control equipment but instead requires conversion to alternative means of soil conditioning. The limited waiver is necessary to allow time for arranging the purchase and implementation of new materials and practices.

The durational limitation to this growing season recognizes that the timing for application of phosphogypsum varies from farm to farm, crop to crop, and thus allows phosphogypsum application to fields through this growing season, even if already commenced, but in no case after October 1, 1990. The limited waiver bars enforcement against such use and distribution for this period, but in the event that phosphogypsum is sold or otherwise distributed but not used for this growing season, it must be disposed into stacks or mines unless further relief from the provisions of the rule has been provided by EPA.

F. Miscellaneous

EPA has determined that this action does not constitute a major rule within the meaning of Executive Order 12291 since it is not likely to result in (1) a nationwide annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a Regulatory Impact Analysis is not being prepared for this action.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection at Docket A–79–11.

Issued: March 22, 1990.

William K. Reilly,

Administrator.

[FR Doc. 90–8150 Filed 4–9–90; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL 3746-2]

NESHAPS for Radionuclides Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule.

SUMMARY: Today's action announces the limited reconsideration by EPA of the portion of 40 CFR part 61, subpart R, National Emission Standards for Hazardous Air Pollutants, Radon Emissions from Phosphogypsum Stacks (54 FR 51654 December 15, 1989) that requires disposal of phosphogypsum in stacks or mines, thereby precluding alternative uses of the material. In light of this reconsideration and other factors described herein, in a document published in the Rules section of this issue, EPA is also granting a limited compliance waiver that permits the continued agricultural use of phosphogypsum through the current growing season. Today's action further notices proposed rulemaking by which EPA is proposing to maintain or modify the rule to, alternatively or in combination, (1) make no change to 40 CFR part 61, subpart R, as promulgated on October 31, 1989, (2) establish a threshold concentration level of radium which would further define the term "phosphogypsum", (3) allow, with prior EPA approval, the use of discrete quantities of phosphogypsum for researching and developing processes to remove radium from phosphogypsum to the extent such use is at least as protective of public health as is disposal of phosphogypsum in mines or stacks, or (4) allow, with prior EPA approval, other alternative use of phosphogypsum to the extent such use is at least as protective of public health as is disposal of phosphogypsum in mines or stacks. EPA is establishing a 60-day comment period to receive information relating to the limited reconsideration and the proposed alternatives. A public hearing on these will be held as stated below.

DATES: Comments must be received by June 11, 1990.

The hearing will be held on May 3 and 4, 1990 at 9 a.m.

Written requests to present comments at the hearing must be received by April 25, 1990.

ADDRESSES: Comments and requests to present testimony at the hearing should be submitted (in triplicate if possible) to Central Docket (A-130), Environmental Protection Agency, Attention: Docket No. A-79-11, Washington DC 20460. The docket may be inspected between the hours of 8 a.m. and 3 p.m. on weekdays. A reasonable fee may be charged for document copying.

The hearing will be held at the Inforum Conference Center, 205 Williams St., Atlanta, Ga.

FOR FURTHER INFORMATION CONTACT: Craig Conklin, Environmental Standards Branch, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington DC 20460, (202) 475-9610.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1989, EPA promulgated (54 FR 51653 December 15, 1989), pursuant to its authority under section 112 of the Clean Air Act (the "Act"), 42 U.S.C. 7412, National Emission Standards for Hazardous Air Pollutants ("NESHAPs") controlling radionuclide emissions to the outdoor air from the following source categories: DOE Facilities, Licensees of the Nuclear Regulatory Commission and Non-DOE Federal Facilities, Uranium Fuel Cycle Facilities, Elemental Phosphorus Plants, Phosphogypsum Stacks, Underground Uranium Mines and the operation and disposal of Uranium Mill Tailings Piles. This action was undertaken pursuant to a voluntary remand and a schedule issued by the U.S. Court of Appeals for the D.C. Circuit in light of its earlier ruling in *NRDC, Inc.* v. *EPA*, 824 F.2d 1146 (D.C. Cir. 1987) (the *"Vinyl Chloride"* decision) which articulated requirements for standard-setting under section 112 of the Act.

The *Vinyl Chloride* decision set forth a decision-making framework for NESHAPs by which the Administrator exercises his judgment under section 112 in two steps: first, determine a "safe" or "acceptable" level of risk considering only health-related factors, and second, set a standard that provides an "ample margin of safety," in which costs, feasibility, and other relevant factors in addition to health may be considered but which is at least as stringent as the "safe" level. After proposing and receiving comments on several options by which to define "safe", the Administrator selected an approach, first announced in the final NESHAPs for certain benzene source categories (54 FR 38044 September 14, 1989) which created a presumption of acceptability for a risk level of approximately one in ten thousand to the maximum exposed individual, and a goal to protect the greatest number of persons possible to a lifetime risk level no higher than approximately one in one million. After evaluating existing emissions against this benchmark, other risk information is then considered and a final decision is made about what risk is acceptable. The Agency then considers other information in addition to the health-related factors and establishes the final NESHAP at the level which protects public health with an ample margin of safety.

B. THE NESHAP for Radon Emissions from Phosphogypsum Stacks or Mines

Phosphogypsum is waste or any other form of byproduct that results from wet acid phosphorus production. Because phosphate ore contains a relatively high concentration of uranium and radium, phosphogypsum also contains these elements. Phosphogypsum, once created, is most typically disposed of in large (multi-acre) stacks or in the mines from which the phosphate ore was originally extracted.

During the rulemaking that resulted in promulgation on October 31, 1989, of the final 40 CFR part 61, subpart R, NESHAP for radon emissions from phosphogypsum, EPA performed a pile-by-pile risk assessment of radon releases from 58 phosphogypsum stacks located at 41 different facilities. The Final Phosphogypsum NESHAP is the product of application by the Administrator of the two part decision-making process articulated by the D.C. Circuit in the *Vinyl Chloride* decision, as summarized in part A above. Specifically, EPA decided that in order to control the dispersion of phosphogypsum and resultant release of radon gas to ambient air, the phosphogypsum, once created, must be disposed in stacks or mines. The radon emissions from these stacks or mines are limited to a level of 20 pCi/m^2-s. The portion of the rule mandating disposal reflects the EPA's concern that the radium-bearing phosphogypsum waste, if diffused throughout the country, would present a public health threat from radon gas emissions that would continue for generations given radium's 1630-year half-life, and that it would be impracticable for EPA to implement its regulations of such numerous and diffuse sources.

Because the phosphogypsum NESHAP, 40 CFR part 61, subpart R, was published on December 15, 1989, it becomes effective for existing facilities on March 15, 1990. Clean Air Act section 112(c)(1)(B)(i), 42 U.S.C. 7412(c)(B)(i). Individual facilities that are unable to achieve compliance by that date may apply to EPA, pursuant to 40 CFR parts

61.10–61.11, for a waiver permitting such facility a period of up to two year after March 15, 1990 to comply. In deciding whether to grant such waiver, EPA considers, among other things, the past practices of the facility, the ability of the facility to comply, the necessity for a waiver, and whether the waiver would present an imminent endangerment to public health. Owners or operators of phosphogypsum that desire a waiver and meet these criteria are invited to apply to the EPA Regional Office in which the phosphogypsum is or will be located. However, for owners or operators of phosphogypsum engaged in the sale and use of phosphogypsum solely for agricultural purposes, for the current growing season individual waivers are not necessary as EPA is today granting a limited class wavier for that purpose in a document published in the Rules section of this issue. This class waiver is further discussed in part E below.

C. Industry Petitions

EPA has received petitions from The Fertilizer Institute ("TFI"), Consolidated Minerals, Inc. ("CMI"), and U.S. Gypsum Co. ("USG") to reconsider the portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, which requires disposal into stacks or mines of all phosphogypsum thereby preventing alternative uses of the material. In pertinent part, TFI contends that this provision (1) was adopted without proper notice and comment, (2) is contrary to the national policy favoring recycling and reuse of secondary materials, (3) effectively prevents any amount, no matter how small, from being used in the research and development of beneficial uses of the material, (4) is unnecessary because certain uses of phosphogypsum such as mixing with soil as a calcium replenisher does not cause significant risks, and (5) will cause irreparable harm to thousands of farmers.

CMI adds that this portion of the phosphogypsum NESHAP is arbitrary and capricious because it prevents the use or sale of any of the phosphogypsum produced by their particular industrial process. In particular, because their phosphate ore treatment method allegedly reduces the radium concentration in much of the resultant phosphogypsum such that "safe" levels of radon gas emissions to ambient air are ensured, CMI contends that EPA's prohibition on alternative use is unreasonable.

U.S. Gypsum's petition is consistent with CMI's in that it supports the phosphogypsum NESHAP only insofar as it pertains to *untreated* phosphogypsum; therefore, phosphogypsum that is treated so as to achieve "safe" levels of radium (the material that ultimately results in radon gas emissions to ambient air) should be allowed for agricultural use. USG believes that because there are safer alternative products available in the agricultural gypsum market that are economically viable, and because the technology to treat phosphogypsum is also available and viable, the alternative use of untreated phosphogypsum was properly prohibited by the NESHAP. Therefore, reconsideration is requested as to the ban on use of treated phosphogypsum and, additionally, to allow research and development of phosphogypsum purification technologies.

D. Notice of Limited Reconsideration and Proposed Alternative Revisions

In accordance with section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B), EPA is granting limited reconsideration of the portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, which requires disposal of phosphogypsum in stacks or mines, and is simultaneoulsy proposing several alternatives to the existing rule. Although the Agency has concluded that several of the issues raised by the petitioners merit reconsideration, EPA does not agree with all of the arguments or assertions raised. For example, EPA believes that its proposal, published at 54 FR 9612, *et seq.* (March 7, 1989), which included explicit regulatory language requiring that phosphogypsum be disposed in stacks or mines (implicitly prohibiting alternative uses), provided adequate public notice for the final rule. Indeed, comments from both industry and environmental groups ont this very issue were submitted to EPA in response to that proposal. Nevertheless, reconsideration and proposal will afford an additional opportunity for public comment.

EPA is granting limited reconsideration in order to receive more information on the following: (1) The specific types of proposed alternative use of phosphogypsum; (2) the current or anticipated feasibility of those alternative uses; (3) the research and development of processes which remove radium from phosphogypsum; (4) the health risks associated with either research and development or alternative uses, (5) the availability, cost, and effectiveness of substitutes for phosphogypsum, and (6) the proper definition of "phosphogypsum" in terms of its origin and its radium content. No comments that exceed the scope of these subjects will be considered by EPA.

In accordance with the above subjects being reconsidered, EPA is simultaneously proposing four options to maintain or amend the phosphogypsum NESHAP, 40 CFR part 61, subpart R. Information being provided pursuant to reconsideration should, therefore, include the commenter's preferred option or combination or options.

Option A

EPA proposes making no change to the phosphogypsum NESHAP, 40 CFR part 61, subpart R, as promulgated on October 31, 1989 at 54 FR 51653 (December 15, 1989).

Option B

EPA proposes to amend the definition of "phosphogypsum" to add a requisite threshold concentration level in terms of picocuries of radium per gram of phosphogypsum. EPA is considering for this threshold level a range of values up to 10 picocuries of radium per gram. EPA is also proposing to amend the present definition of phosphogypsum from the "waste which results from the process of wet acid phosphorus fertilizer production" to "the waste or other form of byproduct which results from the process of wet acid phosphorus production." This change simply clarifies EPA's original intent that all phosphogypsum be regulated by this NESHAP regardless of the endproduct's ultimate use.

Option C

EPA proposes allowing the use of phosphogypsum for the limited purpose of researching and developing processes that remove radium from phosphogypsum. Under this option, an owner or operator desiring to make such use must first receive permission from EPA. Permission will be granted only upon a finding by the Administrator that the proposed project is at least as protective of public health, in the short and long term, as would be disposal into a stack or mine, and upon such other factors as the Administrator in his discretion deems appropriate. EPA requests comment as to the type and amount of information that should be required under this option.

Option D

EPA proposes allowing any alternative use of phosphogypsum for which the owner or operator has first received permission from EPA. Permission is to be granted by the Administrator upon finding that the proposed use is at least as protective of

public health, in the short and long term, as would be disposal into a stack or mine, and upon such other factors as the Administrator in his discretion deems appropriate. EPA requests comment as to the type and amount of information that should be required under this option. EPA is aware from prior comments and the reconsideration petitions that extensive agricultural use of phosphogypsum has historically occurred. Therefore, any comments on the agricultural use of phosphogypsum should address this option and, to the extent available, provide information on any resulting increase in the concentration of radium found in agricultural products, the amount of radon which is emitted from the fields at different levels of accumulation, the gamma radiation dose due to radium-226, and the radon levels in homes which may be or already have been built on or adjacent to land treated with phosphogypsum.

E. Limited Class Waiver for Agricultural Use

Pursuant to the Agency's authority under Clean Air Act section 112(c)(1)(B)(ii), 42 U.S.C. 7412(c)(1)(B)(ii), and 40 CFR parts 61.10–61.11, a limited waiver from compliance with the work practice portion of the phosphogypsum NESHAP, 40 CFR part 61, subpart R, has been granted for those owners or operators engaged in the distribution or use of phosphogypsum for agricultural purposes for the duration of the current growing season (see the document published in the Rules section of this issue).This limited waiver is based upon the finding of the Administrator that such activity presents no imminent endangerment to public health, that the immediate prohibition of such use would cause great injury to many small farmers who rely upon phosphogypsum, and that it would be burdensome and impracticable to issue limited waivers to each affected owner or operator, and it is made in light of the scope of the simultaneously granted limited reconsideration and proposed changes to the phosphogypsum NESHAP. This limited waiver further recognizes that the requirement to dispose of phosphogypsum in stacks or mines does not require emissions control equipment but instead requires conversion to alternative means of soil conditioning. The limited waiver is necessary to allow time for arranging the purchase and implementation of new materials and practices.

The durational limitation to this growing season recognizes that the timing for application of phosphogypsum varies from farm to farm, crop to crop, and thus allows phosphogypsum application to fields through this growing season, even if already commenced, but in no case after October 1, 1990. The limited waiver bars enforcement against such use and distribution for this period, but in the event that phosphogypsum is sold or otherwise distributed but not used for this growing season, it must be disposed into stacks or mines unless further relief from the provisions of the rule has been provided by EPA.

F. Miscellaneous

EPA has determined that this action does not constitute a major rule within the meaning of Executive Order 12291 since it is not likely to result in (1) a nationwide annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a Regulatory Impact Analysis is not being prepared for this action.

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The "initial regulatory flexibility analysis" describes the effect of the proposed rule on small business entities. However, section 604(b) of the Regulatory Flexibility Act provides that section 603 "shall not apply to any proposed * * * rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA believes that the proposed changes, if promulgated, would actually ease the regulatory burdens associated with provisions of the existing final rule. Therefore, this rule will have no adverse effect on small businesses. For the preceding reasons, I certify that this rule will not have significant economic impact on a substantial number of small entities.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA written response to those comments are available for public inspection at Docket A–79–11.

Dated: March 22, 1990.

William K. Reilly,

Administrator.

PART 61—[AMENDED]

It is proposed to amend part 61 of chapter I of title 40 of the Code of Federal Regulations as follows:

Subpart R—National Emission Standards for Radon Emissions From Phosphogypsum Stacks

§ 61.200 Designation of facilities

Option A [make no change in existing language]

The provisions of this subpart apply to the owners and operators of the phosphogypsum that is produced as a result of phosphorus fertilizer production and all that is contained in existing phosphogypsum stacks.

Option B

The provisions of this subpart apply to the owners and operators of phosphogypsum that is produced as a result of wet acid phosphorus production and all that is contained in existing phosphogypsum stacks or mines.

§ 61.201 Definitions.

Option A [no change in existing language]

(b) *Phosphogypsum stacks* or *stacks* are piles of waste from phosphorus fertilizer production containing phosphogypsum. Stacks shall also include phosphate mines that are used for the disposal of phosphogypsum.

Option B

(b) *Phosphogypsum* is the waste or other form of byproduct which results from the process of wet acid phosphorus production and which contains greater than [up to 10] pCi/g radium.

(c) *Phosphogypsum stacks* or *stacks* are piles of waste or other form of byproduct which results from wet acid phosphorus production containing phosphogypsum. Stacks shall also include phosphate mines that are used for the disposal of phosphogypsum

§ 61.202 Standard.

Option A [make no change in existing language]

All phosphogypsum shall be disposed of in stacks or in phosphate mines which shall not emit more than 20 pCi/m^2-s of radon-222 into the air.

Option B

All phosphogypsum shall be disposed of in stacks or in phosphate mines which shall not emit more than 20 pCi/m^2-s of radon-222 into the air.

Option C

§ 61.202(a). Make no change except as to changing § 61.202 into § 61.202(a).

§ 61.202(b). Notwithstanding paragraph (a) to this subsection, the Administrator may grant prior approval of research and development of processes to remove radium from phosphogypsum. Such approval shall be granted upon the Administrator's finding that the owner or operator has demonstrated that the proposed process is at least as protective of public health, in the short and long term, as is disposal into stacks or mines, and upon such other factors as the Administrator in his discretion deems appropriate.

Option D

§ 61.202(a). Make no change except as to changing § 61.202 into § 61.202(a)

§ 61.202(b). Notwithstanding paragraph (a) to this subsection, the Administrator may grant prior approval for alternative commercial or other use of phosphogypsum. Such approval shall be granted upon the Administrator's finding that the owner or operator has demonstrated that the proposed use is at least as protective of public health, in the short and long term, as is disposal into stacks or mines, and upon such other factors as the Administrator in his discretion deems appropriate.

[FR Doc. 90-7218 Filed 4-9-90; 8:45 am]

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federal register

Tuesday
April 10, 1990

Part VIII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Steller Sea Lion and Palo de Rosa; Emergency Rule and Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB41

Endangered and Threatened Wildlife and Plants; Emergency Listing of the Steller Sea Lion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The Service adds the Steller (northern) sea lion (*Eumetopias jubatus*) to the List of Endangered and Threatened Wildlife for a period of 240 days. This measure is required by section 4(a)(2)(A) of the Endangered Species Act of 1973 in order to implement an emergency determination of threatened status by the National Marine Fisheries Service, which has jurisdiction for the Steller sea lion.

DATES: This emergency rule is effective on April 10, 1990, and expires on December 3, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph Morgenweck, Assistant Director, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service (AFWE-3024 MIB), Department of the Interior, Washington, DC 20240 (202/343-4646, FTS 343-4646).

SUPPLEMENTARY INFORMATION: Responsibility for the Steller sea lion under the Endangered Species Act (16 U.S.C. 1531 *et seq.*) lies with the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce. See Reorganization Plan No. 4 of 1970. Section 4(a)(2)(A) of the Act provides that NMFS must decide whether a species under its jurisdiction should be listed as endangered or threatened. The Fish and Wildlife Service (FWS) is responsible for the actual addition of a species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

In the April 5, 1990, issue of the **Federal Register** (55 FR 12645), NMFS published its emergency determination of threatened status for the Steller sea lion. Accordingly, the FWS is required by section 4(a)(2)(A) of the Act to add the Steller sea lion as a threatened species to the List of Endangered and Threatened Wildlife for the 240-day period of the NMFS emergency rule. Because this FWS action is nondiscretionary, and, in view of NMFS's emergency finding under section 4(b)(7) of the Act, the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

The FWS also has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in regard to regulations adopted under section 4(a) of the Act. A notice outlining the reasons for this determination was published in the **Federal Register** on October 25, 1985 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended from April 10, 1990, through December 3, 1990, by adding the following, in alphabetical order, to the List of Endangered and Threatened Wildlife under "MAMMALS:"

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS:							
Sea-lion, Steller (=northern)	*Eumetopias jubatus*	U.S.A. (AK, CA, OR, WA), Canada, Soviet Union; North Pacific Ocean.	Entire	T	384E	NA	227.12

Dated: April 4, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-8241 Filed 4-9-90; 8:45 am]

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DEPARTMENT OF THE INTERIOR

50 CFR Part 17

RIN 1018-AB31

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Ottoschulzia rhodoxylon (Palo de Rosa)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Ottoschulzia rhodoxylon* (palo de rosa) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. *Ottoschulzia rhodoxylon* is a plant that is endemic to Puerto Rico and Hispaniola. In Puerto Rico it is found in the limestone hills of the north coast, on limestone-derived soils of the south coast, and on the serpentine soils of the western mountains. Only nine individuals are known to exist in these three areas. The species is threatened by deforestation due to the expansion of residential and industrial areas and by its extremely low numbers. This final rule will extend the Federal protection and recovery provisions afforded by the Act to *Ottoschulzia rhodoxylon*.

EFFECTIVE DATE: May 10, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851-7297) or Mr. David P. Flemming at the Atlanta

Regional Office address (404/331-3583 or FTS 841-3583).

SUPPLEMENTARY INFORMATION:

Background

Ottoschulzia rhodoxylon (palo de rosa) was first collected by Leopold Krug near Mayaguez, Puerto Rico, in 1876 and was described in 1908. This West Indian genus of only three species was dedicated to Otto Eugen Schulz, a German botanist (Liogier and Martorell 1982). Today the species is known from one locality in the limestone hill area on the north coast near Bayamón, and in several sites in the Guánica Commonwealth Forest, a dry limestone forest on the south coast. One individual has recently been reported from the Maricao Commonwealth Forest (G. Proctor, Puerto Rico Department of Natural Resources, personal communication). Urban, residential, and industrial expansion has greatly reduced forested area in all three of these localities. The information available indicates that the species is also rare in the Dominican Republic (Little et al. 1974, G. Proctor, personal communication).

Ottoschulzia rhodoxylon is a small, evergreen tree that has been reported to reach 12 to 15 feet (4 to 5 meters) in height. The leaves are alternate, glabrous, and elliptic to ovate. They are from 2 to 3½ inches (5 to 9 centimeters) long and 1¼ to 2½ inches (3 to 6 centimeters) wide, rounded or blunt at the apex and the base, entire, thick, and leathery. Flowers have not been observed, but fruits have recently been described as a one-seeded drupe with a thin pericarp (G. Proctor, personal communication). Flowers in this genus are bisexual, solitary or in clusters at the leaf bases, and composed of a tubular corolla with five lobes (Little et al. 1974). As indicated by both the common name and specific name, the heartwood is reddish and suitable for articles of turnery.

On the north coast *Ottoschulzia rhodoxylon* is found in semi-evergreen, seasonal forests at an elevation of approximately 325 feet (100 meters) in the limestone hills of Bayamón, to the west of the San Juan metropolitan area. On the south coast it occurs in low elevation, semi-deciduous dry forest on limestone. One individual is found along a dry stream bed, which carries water only during periodic torrential rains. All known south coast individuals occur within the Guánica Commonwealth Forest. In Maricao it is found on serpentine soils in lower montane, semi-evergreen forest at an elevation of approximately 1,960 feet (600 meters). These serpentine outcrops and serpentinaceous soils contribute to a high floristic diversity and endemism.

Deforestation for agriculture, grazing, charcoal production, and urban and industrial development has had a significant effect on the native flora of Puerto Rico. Much of the remaining forest consists of secondary growth. Individual trees of *Ottoschulzia rhodoxylon* are known to have been lost to forest clearing. The extreme rarity of the species and the apparent irregularity of flower and fruit production make the species extremely vulnerable to the loss of any one individual.

Ottoschulzia rhodoxylon was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened species by the Service, as published in the **Federal Register** (45 FR 82480) dated December 15, 1980; the November 28, 1983, update (48 FR 53680) of the 1980 notice; and the September 27, 1985, revised notice (50 FR 39526). The species was designated category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in each of the three notices.

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found in each October of 1983 through 1988 that listing *Ottoschulzia rhodoxylon* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. The Service proposed listing *Ottoschulzia rhodoxylon* on July 27, 1989 (54 FR 31216), which constituted the final finding required by the petition process.

Summary of Comments and Recommendations

In the July 27, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in the *El Dia* on August 16, 1989, and in the *San Juan Star* on August 13, 1989. Two letters of comment were received and are discussed below.

The U.S. Army Corps of Engineers, Jacksonville District, reported that they did not have ongoing studies or projects within the known habitat of *Ottoschulzia rhodoxylon*.

Dr. José Vivaldi, Chief of the Terrestrial Ecology Section of the Puerto Rico Department of Natural Resources, did not have additional information on the status of the species. All herbarium specimens examined were collected from the known localities. Due to the extreme rareness of the species, he supported listing as endangered.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1535 *et seq.*) and regulations (50 CFR part 242) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Ottoschulzia rhodoxylon* (palo de rosa) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Much of the island of Puerto Rico has been deforested, and today all of the known sites for *Ottoschulzia rhodoxylon* are found in areas of secondary forests. The north coast site lies just to the west of the San Juan metropolitan area, an area which is being rapidly developed. Undiscovered individuals in this area are likely to be destroyed before being discovered. Remaining individuals on the southwestern coast are found within the Guánica Commonwealth Forest, but they are found in sites such as dry stream beds and roadsides, which may be vulnerable to forest management practices that do not take the species into consideration.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor in the decline of this species.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Ottoschulzia rhodoxylon* is not yet on

the Commonwealth list. Federal listing would provide immediate protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence. Ottoschulzia rhodoxylon* is limited in its distribution. Only nine individuals are known to occur in Puerto Rico. The fruits of this species were only recently described and are rarely observed. Flowers have not yet been described. The location of some individuals along stream beds makes them vulnerable to natural disturbances such as flash-flooding. Because so few individuals are known to occur, the risk of extinction is extremely high.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Ottoschulzia rhodoxylon* as endangered. Only nine individuals in three areas are known to occur and no seedlings have been observed. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The number of individuals of *Ottoschulzia rhodoxylon* is sufficiently small that vandalism could seriously affect the survival of the species. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Ottoschulzia rhodoxylon*, as discussed above. Federal involvement is not expected where the species is known to occur.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands, and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State (Commonwealth) law or regulation, including State (Commonwealth) criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for *Ottoschulzia rhodoxylon* will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203–3507 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E.S., and R.A. Defilipps. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, DC. xv + 403 pp.

Liogier, H.A., and L.F. Martorell. 1982. Flora of Puerto Rico and adjacent islands: a systematic synopsis. University of Puerto Rico, Río Piedras, Puerto Rico. 342 pp.

Little, E.L., Jr., R.O. Woodbury, and F.H. Wadsworth. 1974. Trees of Puerto Rico and the Virgin Islands, second volume. Agriculture Handbook No. 449. U.S.D.A., Forest Service.

Author

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Icacinaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*		*	
Icacinaceae—Icacina Family: *Ottoschulzia rhodoxylon.*	Palo de rosa	U.S.A. (PR), Dominican Republic	E	385	NA	NA
*	*	*	*		*	

Dated: March 21, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–8241 Filed 4–9–90; 8:45 am]

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federal register

Tuesday
April 10, 1990

Part IX

The President

Federal Register

Tuesday
April 10, 1990

Part IX

The President

Proclamation 6113—National Former Prisoners of War Recognition Day, 1990

Proclamation 6114—Pan American Day and Pan American Week, 1990

Federal Register
Vol. 55, No. 69
Tuesday, April 10, 1990

Presidential Documents

Title 3—

The President

Proclamation 6113 of April 6, 1990

National Former Prisoners of War Recognition Day, 1990

By the President of the United States of America

A Proclamation

Our freedom and security have been won for us at a very high price—a price borne bravely in times of conflict and peril by members of the United States Armed Forces. Those Americans who have suffered as prisoners of war know all too well the costs of battle. Few of us could have a more profound understanding of the value of liberty than these who once experienced the terrible reality of life without it.

Every member of the United States Armed Forces is prepared to uphold and defend our Nation's Constitution and the principles it enshrines. Every member of the United States Armed Forces knows and accepts his or her duties and the high standards expected of our military personnel. No training course or series of instructions, however, could ever prepare prisoners of war for the privation and suffering to which they were often exposed. In violation of fundamental standards of morality and international codes and customs regarding the treatment of captured military personnel, many American prisoners of war were subjected to starvation, disease, and physical and psychological torture. Thousands died in captivity. Thousands were permanently disabled by illness or by injuries inflicted upon them. All of them endured the immeasurable pain of separation from loved ones.

Nevertheless, our prisoners of war held firm in their belief in the promise of America and the freedom and justice to which this Nation is dedicated. They struggled to stay alive and to return home, and, by the grace of God, many of them did.

Today, we honor our former prisoners of war and give thanks for the peace and liberty they so valiantly defended. Each of them has shown us that faith and courage are freedom's invincible shield and sword. We must never forget the sacrifices they made for us, nor must we allow our children to forget the lasting debt we owe to each of them. Therefore, we should also renew our commitment to securing the release of any U.S. serviceman who may still be held against his will.

As a measure of our admiration and gratitude for all former prisoners of war, the Congress, by Senate Joint Resolution 190, has designated April 9, 1990, as "National Former Prisoners of War Recognition Day" 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 April 9, 1990, as National Former Prisoners of War Recognition Day. I call upon government officials, private organizations, and individual Americans to observe this day with appropriate ceremonies and activities to honor former prisoners of war and to renew our Nation's appreciation for the rights and freedom they defended.

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

George Bush

[FR Doc. 90-8484
Filed 4-9-90; 10:44 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6114 of April 6, 1990

Pan American Day and Pan American Week, 1990

By the President of the United States of America

A Proclamation

This is a momentous time in the history of the Americas, and it is a promising time in inter-American relations. Throughout the Western Hemisphere, the ideals of freedom and representative democracy have triumphed, while tyranny has been in full retreat. Democracy, the exception just one decade ago, is today the rule. A majority of the nations in this hemisphere have freely elected governments, and prospects for democracy, peace, and economic development throughout the Americas appear bright.

Much of this progress has been made possible by the work of the Organization of American States and its predecessors, the Pan American Union and the International Union of American Republics, formed in 1890. Each year, Pan American Day and Pan American Week provide an occasion to reaffirm the beliefs and aspirations that inspired the founding of these organizations.

The people of the Americas are united by much more than geographic proximity. From the earliest days of the inter-American system, we have been drawn together by certain ideals. Those ideals are rooted in respect for human rights, and they are clearly expressed in the Charter of the Organization of American States, which declares that the "historic mission of America is to offer to man a land of liberty." The creation of the inter-American system a century ago signalled our commitment to promoting freedom, opportunity, and political and economic stability throughout the Americas.

The OAS Charter also states that "the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent . . . of a system of individual liberty and social justice based on respect for the essential rights of man." After 100 years of partnership, we know that the proudest days of the inter-American community have been those when it has faithfully upheld these ideals and set a universal standard for the protection of liberty and democracy. The United States is therefore determined to help ensure that the inter-American system remains a formidable opponent of totalitarianism and an effective advocate of representative government in the region. We also recognize the vital role it can and must play in eliminating illicit drug-trafficking, which has posed a threat to the freedom and safety of millions of men and women.

Today, poised at the threshold of the 21st century, the nations of the New World face a world of new challenges and opportunities. As we prepare to meet them, we do well to remember that there is no better legacy we can bequeath to future generations than a hemisphere of free and democratic nations, stretching from Alaska to Antarctica, prosperous and at peace. Through the cooperation of all those governments that are members of the inter-American system, may we continue to move forward in our efforts to realize this noble goal.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Saturday, April 14, 1990, as Pan American Day and the week of April 8 through April 14, 1990, as Pan American Week. I urge the Governors of the fifty States, the Governor of the

Commonwealth of Puerto Rico, and officials of other areas under the flag of the United States of America to honor these observances with appropriate ceremonies and activities.

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

George Bush

[FR Doc. 90-8483
Filed 4-9-90; 10:45 am]
Billing code 3195-01-M

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Tuesday, April 10, 1990

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S. 1521/Pub. L. 101-263

To provide for an increase in the maximum rates of basic pay for the police force of the National Zoological Park. (Apr. 4, 1990; 104 Stat. 125; 1 page) Price: $1.00

S.J. Res. 250/Pub. L. 101-264

Designating April 1990 as "National Recycling Month". (Apr. 4, 1990; 104 Stat. 126; 2 pages) Price: $1.00

S.J. Res. 266/Pub. L. 101-265

Designating March 1990, as "United States Naval Reserve Month". (Apr. 4, 1990; 104 Stat. 128; 1 page) Price: $1.00

S.J. Res. 190/Pub. L. 101-266

Designating April 9, 1990, as "National Former Prisoners of War Recognition Day". (Apr. 5, 1990; 104 Stat. 129; 1 page) Price: $1.00

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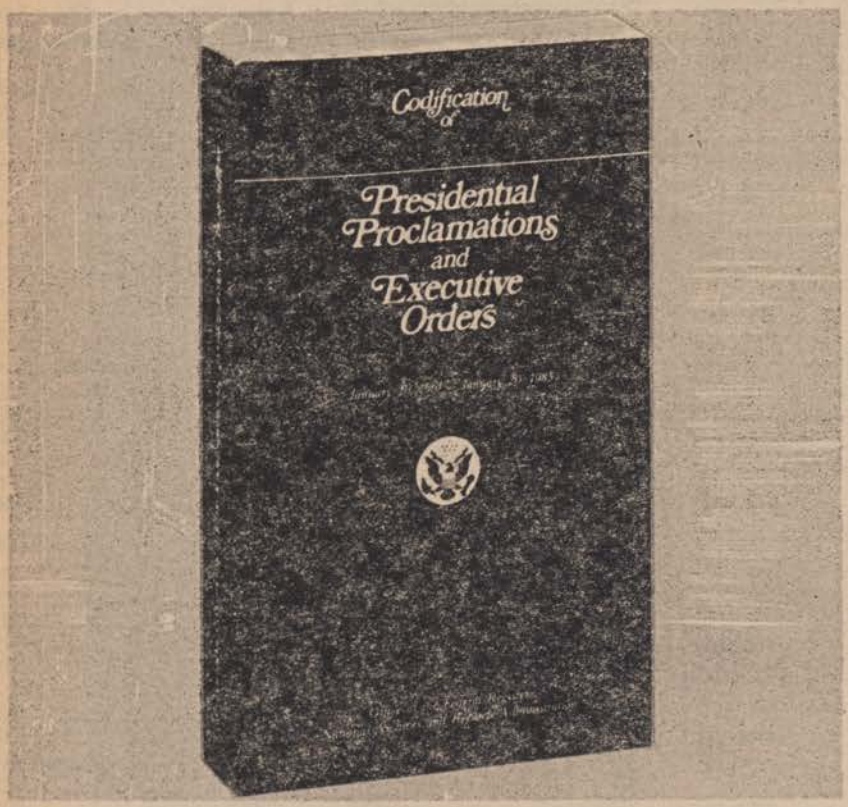

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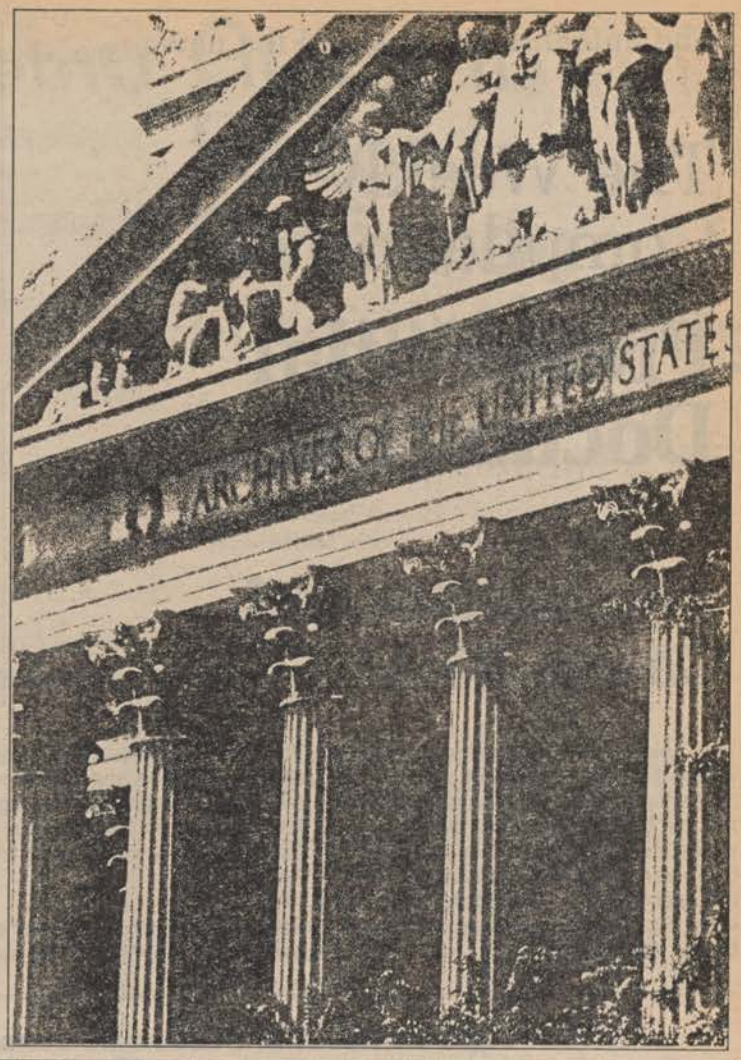

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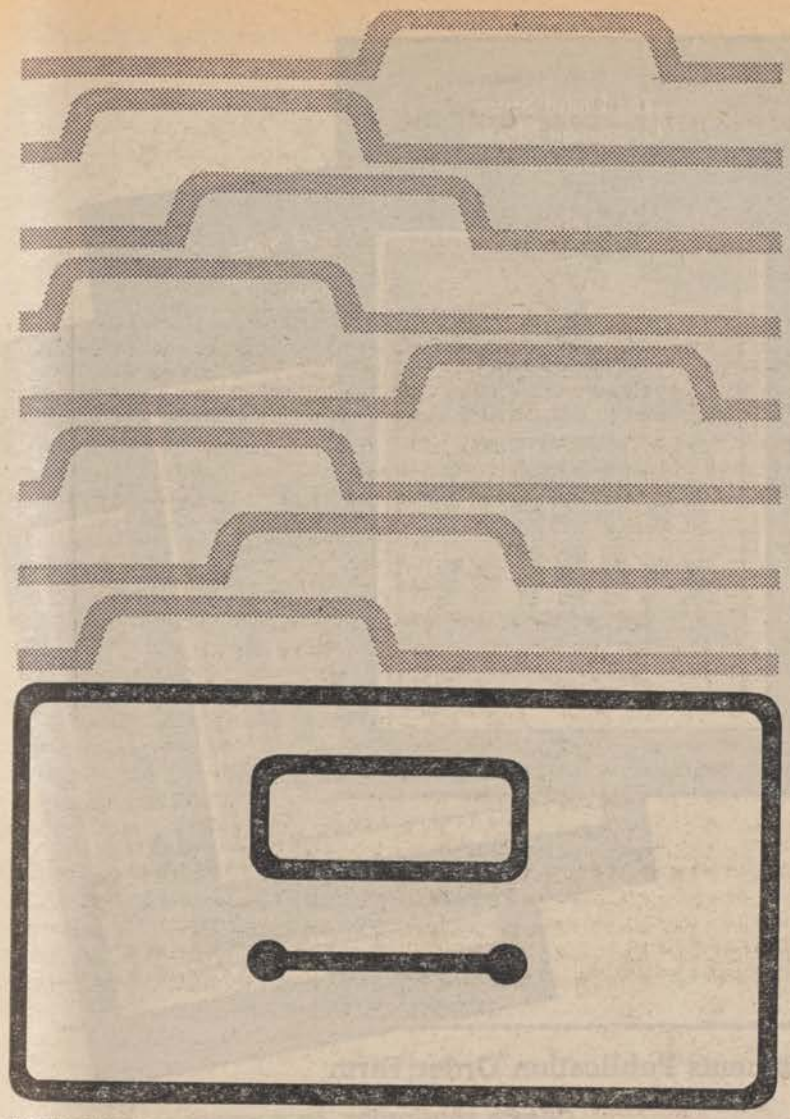

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1990

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