AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

10–1–93
Vol. 58 No. 189

federal register

Friday
October 1, 1993

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

10-1-93
Vol. 58 No. 189
Pages 51211-51564

Federal Register

Friday
October 1, 1993

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

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

The **Federal Register** is published in paper, 24x microfiche format and magnetic tape. The annual subscription price for the **Federal Register** paper edition is $375, or $415 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $353; and magnetic tape is $37,500. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $4.50 for each issue, or $4.50 for each group of pages as actually bound; or $1.50 for each issue in microfiche form; or $175.00 per magnetic tape. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 58 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	512–1530
Problems with public subscriptions	512–2303

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	512–1530
Problems with public single copies	512–2457

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Magnetic tapes	512–1530
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

(two briefings)

WHEN: October 19 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 58, No. 189
Friday, October 1, 1993

Administration Office, Executive Office of the President
PROPOSED RULES
Freedom of Information Act; implementation, 51255
Privacy Act; implementation, 51256

Administrative Office of United States Courts
NOTICES
Fee schedule; miscellaneous amendments, 51312

Agency for Toxic Substances and Disease Registry
NOTICES
Toxicological profiles of priority hazardous substances; availability, 51352

Agricultural Marketing Service
See Packers and Stockyards Administration

Agriculture Department
See Farmers Home Administration
See Forest Service
See Packers and Stockyards Administration
RULES
Organization, functions, and authority delegations:
Assistant Secretary for Science and Education et al., 51211

Antitrust Division
NOTICES
National cooperative research notifications:
Advanced Lead-Acid Battery Consortium, 51382

Army Department
See Engineers Corps
NOTICES
Meetings:
Armed Forces Epidemiological Board, 51325

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Meetings:
Diabetes Translation and Community Control Programs Technical Advisory Committee, 51353

Children and Families Administration
NOTICES
Agency information collection activities under OMB review, 51351, 51352

Coast Guard
RULES
Ports and waterways safety:
East River, NY; safety zone, 51243
Upper Mississippi River, MO; safety zone, 51243
Regattas and marine parades:
San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels Demonstration, 51242
PROPOSED RULES
Merchant marine officers and seamen:
Five-year term of validity for certificates of registry and merchant mariner's documents
Correction, 51408
Vessel documentation and measurement:
Vessel rebuild standards; meeting, 51298
NOTICES
Meetings:
Merchant Marine Personnel Advisory Committee, 51398

Commerce Department
See National Oceanic and Atmospheric Administration
See Travel and Tourism Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 51317, 51319

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
Live cattle, 51320

Defense Department
See Army Department
See Engineers Corps
See Navy Department
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
Reimbursement of providers, claims filing, and participating provider program, 51227
NOTICES
Meetings:
Strategic Command Strategic Advisory Group, 51324
Wage Committee, 51324

Drug Enforcement Administration
NOTICES
Schedules of controlled substances; production quotas:
Schedules I and II—
1993 proposed aggregate, 51382
Applications, hearings, determinations, etc.:
B&B Medical Supplies, 51383
Mauskar, Anant N., M.D., 51385
Vogler, Robert L., D.D.S., 51385

Education Department
RULES
Postsecondary education:
Federal TRIO programs, Upward Bound program, and student support services program; training program, 51518

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 51386

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Advanced coal research program at U.S. colleges and universities, 51325
University research instrumentation program, 51327

Engineers Corps
NOTICES
Recreational user fees, 51325

Environmental Protection Agency
RULES
Hazardous waste:
Solid waste disposal facility criteria (landfills), 51536
Hazardous waste program authorizations:
Michigan, 51244
PROPOSED RULES
Air quality implementation plans:
Clean Air Act sanctions, 51270
Air quality implementation plans; approval and promulgation; various States:
Illinois, 51279
NOTICES
1987 Chesapeake Bay Agreement; exotic species; report availability, 51345
Agency information collection activities under OMB review, 51341
Environmental statements; availability, etc.:
Agency statements—
Comments availability, 51342
Weekly receipts, 51342
Municipal solid waste landfill permit programs; adequacy determinations:
Colorado, 51343
Pesticide registration, cancellation, etc.:
Zinc phosphide bait, etc., 51345
Superfund; response and remedial actions, proposed settlements, etc.:
South Macomb Disposal Authority Sites 9 and 9a, MI, 51346

Equal Employment Opportunity Commission
PROPOSED RULES
Harassment based on race, color, religion, gender, national origin, age, or disability; guidelines, 51266

Executive Office of the President
See Administration Office, Executive Office of the President
See Presidential Documents

Farmers Home Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Rural rental housing diversity demonstration program, 51312

Federal Aviation Administration
RULES
Airworthiness directives:
Pratt & Whitney, 51212
Precision Airmotive, 51215
PROPOSED RULES
Class E airspace, 51256, 51257
NOTICES
Advisory circulars; availability, etc.:
Airports without control towers; traffic patterns and aeronautical operations, 51398
Meetings:
Aviation Rulemaking Advisory Committee, 51399
Passenger facility charges; applications, etc.:
Albany County Airport, NY, 51399
Hilton Head Island Airport, SC; correction, 51400

Federal Communications Commission
RULES
Communications equipment:
Radio frequency devices—
Digital device standards and international standards; harmonization, 51247
Practice and procedure:
Complaints, applications, tariffs, and reports involving common carriers; copies to copy contractor, 51246
Radio broadcasting and radio services, special; editorial amendments, 51250
Radio services, special:
Private land mobile services—
Construction, licensing, and operation, and finder's preference program, 51251
PROPOSED RULES
Radio services, special:
Private land mobile services—
Cordless telephones; additional operation frequencies, 51299
NOTICES
Public safety radio communications plans:
Florida, 51347
Rulemaking proceedings; petitions filed, granted, denied, etc., 51347

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
Special assessments; accounting and ratemaking treatment, 51217
Organization, functions, and authority delegations:
Hydropower Licensing Office, 51222
PROPOSED RULES
Electric utilities (Federal Power Act):
Company-owned or controlled source fuel purchases; fuel cost adjustment clause regulation revision, 51259
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Polk Power Partners, L.P.; correction, 51340
Electric utilities (Federal Power Act):
Special assessments; accounting and ratemaking treatment, 51330
Hydroelectric applications, 51333
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 51339
ANR Pipeline Co. et al., 51340
Public Service Co. of—
New Hampshire et al., 51340
Transcontinental Gas Pipe Line Corp., 51341
Trunkline Gas Co., 51341

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Fairfield County, CT, 51400

Federal Maritime Commission
NOTICES
Agreements filed, etc., 51347

Federal Reserve System
NOTICES
Priced secondary market purchases and sales of securities service; consolidation; proposal, 51348
Applications, hearings, determinations, etc.:
InterBank, Inc., et al., 51349
J.P. Morgan & Co., Inc., 51349
Norwest Corp., 51349
Rogers, Thomas R., et al., 51350

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Pennsylvania General Insurance Co., 51406

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Del Mar manzanita, etc. (six California and Mexico plants), 51302
NOTICES
Endangered and threatened species:
Recovery plans—
Schweinitz's sunflower, 51380
National Wildlife Refuge System units; public entrance and recreation user fees, 51512

Food and Drug Administration
NOTICES
Meetings:
Center for Drug Evaluation and Research, 51354

Forest Service
NOTICES
Boundary establishment, descriptions, etc.:
Ouachita Purchase Unit, AR, 51313
Environmental statements; availability, etc.:
Roosevelt National Forest, CO, 51313

General Services Administration
NOTICES
Federal Supply Service orders:
Paper purchase and delivery orders; discontinuance, 51350

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Public Health Service
NOTICES
Agency information collection activities under OMB review, 51350

Health Care Financing Administration
RULES
Medicaid:
Eligibility and coverage requirements Correction, 51408
PROPOSED RULES
Medicaid:
Early and periodic screening, diagnosis, and treatment (EPSDT) services defined, 51288
NOTICES
Medicare:
Ambulatory surgical centers; covered surgical procedures; list additions and deletions; implementation stay, 51355

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
RULES
Low income housing:
Housing assistance payments (Section 8)—
Fair market rent schedules for rental certificate, loan management and property disposition, moderate rehabilitation, and rental voucher programs, 51410
PROPOSED RULES
Public and Indian housing:
Low-income housing; performance funding system; cooling degree days, 51261
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 51366

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office
RULES
Recreation management:
Cave resources management, 51550

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Missouri Pacific Railroad Co., 51382

Justice Department
See Antitrust Division
See Drug Enforcement Administration
RULES
Federal claims collection; tax refund offset, 51223
Organization, functions, and authority delegations:
Civil Rights Division's Voting Section; relocation, 51225

Labor Department
See Employment Standards Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Land Management Bureau
PROPOSED RULES
Range management:
Wild free-roaming horses and burros management—
Foals born to wild horses and burros after approval of private maintenance and care agreement; exclusion from definition, 51297
NOTICES
Classification of public lands:
Nevada, 51375
Closure of public lands:
Nevada, 51375
Environmental statements; availability, etc.:
California Desert Conservation Area, CA, 51375
Meetings:
Yuma District Advisory Council, 51376

Motor vehicle use restrictions:
Montana, 51376
Oil and gas leases:
Wyoming, 51376
Resource management plans, etc.:
Grants Pass Resource Area, OR, 51377
Royal Gorge Resource Area, CO, 51378
Withdrawal and reservation of lands:
Oregon, 51379
Washington, 51379

Minerals Management Service
NOTICES
Agency information collection activities under OMB review, 51380, 51381

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Eastern Associated Coal Corp. et al.; correction, 51388

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Chrysler Corp., 51400

National Institutes of Health
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 51364
National Institute on Aging, 51365

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 51253
Pacific halibut, 51253
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
ARCO Alaska, Inc., 51315

National Park Service
NOTICES
Meetings:
Gettysburg National Military Park Advisory Commission, 51381
Mississippi River Corridor Study Commission, 51381
Santa Fe National Historic Trail Advisory Council, 51381

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 51389, 51390

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Barry, 51241

Nuclear Regulatory Commission
NOTICES
Agency information collection activities under OMB review, 51391
Meetings:
Reactor Safeguards Advisory Committee, 51391
Regulatory guides; issuance, availability, and withdrawal, 51392

Occupational Safety and Health Administration
NOTICES
State plans; standards approval, etc.:
Connecticut, 51388

Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
Cash and Carry Livestock Sale, CA, et al., 51314

Personnel Management Office
RULES
Prevailing rate systems, 51211
NOTICES
Meetings:
Federal Prevailing Rate Advisory Committee, 51392

Physician Payment Review Commission
NOTICES
Meetings, 51393

Presidential Documents
PROCLAMATIONS
Generalized System of Preferences; amendments (Proc. 6599), 51561
Special observances:
Death of General James H. Doolittle (Proc. 6598), 51559
ADMINISTRATIVE ORDERS
Haitian emergency; continuation (Notice of September 30, 1993), 51563

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency information collection activities under OMB review, 51365

Research and Special Programs Administration
RULES
Hazardous materials:
Editorial corrections and clarifications, 51524
NOTICES
Pipeline safety:
Risk assessment prioritization, 51402

Securities and Exchange Commission
RULES
Public utility holding companies:
Exempt wholesale generators and foreign utility companies; acquisitions financing, 51488
PROPOSED RULES
Public utility holding companies:
Intrasystem service, sales, and construction contracts involving exempt wholesale generators and foreign utility companies, 51488
NOTICES
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 51393
Chicago Stock Exchange, Inc., 51394
Depository Trust Co., 51395
Applications, hearings, determinations, etc.:
Public utility holding company filings, 51396, 51397

State Department
NOTICES
Meetings:
Russian, Eurasian, and East European Studies Advisory Committee, 51397
Shipping Coordinating Committee, 51398

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Kentucky, 51225

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration

Travel and Tourism Administration
NOTICES
International tourist trade development; markets selection, 51316

Treasury Department
See Fiscal Service
PROPOSED RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Funds transfers and transmittals (wire transfers); transmittal orders by financial institutions; correction, 51269
NOTICES
Agency information collection activities under OMB review, 51405, 51406

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 51410

Part III
Securities and Exchange Commission, 51488

Part IV
Department of the Interior, Fish and Wildlife Service, 51512

Part V
Department of Education, 51518

Part VI
Department of Transportation, Research and Special Programs Administration, 51524

Part VII
Environmental Protection Agency, 51536

Part VIII
Department of the Interior, Office of the Secretary, 51550

Part IX
The President, 51557

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.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

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.

3 CFR
Administrative Orders:
Notices:
September 30, 1993.....51563
Executive Orders:
12775 (See notice of September 30).....51563
12779 (See notice of September 30).....51563
12853 (See notice of September 30).....51563
Proclamations:
6598.....51559
6599.....51561

5 CFR
532.....51211
Proposed Rules:
2502.....51255
2504.....51256

7 CFR
2.....51211

14 CFR
39 (2 documents).....51212, 51215
Proposed Rules:
71 (2 documents).....51256, 51257

17 CFR
250.....51488
259.....51488
Proposed Rules:
250.....51508

18 CFR
35.....51217
375.....51222
Proposed Rules:
35.....51259

24 CFR
888.....51410
Proposed Rules:
905.....51261
990.....51261

28 CFR
11.....51223
51.....51225

29 CFR
Proposed Rules:
1609.....51266

30 CFR
917.....51225

31 CFR
Proposed Rules:
103.....51269

32 CFR
199.....51227
706.....51241

33 CFR
100.....51242
165 (2 documents).....51243

34 CFR
642.....51518
645.....51518
646.....51518

40 CFR
258.....51536
271.....51244
Proposed Rules:
52 (2 documents).....51270, 51279

42 CFR
435.....51408
436.....51408
440.....51408
Proposed Rules:
440.....51288
441.....51288

43 CFR
37.....51550
Proposed Rules:
4700.....51297

46 CFR
Proposed Rules:
10.....51408
12.....51408
67.....51298

47 CFR
1.....51246
15.....51247
73.....51250
74.....51250
90.....51251
Proposed Rules:
15.....51299
90.....51299

49 CFR
107.....51524
171.....51524
172.....51524
173.....51524
174.....51524
175.....51524
176.....51524
177.....51524
178.....51524
179.....51524
180.....51524

50 CFR
301.....51253
675.....51253
Proposed Rules:
17.....51302

Rules and Regulations

Federal Register
Vol. 58, No. 189
Friday, October 1, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AF48

Prevailing Rate Systems; Macomb, MI, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.
ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule adding Ottawa County, Michigan, as an area of application to the Macomb, Michigan, Federal Wage System (FWS) Nonappropriated Fund (NAF) wage area for pay-setting purposes. Ottawa County is not presently defined to an NAF wage area. However, OPM recently learned that there is now one NAF employee working at the Coast Guard Exchange, Grand Haven, located in Ottawa County, Michigan. The intent of this action is to officially assign Ottawa County to the proper NAF wage area for pay-setting purposes.

EFFECTIVE DATE: November 1, 1993.
FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.
SUPPLEMENTARY INFORMATION: On June 18, 1993, OPM published an interim rule to add Ottawa County, Michigan, as an area of application to the Macomb, Michigan, FWS NAF wage area (58 FR 33499). The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. The interim rule is being adopted as a final rule.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on June 18, 1993 (58 FR 33499), is adopted as final without any changes.

U.S. Office of Personnel Management
Lorraine A. Green,
Deputy Director.
[FR Doc. 93–24131 Filed 9–30–93; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.
ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to delegate to the Assistant Secretary for Science and Education and to the Administrator, Agricultural Research Service, the authority to propagate bee-breeding stock and to release bee germplasm to the public pursuant to 7 U.S.C. 283.

EFFECTIVE DATE: October 1, 1993.
FOR FURTHER INFORMATION CONTACT: Marcus F. Gross, Jr., Office of the General Counsel, United States Department of Agriculture, Washington, DC (202) 720–4076.
SUPPLEMENTARY INFORMATION: This rule relates to the internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is exempt from the notice and comment procedures of the Administrative Procedure Act, and this rule may be effective less than 30 days after publication in the **Federal Register.**

Further, since this rule relates to internal agency management it is exempt from the provisions of Executive Order Nos. 12291 and 12778. This action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*) and thus is exempt from its provisions. This rule also is exempt from the requirements of the National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*) and the requirements of the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, part 2, subtitle A, title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.30 is amended by revising the section heading and by adding a new paragraph (a)(34) to read as follows:

§ 2.30 Assistant Secretary for Science and Education.

(a) Related to science and education.
* * *

(34) Propagate bee-breeding stock and release bee germplasm to the public (7 U.S.C. 283).
* * * * *

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education

(3) Section 2.106 is amended by revising the heading and adding a new paragraph (a)(64) to read as follows:

§ 2.106 Administrator, Agricultural Research Service.

(a) *Delegations.* * * *

(64) Propagate bee-breeding stock and release bee germplasm to the public (7 U.S.C. 283).
* * * * *

For subpart C.

Dated: September 24, 1993.

Mike Espy,

Secretary of Agriculture.

For subpart N.

Dated: September 24, 1993.

R.D. Plowman,

Assistant Secretary for Science and Education.

[FR Doc. 93–24191 Filed 9–30–93; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–33; Amendment 39–8695; AD 93–19–02]

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT9D series turbofan engines, that currently requires initial and repetitive on-wing eddy current inspections of the diffuser case rear rail for cracking. This amendment requires more stringent eddy current inspection and removal criteria than the existing AD, and modification of the diffuser case rear rail. This amendment also requires ultrasonic, metallographic, and X-ray inspections of specific locations in the diffuser case. This amendment is prompted by reports of two uncontained engine failures since the publication of the existing AD. The actions specified by the AD are intended to prevent diffuser case rupture and an uncontained engine failure.

DATES: Effective October 18, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 18, 1993.

Comments for inclusion in the Rules Docket must be received on or before November 30, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–33, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7130, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On May 16, 1986, the Federal Aviation Administration (FAA) issued AD 86–11–04, Amendment 39–5300 (51 FR 17925, May 16, 1986), to require initial and repetitive on-wing eddy current inspections of the diffuser case rear rail for cracking. That action was prompted by reports of diffuser case rupture and uncontained engine failure. That condition, if not corrected, could result in diffuser case rupture and an uncontained engine failure.

Since the issuance of that AD, the FAA has received reports of 2 additional diffuser case failures. Both failures occurred within significantly shorter time intervals since last inspection than that specified in the existing AD. In an effort to better understand the diffuser case failure mode, a rig test was performed. This test examined crack initiation and growth rates in weld-repaired versus non-weld-repaired diffuser cases. Results of the test established that cracks initiate and propagate more rapidly in weld-repaired diffuser cases. In addition, weld repairs at the Boss 6 location were determined to have even greater potential for rapid crack growth and resultant diffuser case failure.

The FAA has reviewed and approved the technical contents of PW Service Bulletin (SB) No. 5805, Revision 6, dated September 15, 1993, that describes procedures for modification of the rear rail by detaching the diffuser case rear rail from the strut boss, thus extending the serviceable life of the diffuser case by reducing crack initiation and propagation rates; PW Alert Service Bulletin (ASB) No. 6076, Revision 1, dated August 20, 1992, that describes ultrasonic and metallographic inspection of the shell wall, and ultrasonic inspection of the rear rail at the Boss 6 location to determine weld size; PW SB No. 6088, dated August 5, 1992, that describes an X-ray inspection of the rear rail and sides of bosses for detection of poor weld quality; PW SB No. 5591, Revision 7, dated August 25, 1992, that describe initial and repetitive on-wing eddy current inspections of the diffuser case rear rail; and PW SB No. 6105, Revision 2, dated May 14, 1993, that describes installation of a new, improved diffuser case.

Additional information regarding weld repair requirements for the diffuser case rear rail is contained in PW JT9D Engine Manual, Part Number 686028, dated September 1, 1993.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes AD 86–11–04 to define initial inspection requirements that will allow for transition to more stringent repetitive on-wing eddy current inspections of the diffuser case rear rail for cracking. This AD also requires ultrasonic and metallographic inspections of the shell wall, and ultrasonic inspection of the rear rail at the Boss 6 location to determine weld size. In the existing AD, diffuser cases were allowed to remain in service with weld repairs of up to 4 inches in length. In this AD, diffuser cases with weld repairs in the rear rail of greater than or equal to 1.5 inches in axial length at Boss 6 must be replaced. In addition, this AD requires a one-time X-ray inspection of the rear rail and sides of bosses for weld quality. This inspection is necessary since in the last two failures, weld defects were undetected by the inspections required by the current AD. Also, diffuser cases with rear rails that have been weld-repaired must incorporate the modifications described in PW SB No. 5805, Revision 6, dated September 15, 1993. Finally, an optional terminating action to the inspections and modifications of this AD is available with the installation of a new, improved diffuser case in accordance with PW SB No. 6105, Revision 2, dated May 14, 1993. The actions are required to be accomplished in accordance with the service bulletins described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the

Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ANE–33." The postcard will be date-stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–5300 (51 FR 17925, May 16, 1986), and by adding a new airworthiness directive, Amendment 39–8695, to read as follows:

93–19–02 Pratt & Whitney: Amendment 39–19–02. Docket 92–ANE–33. Supersedes AD 86–11–04, Amendment 39–5300.

Applicability: Pratt & Whitney (PW) JT9D–3A, –7, –7H, –7A, –7AH, –7F, –7J, –20, and –20J turbofan engines installed on but not limited to Boeing 747 series, Airbus A300 series, and McDonnell Douglas DC–10 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent diffuser case rupture and an uncontained engine failure, accomplish the following:

(a) For those diffuser cases that have not been inspected in accordance with PW Alert Service Bulletin (ASB) No. 6076, Revision 1, dated August 20, 1992, initially inspect the diffuser case for cracks in accordance with the intervals and requirements described in paragraphs (d), (f), (g), (i), (j), (k), or (l) of this AD, as applicable.

(b) For those diffuser cases that have not been inspected in accordance with PW ASB No. 6076, Revision 1, dated August 20, 1992, inspect the diffuser case rear rail along the shell wall at Boss 6 for weld repair size in accordance with PW ASB No. 6076, Revision 1, dated August 20, 1992, at the next M flange separation of the high pressure turbine case after the effective date of this AD. Diffuser cases with weld repairs in the rear rail along the shell wall of axial length greater than or equal to 1.5 inches at Boss 6 must not be returned to service. If the weld length is less than 1.5 inches, inspect in accordance with the new criteria, improved technique, intervals, and requirements defined in the Accomplishment Instructions of PW Service Bulletin (SB) No. 5591, Revision 7, dated August 25, 1992.

Note: Additional information regarding weld repair requirements for the diffuser case rear rail is contained in PW JT9D Engine Manual, Part Number 686028, dated September 1, 1993.

(c) For those diffuser cases that have been inspected in accordance with PW ASB No. 6076, Revision 1, dated August 20, 1992, accomplish the following:

(1) For diffuser cases that have weld repairs in the rear rail along the shell wall at Boss 6 of axial length greater than or equal to 1.5 inches, remove from service and replace with a serviceable part prior to further flight.

(2) For diffuser cases that have weld repairs in the rear rail along the shell wall at Boss 6 of axial length less than 1.5 inches, initially inspect the diffuser case for cracks in accordance with the intervals and requirements described in paragraphs (d), (f), (g), (i), (j), (k), or (l) of this AD, as applicable.

(3) For diffuser cases that have no weld repairs in the rear rail along the shell wall at Boss 6, initially inspect the diffuser case for cracks in accordance with the intervals and requirements described in paragraphs (d), (f), (g), (i), (j), (k), or (l) of this AD, as applicable.

(d) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, that contained rear rails with no cracks at any boss location at the last ECI, and have a weld repair in the rear rail along the shell wall at Boss 6, perform an initial ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, as follows:

(1) For diffuser cases with greater than 275 cycles in service (CIS) since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, on the effective date of this AD, perform an ECI in accordance with the new criteria and improved technique defined in the Accomplishment Instructions PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 500 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, or prior to accumulating 75 CIS after the effective date of this AD, whichever occurs first.

(2) For diffuser cases with less than or equal to 275 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, on the effective date of this AD, perform an ECI in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 350 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986.

(e) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, that contained rear rails with no cracks at any boss location at the last ECI, and have no weld repairs in the rear rail along the shell wall at Boss 6, perform an ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August

25, 1992, prior to accumulating 500 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986.

(f) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, that contained rear rails with "A" cracks at Boss 6 at the last ECI, and have a weld repair in the rear rail along the shell wall at Boss 6, perform an ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 300 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, or prior to accumulating 60 CIS after the effective date of this AD, whichever occurs first.

(g) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, that contained rear rails with "A" cracks at any boss location other than at Boss 6 at the last ECI, with or without weld repairs in the rear rail along the shell wall at Boss 6, perform an ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 300 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 16, 1986.

(h) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, that contained rear rails with "A" cracks at Boss 6 at last ECI, and have no weld repairs at Boss 6, perform an ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 300 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986.

(i) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, and contained rear rails with "B" cracks at Boss 6 at last ECI, with or without weld repairs in the rear rail along the shell wall at Boss 6, remove from service and replace with a serviceable part prior to accumulating 5 CIS after the effective date of this AD.

(j) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, and contained rear rails with "B" cracks at any boss location other than Boss 6 at last ECI, with or without weld repairs in the rear rail along the shell wall at Boss 6, perform an ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 75 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986.

(k) For those diffuser cases that have been inspected in accordance PW SB No. 5591, Revision 4, dated March 6, 1986, and contained rear rails with "C" cracks at Boss 6 at last ECI, with or without weld repairs in the rear rail along the shell wall at Boss 6, remove from service and replace with a serviceable part prior to further flight.

(l) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, and contain rear rails with "C" cracks at any boss location other than Boss 6 at last ECI, with or without weld repairs in the rear rail along the shell wall at Boss 6, remove from service and replace with a serviceable part as follows:

(1) For shell wall cracks of greater than or equal to 2 inches, remove from service and replace with a serviceable part prior to further flight.

(2) For shell wall cracks of less than 2 inches, remove from service and replace with a serviceable part within 5 CIS after the effective date of this AD.

(m) Thereafter, perform repetitive ECI of the diffuser case rear rail for cracks in accordance with the new criteria, improved technique, intervals, and requirements defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992.

(n) For those diffuser cases that have been weld repaired at any boss location, at the next K flange separation of the diffuser case after the effective date of this AD, perform a one-time X-ray inspection of the diffuser case rear rail and sides of all bosses for weld quality in accordance with PW SB No. 6088, dated August 5, 1992, prior to installation of the diffuser case. Remove any weld defects within the inspection zone in accordance with PW SB No. 6088, dated August 5, 1992, prior to installation of the diffuser case.

(o) For those diffuser cases with rear rails that have been weld repaired at any boss location, incorporate the modifications described in PW SB No. 5805, Revision 6, dated September 15, 1993, at the next removal of the diffuser case for overhaul after the effective date of this AD.

(p) Installation of an improved diffuser case in accordance with PW SB No. 6105, Revision 2, dated May 14, 1993, constitutes terminating action to the inspections and modifications required by this AD.

(q) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(r) Except for diffuser cases that have cracks that require removal prior to further flight, special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished. For diffuser cases that have cracks that require removal prior to further flight, on aircraft that are eligible for an engine-inoperative ferry, special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished with one engine inoperative.

(s) The inspections and modifications shall be done in accordance with the following PW service bulletins:

Document No.	Pages	Revision	Date
SB No. 5591	1–3	7	Aug. 25, 1992.
	4–9	6	Aug. 14, 1992.
	10	7	Aug. 25, 1992.
	11–12	6	Aug. 14, 1992.
	13	7	Aug. 25, 1992.
	14–15	6	Aug. 14, 1992.
	16	7	Aug. 25, 1992.
	17–19	6	Aug. 14, 1992.
Total pages	19		
SB No. 5805	1–4	6	Sept. 15, 1993.
	5	Original	Apr. 20, 1988.
	6–72	6	Sept. 15, 1993.
Total pages	72		
ASB No. 6076	1–5	1	Aug. 20, 1992.
	6–19	Original	July 31, 1992.

Document No.	Pages	Revision	Date
Total pages	19		
SB No. 6088	1–11	Original .	Aug. 5, 1992.
Total pages	11		
SB No. 6105	1	2	May 14, 1993.
	2–7	Original .	Jan. 15, 1993.
	8	1	Apr. 14, 1993.
	9	2	May 14, 1993.
	10–15	Original .	Jan. 15, 1993.
	16	2	May 14, 1993.
	17–18	Original .	Jan. 15, 1993.
	19	2	May 14, 1993.
	20–46	Original .	Jan. 15, 1993.
	47	1	Apr. 14, 1993.
	48	2	May 14, 1993.
	49–56	Original .	Jan. 15, 1993.
Total pages	56		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. Copies may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(t) This amendment becomes effective on October 18, 1993.

Issued in Burlington, Massachusetts, on September 16, 1993.

Mark C. Fulmer,

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

[FR Doc. 93–24088 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–ANE–61; Amendment 39–8700; AD 93–19–04]

Airworthiness Directives; Precision Airmotive Model MA3 and MA4 Series Carburetors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Precision Airmotive Model MA3 and MA4 series carburetors fitted with floats that were manufactured by Consolidated Fuel Systems, Incorporated (CFS). This action supersedes priority letter AD 92–15–16, which currently requires, prior to further flight, inspection of those carburetors for CFS Part Number (P/N) CF 30–766 floats with the date stamp "10 91," and removal and replacement of these floats with serviceable floats. This action adds a note to paragraph (a)(1) to aid in complying with the requirements of this AD. This does not change the scope or the substance of the AD. This amendment is prompted by questions received by the FAA as to the requirements of paragraph (a)(1) of the priority letter AD. The actions specified by this AD are intended to prevent a disruption of fuel flow to the engine, resulting in engine power loss, engine failure and damage to the aircraft.

EFFECTIVE DATE: October 18, 1993.

Comments for inclusion in the Rules Docket must be received on or before November 30, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–61, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Consolidated Fuel Systems, Incorporated, 1400 East South Blvd., Montgomery, AL 36116. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7134, fax (617) 238–7121.

SUPPLEMENTARY INFORMATION: On July 9, 1992, the Federal Aviation Administration (FAA) issued priority letter AD 92–15–16, applicable to Precision Airmotive (formerly Facet Aerospace Products (formerly Marvel-Schebler)) Model MA3, MA3A, MA3PA, MA3SPA, and MA4SPA carburetors, installed on but not limited to Textron Lycoming Model 0–235, 0–290, and 0–320 series engines, and Teledyne Continental Model A–65, A–75, C–75, C–85, C–90, C–115, C–125, C–145, 0–200, and 0–300 series engines installed on but not limited to normally aspirated piston engine powered aircraft manufactured by Cessna, Piper, Beechcraft, and Mooney. The priority letter AD requires, prior to further flight, inspection of those carburetors for Consolidated Fuel Systems (CFS) Part Number (P/N) CF 30–766 floats with the date stamp "10 91," and removal and replacement of these floats with serviceable floats. The priority letter AD was prompted by reports of engine power loss incidents and service difficulties on Precision Airmotive (formerly Facet Aerospace Products (formerly Marvel Schebler)) carburetors fitted with floats that were manufactured by CFS. Facet Aerospace Products acquired the Marvel-Schebler carburetor product line, and subsequently Precision Airmotive acquired the product line from Facet Aerospace Products.

Investigation of these incidents revealed that engine power losses may occur due to cracks in certain CFS produced carburetor floats. In October 1991, CFS manufactured metal carburetor floats, P/N CF 30–766, with thin walled pontoons which may crack at or near the pontoon kidney half solder joint. These defective CFS carburetor floats can be identified by the date "10 91" stamped on the float lever arm. That condition, if not corrected, can result in a disruption of fuel flow to the engine, resulting in engine power loss, engine failure and damage to the aircraft.

Since the issuance of the priority letter AD, the FAA has received questions on the intent of the requirements in paragraph (a) of the priority letter AD. This final rule AD provides as a note to paragraph (a)(1) a partial listing of those carburetors repaired or rebuilt during the suspect time period.

Since an unsafe condition has been identified that is likely to exist or develop on other carburetors of this same type design, this AD is being issued to prevent engine power loss, engine failure and damage to the aircraft. This AD supersedes priority letter AD 92–15–16 by adding a note clarifying paragraph (a) of this AD.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule.

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–61." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13—[Amended]

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

93–19–04 PRECISION AIRMOTIVE (formerly Facet Aerospace Products (formerly Marvel-Schebler)), Amendment 39-8700. Docket 93-ANE-61.

Applicability: Precision Airmotive (formerly Facet Aerospace Products (formerly Marvel-Schebler)) Model MA3, MA3A, MA3PA, MA3SPA, and MA4SPA carburetors installed on but not limited to Textron Lycoming Model O–235, O–290, and O–320 series engines, and Teledyne Continental A–65, A–75, C–75, C–85, C–90, C–115, C–125, C–145, O–200, and O–300 series engines installed on but not limited to normally aspirated piston engine powered aircraft manufactured by Cessna, Piper, Beechcraft, and Mooney.

Compliance: Required as indicated, unless accomplished previously.

To prevent a disruption of fuel flow to the engine, resulting in engine power loss, engine failure, and damage to the aircraft, accomplish the following:

(a) Prior to further flight, for carburetors repaired or rebuilt from November 1, 1991, through July 15, 1992, accomplish the following:

(1) Visually inspect the float for Consolidated Fuel Systems (CFS) Part Number (P/N) CF 30–766 and remove the float if the date "10 91" is stamped on the top of the float lever arm, and replace with a serviceable float.

Note: CFS Mandatory Service Bulletin CF–1–92, Revision 1, dated July 6, 1992, gives a listing of those known carburetors repaired or rebuilt during the suspect time period.

Note: Guidance on replacing floats is contained in either Precision Airmotive (Facet) Aircraft Carburetor Service Manual, dated September 1984, or CFS Carburetor Float Kit Installation Instructions, CF 666–915.

(2) Floats identified with Precision Airmotive P/N 30–766 with any date stamped on the float lever arm, or CFS P/N CF 30–766 with dates 8 89, 12 89, 1 90, 2 90, 8 90, 10 90, 1 91, 2 91, 4 91, 4 92, or 7 92 stamped on the float lever arm do not need to be removed.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on October 18, 1993.

Issued in Burlington, Massachusetts, on September 24, 1993.

Mark C. Fulmer,

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

[FR Doc. 93–24138 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM93–18–000]

Accounting and Ratemaking Treatment of Special Assessments Levied Under the Atomic Energy Act of 1954, as Amended by Title XI of the Energy Policy Act of 1992

Issued September 24, 1993.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations concerning the ratemaking method to be used by public utilities to recover in jurisdictional rates the costs incurred in paying special assessments levied under the Atomic Energy Act of 1954, as amended by Title XI of the Energy Policy Act of 1992.

EFFECTIVE DATE: This rule is effective November 1, 1993.

FOR FURTHER INFORMATION CONTACT:

James H. Douglass (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: (202) 208–2143.

James K. Guest (Accounting Issues), Office of the Chief Accountant, Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, Telephone: (202) 219–2602. Lawrence R. Anderson (Ratemaking Issues), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, Telephone: (202) 208–0575.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Order No. 557

I. Introduction

On June 23, 1993, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking in which the Commission proposed to amend its regulations to provide a method for public utilities to recover through jurisdictional rates the costs of special assessments levied under the Atomic Energy Act of 1954 (Atomic Energy Act),[1] as amended by Title XI of the Energy Policy Act of 1992 (Energy Policy Act).[2] In the same proceeding and also on June 23, 1993, the Commission issued a Notice Providing Accounting Guidance that specified the accounting treatment to be used for special assessments.[3] The Commission requested that interested persons submit written comments no later than August 5, 1993. Twenty-eight entities submitted comments.[4]

The Commission is now adopting a final rule amending its regulations to provide a method for public utilities to recover the costs of special assessments. The final rule adds a new § 35.28 to part 35 of title 18, chapter I of the code of Federal Reguations. New § 35.28 specifies the ratemaking method that public utilities may use to recover the costs of special assessments. It is essentially the same as the proposed rule.

The final rule establishes the method public utilities may use to recover the costs of special assessments through jurisdictional rates. The final rule clarifies certain reporting requirements contained in the proposed rulemaking.

II. Public Reporting Burden

The Commission estimates that the public reporting burden for the information collection requirements contained in this rule will average 2 hours per response. The information will be collected on an annual basis. The Commission estimates that the number of respondents to this information collection will be 70. The respondents are public utilities who may seek to recover the costs incurred for special assessments and may seek to make minor revisions to rate calculations. To the extent that rate calculations are computerized, a one-time programming change, estimated at 50 hours per respondent, will be necessary. Thus, the Commission estimates that the ratemaking impact will be no more than a one-time effort of 3640 hours. These estimates include time for reviewing the requirements of the Commission's regulations, searching existing data sources, gathering and maintaining the necessary data, completing and reviewing the collection of information, and filing the required information.

Send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415], and to the Office of Information and Regulatory Affairs of the Office of Management and Budget [Attention: Desk Officer for Federal Energy Regulatory Commission].

---

[1] 42 U.S.C. 2011 *et seq.*

[2] See Pub. L. No. 102–486, Title XI, 106 Stat. 2776, 2954 (1992).

[3] See Accounting and Ratemaking Treatment of Special Assessments Levied Under the Atomic Energy Act of 1954, as Amended by Title XI of the Energy Policy Act of 1992, Notice of Proposed Rulemaking, 58 FR 36172 (July 6, 1993), FERC Stats. & Regs. ¶ 32,495 (1993). Requests for rehearing of the accounting guidance are addressed separately in an order issued today in Docket No. RM93–18–001.

[4] The commenters are American Electric Power System (AEP), Arizona Public Service Company (Arizona), Baltimore Gas & Electric Company, Carolina Power & Light Company, Consolidated Edison Company of New York, Inc., Consumers Power Company, Delmarva Power & Light Company (Delmarva), Deloitte & Touche, Detroit Edison Company (Detroit Edison), Duke Power Company (Duke), Edison Electric Institute (EEI), Florida Power Corporation (Florida Power), Florida Power & Light Company (Florida P&L), General Public Utilities Corporation and its operating companies, Gulf States Utilities Company (Gulf States), Iowa-Illinois Gas and Electric Company (Iowa-Illinois), KPMG Peat Marwick, Maine Yankee Atomic Power Company (Maine Yankee), National Rural Electric Cooperative Association, New England Power Company (NEPCO), Niagara Mohawk Power Corporation, Ohio Edison Company (Ohio Edison), Pennsylvania Power & Light Company (Penn Power), Soother California Edison Company (SoCal Edison), Southern Company Services, Inc. (Southern), Virginia Electric and Power Company (Virginia Power), Wisconsin Wholesale Customer Group (Wisconsin Customers) (made up of Wisconsin Public Power Incorporated SYSTEM, Badger Power Marketing Authority, 41 municipal electric systems, and four cooperatives), and Yankee Atomic Electric Company (Yankee Atomic).

III. Background

Title XI of the Energy Policy Act, among other things, amended the Atomic Energy Act to establish a Uranium Enrichment Decontamination and Decommissioning Fund (Fund). The Fund is to be used to pay for decontamination, decommissioning, reclamation and other remedial activities at the Department of Energy's (DOE) gaseous diffusion uranium enrichment facilities.

The Fund is financed in part through appropriations, and in part through the collection of special assessments on domestic utilities. The special assessments are to be calculated and levied by the DOE based on the "separative work units" purchased by domestic utilities for the purpose of commercial electricity generation before October 24, 1992. A separative work unit is a measurement of energy and is the unit by which uranium enrichment services are sold.

The DOE plans to collect special assessments for fiscal year 1993 by no later than September 30, 1993. On August 2, 1993, the DOE published an interim final rule and notice of proposed rulemaking concerning the procedures and methods to be used to calculate and collect special assessments.[5]

On June 23, 1993, the Commission issued a Notice of Proposed Rulemaking in which the Commission proposed to amend its regulations to provide a method for public utilities to recover the costs of special assessments through jurisdictional rates. The Commission noted that the Atomic Energy Act provides that special assessments are a necessary and reasonable current cost of fuel and shall be fully recoverable in rates in the same manner as a utility's other fuel cost. The Commission further noted that its ratemaking policy permits public utilities an opportunity to recover all of the fuel expense prudently incurred in providing jurisdictional service. Therefore, the Commission stated that special assessments are costs that are generally recoverable through jurisdictional rates.[6] If it is probable that a public utility will recover the costs of special assessments through jurisdictional rates, the Commission has advised public utilities that a regulatory asset should be recorded in Account 182.3, Other Regulatory Assets, for such probable future revenues.[7] The Commission has further advised public utilities that the amounts recorded in Account 182.3 should be charged to Account 518, Nuclear Fuel Expense, concurrently with the recovery of the amounts of rates.[8]

In the proposed rulemaking, the Commission stated that under some circumstances the costs of special assessments charged to Account 518 may not be equal to the amount that the utility actually pays to DOE in a particular year. The Commission stated that the costs of special assessments eligible for wholesale rate recovery in a particular year should be based on the actual amount paid to DOE, not the amount charged to Account 518 during such period.

The Commission proposed certain procedures to be used by public utilities to reflect the costs of special assessments in wholesale rates. Specifically, the Commission proposed to add a new § 35.28 to its regulations to prescribe the ratemaking treatment for the costs of special assessments.

The proposed rule would permit public utilities to recover the costs of special assessments on a monthly basis. It would require public utilities to calculate their monthly net costs by: (1) Deducting any expenses associated with special assessments included in Account 518; (2) adding to Account 518 one-twelfth of any payments made for special assessments within the 12-month period ending with the current month; and (3) deducting from Account 518 one-twelfth of any refund of payments made for special assessments received within the 12-month period ending with current month that is received from the federal government because a public utility has contested or overpaid a special assessment.

IV. Discussion

A. Necessity of Regulations

1. *Comments.* Several of the commenters note that section 1802(g) of the Atomic Energy Act, as amended by the Energy Policy Act, provides that costs of special assessments shall be deemed a necessary and reasonable current cost of fuel and shall be fully recoverable in rates in all jurisdictions in the same manner as the utility's other fuel cost. AEP, Delmarva, Gulf States, Iowa-Illinois, Ohio Edison, Penn Power and Southern argue that additional ratemaking guidance for special assessments is unnecessary since the Commission already has rules and guidelines concerning the treatment of fuel costs.

Arizona states that special assessments will be levied for a limited period. Arizona argues that the costs of special assessments in relation to total fuel costs is not significant enough to warrant the adoption of new regulations.

2. *Commission ruling.* The Commission believes that regulations establishing the ratemaking method to be used for the recovery of special assessments are necessary to ensure that the actual costs assessed by DOE are recovered in a just and reasonable manner.

As the comments themselves demonstrate, section 1802(g) of the Atomic Energy Act, as amended, does not specify the periods in which the costs of special assessments should be recovered in rates or the amount that should be recovered in each period. The Commission's proposed regulations provide specificity concerning the recovery period and the amount eligible for recovery in each period. The regulations also provide that the costs of special assessments may be recovered in the same manner as other fuel costs assigned to the same period.

In addition, § 35.14(a)(6) of our regulations specifies that the cost of nuclear fuel to be included in fuel adjustment clause (FAC) calculations shall be the amount shown in Account 518, Nuclear Fuel Expense. When companies' rates are regulated by more than one regulatory authority, as is normally the case, the amounts recorded in Account 518 will reflect the amount of the special assessments recovered in each jurisdiction. If state rate treatment differs from the Commission's, the cost of the special assessment shown in Account 518 would not represent the correct amount to be included in wholesale FAC billings. Absent the proposed regulations, rate determinations of other regulatory authorities could thus affect wholesale FAC billings. This rule eliminates this potential problem.

In addition, Arizona offers no support for its contention that the relative cost of the special assessment, when compared to total fuel costs, does not warrant the adoption of new regulations. Given the lack of guidance provided by the amended Atomic Energy Act, this Commission needs to provide accounting and ratemaking guidance in order to regulate effectively.

[5] See Uranium Enrichment Decontamination and Decommissioning Fund; Procedures for Special Assessment of Domestic Utilities, 58 FR 41160, 41164 (Aug. 2, 1993).

[6] However, the Commission also noted that some public utilities may be operating under rate moratoria or rate settlements that would prohibit recovery of special assessments for certain periods.

[7] See Accounting and Ratemaking Treatment of Special Assessments Levied Under the Atomic Energy Act of 1954, as Amended by Title XI of the Energy Policy Act of 1992, Notice Providing Accounting Guidance, 58 FR 36193, 36194 (July 6, 1993), FERC Stats. & Regs. ¶ 32,495 (1993).

[8] *Id.*

B. Method of Recovery

1. *Comments.* The proposed rulemaking would provide that public utilities may recover costs of special assessments in equal installments on a monthly basis over the twelve-month period following payment to DOE.

A large number of commenters argue that the proposed ratemaking treatment denies recovery of the time value of money, which is lost due to the lag between payment and recovery. Many of these commenters argue that the Commission should permit utilities to recover the costs of special assessments as they accrue. Arizona, EEI, Maine Yankee and NEPCO state that costs recovered through fuel adjustment clauses normally are accrued. AEP and EEI state that an accrual method is appropriate because the Commission's Uniform System of Accounts (USofA) [9] requires utilities to reflect liabilities as they occur. AEP points out that General Instruction No. 11 to the USofA clearly states that accrual accounting is appropriate for timely recognition of "actual" costs.

If the Commission does not adopt an accrual method of recovery, Detroit Edison, Florida P&L, Florida Power and Gulf States argue that the Commission should permit amounts paid for special assessments to be charged to fuel expense at the time the actual payment is made. The commenters state that immediate recovery would eliminate the need for any adjustments and would avoid unnecessary administrative expense.

Yankee Atomic states that as a single-asset utility that has permanently ceased operations, it does not have access to capital to support the cash flow needed to pay special assessments under the Commission's proposed ratemaking treatment. Accordingly, Yankee Atomic argues that the Commission should permit recovery on an accrual basis or permit full recovery during the month in which a special assessment is due.

Virginia Power states that it uses a levelized annual FAC based on projected annual fuel expense. Virginia Power states that the Commission should permit it to continue to estimate its costs for special assessments with an annual true-up to reflect actual costs. Virginia Power states that its proposed treatment is consistent with the treatment of other fuel costs under its annual fuel clause. Virginia Power states that it has already included its portion of the annual payment in the projected system fuel expense and requests waiver to continue this practice. Virginia Power argues that its proposed treatment eliminates the time-value of money expense created by the proposed regulations. EEI and Virginia Power argue that the Commission should adopt flexible regulations for FACs so that utilities with annual FACs may recognize amounts paid as those payments are made.

Several commenters discuss how to deal with the fact that some utilities have already begun recovering these costs. EEI states that some utilities have already begun to recover the costs of special assessments through their fuel adjustment clauses. Ohio Edison states that the Commission should provide a transition period for recovery of any payments to DOE that were made prior to the Commission's rulemaking. Virginia Power states that the regulations should be prospective, since utilities may have already initiated other rate recovery methods. AEP states that utilities should not be penalized if they previously adopted different recovery methods for special assessments. Duke states that the proposed ratemaking treatment could permit double recovery for utilities that have previously recorded and recovered costs of special assessments.

Iowa-Illinois states that the Commission should permit utilities to use the same ratemaking treatment for wholesale transactions as the utility is required to use in its primary rate jurisdiction.

Finally, Wisconsin Customers supports the method of recovery proposed by the Commission because it avoids the use of estimated amounts and subsequent adjustments. KPMG Peat Marwick also supports the proposal.

2. *Commission ruling.* The final rule substantially retains the ratemaking treatment contained in the proposed regulations. In determining permissible practices under our fuel adjustment clause regulations, we have sought to minimize the use of estimates. The "accrual" method of recovery advocated by some of the commenters would permit recovery of estimated amounts.[10] It would result in the recovery of the costs included in Account 182.3 based on the estimated yearly special assessment spread over a twelve-month period. Although commenters propose to correct the estimates to actual upon payment to DOE, the method nevertheless results in recovery of estimated amounts in some months. The ratemaking treatment proposed by the Commission, however, results in the recovery of costs based on actual amounts paid for special assessments and avoids the use of estimates.

Some of the commenters also suggest that the Commission permit full recovery of the costs of special assessments at the time they are paid, rather than amortizing the costs over the twelve-month period following payment. The Commission believes that amortization is appropriate because special assessments are an annual charge that should be collected over an annual period. The Commission is also concerned that immediate recovery of the entire amount of a special assessment could cause a rate spike in one month of each year.

Many commenters express concern about the loss of the time value of money due to the lag between payment of special assessments and recovery of the costs. However, under existing regulations, utilities may seek to recover this type of expense through an addition to rate base by making an appropriate rate filing.

Virginia Power's argument concerning annual fuel clauses provides no basis for modifying the proposed rule. Virginia Power may continue to implement its current fuel clause calculation which estimates the monthly fuel adjustments a year at a time and bills these estimates subject to true-up at year's end. Virginia Power's estimates and its true-up calculations, however, must reflect the procedures adopted here, *i.e.*, it must base both on an amortization of the assessments during the twelve months following payment. This will ensure that the amounts billed to wholesale customers (after true-up provided for in Virginia Power's fuel clause) reflect the amounts for special assessments allowed under § 35.28 of the regulations, rather than the amounts actually expensed to Account 518.

To the extent that Virginia Power argues that a time-value of money problem persists, the Commission reiterates that, under existing regulations, Virginia Power (and other utilities) may seek to recover the time-value expense through an addition to rate base by making an appropriate rate filing. The Commission notes that rate base treatment of the unamortized portion of the special assessment is analogous to the rate base treatment afforded the unamortized balance of nuclear fuel.

Several utilities state that they have already begun collecting amounts for special assessments from their customers. These utilities should immediately cease collecting amounts for special assessments in a manner that

[9] 18 CFR part 101.

[10] The commenters' method is more accurately described as an allocation method. It would allocate the costs of the special assessments to periods in a systematic manner.

is inconsistent with the ratemaking treatment specified by the Commission. If the amount already collected is less than the amount billed by DOE in the initial year, then the utility should deduct the amount collected from the amount billed, and collect the remainder in accordance with the ratemaking treatment specified by the Commission. If the amount already collected is more than the amount billed by DOE in the initial year, then the utility should immediately refund the excess amount through a credit to the fuel clause in Account 518.

C. Expenses Associated With Special Assessments

1. *Comments.* Section 35.28(a)(2) of the proposed regulations would provide that a utility shall add expenses associated with special assessments to Account 518. Wisconsin Customers request that the Commission clarify what expenses should be added into the fuel clause calculation under the regulations. They state that overhead and accounting costs are already recoverable through rates and argue that the proposed regulations may encourage abuses of the fuel clause.

Gulf States recommends, among other things, that the Commission modify § 35.28(a)(1) to clarify that the proposed deduction for expenses associated with special assessments relates only to special assessment expenses that have been recorded in Account 518 on an accrual basis.

2. *Commission ruling.* The regulations establish procedures for determining when and in what amounts the costs of special assessments (*i.e.* the amounts recorded in Account 182.3) may be recovered in jurisdictional rates. The expenses referred to in § 35.28(a)(1) are the amounts of special assessments charged to Account 518. The expenses do not reflect administrative costs or any other type of cost.

In response to Gulf States, the Commission declines to adopt the suggested changes to § 35.28(a)(1) because the intention of this section is to require the removal of all special assessment expenses included in Account 518 regardless of the recording methodology used.

D. Rate Spike Concerns

1. *Comments.* Wisconsin Customers state that if a utility makes two large payments to the DOE within a twelve-month period, this may cause a rate spike or other inequities. Accordingly, Wisconsin Customers state that the Commission should ensure that utilities make payments to DOE on a regular basis, such as either equal monthly installments or annual installments that are twelve months apart.

2. *Commission ruling.* The DOE, not the Commission, is responsible for collecting special assessments and ensuring that special assessments are paid in a timely manner. On August 2, 1993, the DOE published an interim final rule and notice of proposed rulemaking concerning the procedures and methods to be used to calculate and collect special assessments.[11] Even if a utility were to make two payments to DOE within the same month, a concern raised by Wisconsin Customers, the ratemaking treatment specified by the Commission would dissipate any potential rate spike by amortizing recovery over a twelve-month period.

E. Single-Asset Utilities

1. *Comments.* Maine Yankee and Yankee Atomic state that the Commission should provide flexibility for single-asset utilities that own plants that have limited service lives or that have permanently ceased operations.

Yankee Atomic believes that it may not be subject to special assessments because it is a single-asset utility that permanently ceased operations before enactment of the Energy Policy Act. If Yankee Atomic is required to pay special assessments, Yankee Atomic requests that the Commission clarify the ratemaking treatment for utilities, such as itself, that have permanently ceased operations.

Yankee Atomic points out that the Commission's proposed ratemaking treatment would provide that utilities may recover only the amounts actually paid to DOE in a particular year, even if this amount differs from the amount recorded in Account 518. Maine Yankee and Yankee Atomic state that if this treatment is applied to a single-asset utility that has ceased operation or has a plant with a limited service life, customers would be charged for special assessments after they have stopped receiving power from the utility. The commenters argue that this treatment may cause intergenerational inequity.

Maine Yankee urges the Commission to permit single-asset utilities to estimate their total obligation for special assessments and recover the balance over the earlier of the service life of the utility's plant, the fifteen year assessment period, or the balance of the utility's applicable purchased power contracts.

Yankee Atomic states that the entire special assessment should be recovered over the balance of the service life of a single-asset utility's plant. Yankee Atomic states that the service life of a single-asset nuclear plant may coincide with the plant's operating license. In Yankee Atomic's case, although it has ceased operation of its plant, the plant's operating license extends through July 9, 2000. Yankee Atomic states that charges should be adjusted to reflect any difference between the estimated total obligation and actual amounts paid. Yankee Atomic also maintains that because if has permanently ceased operations, it no longer has ready access to capital markets in order to support the cash flow needed to pay special assessments under the Commission's proposed ratemaking method.

2. Commission Ruling

Maine Yankee's arguments for modification of the proposed ratemaking treatment are not compelling. As discussed above with respect to other utilities, Maine Yankee's argument for accrual-based ratemaking should be rejected.

The possibility that Maine Yankee may retire its plant earlier than currently expected does not warrant special treatment. Although Maine Yankee is a single asset utility, the license life of its asset expires October 21, 2008, approximately one year after the DOE assessment terminates. The proposed ratemaking is not inappropriate for a single-asset utility such as Maine Yankee because it permits the passage of the costs of the special assessment on to its customers as a current cost of fuel, consistent with the rate recovery afforded every other utility under this rulemaking.

Maine Yankee also argues that the assessment should be collected over the life of its existing purchase power contracts in order to assign costs to the benefiting customers and avoid intergenerational inequity. We do not agree. The Atomic Energy Act provides that special assessments are a necessary and reasonable current costs of fuel and shall be recoverable in rates in the same manner as a utility's other fuel cost. Expedited recovery is beyond the scope of this proceeding and contrary to Congress; mandate that the DOE assessment be collected in the same manner as a utility's other fuel cost.

A ruling on Yankee Atomic's proposal that it be allowed to collect its estimated liability over the license life of its plant is premature. The extent of Yankee Atomic's liability, if any, is an issue for determination by the Secretary of Energy. If Yankee Atomic is found liable for payments, the company may request waiver of this rule at that time. The Commission recognizes that these special circumstances may justify a

[11] *Supra*, note 5.

deviation from the prescribed rate recovery methodology.

F. Effect of Rate Moratoria

1. *Comments.* SoCal Edison states that it appears that the proposed ratemaking treatment may prevent recovery of the costs of special assessments by utilities that are operating under rate moratoria with respect to their wholesale customers. SoCal Edison states that it is subject to a rate moratorium that specifies a methodology for calculating its fuel adjustment clause that is nearly identical to § 35.14 of the Commission's regulations concerning fuel clauses. SoCal Edison states that if the Commission specifies that special assessments are to be recovered through a method other than that provided by section 35.14, utilities such as SoCal Edison may be precluded from recovering costs of special assessments from their wholesale customers.

SoCal Edison states that this problem could be avoided by referencing Account 518 in §§ 35.28(a) (2) and (3) of the regulations.

2. *Commission ruling.* Section 35.28(a) of the proposed rule specifically states that the ratemaking treatment for special assessments is to be used to compute the cost of nuclear fuel pursuant to § 35.14(a)(6) of the Commission's fuel clause regulations. The final rule addresses SoCal Edison's concerns by adding clarifying language to the text of the regulations to explicitly state that costs for special assessments are included in Account 518 for ratemaking purposes.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[12] requires that rulemakings contain either a description and analysis of the effect the rule will have on small entities or certify that the rule will not have a substantial economic effect on a substantial number of small entities. Because most of the entities that would be required to comply with this rule are large public utilities that do not fall within the RFA's definition of small entities,[13] the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

VI. Environmental Statement

Commission regulations require the preparation of an environmental assessment or an environmental impact statement for any Commission action that may have a significant effect on the human environment.[14] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[15] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective or procedural or that does not substantively change the effect of legislation or regulations being amended.[16] Because the final rule is merely clarifying and procedural, no environmental consideration is necessary.

VII. Information Collection Statement

The information collection requirements in this rule have not changed from those proposed in the rule that was published in the **Federal Register** on July 6, 1993. Therefore, this rule does not have to be submitted to OMB for review. A copy will be sent to OMB for information purposes only. The information collection requirements in this final rule are contained in FERC–516, "Electric Rate Filings" (OMB approval No. 1902–0096), FERC Form No. 1, "Annual Report of Major public utilities, licensees and others" (OMB approval No. 1902–0021); and FERC Form No. 1–F, "Annual Report of Nonmajor public utilities and licensees" (OMB approval No. 1902–0029).

The Commission uses the data collected in these information collections to carry out its responsibilities under the FPA and the Energy Policy Act. The Commission's Office of Electric Power Regulation uses the data to review electric rate filings. The Commission's Office of the Chief Accountant uses the data to carry out its audit programs and continuous review of the financial conditions of regulated companies.

The Commission believes that the final rule will assist regulated companies in recovering in jurisdictional rates the costs incurred for special assessments, without significantly increasing the reporting burden for public utilities.

The Commission is submitting notification of the final rule to OMB. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415]. Comments on the requirements of the final rule can also be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for Federal Energy Regulatory Commission].

VIII. Effective Date

This final rule is effective November 1, 1993.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 35, chapter I, title 18 of the Code of Federal Regulations, as set forth below.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 is revised to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Part 35 is amended by adding new section 35.28 to read as follows:

§ 35.28 Treatment of special assessments levied under the Atomic Energy Act of 1954, as amended by Title XI of the Energy Policy Act of 1992.

The costs that public utilities incur relating to special assessments under the Atomic Energy Act of 1954, as amended by the Energy Policy Act of 1992, are costs that may be reflected in jurisdictional rates. Public utilities seeking to recover the costs incurred relating to special assessments shall comply with the following procedures.

(a) *Fuel adjustment clauses.* In computing the Account 518 cost of nuclear fuel pursuant to § 35.14(a)(6), utilities seeking to recover the costs of special assessments through their fuel adjustment clauses shall:

(1) Deduct any expenses associated with special assessments included in Account 518;

(2) Add to Account 518 one-twelfth of any payments made for special assessments within the 12-month period ending with the current month; and

(3) Deduct from Account 518 one-twelfth of any refunds of payments made for special assessments received within the 12-month period ending with the current month that is received from the Federal government because the public utility has contested a special assessment or overpaid a special assessment.

(b) *Cost of service data requirements.* Public utilities filing rate applications

---

[12] 5 U.S.C. 601–612.

[13] 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 632). Section 3 of the Small Business Act defines a small-business concern as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632(a).

[14] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30, 783 (1987).

[15] 18 CFR 380.4.

[16] 18 CFR 380.4(a)(2)(ii).

under §§ 35.12 or 35.13 (regardless of whether the utility elects the abbreviated, unadjusted Period I, adjusted Period I, or Period II cost support requirements) must submit cost data that is computed in accordance with the requirements specified in paragraphs (a) (1), (2) and (3) of this section.

(c) *Formula rates.* Public utilities with formula rates on file that provide for the automatic recovery of nuclear fuel costs must reflect the costs of special assessments in accordance with the requirements specified in paragraphs (a) (1), (2) and (3) of this section.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24168 Filed 9–30–93; 8:45 am]

BILLING CODE 6717–01–M

---

18 CFR Part 375

[Docket No. RM93–17–000]

License Termination

Issued September 24, 1993.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations to authorize the Director of the Commission's Office of Hydropower Licensing to terminate a license for failure to commence construction after first giving the licensee 30 days' written notice. The prior regulation required 90 days' notice.

EFFECTIVE DATE: November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1269.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Order No. 556

I. Introduction

The Federal Energy Regulatory Commission (Commission) is revising § 375.314(f)(1) of its regulations so as to authorize the Director of the Commission's Office of Hydropower Licensing (Director) to terminate a license for failure to commence construction after first giving the licensee 30 days' written notice. The prior regulation required 90 days' notice.

II. Background and Discussion

Part I of the Federal Power Act (FPA)[1] authorizes the Commission to issue licenses for the construction, maintenance, and operation of hydropower projects. Section 13 of the FPA[2] requires the licensee to commence construction of the project works within the time fixed in the license, which shall not be more than two years after issuance of the license. Section 13 also authorizes the Commission to grant one extension of that deadline, the extension to be for no more than two additional years. Section 13 further provides that if the licensee does not commence construction within the time prescribed in the license as it may have been extended by the Commission, then "after due notice given, the license shall, as to such project works or part thereof, be terminated upon written order of the Commission."

Prior § 375.314(f) of the Commission's regulations authorized the Director or the Director's designee to:

(f) Issue an order pursuant to section 13 of the Federal Power Act to terminate a license granted under Part I of the Federal Power Act if the licensee fails to commence actual construction of the project works within the time prescribed in the license, provided:

(1) The Director gives notice by certified mail to the licensee of probably termination no less than 90 days prior to the issuance of the termination order, and

(2) The licensee does not oppose the issuance of the termination order.

On June 24, 1993, the Commission issued a Notice of Proposed Rulemaking,[3] proposing to revise paragraph (f)(1) so that the notice requirement would be 30 days rather than 90 days. No comments were received in response to the NOPR.

As discussed in the NOPR, most of the Commission's license termination proceedings are initiated for failure to commence construction after having received a one-time extension of two years in addition to the two-year period prescribed in the license. Thus, the notices are usually issued after a four-year period in which to commence construction has expired and no construction has occurred. By that time, the licensee's unwillingness or inability to commence construction has in virtually every case become common knowledge to both the licensee and the Commission's staff such that the notice becomes a procedural formality that confirms the obvious. Reducing the waiting period will expedite the processing of the Commission's license termination workload. Therefore, we will revise the regulation as proposed in the NOPR.

III. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[4] generally requires a description and analysis of rules that will have a significant economic impact on a substantial number of small entities. The final rule adopted herein is purely procedural in nature. The Commission certifies that this final rule will not have a "significant economic impact on a substantial number of small entities."

IV. Environmental Statement

The Commission concludes that promulgating the final rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[5] The final rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental

---

[1] 16 U.S.C. 792–823(b).

[2] 16 U.S.C. 806.

[3] 63 FERC ¶ 61,322. The NOPR was published in the **Federal Register** on July 1, 1993, 58 FR 35415.

[4] 5 U.S.C. 601–612.

[5] 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (codified at 18 CFR part 380).

impact statement nor an environmental assessment is required.[6]

V. Effective Date

This rule is effective November 1, 1993.

List of Subjects in 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

In consideration of the foregoing, the Commission amends part 375, chapter I, Title 18 of the Code of Federal Regulations as set forth below.

PART 375—THE COMMISSION

1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–828r, 791a note, 2601–2645; 42 U.S.C. 7107–7532.

2. In § 375.314, paragraph (f)(1) is revised to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

* * * * *

(f) * * *

(1) The Director gives notice by certified mail to the licensee of probable termination no less than 30 days prior to the issuance of the termination order, and

* * * * *

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24106 Filed 9–30–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 11

[AG Order No. 1792–93]

RIN 1103–AA16

Tax Refund Offsets

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule modifies procedures for referring debts that have been reduced to judgment or are legally enforceable to the Secretary of the Treasury for collection by offset against Federal tax refunds. This rule contains safeguards for debtors while strengthening the ability of the Department to collect outstanding debts.

EFFECTIVE DATE: November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Imogene McCleary, Debt Collection Management, Justice Management Division, U.S. Department of Justice, room 1344, 10th Street and Constitution Avenue NW., Washington, DC 20530, telephone (202) 514–5345.

SUPPLEMENTARY INFORMATION:

Background

The provisions of 26 U.S.C. 6402(d) and 31 U.S.C. 3720A authorize the Secretary of the Treasury, acting through the Internal Revenue Service (IRS), to offset a delinquent debt owed to the United States Government from the tax refund due a taxpayer when other collection efforts have failed to recover the amount due. The purpose of these statutes is to improve the ability of the Government to collect money owed it while granting the debtor notice and certain other protections.

The Department previously published an interim final rule, 54 FR 9979, March 9, 1989, which established procedures for referring to the IRS certain debts for collection by offset against Federal tax refunds. In a Notice of Proposed Rulemaking, 56 FR 8734, March 1, 1991, the Department proposed to broaden the rule's coverage by including organizations and entities in addition to individual debtors and by including debts that are past due and legally enforceable but not reduced to judgment in addition to debts that have been reduced to judgment. No comments were received. The only changes from the proposed rule either implement existing law, 31 U.S.C. 3720A, 26 CFR 301.6402, or are minor grammatical or technical alterations, so an additional notice and comment period is unnecessary. 5 U.S.C. 553(b)(B). Accordingly, this rule implements 26 CFR 301.6402–6(d)(2) by providing the debtor with the opportunity to request a second review of evidence by the Department if the initial review of evidence is conducted by and a determination made by a non-Departmental agent or other entity acting on the Department's behalf, and an unresolved dispute exists.

A complete discussion of the rule is contained in the **Federal Register** notice of March 1, 1991.

Other Matters

The Department has reviewed this rule in light of section 2(c) of E.O. 12778 and concludes that the rule meets the applicable standards provided in section 2(b) of the Order. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291. This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to E.O. 12612. The Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule will apply only to individuals, organizations, or units of state or local government that owe past-due legally enforceable debts to the United States Government.

This rule requires debtors to submit information if they wish to dispute a proposed offset. This information collection requirement is part of an administrative action that is initiated when the Department sends a debtor notice pursuant to 28 CFR 11.12(b). Pursuant to 5 CFR 1320.3(c), therefore, the Paperwork Reduction Act of 1980 does not apply to this collection of information.

List of Subjects in 28 CFR Part 11

Claims, Debt collection, Government contracts, Government employees, Income taxes, Lawyers.

PART 11—[AMENDED]

By virtue of the authority vested in me as Attorney General by 31 U.S.C. 3720A, 5 U.S.C. 301, and 28 U.S.C. 509 and 510, 28 CFR part 11 is amended as follows:

1. The authority citation for part 11 is revised to read as follows;

Authority: 5 U.S.C. 301, 28 U.S.C. 509, 510, 31 U.S.C. 3718, 3720A.

2. Part 11 is amended by revising subpart C to read as follows:

Subpart C—IRS Tax Refund Offset Provisions for Collection of Debts

Sec.
11.10 Scope.
11.11 Definitions.
11.12 Procedures.

Subpart C—IRS Tax Refund Offset Provisions for Collection of Debts

§ 11.10 Scope.

The provisions of 26 U.S.C. 6402(d) and 31 U.S.C. 3720A authorize the Secretary of the Treasury, acting through the Internal Revenue Service (IRS), to offset a delinquent debt owed to the United States Government from the tax refund due a taxpayer when other collection efforts have failed to recover the amount due. The purpose of these statutes is to improve the ability of the Government to collect money owed it while granting the debtor notice and certain other protections. This subpart authorizes the collection of debts owed to the United States Government by persons, organizations, and entities by means of offsetting any tax refunds due to the debtor by the IRS. It allows referral to the IRS for

[6] See 18 CFR 380.4(a)(1).

collection of debts that are past due and legally enforceable but not reduced to judgment and debts that have been reduced to judgment.

§ 11.11 Definitions.

(a) *Debt.* Debt means money owed by an individual, organization or entity from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, services, overpayments, civil and criminal penalties, damages, interest, fines, administrative costs, and all other similar sources. A debt becomes eligible for tax refund offset procedures if it cannot currently be collected pursuant to the salary offset procedures of 5 U.S.C. 5514(a)(1) and is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2), or cannot currently be collected by administrative offset under 31 U.S.C. 3716(a) against amounts payable to the debtor by the Department of Justice. A non-judgment debt is eligible for tax refund offset procedures if the Department's or the referring agency's right of action accrued more than three months but less than ten years before the offset is made. Judgment debts are eligible for referral at any time. Debts that have been referred to the Department of Justice by other agencies for collection are included in this definition.

(b) *Past due.* All accelerated debts and all judgment debts are past due for purposes of this section. Such debts remain past due until paid in full. An accelerated debt is past due if, at the time of the notice required by § 11.12(b), any part of the debt had been due, but not paid, for at least 90 days. Such an unaccelerated debt remains past due until paid to the current amount of indebtedness.

(c) *Notice.* Notice means the information sent to the debtor pursuant to § 11.12(b). The date of the notice is the date shown on the notice letter as its date of issuance.

(d) *Dispute.* A dispute is a written statement supported by documentation or other evidence that all or part of an alleged debt is not past due or legally enforceable, that the amount is not the amount currently owed, that the outstanding debt has been satisfied, or, in the case of a debt reduced to judgment, that the judgment has been satisfied or stayed.

§ 11.12 Procedures.

(a) The Department may refer any past due, legally enforceable non-judgment debt of an individual, organization or entity to the IRS for offset if the Department's or the referring agency's rights of action accrued more than three months but less than ten years before the offset is made. Debts reduced to judgment may be referred at any time. Debts in amounts lower than $25.00 are not subject to referral.

(b) The Department will provide the debtor with written notice of its intent to offset before initiating the offset. Notice will be mailed to the debtor at the current address of the debtor, as determined from information obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2), (4), (5) or from information regarding the debt maintained by the Department of Justice. The notice sent to the debtor will state the amount of the debt and inform the debtor that:

(1) The debt is past due;

(2) The Department intends to refer the debt to the IRS for offset from tax refunds that may be due to the taxpayer;

(3) The Department intends to provide information concerning the delinquent debt exceeding $100 to a consumer reporting bureau (credit bureau) unless such debt has already been disclosed; and

(4) The debtor has 65 days from the date of notice in which to present evidence that all or part of the debt is not past due, that the amount is not the amount currently owed, that the outstanding debt has been satisfied, or, if a judgment debt, that the debt has been satisfied, or stayed, before the debt is reported to a consumer reporting agency, if applicable, and referred to the IRS for offset from tax refunds.

(c) If the debtor neither pays the amount due nor presents evidence that the amount is not past due or is satisfied or stayed, the Department will report the debt to a consumer reporting agency at the end of the notice period, if applicable, and refer the debt to the IRS for offset from the taxpayer's federal tax refund.

(d) A debtor may request a review by the Department if the debtor believes that all or part of the debt is not past due or is not legally enforceable, or, in the case of a judgment debt, that the debt has been stayed or the amount satisfied, as follows:

(1) The debtor must send a written request for review to the address provided in the notice.

(2) The request must state the amount disputed and the reasons why the debtor believes that the debt is not past due, is not legally enforceable, has been satisfied, or, if a judgment debt, has been satisfied or stayed.

(3) The request must include any documents that the debtor wishes to be considered or state that additional information will be submitted within the time permitted.

(4) If the debtor wishes to inspect records establishing the nature and amount of the debt, the debtor must request an opportunity for such an inspection in writing. The office holding the relevant records shall make them available for inspection during normal business hours.

(5) The request for review and any additional information submitted pursuant to the request must be received by the Department at the address stated in the notice within 65 days of the date of issuance of the notice.

(6) The Department will review disputes and shall consider its records and any documentation and arguments submitted by the debtor. The Department's decision to refer to the IRS any disputed portion of the debt shall be made by the Assistant Attorney General for Administration of his designee, who shall hold a position at least one supervisory level above the person who made the decision to offset the debt. The Department shall send a written notice of its decision to the debtor. There is no administrative appeal of this decision.

(7) If the evidence presented by the debtor is considered by a non-Departmental agent or other entities or persons acting on the Department's behalf, the debtor will be accorded at least 30 days from the date the agent or other entity or person determines that all or part of the debt is past-due and legally enforceable to request review by an officer or employee of the Department of any unresolved dispute.

(8) Any debt that previously has been reviewed pursuant to this section or any other section of this part, or that has been reduced to a judgment, may not be disputed except on the grounds of payments made or events occurring subsequent to the previous review of judgment.

(e) The Department will notify the IRS of any change in the amount due promptly after receipt of payments or notice of other reductions.

(f) In the event that more than one debt is owed, the IRS refund offset procedure will be applied in the order in which the debts became past due.

Dated: September 22, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93–24078 Filed 9–30–93; 8:45 am]

BILLING CODE 4410–01–M

28 CFR Part 51

[Order No. 1793–93]

Voting Rights Act of 1965; Procedural Amendment to the Attorney General's Section 5 Guidelines

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Civil Rights Division's Voting Section has moved from one floor to another within the same building. This amendment substitutes the new room number for the old in the Attorney General's section 5 guidelines. The post office address (post office box number) is unchanged.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: David H. Hunter, Attorney, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035–6128, 202–307–2898.

SUPPLEMENTARY INFORMATION: This amendment notifies those making submissions of changes affecting voting under section 5 of the Voting Rights Act and other interested persons that submissions and other correspondence sent via carriers other than the U.S. Postal Service should be sent to room 818A rather than to Room 716, at 320 First Street, NW., Washington, DC 20001. The address for U.S. Postal Service delivery remains P.O. Box 66128, Washington, DC 20035–6128.

Good cause exists under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d) for implementing this rule as a final rule effective immediately without provision for public comment. The amendment simply reflects the change of the Voting Section's address and, therefore, is technical in nature and does not affect any substantive provision of the guidelines. Public comment could have no effect on this amendment.

List of Subjects in 28 CFR Part 51

Administrative practice and procedure, Civil rights, Elections, Voting rights.

For the reasons set forth in the preamble, 28 CFR Part 51 is amended as follows:

PART 51—PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED

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

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 1973c.

§ 51.24 [Amended]

2. Section 51.24 is amended by removing, in paragraph (b), the words "room 716" and adding, in their place, the words "room 818A".

Dated: September 22, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93–24079 Filed 9–30–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Termination and Reassertion of Jurisdiction

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed program amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed modifications to 405 Kentucky Administrative Regulations (KAR) 1:007, 3:007 and 7:030. The proposed program amendment pertains to the termination and reassertion of Kentucky's jurisdiction to regulate interim and permanent program minesites. The proposed regulation changes are in response to a Notice of Reinstatement of Suspended Rule, published by OSM on April 10, 1992 (57 FR 12461), in which OSM reinstated the termination of jurisdiction rule based upon a decision of the U.S. Court of Appeals for the District of Columbia Circuit in *NWF* v. *Lujan II*. These proposed regulation changes also respond in part to OSM's 30 CFR Part 732 letter dated February 8, 1990, (Administrative Record No. KY–967).

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of Amendment

By letter of July 21, 1992, (Administrative Record No. KY–1165) Kentucky submitted a proposed program amendment containing modifications to 405 Kentucky Administrative Regulations (KAR) 1:007, 3;007 and 7:030 regarding termination and reassertion of jurisdiction. These proposed regulation changes also respond in part to OSM's 30 CFR Part 732 letter dated February 8, 1990, (Administrative Record No. KY–967).

OSM announced receipt of the proposed amendment in the September 23, 1992, **Federal Register** (57 FR 43948), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 23, 1992.

By letter dated December 9, 1992 (Administrative Record Number KY–1199), Kentucky resubmitted its proposed program amendment regarding termination and reassertion of jurisdiction, with changes to 405 KAR 1:007 and 3:007 which take into account the possibility that termination could occur after November 1, 1992, on interim program sites for which no bond was posted.

OSM announced receipt of the revised amendment in the January 14, 1993, **Federal Register** (58 FR 4386), and in the same notice, reopened the public comment period and provided opportunity for a public hearing on the adequacy of the revised amendment. The comment period closed on January 29, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment to the Kentucky program.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. 405 KAR 1:007 and 3:007

Kentucky proposes to revise Chapters 1 and 3 of its Administrative Regulations, dealing with the interim regulatory program, by adding 405 KAR 1:007 and 405 KAR 3:007, covering surface coal mining and the surface effects of underground mining, respectively. The purpose of the proposed rules, as set forth in the Necessity and Function sections of the proposed rules, is to establish requirements for terminating the jurisdiction of the Cabinet under Chapters 1 and 3 over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, and to reassert that jurisdiction under certain conditions.

Pursuant to proposed Sections 1 of 405 KAR 1:007 and 3:007, as revised and resubmitted on December 9, 1992, beginning November 1, 1992, the Cabinet's jurisdiction shall terminate when (1) the Cabinet has determined in writing that all requirements imposed under 405 KAR Chapters 1 and 3 and KRS Chapter 350 have been successfully completed; or (2) if a performance bond was required, the Cabinet has made a final decision pursuant to Section 11 of 405 KAR 1:050 or 3:050, to fully release the performance bond. The Cabinet's decision shall not be final until the time to file administrative and judicial appeals has expired and all appeals have been resolved.

By letter dated September 14, 1992 (Administrative Record Number KY–1178), in response to a request from OSM dated July 23, 1992 (Administrative Record Number KY–1166), Kentucky submitted a copy of its standard interim program site bond release form. The form provides for a finding, based on inspection of the permitted area, that reclamation is complete and satisfactory. Also on September 14, 1992, Kentucky submitted a copy of the Statement of Consideration (Administrative Record Number KY–1179), which summarizes the comments received at a public hearing held on August 27, 1992, and Kentucky's responses to those comments. In response to one of the comments, Kentucky stated that "the permittee's compliance with 405 KAR Chapters 1 and 3, rather than 30 CFR chapter VII, subchapter B, was the appropriate basis for the Cabinet's bond release decisions and subsequent terminations of jurisdiction." However, under 30 CFR 700.11(d)(1)(i), termination of jurisdiction for interim program sites is appropriate only after a determination of compliance with subchapter B of 30 CFR chapter VII.

Therefore, in order for Kentucky to terminate its jurisidction over interim sites based on a determination of compliance with the State's interim program, it must be shown that its interim program contains the same performance standards which serve as prerequisites to bond release as those contained in 30 CFR chapter VII, subchapter B. In this regard, OSM has reviewed the performance standards contained in Kentucky's interim program regulations, and has found that any provisions having a direct impact on the State's bond release procedures are the same as those contained in the corresponding Federal interim regulations. Therefore, the Director finds that 405 KAR 1:007, Section 1 and 3:007, Section 1 are no less effective than the corresponding Federal regulations at 30 CFR 700.11(d)(1)(i).

Proposed Section 2 of 405 KAR 1:007 and 3:007 provides for the reassertion of jurisdiction by the Cabinet where its bond release decision or other determination that led to the termination of jurisdiction was based upon fraud, collusion, or misrepresentation of a material fact. This proposal is substantively identical to the Federal provisions set forth at 30 CFR 700.11(d)(2). Therefore, the Director finds the proposal to be no less effective than the Federal counterpart.

B. 405 KAR 7:030

Kentucky proposes to revise 405 KAR 7:030 by adding Section 4, Termination and Reassertion of Jurisdiction. Pursuant to the proposed new rule, the jurisdiction of the Cabinet over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, or coal exploration operation, shall terminate when:

(a) The Cabinet makes a written determination that all requirements under 405 KAR Chapters 7–24 and KRS Chapter 350 have been successfully completed; or

(b) Where a performance bond was required, the Cabinet makes a final decision to release the bond fully. Such decision is not to be considered final until the time for filing administrative and judicial appeals has expired and all appeals have been resolved.

The proposed rule further provides that the Cabinet shall reassert its jurisdiction if it is demonstrated that the bond release decision or other determination that led to the termination of jurisdiction was based upon fraud, collusion, or misrepresentation of a material fact. This proposed language is substantively identical to that found in the corresponding Federal rule at 30 CFR 700.11(d)(1)(ii) and (d)(2). Therefore, the Director finds the proposal to be no less effective than the Federal counterpart.

IV. Summary and Disposition of Comments

Public Comments

The public comment periods and opportunities to request a public hearing were announced in the September 23, 1992, **Federal Register** (57 FR 43948), and the January 14, 1993, **Federal Register** (58 FR 4386). The public comment periods closed on October 23, 1992, and January 29, 1993, respectively. No one requested an opportunity to testify at the scheduled public hearings so no hearings were held.

The Kentucky Resources Council (KRC), in a letter dated February 1, 1993 (Administrative Record Number KY–1208), expressed its support for the termination of jurisdiction regulations as revised and resubmitted by Kentucky on December 9, 1992 (Administrative Record Number KY–1199). KRC felt that concerns it had raised in a letter dated October 23, 1992 (Administrative Record Number KY–1194) had been adequately resolved by Kentucky's resubmission.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various government agencies with an actual or potential interest in the Kentucky program. The U.S. Forest Service, Mine Safety and Health Administration, Bureau of Land Management, and Bureau of Mines acknowledged receipt of the proposed amendment but offered no substantive comments.

V. Director's Decision

Based upon the above findings, the Director is approving the program amendment as submitted by Kentucky on July 21, 1992, and revised and resubmitted on December 9, 1992. The Federal rules at 30 CFR part 917 codifying decisions concerning the

Kentucky program are being amended to implement this decision. The Director is approving these State rules with the understanding that they be promulgated in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and the EPA's concurrence is not required.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovenmental relations, Surface mining, Underground mining.

Dated: September 22, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

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

PART 917—KENTUCKY

1. The authority citation for Part 917 continues to read as follows:

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

2. 30 CFR 917.15, is amended by adding new paragraph (ss) to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(ss) The following amendment submitted to OSM on July 21, 1992, and modified and resubmitted on December 9, 1992, is approved effective October 1, 1993. The amendment consists of additions and modifications to the following provisions of the Kentucky Administrative Regulations (KAR):

405 KAR 1:007.	Termination and reassertion of jurisdiction—Interim program—surface mining.
405 KAR 3:007.	Termination and reassertion of jurisdiction—Interim program—underground mining.
405 KAR 7:030 Sec. 4.	Termination and reassertion of jurisdiction—Permanent program.

[FR Doc. 93–24149 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD 6010.8–R]

32 CFR Part 199

RIN 0720–AA15

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Reimbursement of Providers, Claims Filing, and Participating Provider Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the Department of Defense Appropriations Act, 1993, section 9011, which limits increases in maximum allowable payments to physicians and other individual professional providers (including clinical laboratories), authorizes reductions in such amounts for overpriced procedures, provides special procedures to assure beneficiary access to care, and establishes limits on balance billing by providers. Also, the final rule implements a provision of the National Defense Authorization Act for Fiscal Year 1992 that requires providers to file claims on behalf of CHAMPUS beneficiaries, builds into the CHAMPUS Regulation provisions that have been in

effect for several years regarding the Participating Provider Program, and implements a new approach for CHAMPUS reimbursement for ambulatory surgery.

DATES: This rule is effective November 1, 1993.

It applies to services delivered on or after that date.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900. For copies of the Federal Register containing this final rule, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

FOR FURTHER INFORMATION CONTACT: Steve Lillie, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 695–3350.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. Congressional Action

The Department of Defense Appropriations Act, 1993, Public Law 102–396, that was signed on October 6, 1992 provides that no funds appropriated for CHAMPUS may be used for payments to physicians and other authorized individual health care providers in excess of the amounts allowed in Fiscal Year 1992 for similar services, except that: (a) For services for which the Secretary of Defense determines an increase is justified by economic circumstances, the allowable amounts may be increased in accordance with appropriate economic index data similar to that used for Medicare; and (b) for services the Secretary determines are overpriced based on allowable payments under Medicare, the allowable amounts shall be reduced by not more than 15 percent (except that the reduction may be waived if the Secretary determines that it would impair adequate access to health care services for beneficiaries). The Secretary is directed to solicit public comment prior to promulgating regulations to implement this section, and implementing regulations are to include a limitation similar to that used under Medicare on the extent to which a provider may bill a beneficiary an actual charge in excess of the allowable amount.

Thus, section 9011 provides Congressional direction to reduce CHAMPUS payment limits for professional services towards the Medicare limits for similar services, and to proceed gradually by reducing each CHAMPUS payment limit by no more than 15 percent per year. Additionally, the provision requires that special consideration be given to beneficiary access to health care services as reductions in payment limits are undertaken. Lastly, limitations (similar to Medicare limitations) on balance billing of beneficiaries by nonparticipating providers are required.

The National Defense Authorization Act for Fiscal Year 1992, Public Law 102–190, section 716, added a new section 1106 to title 10, United States Code, "Submittal of Claims Under CHAMPUS". This section requires that each provider of services under CHAMPUS must submit claims on behalf of beneficiaries, provides authority to waive the claims filing requirement in cases where access may be impaired, and limits the period during which claims may be filed to one year following the date of service.

Another statutory provision pertinent to this final rule is 10 U.S.C. 1079(j)(2)(A), which allows CHAMPUS to reimburse institutional providers "to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under" Medicare. This authority was used in implementing the CHAMPUS DRG-Based Payment System in 1987, and other CHAMPUS reimbursement approaches for institutional providers. In this final rule, the authority is applied to another type of institutional provider, providers of ambulatory surgery services.

B. The Need for Reform of CHAMPUS Payment Methods

Over the past several years, at the direction of Congress, growth in CHAMPUS payment limits for physicians and other individual professional health care providers has been constrained, and late in 1991, reductions in payment limits for certain overpriced procedures were undertaken. Additional reductions were taken in May 1992 and March 1993. Despite these measures, CHAMPUS professional payment limits remain about 40 percent higher than Medicare payment limits. Medicare is by far the largest payor for health services in the country, and as such its payment methodologies are carefully developed by the Executive Branch and Congress and subject to intense scrutiny by the public and by providers of health services. The product of this intensive activity represents the Federal government's best judgment on what constitutes a reasonable and appropriate payment method for the nation's largest health care program.

CHAMPUS, being structurally similar to Medicare and a considerably smaller program, neither attracts nor requires the same degree of attention in development of reimbursement methods. Thus, Congress has followed the prudent course of directing that CHAMPUS adopt or adapt Medicare reimbursement approaches when appropriate. In the case of payments to physicians and other individual providers, Congress directed in the Department of Defense Appropriation Act, 1993 that CHAMPUS payment limits be measured against Medicare payment limits to identify CHAMPUS payment limits that are too high; and those overpriced procedures be gradually reduced, without impairing adequate access to care.

This final rule moves not only to implement a requirement of law, but also to advance an important policy objective. Requirements have been established for major reductions in the Defense Department budget, creating a need to at least moderate the rate of growth in DoD's health care budget. After years of study and deliberation, reasonable payment levels have been established by law for providers under the government's primary health care program, Medicare. CHAMPUS payments in excess of those reasonable levels are presumptively unnecessary and undesirable. Thus it is an important policy objective for DoD to undertake a gradual transition, without impairing access, to these fair and reasonable levels.

This policy objective is also advanced by the provisions of this final rule regarding payments for ambulatory surgery. CHAMPUS payment reforms for most inpatient hospital care, for most inpatient mental health care, and for physician reimbursements have shifted the basis away from billed charges and toward reimbursement based on the costs of providing services. One of the last remaining circumstances in which CHAMPUS reimburses care on the basis of billed charges is for ambulatory surgery. This final rule establishes a new approach featuring prospectively-determined pricing for ambulatory surgery services.

For the most part, CHAMPUS pays for health care services on the basis of claims submitted after services are rendered, similar to the approach used by Medicare and throughout the health

care industry. Medicare requires providers to file claims on behalf of beneficiaries, which increases efficiency of claims processing, because claims are more accurate and complete, and reduces paperwork burdens for beneficiaries. This final rule implements a statutory requirement in the National Defense Authorization Act for Fiscal Year 1992 that establishes a general obligation for both institutional and individual providers also to file CHAMPUS claims on behalf of beneficiaries.

C. Adapting the Medicare Fee Schedule Approach to CHAMPUS

In January 1992, Medicare implemented a new fee schedule for physician payments, based on a resource-based relative value scale (RBRVS). Rather than basing allowable payments for health care services on the historical charges submitted by providers, the approach uses the relative resource requirements of procedures as the basis for allowable payments. Each service is reimbursed based on its value, which is the sum of relative value units representing physician work, practice expenses, and the cost of professional liability insurance. Nationally uniform relative values are adjusted to localities according to published geographic practice cost indices, and a national conversion factor is used to convert total relative value units into dollar payment levels. Medicare is in transition from its former historical-charge-based payment approach to the Medicare Fee Schedule; the new approach will be fully implemented in 1996.

The Medicare Fee Schedule is the culmination of long-term efforts to achieve a rational payment system for physicians, involving experts from inside and outside the government. A research team led by William Hsiao, Ph.D., of the Harvard University School of Public Health, produced a series of seminal reports on development and application of resource-based relative value scales for physician services. Additional substantial contributions to the development of the Medicare Fee Schedule were made by the Federally-sponsored Physician Payment Review Commission, the Urban Institute, and the Center for Health Economics Research. Thorough consideration of the theoretical and practical effects of implementing the Fee Schedule preceded its introduction in 1992.

In examining the Medicare Fee Schedule payment approach, we are encouraged that evidence to date indicates that it will provide a reasonable basis for determining appropriate CHAMPUS payment limits, if we proceed prudently. Among the points that encourage us, monitoring of the Medicare system to date has uncovered no systematic evidence that implementation of the new approach has reduced access to care for Medicare beneficiaries. On the contrary, results of a Louis Harris & Associates survey commissioned by the Physician Payment Review Commission (PPRC Annual Report to Congress, 1993) indicated that 94 percent of doctors with substantial Medicare practices still accepted new Medicare patients in the last six months of 1992. Further, of those who did not, most also had not done so the prior year, before the new payment system was implemented.

In addition, a PPRC survey of beneficiary complaints in 1992 found that in general, "Medicare beneficiaries registered few or no complaints regarding access to care." (*Id.*, page 97.)

Perhaps most significant, Medicare claims data show that through the early implementation of the fee schedule, both assignment (acceptance of the Medicare allowed charge as payment in full) and participation (acceptance of assignment on all claims) increased. According to the PPRC report (page 105):

> Based on the first six months data from 1992, the implementation of the fee schedule was accompanied by increased participation and assignment and reduced balance billing. Early claims data show a 34 percent reduction in the total amount of balance billing. Of total Medicare payments for physicians' services, 76 percent were paid to participating physicians, and 86 percent were paid on assignment. These figures all continue recent trends toward greater participation rates and reduced balance billing.

These trends have continued into 1993. According to data from the Health Care Financing Administration, during the first quarter of calendar year 1993, 84 percent of Medicare payments for physicians' services were paid to participating physicians, and 93 percent were paid on assignment. Thus, concerns about adverse impacts on beneficiaries resulting from implementation of the Medicare fee schedule have not been observed to date.

The early experience of Medicare following implementation of the Medicare Fee Schedule mirrors the experience of CHAMPUS over the past several years. Although growth in CHAMPUS prevailing charge limits for physicians and other individual professional providers was constrained beginning in 1989, no adverse impact on access, as indicated by provider participation rates, has been observed. On the contrary, there has been a steady increase in the percentage of claims on which providers accept the CHAMPUS allowable amount as full payment—this "participation rate" was 67.8 percent in the first quarter of 1989, and rose to 81.8 percent by the second quarter of 1992. This suggests that the revisions to CHAMPUS payment policy to date have not adversely affected beneficiary access to care.

The fundamental soundness of the Medicare approach, the early indications that it is not causing adverse effects, and recent CHAMPUS experience all suggest that adapting it to CHAMPUS can be accomplished without creating access problems, if we proceed carefully. Accordingly, we will phase in payment reductions, in line with Congressional guidance, and provide ongoing controls to assure access to care. These protections will be based on analysis of data from each locality to provide maximum protection, and will include a special "fail-safe" mechanism in the form of a new provision for petitioning for relief in special circumstances. In addition, new emphasis will be placed on the Participating Provider Program, which will provide beneficiaries with increased access to providers who accept the CHAMPUS maximum allowable charge as full payment. Finally, new limits on balance billing by providers who do not accept assignment will provide an additional measure of financial protection for beneficiaries.

D. Public Comments

The proposed rule was published in the **Federal Register** December 10, 1992 (57 FR 58427). We received 29 comment letters. All of these were from providers and provider associations. Many of them were quite similar in content and wording. Some were very detailed and provided helpful analytical input. We thank those who provided comments. Specific matters raised by commenters and our analysis of the comments are summarized below.

II. Payments to Physicians and Other Authorized Individual Professional Providers

A. Provisions of Proposed Rule (Revisions to Section 199.14(g))

Pursuant to the Fiscal Year 1991 Department of Defense Appropriations Act, Public Law 101–511, section 8012, CHAMPUS published a final rule on September 6, 1991 (56 FR 44001), which established a process for identifying "overpriced procedures" and reducing the CHAMPUS maximum allowable charges for such procedures. Procedures

targeted for reduction were those which exceeded 1.5 times the Medicare Fee Schedule amount. This target was based on a comparison of existing CHAMPUS payment limits to the new Medicare amounts. In the aggregate, CHAMPUS payment limits were about 1.5 times the Medicare amounts.

The proposed rule contained a new standard for determining overpriced procedures for CHAMPUS, based on the Department of Defense Appropriations Act, 1993, section 9011. The new standard of comparison is the fully phased in Medicare Fee Schedule amount under Medicare. Thus, under the proposed rule, for procedures for which the CHAMPUS maximum allowable charge is above the fully phased in Medicare Fee Schedule amount, the CHAMPUS level would be reduced, unless the reduction is waived because of access considerations. The reduction would not exceed 15 percent per year, nor result in a CHAMPUS level below the Medicare level.

Simultaneous with implementing its reductions for overpriced procedures based on the FY 1991 statute, CHAMPUS implemented a process for determining prevailing charges on a national basis, with local economic adjustments (similar to the approach used by Medicare). This system replaced state-by-state prevailing charges with more precise locality-based maximum allowable charges. We have received sporadic reports of localities where the combined effect of the "overpriced procedure" reductions and the shift from state-based to locality-based payment limits was to reduce payments for some procedures by more than fifteen percent in some localities.

To respond to these concerns, the proposed rule included limitations on reductions in maximum allowable charges for localities. For any procedure with more than 50 annual claims in a locality, the cumulative reduction cannot exceed 15 percent per year in the locality. We proposed to use the threshold of 50 claims per year involving that specific procedure in that locality to assure the statistical validity of the calculations and the practical relevance of this special step.

In order to protect beneficiaries and avoid impairing access to care, the proposed rule included two separate mechanisms to assure adequate access to care. The first of these was an objective, statistical test; the second was a flexible method that will allow a case-by-case judgment of any special factors in any locality.

Under the first procedure, we proposed to monitor the amount of balance billing of beneficiaries for all specific procedures (other than very infrequent procedures) in all localities. Balance billing refers to a provider billing a beneficiary for any amount above the CHAMPUS payment rate (not counting normal deductibles and cost sharing amounts). Again, we proposed a threshold of 50 claims per year in a locality involving the particular procedure to assure the statistical validity of the test. In any case in which a reduction of the CHAMPUS payment level would have taken place based on the comparison to the Medicare level, the reduction would be waived if in the previous year the number of claims on which there was no balance billing falls below a certain level. In the proposed rule, we set that level at 50 percent of all claims in that locality involving that procedure. As discussed below, we have revised this threshold in the final rule to 60 percent. Thus, if the number of claims for which there is no balance billing falls below 60 percent, we will consider there to be an access problem, and waive the reduction. However, as long as at least 60 percent of the claims for a procedure in a locality have no balance billing, we have a basis to be reassured that beneficiaries have access to that procedure from providers who will accept the CHAMPUS payment level as payment in full.

Recognizing that no statistical test can take account of all possible circumstances, the proposed rule included a second mechanism to assure adequate beneficiary access to care. This was to allow a waiver of a payment level reduction based on a determination by the Director, OCHAMPUS that the reduction would impair access. This determination could be based on any relevant evidence, and could be made by the Director, OCHAMPUS on the Director's own initiative, or based on a petition from providers and beneficiaries for such a determination. As with the waiver based on balance billing, we would expect that this fall-back waiver mechanism will not be frequently needed, but it was incorporated into the proposed rule as a fail-safe method to assure adequate access.

B. Analysis of Major Public Comments

1. Appropriateness of Medicare Rates

A number of commenters representing physicians challenged the premise that Medicare rates are adequate, such that they should be used as a benchmark for reasonable CHAMPUS payment amounts. These commenters argued that Medicare's conversion factors and other calculations are affected by budget considerations unrelated to adequacy of payment levels. Some of these commenters pointed to a number of defects they believe exist in the Medicare system. They further argued that to the extent CHAMPUS reduces reimbursement rates based on Medicare fee levels, CHAMPUS beneficiaries may experience access problems.

Response. We continue to believe that the statutory requirement that we use Medicare rates as the benchmark for determining which CHAMPUS rates are overpriced is reasonable and appropriate. These rates reflect the collective judgment of Congress and the Executive Branch regarding adequate payment levels in the context of the nation's largest health care program. Assuring beneficiary access to care, as well as maintaining fairness to providers, are weighty considerations in connection with this collective judgment.

We have not, however, accepted this premise purely on faith. Rather, we have built into the rule checks and balances to measure the actual marketplace consequences of the payment rates established for CHAMPUS based on Medicare benchmarks. One of these checks and balances is our phased reduction to the Medicare rates. Under the final rule, we will apply the 15 percent reduction limit by geographical area. This will assure a transition gradual enough that we will be able to measure carefully its effects.

Another checks and balances mechanism is that in any case in which payment levels might become too low, based on the actual marketplace reaction, our waiver procedures will be activated to prop up the CHAMPUS payment level. Our measure of marketplace reaction is the extent of balance billing. If less than 60 percent of the claims in an area involving a particular procedures have no balance billing—a matter purely within the control of the provider community and the marketplace—our waiver kicks in. Further, we provide a fall-back waiver if there are special circumstances not reflected in the statistical test. These waiver procedures provide strong safeguards of beneficiary access.

Based on these considerations, we continue to believe that the basic premise of using Medicare rates as a benchmark is reasonable and appropriate, as long as we proceed cautiously, with prudent checks and balances.

2. Medicare Rates Still Being Refined

A related comment made by several physician groups was that for certain categories of procedures, including obstetrical care, the Medicare payment

methodology is still being refined. A similar comment pointed out the relative immaturity of the Medicare payment system, suggesting that further experience is needed before replicating it. These commenters appeared to be concerned that some CHAMPUS rates could be reduced prematurely, resulting in a CHAMPUS rate potentially less than the final Medicare rate, when eventually established.

Response. We agree with these commenters that there could be circumstances in which a CHAMPUS Maximum Allowable Charge (CMAC) that was reduced because it was higher than the Medicare fee could later be too low if the Medicare Relative Value Unit (RVU) is subsequently increased pursuant to HCFA's continuing refinement process. We have made a revision to the final rule to establish a special rule for any case in which the national CMAC has been reduced to a point at which is lower that a subsequently increased Medicare fee. The special rule is that the national CMAC reduction will be restored to the extent necessary to bring it up to the national Medicare fee.

We note, however, that we do not anticipate that this will be a frequent occurrence. HCFA undertook a massive review process during the first year of the RBRVS system to address major inaccuracies in the relative value units. Any well-documented and specific petition for reconsideration of a CPT code's RVU was included in the refinement process. This process considered about 800 procedures, and hundreds of CPT codes had their RVUs adjusted. HCFA described this extensive review process in the November 25, 1992, **Federal Register** (57 FR 55917–55987). Any major discrepancies in the RVUs should have thus been incorporated into new values or justified at their existing values during this past year. In our March 1993 CMAC revision, we incorporated changes made by HCFA between the 1992 and 1993 RVUs. We, therefore, believe that any major inaccuracies in the RVUs have been addressed, both by HCFA and DoD.

3. CHAMPUS Fee Lower Than Medicare Fee

Another similar comment was that if Medicare fees are considered the proper payment amount, then in any case in which the CMAC is below the Medicare fee, the CMAC should be increased.

Response. We agree with this comment. We have made a revision to the final rule to state that in any case in which the national CMAC is below the national Medicare fee, the CMAC will be increased by the Medicare Economic Index up to the Medicare fee. Also, when CHAMPUS rates equal Medicare rates, the CHAMPUS rates will be annually adjusted along with the Medicare rates to maintain that relationship.

4. Population Differences

Another comment made by several commenters was that the differences in the beneficiaries served, particularly Medicare's predominant focus on the elderly, make Medicare fees an inappropriate benchmark for CHAMPUS.

Response. The RBRVS relative values of various medical and surgical procedures were not developed based on the elderly population, but a typical patient population. Thus, the fundamentals of the system are not distorted by age differences. It is true that some features of the system, such as the conversion factors, are established specifically in relation to the Medicare program, and would not necessarily be identical if established exclusively for CHAMPUS. However, this is where our waiver procedures assure that any inappropriate consequences that might result from CHAMPUS following a Medicare action can be avoided.

5. Different Services Covered

Several commenters argued that another reason why Medicare rates are inappropriate for CHAMPUS is that CHAMPUS covers some services not covered by Medicare.

Response. It is true that there are some services, such as certain preventive care services, not covered by Medicare that are covered by CHAMPUS, although there are not many of these. These services will, of course, continue to be covered by CHAMPUS, and, notwithstanding any differences in covered services, comparisons with Medicare fees will be based on appropriate comparable data.

6. Different Program Purposes

Several commenters asserted that another reason why Medicare rates are inappropriate for CHAMPUS is that the two programs have different purposes: Medicare is a government entitlement program; CHAMPUS is more in the nature of an employee compensation program.

Response. There are many parallels between Medicare and CHAMPUS and numerous statutory provisions directly linking the two programs. Whatever philosophical arguments there might be about underlying purposes, the basic facts are that Congress has established what it considers to be reasonable payment rates and other management procedures for Medicare and has repeatedly authorized or directed CHAMPUS to follow them. In view of the similar attributes of the two programs, which clearly outnumber any arguable differences in purpose, we believe the Congressional judgment is correct.

7. Geographic Practice Cost Indices

Another comment relating to the replication by CHAMPUS of Medicare procedures was that the geographic practice cost indices (GPCIs) used by Medicare inadequately reflect actual practice costs and should not be relied upon by CHAMPUS.

Response. We acknowledge that refinements are likely in the Medicare GPCIs, and look forward to implementing those refinements when made by Medicare. In the meantime, we believe our checks and balances protect against any adverse impacts. Our 15 percent per year limit on reductions is applied on a locality basis, as are our balance billing waiver test and fail-safe waiver authority. These checks and balances protect against undesirable effects on a locality basis, whether attributable to the GPCI calculations or otherwise.

8. Waiver Procedures

Several comments addressed our proposed procedures for waiving a reduction in the CHAMPUS payment rates for overpriced procedures. One major physician association commended us for "foresight" in establishing these waiver procedures. This commenter and others suggested revisions in procedures, however. Some commenters urged a change in our proposal to limit the balance billing test waiver to procedures for which there were at least 50 claims in a locality in the prior year, arguing, among other things, that for new procedures, this test would not be met. Some thought our 50 percent balance billing test was too high, and that we should consider a substantial increase in current balance billing rates to signal an access problem, even if the overall rate of balance billing claims remains fairly low. Another comment urged consideration of any reduction in the number of providers under the CHAMPUS program, on the grounds that reduced choice of providers would not necessarily be reflected in balance billing rates. Another comment regarding waivers requested further details on procedures for the waiver authority based on other evidence of access problems.

Response. First, we thank the commenter who commended our efforts in this area. In preparing the proposed rule, we devoted a great deal of attention to establishing workable, effective waiver procedures to assure that we would not make inappropriate payment rate reductions, and we are grateful this effort was noticed.

We have again reviewed our tentative decision to apply a 50 claim minimum for the balance billing test. This review has reaffirmed our view that this is necessary to assure a statistically valid comparison. Without this limit, payment rates for certain procedures could much more likely be artificially affected by the actions of one or two providers or by anomalous claims data. It should be understood that the vast majority of CHAMPUS professional services will be covered by a test that includes a 50 claim requirement for statistically reliable results. In fact, our most recent claims data show that 89 percent of physician services will be covered under this criteria. It is also noteworthy that for new procedures, CHAMPUS follows careful crosswalk procedures to align old procedure codes with new ones, thereby generating historical claims data. Finally, if any special circumstance should arise in which a meritorious case is not recognized because of the 50 claim limit, there remains the fall-back authority to consider a waiver based on any evidence of access problems.

With respect to the balance billing test of a majority of claims involving no balance billing, we have carefully considered the suggestions that we should recognize a lower level of balance billing as signalling possible access problems, and are making a change. In the final rule, if the number of claims for which there is no balance billing falls below 60 percent, we will waive a reduction that would otherwise occur.

To those who might see the waiver authority as a way simply to maintain higher fees, we note that the statute establishes the waiver authority if a fee reduction "would impair adequate access to health care services for beneficiaries." We do not believe this means that every doctor in town has to be satisfied with the CHAMPUS payment rates. We believe the proper question is: Are physician services reasonably available in that locality for which the CHAMPUS Maximum Allowable Charge will be accepted as payment in full? As long as 60 percent of claims involving a particular procedure do not include any balance billing, it is a reasonable assumption that beneficiaries in the area have access to providers who will not require balance billing. If there are special circumstances in which this assumption is incorrect, the fall-back waiver process will be available.

Similarly, we think it a reasonable assumption that if a significant number of providers in an area believe the CHAMPUS payment levels are too low, it is unlikely that this would manifest itself in a noticeable number of physicians refusing to treat CHAMPUS patients, but not manifest itself in high balanced billing rates. However, again, the fall-back waiver process is available to look at any special cases where the balance billing test fails to detect a problem.

Regarding the procedures for activating the fall-back waiver, we prefer to avoid rigid procedures. Rather, we want a flexible process than can react to any credible evidence that a reduction in the CHAMPUS Maximum Allowable Charge to move it toward the Medicare fee for that procedure would cause adverse effects for beneficiary access to care in a locality. We thus are not establishing detailed procedures or formats.

We have, however, made two revisions to the proposed rule regarding waiver procedures. One relates to the opportunity for any affected party to petition for a waiver based on evidence that adequate access to care would be impaired. We have revised the rule to state that any petition received 120 days prior to the implementation of every scheduled recalculation of CHAMPUS Maximum Allocable Charges will be considered and answered prior to the recalculation. In general, recalculations are scheduled for implementation January 1. Thus, petitions received by September 1, would be assured of consideration in the regular update cycle. However, petitions may be submitted at any time. If during the course of a year, problems are identified attributable to a reduction made at the beginning of the year, the reduction may be restored, resulting in services provided in the remainder of the year being paid on the basis of the restored level.

The second revision to the proposed rule concerning waiver procedures is that the final rule makes clear that waiver decisions are not subject to the CHAMPUS appeals and hearings procedures. These procedures apply to case-specific adjudications. The waiver processes are exercises of statistical measures and discretionary policy judgments, and are not appropriate for appeals and hearings adjudications.

9. Comparative Data Availability

One commenter asked for clarification of a statement in the proposed rule that during the process of comparing CHAMPUS rates to Medicare rates, if comparable CHAMPUS and Medicare data are unavailable, but there are reasonable alternative data sources, the alternative data may be used.

Response: This provision is to cover situations, such as a redefinition of procedure codes or other circumstances, in which CHAMPUS claims were not coded identically to Medicare claims. In such cases, the reasonable thing to do is to establish appropriate "crosswalks" or apply some other sound analytical judgment to put the data sets on a basis for proper comparison. The provision of the rule authorizes this type of action.

10. Pediatric Services

Most of the comment letters we received were from providers of pediatric services, including physicians, children's hospitals, and associations. They asserted that physician costs for caring for children are higher than providing the same services to adults, citing, among other things, a report of the Physician Payment Review Commission (PPRC) suggesting that such a children's differential might exist for some services. Therefore, they argued, it would be improper to allow payments for pediatric care to be based on determinations of the value of services in the context of adult populations. These commenters suggested that increases to payments be made for care provided to children in comparison to the same service provided to an adult.

Response. Because we considered this such an important issue, we commissioned a study by Lewin-VHI, a prominent health care consulting firm, of CHAMPUS claims data to determine whether CHAMPUS experience supported the thesis that physician costs for caring for children are higher. We believe that if this thesis is true, it would be reflected in the billed charges submitted to CHAMPUS by physicians. A copy of the Lewin-VHI study will appear as Attachment 1 (to be published later) to this preamble.

The results of this study clearly fail to support the thesis that costs for children's care are generally higher. Only 12.3 percent of all CHAMPUS payments for services for children are in categories of care for which charges for pediatric care are higher, to a statistically significant extent, than charges for providing the same service to adults. In contrast, 56.2 percent of all CHAMPUS payments for services for

children are in categories of care for which charges for pediatric care are lower, to a statistically significant extent, than charges for providing the same service to adults. For the remainder, there is no statistically significant difference, or age differences are already captured by age-specific procedure codes. (These percentages compare children ages 0–5 with adults.)

Lewin-VHI also specifically examined CHAMPUS data on the three procedures the PPRC listed as examples for which a children's cost differential might exist. For two of these, no statistically significant difference was found. For the other, charges for pediatric cases were significantly less than charges for adult care.

As part of this study, we sought information on the effects of each of three options: (1) Establish no special payment differential for pediatric care (i.e., the position reflected in the proposed rule); (2) establish a special payment differential for pediatric care that pays extra for procedures for which there is evidence of higher costs for pediatric care and makes no adjustment for procedures for which there is evidence of lower costs for pediatric care (the probable preference of the commenters on this issue); and (3) establish a special payment differential for pediatric care that pays extra for procedures for which there is evidence of higher costs for pediatric care and pays less for procedures for which there is evidence of lower costs for pediatric care (a compromise option).

With respect to option 2, Lewin-VHI calculated the additional payments for pediatric care that would be needed to fully reimburse all of the services for which the study identified potential higher costs for children. Lewin-VHI reported that if we were to increase CMACs for pediatric care (ages 0–17) for procedures for which there is evidence of probable higher children's costs by the same percentage by which pediatric charges exceed adult charges, total CHAMPUS pediatric payments would increase by less than three percent above current payments. Put another way, if we viewed option 2 as 100 percent fair, we would have to view option 1, based on our study, as about 97 percent fair. We did not calculate the payment effects of option 3, but it would certainly produce a significant net decrease in CHAMPUS payments for pediatric care.

Were we inclined to adopt a payment differential, we would see option 3 as presenting much stronger policy justification than option 2. If a payment system should recognize apparent cost differences based on patients' ages, then the differences should be recognized without bias as to which providers would be "winners" or "losers."

However, our conclusion is to stay with option 1. The payment system is already extraordinarily complex, with payment differences based on thousands of procedure codes, hundreds of geographical localities, and numerous special calculations and checks and balances. Theoretical possibilities for increased precision are numerous, if not limitless. But valid statistical data to support such precision is quite often lacking, and the resulting administrative burden and increased confusion can be very counterproductive. Like all prospective payment methods, claim-by-claim precision in producing the "correct" payment is not achievable. The objective must be to produce a system that, on the whole, provides fair payment. Our view is that additional layers of complexity should be adopted only to serve compelling needs. The proposed pediatric differential does not meet this test.

Furthermore, we are very reluctant to alter the relative values for pediatric services without concrete research on this matter, rather than general comments or anecdotes. We understand that legislation has been introduced in Congress this year (similar to a provision in legislation passed last year, but vetoed by President Bush) that would require the Secretary of HHS to study and develop RVUs for pediatric services. We will evaluate such research and reconsider our position on this matter if indicated by the results of such a study.

11. Obstetrical Services

One commenter representing obstetricians and gynecologists argued that the Medicare rates are particularly inappropriate as a benchmark for reasonable payment levels for obstetrical care because of its lack of relevance for the Medicare population. This commenter criticized a number of features of the HCFA determinations regarding obstetrical procedures.

Response. We believe that some of these criticisms of the initial HCFA calculations concerning obstetrical care had validity. However, HCFA gave serious attention to obstetric RVUs during the first year refinement process, and increased several considerably (notably vaginal delivery codes 59400 and 59410). HCFA also addressed, in its 1993 RVU schedule, previous data problems regarding obstetrical practice expenses. CHAMPUS made corresponding refinements during our March 1993 revisions. We would similarly respond to any new refinements to obstetrical RVUs.

12. Pathology Services

One commenter suggested that CHAMPUS follow Medicare procedures regarding the national list for clinical pathology interpretations and CPT coding conventions.

Response. We agree that pathology services should follow the definitions used by the CPT and Medicare, and will do so in implementation of the final rule. We will clarify and standardize this policy with our fiscal intermediaries. With few exceptions, we do follow the same classification as Medicare in determining which procedures are paid under the CMAC system (and can have a professional component) and which are considered clinical laboratory procedures only. Also, we update our list when Medicare does, when feasible. Due to limitations of our data systems, we have not included procedures which are split by Medicare between the Medicare fee schedule and the clinical laboratory payment system, and thus only have RVUs listed for a component, rather than the global service. When feasible, we will incorporate these codes into the CMAC system in the future.

13. Clinical Laboratory Services

The same commenter argued that because Medicare payment rates for pathology services are based not on a relative value study, but on historical Medicare charges, the basis for considering these rates a reasonable benchmark is lacking, especially in light of anticipated cost increases associated with implementation of the Clinical Laboratories Improvements Amendments of 1988 (CLIA).

Response. Although the Medicare payment basis for clinical laboratory services is different than physician services, we believe the same essential premise holds that judgments made by Congress and the Executive Branch regarding adequate payment levels for the nation's largest health care program are presumptively valid for CHAMPUS, subject to exceptions based on marketplace effects and our commitment to protect beneficiary access. Furthermore, the General Accounting Office issued a report on this subject that did involve a study of appropriate payment rates for lab services: "Medicare Payments for Clinical Laboratory Test Services Are Too High," June 1991 (GAO/HRD–91–59). This study estimated that laboratories would earn a 26 percent profit rate on Medicare business in 1991, considerably higher than the

average rate of return on all customers. This study also found that Medicare paid 72 percent more than discount customers during the time period evaluated (1988–90). We thus cannot agree that Medicare rates are an inappropriate comparison for CHAMPUS, since current CHAMPUS laboratory prevailing charges are much higher than the Medicare rates.

14. Radiology Services

One commenter raised a number of concerns regarding payment for radiology services. The commenter provided us copies of detailed criticisms of Medicare program decisions affecting radiology and urged that we not follow a system with such alleged defects. The commenter also recommended that CHAMPUS limit payment reductions to 9 percent per year, rather than 15 percent, because Medicare adopted a 9 percent limit for radiology services.

Response. Medicare's 9 percent cap on reductions to radiology payment limits pertained only to the initial 1992 calculations of the baseline transition payment from 1991 allowed charges, which was done in response to the Omnibus Budget Reconciliation Act of 1990. After that, radiology services are subject to the same transition formula as other Medicare physician services. CHAMPUS received no such direction from Congress that radiology services should be treated differently, even for one year. Moreover, CHAMPUS' radiology services as a group currently have a higher ratio of CMACs to Medicare fees than either medical or surgical services, reinforcing our view that there is no basis for establishing a special, lower limit for reducing CMACs for overpriced radiology procedures.

C. Provisions of Final Rule

On the issue of payments to physicians and other authorized individual providers, the final rule is similar to the proposed rule. As noted above, we have made revisions to: establish a more sensitive threshold for waiving a reduction in the CHAMPUS payment rate for overpriced procedures when the reduction might impair beneficiary access, now providing for a waiver if the number of claims on which no balance billing is required falls below 60 percent (instead of 50 percent, as in the proposed rule); provide for increases in the CHAMPUS Maximum Allowable Charge in cases in which it becomes less than the Medicare fee; clarify that we will restore any reduction in a CMAC based on a Medicare fee that is later revised to become higher than the reduced CMAC; provide that petitions for waiver of reductions in fees for overpriced procedures that are received at least 120 days prior to the recalculation of fees will be decided upon in connection with that recalculation; and clarify that the CHAMPUS appeal and hearing procedures do not apply to waiver determinations.

III. Limitations on Balance Billing

A. Provisions of Proposed Rule (Revisions to Section 199.14(g)(1)(i)(D))

The Department of Defense Appropriations Act, 1993, section 9011 also directs that CHAMPUS include a limitation, similar to that under Medicare, on the extent to which a provider may bill a beneficiary an actual charge in excess of the allowable amount. This limitation on balance billing provides financial protection for beneficiaries by preventing excessively high billing by providers. The proposed rule established the CHAMPUS balance billing limit as the same percentage as that used in Medicare: 115 percent of the allowable charge. Failure by a provider to comply with this requirement is a basis for exclusion from the program. In order to provide flexibility to continue CHAMPUS benefits in special circumstances in which a beneficiary might feel strongly about using a particular provider, notwithstanding high fees, the proposed rule stated that the limitation may be waived on a case-by-case basis if requested by a CHAMPUS beneficiary.

B. Analysis of Public Comments

Several commenters representing physicians addressed this issue. They argued that there should be no balance billing limit, or that the limit should be higher than Medicare's limit, or that, at least, the limit should be phased in. These commenters believe the limit would impair beneficiary access to their providers of choice.

Response. believe it is appropriate to protect beneficiaries against excessive balance billing. We have committed ourselves to monitoring carefully balance billing trends with an objective of assuring that a majority of claims in all localities for all procedures of appreciable volume have zero balance billing. Where this is not maintained, we are willing to maintain CHAMPUS payment rates at a level higher than Medicare's. Based on our willingness to do this, we do not believe providers need to also maintain balance billing levels higher than those allowed by Medicare, absent some special circumstance. In a special circumstance, the limitation can be waived if requested by the beneficiary.

C. Provisions of Final Rule

The final rule is consistent with the proposed rule. We have made one revision to this provision. As in the case of waivers of CMAC reductions, waiver decisions on balance billing limits are not subject to the CHAMPUS appeal and hearing procedures.

IV. Filing of Claims by Providers

A. Provisions of Proposed Rule (Revisions to Section 199.6(a)(11))

The proposed rule included implementation of a provision of the National Defense Authorization Act for Fiscal Year 1992 that requires providers to file claims on behalf of CHAMPUS beneficiaries and limits the claims filing period to one year following the date of service. Pursuant to 10 U.S.C. section 1106, the proposed rule generally required all institutional and individual providers to file claims on behalf of beneficiaries. This requirement was modeled after a similar Medicare requirement. See S. Rept. No. 102–113, 92d Cong., 1st Sess., p.232 (Senate Armed Services Committee). The proposed rule allowed exceptions in certain circumstances. Blanket waivers of the requirement were proposed for providers outside the United States and Puerto Rico, and in double coverage cases. Waivers for particular categories of care in particular localities where the enforcement of the requirement would impair access were also authorized to be granted through a determination by the Director, OCHAMPUS. A special petition process was proposed, similar to that established for waivers of CHAMPUS maximum allowable charge reductions.

We proposed to implement the claims filing requirement in a manner similar to Medicare. This includes a prohibition on a provider imposing any administrative charge relating to the claim filing requirement and authority to reduce allowable payment amounts by ten percent (which may not be balance billed to the patient) for providers who fail to comply with the requirement or obtain a waiver.

The general deadline for filing claims of one year from the date the services were provided, established by the National Defense Authorization Act for Fiscal Year 1992, now appears at 10 U.S.C. 1106. This is a change from current practice, which allows a claim to be filed up until the end of the calendar year following the year in which the services were provided. This new deadline, like the new provider claim filing requirements, is subject to waiver when necessary to ensure adequate access to health care services.

This issue was addressed in proposed section 199.7(d).

B. Analysis of Public Comments

One commenter suggested that for some procedures, a 10 percent reduction in the payment amount for a claim a provider fails to submit may be punitive, and, therefore, that the reduction should, except for repeat offenders, be limited to a set dollar amount.

Response. The statute recognizes issues relating to beneficiary access as deserving consideration for an exception to the general rule of provider filing. We believe our proposed rule, by including several possibilities for waiver of the requirement where such circumstances exist, already reflects considerable accommodation to providers. During the initial implementation of the requirement, while providers and beneficiaries are becoming aware of it, we expect to have a flexible waiver approach. We will waive the penalty for the first six months of implementation, using the period to include warning notices to providers and information to beneficiaries in response to claims not filed by providers. Beyond this, however, we do not see a strong policy reason why providers of expensive services who refuse or fail to comply with either filing or waiver procedures should receive further accommodation.

C. Provisions of Final Rule

The final rule is consistent with the proposed rule. One clarification has been made. Consistent with the above discussion regarding waivers of payment reductions, decisions to waive or not waive the claims filing requirement are not subject to the CHAMPUS appeal and hearing procedures.

V. Participating Provider Program

A. Provisions of Proposed Rule (Proposed Section 199.6(a)(8)(iii))

Historically, individual providers have determined participation in CHAMPUS on a claim-by-claim basis. The proposed rule built into the CHAMPUS regulation provisions that have been in effect for several years regarding the Participating Provider Program, in which providers may sign agreements to participate on all claims, agreeing to accept the CHAMPUS-determined allowable amount as payment in full for the service provided. This Participating Provider Program establishes a basic relationship among providers, CHAMPUS beneficiaries, and CHAMPUS. As such, it may be a building block for more extensive programs, entailing discounts, preferred provider arrangements, or other additional provisions to enhance services for CHAMPUS beneficiaries. The Participating Provider Program offers benefits to beneficiaries, in that they can be assured access to providers who will not balance bill, and for providers, in that CHAMPUS beneficiaries will tend to seek out Participating Providers.

Beneficiaries will be assisted in locating Participating Providers by several resources. First, Health Benefits Advisors in military treatment facilities will have lists of Participating Providers. In many cases, this service will be supplemented by a Health Care Finder, often a telephone service center to aid beneficiaries. CHAMPUS contractors will compile lists of Participating Providers to support this activity.

A significant incentive for providers to join the Participating Provider Program would, under the proposed rule, be implemented in 1994. Similar to Medicare, CHAMPUS would institute a 5 percent differential for nonparticipating providers, so that their reimbursement will be only 95 percent of the rate allowable for Participating Providers. Coupled with the potential for increased volume of CHAMPUS business for Participating Providers, the differential would provide a strong basis for providers to join the program.

B. Analysis of Public Comments

Several commenters recommended elimination of the 5 percent differential, arguing that it would not likely have a positive impact on participation rates and may convince physicians that it is another regulatory obstacle in connection with treating CHAMPUS patients. One commenter suggested that if we are determined to establish this payment differential for participating providers, we should do so on a claim-by-claim basis.

Response. Our view is unchanged that the method adopted by Congress to encourage provider participation in Medicare is also appropriate for CHAMPUS. We do not believe this action will discourage physician involvement with CHAMPUS. Rather, we believe it creates an opportunity for many providers who have expressed an interest in being involved in a preferred relationship with CHAMPUS to do so. With respect to the suggestion of claim-by-claim application of the 5 percent differential, we believe this would not be advantageous for providers, beneficiaries, or the program. The Participating Provider Program will function effectively only if there is simple consistency in the program. Physicians can decide if they want to be Participating Providers. Beneficiaries can be told who are Participating Providers, and can establish their medical care patterns accordingly.

C. Provisions of Final Rule

No substantive revisions have been made to this portion of the rule.

VI. Ambulatory Surgery Reimbursement

A. Provisions of Proposed Rule (Proposed Section 199.14(d))

The proposed rule addressed one of the last remaining circumstances in which CHAMPUS reimburses care on the basis of billed charges. Payment reforms have previously been adopted for most hospital care, for most inpatient mental health services and for physician reimbursements. Proposed § 199.14(d) would put into effect a prospective payment approach to reimbursement for facility charges for ambulatory surgery, including that provided in freestanding ambulatory surgery centers and in hospital-based outpatient or ambulatory surgery clinics. This is being done under the authority of 10 U.S.C. 1079(j)(2), which authorizes CHAMPUS to pay all institutional facility providers under payment methods similar to those implemented under Medicare. The proposed CHAMPUS system would establish nine group payment rates covering most ambulatory surgery cases. There would be two sets of these group payment rates, one for freestanding ambulatory surgical centers and one for hospitals, each calculated with reference to the appropriate cost-to-charge ratio for that type of provider.

In addition, proposed § 199.4(f)(3)(iii)(B) would establish for retirees, their dependents and survivors similar cost sharing rules for ambulatory surgery cases as currently exist for hospital care covered by the DRG-based payment system. Under the proposed rule, these beneficiaries would pay the lesser of: 25 percent of the applicable group payment rate; or 25 percent of the billed charges. In most cases, 25 percent of the group rate under the new payment method will be less, but because there is some variation within a group, 25 percent of billed charges could be less in some cases. The rule would assure that the beneficiaries get the benefit of the new system when it is more advantageous, but will never be disadvantaged by it. Finally, it is noted that this special cost sharing rule would not apply to dependents of active duty,

who are not required to pay a percentage cost share for ambulatory surgery. Rather, they pay the same nominal fee as is charged for inpatient care.

B. Analysis of Public Comments

1. Pediatric Care

Several commenters argued that reimbursement rates for ambulatory surgery for children should be higher than for the same surgical procedures for adults on the grounds that costs to the institution are higher for care for children.

Response. We are aware of no evidence that institutional costs of ambulatory surgery for children are higher, and none was presented by these commenters. Having undertaken a thorough analysis of the similar argument in the case of physician costs and found, as discussed above, no evidence in CHAMPUS claims data to support the argument, we do not believe there is any solid policy basis for an extra payment to institutions for cases involving children.

2. Procedures Affected

Several commenters asked for an identification in the regulation of what procedures are considered ambulatory surgery, and stated that they were unable to comment on the proposed rule without this information.

Response. Although the proposed rule did not include a list of the procedures covered by the proposed ambulatory surgery reimbursement method, we believe the scope of the term "ambulatory surgery" is fairly well understood based on established CHAMPUS practice and established Medicare policy, which the proposed rule indicated was the model for the proposed CHAMPUS payment method. A list of ambulatory surgery procedures will appear as Attachment 2 (to be published later) to this preamble. This list is quite similar to Medicare's list, with a number of additional procedures that are common in the CHAMPUS population but uncommon or less common in the Medicare population.

3. Publication of Rates.

These commenters also stated that they could not comment on the proposed rule because it did not publish the actual payment rates. They suggested that a new proposal be issued, with actual payment rates.

Response. We have not yet calculated the actual rates. We believe, however, that the methodology was clearly spelled out in the proposed rule. Although the exact dollar consequence of the new payment method could not have been determined, we believe the policy of converting from a charge based reimbursement system to a cost based reimbursement method, the reference to the Medicare system as the model, and the precise methodology for calculating rates were all set forth in the proposed rule with sufficient particularity to permit understanding and comment.

C. Provisions of Final Rule.

The final rule incorporates several changes and clarifications to the proposed rule. The most significant change is that the final rule adopts a single set of payment rates that will be used for both hospital services and freestanding ambulatory surgery services (ASCs). The proposed rule would have established separate rates for hospitals and ASCs.

This change is based on several reasons. First, when we calculated the rates from our claims data for the base period of July 1991 through June 1992, we found no statistically significant difference between hospital costs and ASC costs. (For codes for which we had at least 10 claims from both ASCs and hospitals, the median costs differed by only 0.7 percent.) Secondly, because we have substantially more ambulatory surgery claims from hospitals than from ASCs, establishing a separate list for ASCs would increase the chances of anomalous results attributable to limited claims volume. Third, a single rate structure has been strongly recommended by the Prospective Payment Assessment Commission (ProPAC Interim Congressional Report C–92–02, March 1992).

We also changed the number of ambulatory surgery payment groups from nine in the proposed rule to ten in the final rule. The change divides the proposed rule group of $1000 and above into two groups: $1000 to $1299 and $1300 and above. This will provide for more appropriate payment for these high cost procedures.

We have also made several other clarifications in the final rule. The rule makes clear that all ambulatory surgery charges from hospitals will be paid under this method. Hospital outpatient services other than those on the ambulatory surgery list will not be paid under this method, but will continue to be paid as under current practice. (We are considering development of a new proposed rule for other procedures performed on an outpatient basis in hospitals.) In addition, payments to freestanding ASCs are limited to procedures on the ambulatory surgery list.

We have also clarified the final rule to state that OCHAMPUS may periodically recalculate the payment rates using the same methodology established in the rule. This will allow us to stay current with developments affecting ambulatory surgery procedure practice patterns and costs. Finally, we state that the new ambulatory surgery payment method will take effect January 1, 1994.

VII. Other Issues

Several commenters raised an issue related to implementation of the payment reforms adopted in the rule, but not specific to any provision of the rule. These commenters recommended that CHAMPUS undertake a significant information effort to make providers and beneficiaries aware of the new rules regarding payment rates, balance billing, claims filing, and the Participating Provider Program. A related comment suggested publication of the actual payment rates being established.

Response. We agree with this comment. We intend to undertake a significant information effort, including publication of actual payment rates for high-volume CHAMPUS procedures.

VIII. Regulatory Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed for any major rule. A "major rule" is defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is a not a major rule under the provisions of Executive Order 12291, because it will not have an impact on the economy of more than $100 million. This rule would not have a significant impact on a substantial number of small entities.

This rule imposes no additional information collection requirements on the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

Attachment 1 and Attachment 2 to the preamble will be published within 15 days of the publication of this final rule.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, 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 199.2(b) is amended by adding in alphabetical order new definitions "Assistant Secretary of Defense (Health Affairs)", "Balance billing", and "Director, OCHAMPUS", and by revising the definition of "Participating provider", as follows:

§ 199.2 Definitions.

* * * * *

Assistant Secretary of Defense (Health Affairs). An authority of the Assistant Secretary of Defense (Health Affairs) includes any person designated by the Assistant Secretary to exercise the authority involved.

* * * * *

Balance billing. A provider seeking any payment, other than any payment relating to applicable deductible and cost sharing amounts, from a beneficiary for CHAMPUS covered services for any amount in excess of the applicable CHAMPUS allowable cost or charge.

* * * * *

Director, OCHAMPUS. An authority of the Director, OCHAMPUS includes any person designated by the Director, OCHAMPUS to exercise the authority involved.

* * * * *

Participating provider. A hospital or other authorized institutional provider, a physician or other authorized individual professional provider, or other authorized provider that furnished services or supplies to a CHAMPUS beneficiary and that submits a CHAMPUS claim form and accepts assignment of the CHAMPUS-determined allowable cost or charge as the total payment (even though less than the actual charge), whether paid for fully by the CHAMPUS allowable amount or requiring cost-sharing by the beneficiary (or sponsor). See § 199.6(a)(8) for more information of the Participating Provider Program.

* * * * *

3. Section 199.4 is amended by revising paragraph (a)(7), by redesignating the text of paragraph (f)(3)(iii) as paragraph (f)(3)(iii)(A), by adding an italicized heading to newly designated paragraph (f)(3)(iii)(A), by adding a new paragraph (f)(3)(iii)(B), and by revising paragraph (f)(6)(i), as follows:

§ 199.4 Basic program benefits.

(a) *General.* * * *

* * * * *

(7) *Claims filing deadline.* For all services provided on or after January 1, 1993, to be considered for benefits, all claims submitted for benefits must, except as provided in § 199.7, be filed with the appropriate CHAMPUS contractor no later than one year after the services are provided. Unless the requirement is waived, failure to file a claim within this deadline waives all rights to benefits for such services or supplies.

* * * * *

(f) *Beneficiary or sponsor liability.* * * *

* * * * *

(3) *Retirees, dependents of retirees, dependents of deceased active duty members, and dependents of deceased retirees.* * * *

(iii) *Outpatient cost sharing.*

(A) *For services other than ambulatory surgery services.* * * *

(B) *For services subject to the ambulatory surgery payment method.* For services subject to the ambulatory surgery payment method set forth in § 199.14(d), the cost share shall be the lesser of: 25 percent of the payment amount provided pursuant to § 199.14(d); or 25 percent of the center's billed charges.

* * * * *

(6) *Amounts over CHAMPUS-determined allowable costs or charges.* * * *

(i) *Participating Providers.* There are several circumstances under which institutional and individual providers may be Participating Providers, either on a mandatory basis or a voluntary basis. See § 199.6(a)(8). A Participating Provider, whether participating for all claims or on a claim-by-claim basis, must accept the CHAMPUS-determined allowable amount as payment in full for the medical services or supplies provided, and must accept the amount paid by CHAMPUS or the CHAMPUS payment combined with the cost-sharing and deductible amounts paid by or on behalf of the beneficiary as payment in full for the covered medical services or supplies. Therefore, when costs or charges are submitted on a participating basis, the patient is not obligated to pay any amounts disallowed as being over the CHAMPUS-determined allowable cost or charge for authorized services or supplies.

* * * * *

4. Section 199.5 is amended by revising paragraph (a)(3), as follows:

§ 199.5 Program for the Handicapped.

(a) *General.* * * *

* * * * *

(3) *Claims filing deadline.* For all services provided on or after January 1, 1993, to be considered for benefits, all claims submitted for benefits must, except as provided in § 199.7 be filed with the appropriate CHAMPUS contractor no later than one year after the services are provided. Unless the requirement is waived, failure to file a claim within this deadline waives all rights to benefits for such services or supplies.

* * * * *

5. Section 199.6 is amended by revising paragraph (a)(8), and by adding new paragraphs (a)(11) and (a)(12), as follows:

§ 199.6 Authorized providers.

(a) *General.* * * *

* * * * *

(8) *Participating Providers.*

(i) *In general.* A Participating Provider is an individual or institutional provider that has agreed to accept the CHAMPUS-determined allowable amount as payment in full for the medical services and supplies provided to the CHAMPUS beneficiary, and has agreed to accept the amount paid by CHAMPUS or the CHAMPUS payment combined with the cost sharing and deductible amounts paid by, or on behalf of, the beneficiary as full payment for the covered medical services or supplies. In addition, Participating Providers submit the appropriate claims forms to the appropriate CHAMPUS contractor on behalf of the beneficiary. There are several circumstances under which providers are Participating Providers.

(ii) *Mandatory participation.* Medicare-participating hospitals are required by law to be Participating Providers on all inpatient claims under CHAMPUS. Hospitals that are not Medicare-participating providers but are subject to the CHAMPUS DRG-based payment system or the CHAMPUS mental health payment system (see § 199.14(a)), must sign agreements to participate on all CHAMPUS inpatient claims in order to be authorized providers under CHAMPUS.

(iii) *Participating Provider Program.*

(A) *In general.* An institutional provider not required to participate pursuant to paragraph (a)(8)(ii) of this section and any individual provider may become a Participating Provider by signing a Participating Provider agreement. In such an agreement, the provider agrees that all CHAMPUS claims filed during the time period covered by the agreement will be on a participating basis.

(B) *Agreement required.* Under the Participating Provider Program, the

provider must sign an agreement or memorandum of understanding under which the provider agrees to become a Participating Provider. Such an agreement may be with the nearby military treatment facility, a CHAMPUS contractor, or other authorized official. Such agreement may include other provisions pertaining to the Participating Provider Program. The Director, OCHAMPUS shall establish a standard model agreement and other procedures to promote uniformity in the administration of the Participating Provider Program.

(C) *Relationship to other activities.* Participating Provider agreements may include other provisions, such as provisions regarding discounts (see § 199.14(i)) or other provisions in connection with the delivery and financing of health care services, as authorized by this part or other DoD Directives or Instructions. Participating Provider agreement provisions may also be incorporated into other types of agreements, such as preferred provider arrangements where such arrangements are established under CHAMPUS.

(iv) *Claim-by-claim participation.* Institutional and individual providers that are not participating providers pursuant to paragraphs (a)(8)(ii) or (iii) of this section may elect to participate on a claim-by-claim basis. They may do so by signing the appropriate space on the claims form and submitting it to the appropriate CHAMPUS contractor on behalf of the beneficiary.

* * * * *

(11) *Submittal of claims by provider required.*

(i) *General rule.* Unless waived pursuant to paragraph (a)(11)(ii) of this section, every CHAMPUS-authorized institutional and individual provider is required to submit CHAMPUS claims to the appropriate CHAMPUS contractor on behalf of the beneficiary for all services and supplies. In addition, the provider may not impose any charge relating to completing and submitting the applicable claim form (or any other related information). (Although CHAMPUS encourages provider participation, paragraph (a)(11) of this section requires only the submission of claim forms by providers on behalf of beneficiaries; it does not require that providers accept assignment of beneficiaries' claims or become Participating Providers.)

(ii) *Waiver of claims submission requirement.* The requirement that providers submit claims on behalf of beneficiaries may be waived in circumstances set forth in paragraph (a)(11)(ii) of this section. A decision by the Director, OCHAMPUS to waive or not waive the requirement in any particular circumstance is not subject to the appeal and hearing procedures of § 199.10.

(A) *General requirement for waiver.* The requirement that providers submit claims on behalf of beneficiaries may be waived by the Director, OCHAMPUS when the Director determines that the waiver is necessary in order to ensure adequate access for CHAMPUS beneficiaries to health care services. However, the requirement may not be waived for Participating Providers (see paragraph (a)(8) of this section).

(B) *Blanket waiver for providers outside the United States.* The requirement that providers submit claims is waived with respect to providers outside the United States (the United States includes Puerto Rico for this purpose).

(C) *Blanket waiver in double coverage cases.* The requirement that providers submit claims is waived in cases in which another insurance plan or program provides primary coverage for the services.

(D) *Waivers for particular categories of care.* The Director, OCHAMPUS may waive the requirement that providers submit claims if the Director determines that available evidence clearly shows that the requirement would impair adequate access. For this purpose, such evidence may include consideration of the number of providers in the locality who provide the affected services, the number of such providers who are CHAMPUS Participating Providers, the number of CHAMPUS beneficiaries in the area, and other relevant factors. Providers or beneficiaries in a locality may submit to the Director, OCHAMPUS a petition, together with appropriate documentation regarding relevant factors, for a determination that adequate access would be impaired. The Director, OCHAMPUS will consider and respond to all such petitions. The Director, OCHAMPUS may establish procedures for handling such petitions.

(E) *Case-by-case waivers.* On a case-by-case basis, the Director, OCHAMPUS may waive the provider's obligation to submit that claim if the Director determines that a waiver in that case is necessary in order to ensure adequate access for CHAMPUS beneficiaries to the health care services involved. Such case-by-case waivers may be requested by providers or beneficiaries pursuant to procedures established by the Director.

(iii) *Remedies for noncompliance.* (A) In any case in which a provider fails to submit a claim, or charges an administrative fee for filing a claim (or any other related information), in violation of the requirements of paragraph (a)(11) of this section, the amount that would otherwise be allowable for the claim shall be reduced by ten percent, unless the reduction is waived by the Director, OCHAMPUS based on special circumstances. The amount disallowed by such a reduction may not be billed to the patient (or the patient's sponsor or family).

(B) Repeated failures by a provider to comply with the requirements of paragraph (a)(11) of this section shall be considered abuse and/or fraud and grounds for exclusion or suspension of the provider under § 199.9.

(12) *Balance billing limits.*

(i) *In general.* Individual providers who are not Participating Providers may not balance bill a beneficiary an amount which exceeds the applicable balance billing limit. The balance billing limit shall be the same percentage as the Medicare limiting charge percentage for nonparticipating physicians.

(ii) *Waiver.* The balance billing limit may be waived by the Director, OCHAMPUS on a case-by-case basis if requested by a CHAMPUS beneficiary. A decision by the Director, OCHAMPUS to waive or not waive the limit in any particular case is not subject to the appeal and hearing procedures of § 199.10.

(iii) *Compliance.* Failure to comply with the balance billing limit shall be considered abuse and/or fraud and grounds of exclusion or suspension of the provider under § 199.9.

* * * * *

6. Section 199.7 is amended by revising the introductory text of paragraph (d) and paragraph (d)(1), removing paragraph (d)(2)(i)(D), redesignating paragraph (d)(2)(i)(E) as paragraph (d)(2)(i)(D), and adding a new paragraph (d)(2)(i)(E), as follows:

§ 199.7 Claims submission, review, and payment.

* * * * *

(d) *Claims filing deadline.* For all services provided on or after January 1, 1993, to be considered for benefits, all claims submitted for benefits must, except as provided in paragraph (d)(2) of this section, be filed with the appropriate CHAMPUS contractor no later than one year after the services are provided. Unless the requirement is waived, failure to file a claim within this deadline waives all rights to benefits for such services or supplies.

(1) *Claims returned for additional information.* When a claim is submitted initially within the claim filing time limit, but is returned in whole or in part for additional information to be considered for benefits, the returned

claim, along with the requested information, must be resubmitted and received by the appropriate CHAMPUS contractor no later than the later of:

(i) One year after the services are provided; or

(ii) 90 days from the date the claim was returned to the provider or beneficiary.

(2) * * *

(i) * * *

(E) *Other waiver authority.* The Director, OCHAMPUS may waive the claims filing deadline in other circumstances in which the Director determines that the waiver is necessary in order to ensure adequate access for CHAMPUS beneficiaries to health care services.

* * * * *

7. Section 199.14 is amended by revising paragraphs (d), (g)(1)(i), (g)(1)(ii)(A), (g)(1)(iii), and (g)(1)(iv); by redesignating paragraph (g)(1)(viii) as paragraph (g)(1)(x) and revising newly redesignated paragraph (g)(l)(x), and by adding a new paragraph (g)(l)(viii), as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(d) *Payment of institutional facility costs for ambulatory surgery.*

(1) *In general.* CHAMPUS pays institutional facility costs for ambulatory surgery on the basis of prospectively determined amounts, as provided in this paragraph. This payment method is similar to that used by the Medicare program for ambulatory surgery. This paragraph applies to payment for institutional charges for ambulatory surgery provided in hospitals and freestanding ambulatory surgical centers. It does not apply to professional services. A list of ambulatory surgery procedures subject to the payment method set forth in this paragraph shall be published periodically by the Director, OCHAMPUS. Payment to freestanding ambulatory surgery centers is limited to these procedures.

(2) *Payment in full.* The payment provided for under this paragraph is the payment in full for services covered by this paragraph. Facilities may not charge beneficiaries for amounts, if any, in excess of the payment amounts determined pursuant to this paragraph.

(3) *Calculation of standard payment rates.* Standard payment rates are calculated for groups of procedures under the following steps:

(i) *Step 1: calculate a median standardized cost for each procedure.* For each ambulatory surgery procedure, a median standardized cost will be calculated on the basis of all ambulatory surgery charges nationally under CHAMPUS during a recent one-year base period. The steps in this calculation include standardizing for local labor costs by reference to the same wage index and labor/non-labor-related cost ratio as applies to the facility under Medicare, applying a cost-to-charge ratio, calculating a median cost for each procedure, and updating to the year for which the payment rates will be in effect by the Consumer Price Index-Urban. In applying a cost-to-charge ratio, the Medicare cost-to-charge ratio for freestanding ambulatory surgery centers (FASCs) will be used for all charges from FASCs, and the Medicare cost-to-charge ratio for hospital outpatient settings will be used for all charges from hospitals.

(ii) *Step 2: grouping procedures.* Procedures will then be placed into one of ten groups by their median per procedure cost, starting with $0 to $299 for group 1 and ending with $1000 to $1299 for group 9 and $1300 and above for group 10, with groups 2 through 8 set on the basis of $100 fixed intervals.

(iii) *Step 3: adjustments to groups.* The Director, OCHAMPUS may make adjustments to the groupings resulting from step 2 to account for any ambulatory surgery procedures for which there were insufficient data to allow a grouping or to correct for any anomalies resulting from data or statistical factors or other special factors that fairness requires be specially recognized. In making any such adjustments, the Director may take into consideration the placing of particular procedures in the ambulatory surgery groups under Medicare.

(iv) *Step 4: standard payment amount per group.* The standard payment amount per group will be the volume weighted median per procedure cost for the procedures in that group.

(v) *Step 5: actual payments.* Actual payment for a procedure will be the standard payment amount for the group which covers that procedure, adjusted for local labor costs by reference to the same labor/non-labor- related cost ratio and hospital wage index as used for ambulatory surgery centers by Medicare.

(4) *Multiple procedures.* In cases in which authorized multiple procedures are performed during the same operative session, payment shall be based on 100 percent of the payment amount for the procedure with the highest ambulatory surgery payment amount, plus, for each other procedure performed during the session, 50 percent of its payment amount.

(5) *Annual updates.* The standard payment amounts will be updated annually by the same update factor as is used in the Medicare annual updates for ambulatory surgery center payments.

(6) *Recalculation of rates.* The Director, OCHAMPUS may periodically recalculate standard payment rates for ambulatory surgery using the steps set forth in paragraph (d)(3) of this section.

* * * * *

(g) *Reimbursement of individual health-care professionals and other non-institutional health-care providers.* * * *

(1) *Allowable charge method.*

(i) *Introduction.*

(A) *In general.* The allowable charge method is the preferred and primary method for reimbursement of individual health care professionals and other non-institutional health care providers (covered by 10 U.S.C. 1079(h)(1)). The allowable charge for authorized care shall be the lower of the billed charge or the local CHAMPUS Maximum Allowable Charge (CMAC).

(B) *CHAMPUS Maximum Allowable Charge.* Beginning in calendar year 1992, prevailing charge levels and appropriate charge levels will be calculated on a national level. There will then be calculated a national CHAMPUS Maximum Allowable Charge (CMAC) level for each procedure, which shall be the lesser of the national prevailing charge level or the national appropriate charge level. The national CMAC will then be adjusted for localities in accordance with paragraph (g)(1)(iv) of this section.

(C) *Differential for Participating Providers.* Beginning in calendar year 1994, there shall be a differential in national and local CMACs based on whether the provider is a participating provider or a nonparticipating provider. The differential shall be calculated so that the CMAC for nonparticipating providers is 95 percent of the CMAC for participating providers. To assure the effectiveness of the several phase-in and waiver provisions set forth in paragraphs (g)(1)(iii) and (g)(1)(iv) of this section, beginning in calendar year 1994, there will first be calculated the national and local CMACs for nonparticipating providers. For purposes of this calculation, the identification of overpriced procedures called for in paragraph (g)(1)(iii)(A) of this section and the calculation of appropriate charge levels for such overpriced procedures called for in paragraph (g)(1)(iv)(B) of this section shall use as the Medicare fee component of the comparisons and calculations the fee level applicable to Medicare nonparticipating providers, which is 95 percent of the basic fee level. After nonparticipating provider local CMACs

are calculated (including consideration of special phase-in rules and waiver rules in paragraph (g)(1)(iv) of this section), participating provider local CMACs will be calculated so that nonparticipating provider local CMACs are 95 percent of participating provider local CMACs. (For more information on the Participating Provider Program, see § 199.6(a)(8)).

(D) *Limits on balance billing by nonparticipating providers.* Nonparticipating providers may not balance bill a beneficiary an amount which exceeds the applicable balance billing limit. The balance billing limit shall be the same percentage as the Medicare limiting charge percentage for nonparticipating physicians. The balance billing limit may be waived by the Director, OCHAMPUS on a case-by-case basis if requested by the CHAMPUS beneficiary (or sponsor) involved. A decision by the Director to waive or not waive the limit in any particular case is not subject to the appeal and hearing procedures of § 199.10.

(ii) *Prevailing charge level.*

(A) Beginning in calendar year 1992, the prevailing charge level shall be calculated on a national basis.

* * * * *

(iii) *Appropriate charge level.* Beginning in calendar year 1992, the appropriate charge level shall be calculated on a national basis. The appropriate charge level for each procedure is the product of the two-step process set forth in paragraphs (g)(1)(iii)(A) and (B) of this section. This process involves comparing the prior year's CMAC with the fully phased in Medicare fee. For years after the Medicare fee has been fully phased in, the comparison shall be to the current year Medicare fee. For any particular procedure for which comparable Medicare fee and CHAMPUS data are unavailable, but for which alternative data are available that the Director, OCHAMPUS (or designee) determines provide a reasonable approximation of relative value or price, the comparison may be based on such alternative data.

(A) *Step 1: procedures classified.* All procedures are classified into one of three categories, as follows:

(*1*) *Overpriced procedures.* These are the procedures for which the prior year's national CMAC exceeds the Medicare fee.

(*2*) *Other procedures.* These are procedures subject to the allowable charge method that are not included in either the overpriced procedures group or the underpriced procedures group.

(*3*) *Underpriced procedures.* These are the procedures for which the prior year's national CMAC is less than the Medicare fee.

(*B*) *Step 2: calculating appropriate charge levels.* For each year, appropriate charge levels will be calculated by adjusting the prior year's CMAC as follows:

(*1*) For overpriced procedures, the appropriate charge level for each procedure shall be the prior year's CMAC, reduced by the lesser of: the percentage by which it exceeds the Medicare fee or fifteen percent.

(*2*) For other procedures, the appropriate charge level for each procedure shall be the same as the prior year's CMAC.

(*3*) For underpriced procedures, the appropriate charge level for each procedure shall be the prior year's CMAC, increased by the lesser of: the percentage by which it is exceeded by the Medicare fee or the Medicare Economic Index.

(C) *Special rule for cases in which the CHAMPUS appropriate charge was prematurely reduced.* In any case in which a recalculation of the Medicare fee results in a Medicare rate higher than the CHAMPUS appropriate charge for a procedure that had been considered an overpriced procedure, the reduction in the CHAMPUS appropriate charge shall be restored up to the level of the recalculated Medicare rate.

(iv) *Calculating CHAMPUS Maximum Allowable Charge levels for localities.*

(A) *In general.* The national CHAMPUS Maximum Allowable Charge level for each procedure will be adjusted for localities using the same (or similar) geographical areas and the same geographic adjustment factors as are used for determining allowable charges under Medicare.

(B) *Special locality-based phase-in provision.*

(*1*) *In general.* Beginning with the recalculation of CMACS for calendar year 1993, the CMAC in a locality will not be less than 72.25 percent of the maximum charge level in effect for that locality on December 31, 1991. For recalculations of CMACs for calendar years after 1993, the CMAC in a locality will not be less than 85 percent of the CMAC in effect for that locality at the end of the prior calendar year.

(*2*) *Exception.* The special locality-based phase-in provision established by paragraph (g)(1)(iv)(B)(*1*) of this section shall not be applicable in the case of any procedure code for which there were not CHAMPUS claims in the locality accounting for at least 50 services.

(C) *Special locality-based waivers of reductions to assure adequate access to care.* Beginning with the recalculation of CMACs for calendar year 1993, in the case of any procedure classified as an overpriced procedure pursuant to paragraph (g)(1)(iii)(A)(*1*) of this section, a reduction in the CMAC in a locality below the level in effect at the end of the previous calendar year that would otherwise occur pursuant to paragraphs (g)(1)(iii) and (g)(1)(iv) of this section may be waived pursuant to paragraph (g)(1)(iii)(C) of this section.

(*1*) *Waiver based on balanced billing rates.* Except as provided in paragraph (g)(1)(iv)(C)(*2*) of this section such a reduction will be waived if there has been excessive balance billing in the locality for the procedure involved. For this purpose, the extent of balance billing will be determined based on a review of all services under the procedure code involved in the prior year (or most recent period for which data are available). If the number of services for which balance billing was not required was less than 60 percent of all services provided, the Director will determine that there was excessive balance billing with respect to that procedure in that locality and will waive the reduction in the CMAC that would otherwise occur. A decision by the Director to waive or not waive the reduction is not subject to the appeal and hearing procedures of § 199.10.

(*2*) *Exception.* As an exception to the paragraph (g)(1)(iv)(C)(*1*) of this section, the waiver required by that paragraph shall not be applicable in the case of any procedure code for which there were not CHAMPUS claims in the locality accounting for at least 50 services. A waiver may, however, be granted in such cases pursuant to paragraph (g)(1)(iv)(C)(*3*) of this section.

(*3*) *Waiver based on other evidence that adequate access to care would be impaired.* The Director, OCHAMPUS may waive a reduction that would otherwise occur (or restore a reduction that was already taken) if the Director determines that available evidence shows that the reduction would impair adequate access. For this purpose, such evidence may include consideration of the number of providers in the locality who provide the affected services, the number of such providers who are CHAMPUS Participating Providers, the number of CHAMPUS beneficiaries in the area, and other relevant factors. Providers or beneficiaries in a locality may submit to the Director, OCHAMPUS a petition, together with appropriate documentation regarding relevant factors, for a determination that adequate access would be impaired. The Director, OCHAMPUS will consider and respond to all such petitions. Petitions may be filed at any time. Any petition received by the date which is 120 days

prior to the implementation of a recalculation of CMACs will be assured of consideration prior to that implementation. The Director, OCHAMPUS may establish procedures for handling petitions. A decision by the Director to waive or not waive a reduction is not subject to the appeal and hearing procedures of § 199.10.

* * * * *

(viii) *Clinical laboratory services.* The allowable charge for clinical diagnostic laboratory test services shall be calculated in the same manner as allowable charges for other individual health care providers are calculated pursuant to paragraphs (g)(1)(i) through (g)(1)(iv) of this section, with the following exceptions and clarifications.

(A) The calculation of national prevailing charge levels, national appropriate charge levels and national CMACs for laboratory service shall begin in calendar year 1993. For purposes of the 1993 calculation, the prior year's national appropriate charge level or national prevailing charge level shall be the level that does not exceed the amount equivalent to the 80th percentile of billed charges made for similar services during the period July 1, 1991 through June 30, 1992 (referred to in this paragraph (g)(1)(viii) of this section as the "base period").

(B) For purposes of comparison to Medicare allowable payment amounts pursuant to paragraph (g)(1)(iii) of this section, the Medicare national laboratory payment limitation amounts shall be used.

(C) For purposes of establishing laboratory service local CMACs pursuant to paragraph (g)(1)(iv) of this section, the adjustment factor shall equal the ratio of the local average charge (standardized for the distribution of clinical laboratory services) to the national average charge for all clinical laboratory services during the base period.

(D) For purposes of a special locality-based phase-in provision similar to that established by paragraph (g)(1)(iv)(B) of this section, the CMAC in a locality will not be less than 85 percent of the maximum charge level in effect for that locality during the base period.

* * * * *

(x) A charge that exceeds the CHAMPUS Maximum Allowable 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.

September 29, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-24257 Filed 9-30-93; 8:45 am]

BILLING CODE 5000-04-P

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS BARRY (DDG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Captain R.R. ROSSI, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (703) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS BARRY (DDG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 2(f)(i), pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions, without interfering with its special function as a naval ship. The Judge Advocate General has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements. Further, the Judge Advocate General has certified that the vessel's correct name is now USS BARRY (DDG 52) instead of the name USS JOHN BARRY (DDG 52) shown in pervious navigation light certification records.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

Table 4 of § 706.2 [Amended]

2. Table Four of § 706.2 is amended by:

a. Revising the existing entry in paragraph 15 for USS JOHN BARRY (DDG 52) to read as follows:

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS Barry .	DDG 52 ..	1.94.

b. Revising the existing entry in paragraph 16 for USS JOHN BARRY (DDG 52) to read as follows:

Vessel	Number	Obstruction angle relative ship's headings
USS Barry	DDG 52 ..	101.16 thru 112.50 degree.

Table 5 of § 706.2 [Amended]

3. Table Five of § 706.2 is amended by revising the existing entry for USS JOHN BARRY (DDG 52) to read as follows:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
USS Barry	DDG 52	X	X	X	20

Dated: August 20, 1993.

W.L. Schachte, Jr.,

Acting Judge Advocate General.

[FR Doc. 93-23510 Filed 9-30-93; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11-93-009]

RIN 2115-AE46

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

AGENCY: Coast Guard, DOT.

ACTION: Final rule; amendment.

SUMMARY: This final rule amends regulated area "Bravo" for the Blue Angels air show for the Navy Fleetweek activities in San Francisco Bay, California. The amendment to the regulated area moves the southern boundary of area "Bravo" approximately two-tenths of a nautical mile closer to the waterfront as compared with the originally published coordinates. This amendment is necessary in order to keep traffic along the shoreline to an absolute minimum. In the past it has proven difficult to keep the traffic out of area "Bravo" along the southern shoreline. This change applies to all vessels, including ferry traffic.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Lieutenant T.F. Harrop, Operations Officer, U.S. Coast Guard Group San Francisco, California. Tel: (415) 399-3455, FAX (415) 399-3521.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for the regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since the next Fleetweek activities for which these regulations are issued will occur on October 7, 8, 9, and 10, 1993.

Drafting Information: The drafters of these regulations are LT T.F. Harrop, U.S. Coast Guard Group San Francisco, Project Officer, and Lieutenant Commander C.M. Juckniess, Eleventh Coast Guard District Legal Office, Long Beach, California, Project Attorney.

Discussion of Regulation: This event is Fleetweek's annual Blue Angels Aerial Show over the water near the San Francisco waterfront. The regulated area to be used is approximately 2.8 nautical miles long by .8 nautical miles wide. Approximately 10,000 spectator craft are expected to watch the event. Spectators will be required to view the event from the outside of the regulated area. Coast Guard, Navy, and Coast Guard Auxiliary vessels will be enforcing the regulated area.

Regulatory Evaluation

These regulations are not considered major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The proposed rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

Federalism Assessment

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federal Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[AMENDED]

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

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

2. In § 100.1105, the latitude and longitude coordinates in paragraph (b)(2) are amended to read as follows:

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

* * * * *

(b) * * *

(2) * * *

Latitude	*Longitude*
37° 48' 27.5"N	122° 24' 04"W
37° 49' 31"N	122° 24' 18"W
37° 49' 00"N	122° 27' 52"W
37° 48' 19"N	122° 27' 40"W

and thence along the pierheads and bulwarks to the point of beginning.

* * * * *

Dated: September 16, 1993.

R.D. Herr,

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

[FR Doc. 93–24204 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 165

[COTP St. Louis Regulation 93–031]

RIN 2115–AA97

Safety Zone Regulations; Upper Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Upper Mississippi River from mile 201.0 thru mile 853.0. This regulation is needed to protect commercial and recreational vessels from the hazards associated with extensive shoaling, swift currents and dredge operations. This regulation will restrict general navigation in the regulated area for the safety of vessel traffic.

EFFECTIVE DATE: This regulation is effective September 16, 1993 and will terminate on October 15, 1993.

FOR FURTHER INFORMATION CONTACT: LT Timothy Deal, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are CPO Joseph Cosgrove, Project Officer, Marine Safety Office, St. Louis, Missouri and LCDR A. O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the conditions requiring this regulation could not be foreseen leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue a regulation without waiting for a comment period since the conditions present an immediate hazard.

Background and Purpose

Extensive sediment deposition resulting from the receding river levels after the summer floods has reduced navigational channel depth in numerous areas in the upper reaches of the Upper Mississippi River. The receding flood waters have also produced unusually swift currents. Levees throughout the lower reaches of the Upper Mississippi River are still saturated and susceptible to wake damage. As a result of these conditions this regulation is necessary to help provide safe criteria for navigation of the affected area.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal due to the short anticipated duration of the closure.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary because the regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

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

Temporary Regulation

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

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary section 165.T02–067 is added, to read as follows:

§ 165.T02–067 Safety Zone: Upper Mississippi River.

(a) *Location.* The Upper Mississippi River between mile 201.0 and 853.0 is established as a safety zone.

(b) *Effective dates.* This regulation becomes effective on September 16, 1993 and will terminate on October 15, 1993.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit entry into the described zones without authority of the Captain of the Port apply.

(d) The Captain of the Port, St. Louis, Missouri will notify the maritime community of river conditions affecting the areas covered by this safety zone by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: September 16, 1993.

Scott P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 93–24207 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 165

[CGD01–93–130]

Safety Zone; Columbus Day South Street Seaport Fireworks, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a Columbus Day fireworks program located in the East River. This event is sponsored by South Street Seaport and will take place on Sunday, October 10, 1993, from 8 p.m. until 10 p.m. with a rain date of October 11, 1993, at the same time. This safety zone is needed to protect the boating public from the hazards associated with fireworks exploding in the area.

DATES: The rule is effective from 8 p.m. until 10 p.m. on October 10, 1993, with a rain date of October 11, 1993, at the same time.

FOR FURTHER INFORMATION CONTACT: LT R. Trabocchi, Project Manager, Captain of the Port, New York (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LT R. Trabocchi, Project Manager, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** Publication. Due to the date this application was received, there was not sufficient time to publish a proposed rule in advance of the event. Publishing a NPRM and delaying the event would be contrary to public interest since the fireworks display is for public viewing.

Background and Purpose

On September 3, 1993, South Street Seaport, Inc. submitted an application to hold a fireworks program in the East River off of South Street Seaport, Pier 17, Manhattan, New York. This regulation establishes a temporary safety zone in the East River south of the Brooklyn Bridge and north of a line drawn from Pier 6 Brooklyn to the Coast Guard ferry slip in Manhattan. This safety zone is being established to protect boaters from the hazards associated with the explosion of fireworks in the area. No vessel will be permitted to enter or move within this area unless authorized to do so by the Coast Guard Captain of the Port, New York.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). No vessel traffic will be permitted to transit the East River south of the Brooklyn Bridge. Though there is a regular flow of traffic through this area due to the limited duration of the event, the extensive advisories that will be made to the affected maritime community, and that pleasure craft can take an alternate route via the Hudson and Harlem Rivers, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), The Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be included in the docket.

List of Subjects in 33 CFR Part 165

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

Regulations

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

2. A temporary section, 165.T01–130 is added to read as follows:

§ 165.T01–130 Columbus Day Fireworks, East River, New York.

(a) *Location.* This temporary safety zone includes all waters of the East River south of the Brooklyn Bridge and north of a line drawn from Pier 6 Brooklyn to the Coast Guard ferry slip in Manhattan.

(b) *Effective period.* This regulation is effective from 8 p.m. until 10 p.m. on October 10, 1993, with a rain date of October 11, 1993, at the same time.

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in the regulated area during the effective period of regulation unless participating in the event as authorized by the Coast Guard Captain of the Port, New York.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. Coast Guard Auxiliary members may be present to inform vessel operators of this regulation and other applicable laws.

Dated: September 16, 1993.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 93–24208 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–4783–1]

Michigan: Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Michigan has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter "RCRA"). The Environmental Protection Agency (EPA) has reviewed Michigan's application and has reached a decision, subject to public review and comment, that Michigan's hazardous waste program revisions satisfy all the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Michigan's hazardous waste program revisions, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (hereinafter HSWA). Michigan's application for program revision is available for public review and comment.

EFFECTIVE DATES: Final authorization for Michigan's program revisions shall be effective November 30, 1993, unless an adverse comment pertaining to Michigan's revision discussed in this notice is received by EPA by the end of the comment period. If an adverse

comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision. All comments on Michigan's program revision application must be received by the close of business on November 1, 1993.

ADDRESSES: Written comments should be sent to Ms. Judy Feigler, Michigan Regulatory Specialist, U.S. EPA, Office of RCRA, HRM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, phone (312) 886–4179. Copies of Michigan's program revision application are available for inspection and copying at the following addresses from 9 a.m. to 4 p.m.; Michigan Department of Natural Resources, 608 W. Allegan, South Ottawa Tower, Lansing, Michigan. Contact: Ms. Ronda L. Hall, Phone: (517) 373–9548; U.S. EPA, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604, contact: Ms. Judy Feigler, (312) 886–4179.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Feigler, Michigan Regulatory Specialist, U.S. Environmental Protection Agency, Region V, Waste Management Division, Office of RCRA, Program Management Branch, Regulatory Development Section, HRM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Phone: (312) 886–4179.

SUPPLEMENTARY INFORMATION

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

In accordance with 40 CFR 271.21(a), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessary because of changes to EPA's regulations in 40 CFR parts 124, 260 through 268 and 270.

B. Michigan

Michigan initially received final authorization for its base RCRA program effective on October 30, 1986 (51 FR 36804–36805, October 16, 1986). Michigan received authorization for revisions to its program effective on January 23, 1990 (54 FR 225, November 24, 1989), and June 24, 1991 (56 FR 18517, April 23, 1991). On May 21, 1993, Michigan completed an additional revision application. EPA has reviewed this application and has made an immediate final decision that Michigan's hazardous waste program revision satisfies all the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Michigan for its additional program revision.

Approval of Michigan's program revision shall become effective on November 30, 1993, unless an adverse comment pertaining to Michigan's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Michigan's program has been revised to include authorities analogous to Federal requirements as follows:

Federal requirement	Analogous state authority/effective date
*Sharing of Information with the Agency for Toxic Disease Registry (Section 3019(b) of HSWA, November 8, 1984)..	Michigan Combined Laws, Section 299.528(4), June 4, 1992.
*Dioxin Waste Listing and Management Standards (50 FR 1978, January 14, 1985).	Rule 299.9205(5), November 19, 1991; 299.9207(3) and (15), 299.9212(8) and (3), and 299.9213(1) and (3), April 20, 1988; 299.9214, November 19, 1991; 299.9216(1) and (2) and 299.9220, April 20, 1988; 299.9225 and 299.9504(1), (6)–(9), and (15), November 19, 1991; 299.9508(1), April 20, 1988; 299.9601(3) and (8) and 299.9614(1) and (2), December 28, 1985; 299.9615(1) and (6), April 20, 1988; 299.9616(1) and (4) and 299.9617(1) and (3), December 28, 1985; 299.9618(1) and (2), April 20, 1985; 299.9619(1) and (6), November 19, 1991; 299.9623(3) and (4), April 20, 1988; 299.9626(6) and (7); December 28, 1985; 299.11003(1)(h), (k), (l), (n), and (p), November 19, 1991.
*Codification Rule: Waste Minimization (50 FR 28702, July 15, 1985).	Rule 299.9304(2), April 20, 1988; 299.9308(1) and 299.9502(2), (3), (4), (5) and (11), November 19, 1991; 299.9521(1) and (6), April 20, 1988; 299.9601(1), December 28, 1985; 299.9608 and 299.9609, November 19, 1991; 299.9610, December 28, 1985; 299.11003(1)(l) and (p), November 19, 1991.
*Codification Rule: Pre-construction Ban (50 FR 28702, July 15, 1985).	Michigan Combined Laws, Sections 299.518, June 18, 1990; 299.521a, March 30, 1988; 299.522, June 4, 1992; Rule 299.9501 and 299.9502, November 19, 1991; Rule 299.9503, February 15, 1989.
*Generators of 100 to 1,000 kg of hazardous waste (51 FR 10146, March 24, 1986).	Rule 299.9107(q), April 20, 1988; 299.9205(1)–(5) and (7)–(11) and 299.9214(4), November 19, 1991; 299.9304(5) and 299.9306(1), (4), (5) and (6), April 20, 1988; 299.9308(5) and (6), November 19, 1991; 299.9409(1) and (3), December 28, 1985; 299.9502(2) and (11), November 19, 1991; 299.9503(1), February 15, 1989; 299.11003(1)(j) and (p), November 19, 1991. List (Phase 1) of Hazardous Waste Rule 299.9504(1) and (15), November 19, Constituents for Groundwater 1991; 299.9508(1), April 20, 1988; Monitoring (52 FR 25942, July 9, 299.9612(1) and (4) and 1987) 299.11003(1)(m) and (p), November 19, 1991.
List (Phase 1) of Hazardous Waste Constituents for Groundwater Monitoring (52 FR 25942, July 9, 1987).	Rule 299.9504 (1) and (15), November 19, 1991; 299.9508(1), April 20, 1988; 299.9612 (1) and (4) and 299.11003 (l), (m) and (p), November 19, 1991.
Identification and Listing of Hazardous Waste (52 FR 26012, July 10, 1987).	Rule 299.9214(1)(c), 11/19/91.
*Exception Reporting for Small Quantity Generators of Hazardous Waste (52 FR 35894, September 23, 1987).	Rule 299.9308(3), (5) and (6), November 19, 1991.

Federal requirement	Analogous state authority/effective date
Liability Requirements for Hazardous Waste Facilities: Corporate Guarantee (52 FR 44314, November 18, 1987).	Rule 299.9502(2) and (11), November 19, 1991; 299.9601(3) and (8), Corporate Guarantee (52 FR December 28, 1985; 299.9710(5) and (10) and 299.11003(1)(l) and (n), November 19, 1991.
*Codification Rule 2: Post-Closure Permits (52 FR 45788, December 1, 1987).	Rule 299.9502(1), (8), (9), and (10), November 19, 1991.
Hazardous Waste Miscellaneous Units (52 FR 46946, December 10, 1987).	Rule 299.9105(b) and (o) and 299.9504(1) and (15), November 19, 1991; 299.9508(1), April 20, 1988; 299.9605(1) and (2), 299.9609(1) and (5) and 299.9612(1), (3) and (4), November 19, 1991; 299.9613(1) and (4), April 20, 1988; 299.9628(1) and (4), November 19, 1991; 299.9702(1) and (2), April 20, 1988; 299.9710(2) and 299.11003(1)(b), (k), (l), and (p), November 19, 1991.
Technical Corrections; Identification of Hazardous Waste (53 FR 13382, April 22, 1988).	Rule 299.9224, 299.9225, and 299.11003 (1)(h), November 19, 1991.
*Identification and Listing of Hazardous Waste; Technical Correction (53 FR 27162, July 19, 1988).	Rule 299.9205(5) and (7), November 19, 1991.
Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators (54 FR 615, January 9, 1989).	Rule 299.9504(1) and (15) and 299.11001(1)(p), November 19, 1991.

*Indicates HSWA Requirement.

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for the other provisions on October 30, 1986; January 23, 1990; and June 24, 1991, the effective dates of Michigan's final authorizations for the RCRA base program and for the Non-HSWA Cluster I, Cluster II, and Cluster III revisions.

Michigan is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Michigan's application for program revision meets all the statutory and regulatory requirements established by RCRA. Accordingly, Michigan is granted final authorization to operate its hazardous waste program as revised. Michigan now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Michigan also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Incorporation by Reference

EPA incorporates by reference authorized State programs in 40 CFR part 272 to provide notice to the public of the scope of the authorized program in each State. Incorporation by reference of these revisions to the Michigan program will be completed at a later date.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Michigan's program thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a) 3006, and 7004(b) of the Solid Waste Disposal Act as amended [42 U.S.C. 6912(a), 6926 and 6974(b).

Dated: September 17, 1993.

William E. Muno,

Acting Regional Administrator.

[FR Doc. 93–24184 Filed 9–30–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 93–1126]

Complaints, Applications, Tariffs, and Reports Involving Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission amended its rules regarding procedures for providing documents to the Commission's Copy Contractor. This modification to the Commission's rule will require that all parties filing petitions seeking suspension or rejection of new tariff filings or any provision thereof provide one of the four copies of each petition or pleading directly to the Commission's current contractor. This rule change will permit the Commission's copy contractor to provide information to the public in an efficient and expedient basis.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT:

William Cline, Records Management Division, (202) 632–7513.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Memorandum Opinion and Order adopted September 14, 1993 and released September 22, 1993 amending part 1 of the Commission's Rules. The Commission modified its rules pertaining to the filing of petitions seeking suspension or rejection of new tariff filings or any provision thereof, and any pleadings associated with the petitions. Pursuant to the Commission's rules, parties are required to file an original and four copies of any such petition or pleading with the Commission. To improve service to the public, the Commission is amending its rule to require that all parties filing petitions seeking suspension or rejection of new tariff filings or any provision thereof provide one of the four copies of each petition or pleading directly to the Commission's current copy contractor as follows: Copy Contractor, room 246, 1919 M Street, NW., Washington, DC 20554.

The original and remaining three copies of any document shall continue to be filed with the Secretary, FCC, room 222, 1919 M Street, NW., Washington, DC 20554. In addition, parties shall continue to simultaneously serve separate copies upon the Chief, Common Carrier Bureau, the Chief, Tariff Division, and the publishing carrier or petitioner.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Andrew S. Fish,

Managing Director.

Amendatory Text

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

PART 1—PRACTICE AND PROCEDURE

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303: Implement, 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.773 is amended by revising paragraphs (a)(4) and (b)(3) to read as follows:

§ 1.773 Petitions for suspension or rejection of new tariff filings.

(a) * * *

(4) *Copies, service.* An original and four copies of each petition shall be filed with the Commission, as follows: the original and three copies must be filed with the Secretary, FCC, room 222, 1919 M Street, NW., Washington, DC 20554; one copy must be delivered directly to the Commission's Copy Contractor, room 246, 1919 M Street, NW., Washington, DC 20554. Additional, separate copies shall be served simultaneously upon the Chief, Common Carrier Bureau; and the Chief, Tariff Division. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be served either personally or via facsimile on the filing carrier. If a petition is served via facsimile, a copy of the petition must also be sent to the filing carrier via first class mail on the same day of the facsimile transmission. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 15 or more days notice may be served on the filing carrier by mail.

(b) * * *

(3) *Copies, service.* An original and four copies of each reply shall be filed with the Commission, as follows: The original and three copies must be filed with the Secretary, FCC, room 222, 1919 M Street, NW., Washington, DC 20554; one copy must be delivered directly to the Commission's Copy Contractor, room 246, 1919 M Street, NW., Washington, DC 20554. Additional, separate copies shall be served simultaneously upon the Chief, Common Carrier Bureau; the Chief, Tariff Division; and the petitioner. Replies may be served upon petitioner personally, by mail or via facsimile.

[FR Doc. 93–24091 Filed 9–30–93; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 15

[GEN Docket No. 92–152; FCC 93–421]

Harmonization of Digital Device Standards With International Standards

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts revisions to the technical standards for digital devices, permitting the manufacturers of these devices to demonstrate compliance with either the FCC requirements or the international standards for radio frequency (RF) emissions. The international standards were developed by the International Special Committee on Radio Interference (CISPR) and are used in many other countries, most notably the European Community countries. Harmonization of the standards will permit products manufactured for sale within the U.S. to be marketed to those countries following the CISPR specifications with minimal additional testing and product design modifications.

DATES: This final rule is effective October 1, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 1, 1993.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology, (202) 653–7313.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in ET Docket 92–152, FCC 93–421, adopted August 20, 1993 and released September 17, 1993. The complete text of this Report and Order 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, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Paperwork Reduction

The proposed amendments will not modify the information collection requirements contained in the current regulations.

Summary of the Report and Order

1. In the Report and Order in this proceeding, the Commission amended part 15 of its rules to permit the manufacturers of digital devices to demonstrate compliance with either the existing FCC requirements or the international standards for radio frequency (RF) emissions. These international standards were developed by the International Special Committee on Radio Interference (CISPR) and are contained in CISPR Pub. 22, as amended. The objective of this action is to ensure that U.S. manufacturers have reasonable opportunities to complete fairly and effectively in the international marketplace. Harmonization of the standards will permit products manufactured for sale within the U.S. to be marketed in those countries following the CISPR specifications with minimal additional testing and product design modification while, at the same

time, satisfying the Commission's interference control objectives.

2. Part 15 of the Commission's rules governs the operation of RF devices without an individual license. Digital devices, such as computers, generate and use RF energy. These devices are subject to the provisions in part 15. However, the standards in part 15 apply only to products used in the United States. Many other countries, most notably the European Community countries, are in the process of requiring digital devices to comply with standards developed by CISPR for controlling interference. CISPR is a voluntary standards-making organization under the auspices of the International Electrotechnical Commission (IEC). CISPR adopts recommendations for limits and methods of measurement to control radio interference.

3. The following CISPR standards are incorporated by reference into part 15: First Edition of CISPR Pub. 22 (1985), "Limits and Methods of Measurement of Radio Interference Characteristics of Information Technology Equipment," and the associated Draft International Standards adopted by CISPR, published as documents CISPR/G (Central Office) 2, CISPR/G (Central Office) 5, CISPR/G (Central Office) 9, CISPR/G (Central Office) 11, CISPR/G (Central Office) 12, CISPR/G (Central Office) 13, and CISPR/G (Central Office) 14. To accommodate future, minor changes to the CISPR standards, differing by no more than a few dB, the Commission's Chief Engineer will issue a Public Notice, to be published in the **Federal Register**, identifying the changes and requesting comments. The Chief Engineer is delegated authority to adopt the changes into the regulations if the comments responding to the Public Notice are favorable. More significant modifications to the CISPR standards will be implemented through a formal rulemaking proceeding.

4. Intermixing between the FCC standards and the CISPR standards is not permitted. However, testing to demonstrate compliance with the CISPR standards must be performed using American National Standards Institute (ANSI) C63.4–1992, "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," as detailed in 47 CFR 15.31(a)(6). Further, the Commission retained the limits for RF emissions above 1000 MHz, where required under 47 CFR 15.33, but permitted emissions above 1000 MHz to be measured at the same test distances used below 1000 MHz.

5. Because of differences in power line voltages and frequencies, digital devices designed to be marketed within the U.S. and within countries following the CISPR standards use different power supplies or use a single power supply designed to operate in several modes, *i.e.*, function at different power line voltages and frequencies. The Commission noted that the operation of a device with different power supplies, or with a single power supply with different operating modes, can significantly affect the levels of RF emissions conducted onto the AC power lines. Accordingly, tests to determine the levels of RF emissions conducted onto the AC power lines must be performed with each power supply that will be installed in the equipment when marketed within the U.S. or, when a power supply can operate in different modes, with the digital device operating in each mode suitable for connection to the U.S. AC power service. Power supplies are not, however, a primary cause of radiated emissions. Thus, some relief from multiple testing with different power supplies can be provided when testing to show compliance with the limits on RF emissions radiated from the device. Initial pre-test scans for compliance with radiated emissions limits shall be conducted with all power supplies and operating modes planned to be employed. The full tests for radiated emissions shall be performed using the power supply or operating mode that results in the highest levels of radiated emissions, even if that power supply or operating mode is not the one designed for use within the U.S. We will, of course, also permit digital devices to be tested using only the power supply or operating mode designed for use within the U.S.

6. In a separate matter, the Commission also amended part 15 of its rules to incorporate the standards in the digital device measurement procedures regarding AC power line conducted emissions. For any part 15 devices, including non-digital devices, when the difference between the conducted emission levels measured with a quasi-peak detector and with an average detector is 6 dB or greater, a 13 dB allowance may be added to the part 15 power line conducted limit.

7. Final Regulatory Flexibility Analysis Statement: Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, our final analysis is as follows:

I. Need for and purpose of this action: This action permits manufacturers of digital devices to comply with the Commission's equipment verification or certification requirements by demonstrating that a device complies with either the current part 15 standards or the standards in CISPR Pub. 22. The ability to use the CISPR standards for compliance with both domestic and international requirements facilitates the international marketing of digital devices by reducing testing and equipment design burdens.

II. Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis: Tandy, the only party submitting comments in response to the Initial Regulatory Flexibility Analysis, supports the proposals set forth in the Notice. It indicates that: (1) U.S. manufacturers, whether large or small, who do not market outside the U.S. would suffer no negative impact if the Commission accepts the CISPR standards for digital devices as an alternative to the part 15 standards; (2) harmonization of the standards for digital devices may facilitate the entry of small businesses into the global marketplace, particularly the European Community markets; and, (3) the reduction in design and testing costs resulting from these changes to the rules could be the impetus for the entry of smaller U.S. businesses into foreign markets.

III. Significant alternatives considered and rejected: All of the commenting parties support harmonization of the standards with those in CISPR Pub. 22. Several commenting parties disagree on the version of the CISPR standard and the test procedure that should be employed. We are adopting the version that is expected to be adopted by CISPR, reducing the probability that our regulations must be modified in the near future, and are providing the Chief Engineer with delegated authority to make minor changes to the standards following notice to the public with opportunity for comment.

8. In accordance with the above discussion and pursuant to the authority contained in Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, it is ordered that part 15 of the Commission's Rules and Regulations is amended as set forth below. These rules and regulations are effective upon publication in the **Federal Register.** *It is further ordered* that this proceeding is terminated.

List of Subjects in 47 CFR Part 15

Computer technology, Incorporation by reference, Reporting and recordkeeping requirements.

Rule Changes

Title 47 of the Code of Federal Regulations, part 15, is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

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

Authority: Secs. 4, 302, 303, 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304 and 307.

2. Section 15.31 is amended by adding a note after paragraph (a)(6)(iii) to read as follows:

§ 15.31 Measurement standards.

(a) * * *
(6) * * *
(iii) * * *

Note: Digital devices tested to show compliance with the provisions of §§ 15.107(e) and 15.109(g) must be tested following the ANSI C63.4 procedure described in paragraph (a)(6) of this section.

* * * * *

3. Section 15.107 is amended by redesignating paragraph (d) as paragraph (f), and by adding new paragraphs (d) and (e), to read as follows:

§ 15.107 Conducted limits.

* * * * *

(d) The following option may be employed if the conducted emissions exceed the limits in paragraph (a) or (b) of this section, as appropriate, when measured using instrumentation employing a quasi-peak detector function: if the level of the emission measured using the quasi-peak instrumentation is 6 dB, or more, higher than the level of the same emission measured with instrumentation having an average detector and a 9 kHz minimum bandwidth, that emission is considered broadband and the level obtained with the quasi-peak detector may be reduced by 13 dB for comparison to the limits. When employing this option, the following conditions shall be observed:

(1) The measuring instrumentation with the average detector shall employ a linear IF amplifier.

(2) Care must be taken not to exceed the dynamic range of the measuring instrument when measuring an emission with a low duty cycle.

(3) The test report required for verification or for an application for a grant of equipment authorization shall contain all details supporting the use of this option.

(e) As an alternative to the conducted limits shown in paragraphs (a) and (b) of this section, digital devices may be shown to comply with the standards contained in the First Edition of International Special Committee on Radio Interference (CISPR) Pub. 22 (1985), "Limits and Methods of Measurement of Radio Interference Characteristics of Information Technology Equipment," and the associated Draft International Standards (DISs) adopted in 1992 and published by the International Electrotechnical Commission as documents CISPR/G (Central Office) 2, CISPR/G (Central Office) 5, CISPR/G (Central Office) 9, CISPR/G (Central Office) 11, CISPR/G (Central Office) 12, CISPR/G (Central Office) 13, and CISPR/G (Central Office) 14. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these CISPR publications may be purchased from the American National Standards Institute (ANSI), Sales Department, 11 West 42nd Street, New York, NY 10036, (212) 642–4900. Copies may also be inspected during normal business hours at the following locations: Federal Communications Commission, 2025 M Street, NW., Office of Engineering and Technology (room 7317), Washington, DC, and Office of the Federal Register, 800 N. Capitol Street, NW., suite 700, Washington, DC. In addition:

(1) The test procedure and other requirements specified in this part shall continue to apply to digital devices.

(2) If the conducted emissions are measured to demonstrate compliance with the alternative standards in this paragraph, compliance must also be demonstrated with the radiated emission limits shown in § 15.109(g).

* * * * *

4. Section 15.109 is amended by revising the last sentence of paragraph (e), and by adding a new paragraph (g), to read as follows:

§ 15.109 Radiated emission limits.

* * * * *

(e) * * * At frequencies above 30 MHz, the limits in paragraph (a), (b) or (g) of this section, as appropriate, continue to apply.

* * * * *

(g) As an alternative to the radiated emission limits shown in paragraphs (a) and (b) of this section, digital devices may be shown to comply with the standards contained in the First Edition of CISPR Pub. 22 (1985), "Limits and Methods of Measurement of Radio Interference Characteristics of Information Technology Equipment," and the associated Draft International Standards (DISs) adopted in 1992 and published by the International Electrotechnical Commission as documents CISPR/G (Central Office) 2, CISPR/G (Central Office) 5, CISPR/G (Central Office) 9, CISPR/G (Central Office) 11, CISPR/G (Central Office) 12, CISPR/G (Central Office) 13, and CISPR/G (Central Office) 14. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these CISPR publications may be purchased from the American National Standards Institute (ANSI), Sales Department, 11 West 42nd Street, New York, NY 10036, (212) 642–4900. Copies may also be inspected during normal business hours at the following locations: Federal Communications Commission, 2025 M Street, NW., Office of Engineering and Technology (room 7317), Washington, DC, and Office of the Federal Register, 800 N. Capitol Street, NW., suite 700, Washington, DC. In addition:

(1) The test procedure and other requirements specified in this part shall continue to apply to digital devices.

(2) If, in accordance with § 15.33 of this part, measurements must be performed above 1000 MHz, compliance above 1000 MHz shall be demonstrated with the emission limit in paragraph (a) or (b) of this section, as appropriate. Measurements above 1000 MHz may be performed at the distance specified in the CISPR 22 publications for measurements below 1000 MHz provided the limits in paragraphs (a) and (b) of this section are extrapolated to the new measurement distance using an inverse linear distance extrapolation factor (20 dB/decade), *e.g.*, the radiated limit above 1000 MHz for a Class B digital device is 150 uV/m, as measured at a distance of 10 meters.

(3) The measurement distances shown in CISPR Pub. 22, including measurements made in accordance with this paragraph above 1000 MHz, are considered, for the purpose of § 15.31(f)(4) of this part, to be the measurement distances specified in this part.

(4) If the radiated emissions are measured to demonstrate compliance with the alternative standards in this paragraph, compliance must also be demonstrated with the conducted limits shown in § 15.107(e).

5. Section 15.207 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by adding a new paragraph (b), to read as follows:

§ 15.207 Conducted limits.

* * * * *

(b) The following option may be employed if the conducted emissions exceed the limits in paragraph (a) of this section when measured using instrumentation employing a quasi-peak detector function: If the level of the emission measured using the quasi-peak instrumentation is 6 dB, or more, higher than the level of the same emission measured with instrumentation having an average detector and a 9 kHz minimum bandwidth, that emission is considered broadband and the level obtained with the quasi-peak detector may be reduced by 13 dB for comparison to the limits. When employing this option, the following conditions shall be observed:

(1) The measuring instrumentation with the average detector shall employ a linear IF amplifier.

(2) Care must be taken not to exceed the dynamic range of the measuring instrument when measuring an emission with a low duty cycle.

(3) The test report required for verification or for an application for a grant of equipment authorization shall contain all details supporting the use of this option.

* * * * *

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 93-23887 Filed 9-30-93; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Parts 73 and 74

[DA 93-1159]

Broadcast Services; Editorial Amendments to the Rules

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This *Order* amends agency regulations to correct certain editorial errors in the Code of Federal Regulations and to reflect recent changes in the Commission's Rules in order to make these rules as accurate, current, and efficient as possible.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Rita McDonald, Policy and Rules Division, Mass Media Bureau (202) 632-5414.

SUPPLEMENTARY INFORMATION:

Background/Need for Correction

On October 1, 1993, the Office of the Federal Register will issue the 1993 Code of Federal Regulations (CFR) for Title 47. In order to make the new CFR as accurate possible, we have reviewed the 1992 edition and identified outmoded and/or inconsistent information. Accordingly, this Order amends the Commission's Rules to reflect additional changes to 47 CFR parts 73 and 74. This Order makes no substantive changes that impose additional burdens or remove provisions relied upon by licenses or the public. Additionally, we believe that these revisions will serve the public interest. This information is amended as part of the Agency's oversight function.

These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Because these amendments only interpret and clarify the existing language of parts 73 and 74, prior notice of rule making is not required. 47 CFR Section 1.412(c). For this same reason, these amendments may become effective upon publication in the **Federal Register**. 47 CFR Section 1.427(b). Because a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

List of Subjects in 47 CFR Parts 73 and 74

Radio broadcasting, Television broadcasting.

PART 73—RADIO BROADCAST SERVICES

Accordingly, 47 CFR parts 73 and 74 are amended by making the following corrections:

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

Authority: 47 U.S.C. 154, 303, 334

2. The Alphabetical Index at the end of Part 73 is amended by adding two new listings to read as follows:

Alphabetical Index—Part 73

* * * * *

Hard Look Deficiencies and Amendments (as modified) (FM)—73.3522(a)(6)

* * * * *

Minimum Filing Requirement (FM)—73.3564(a)

* * * * *

§ 73.202 [Amended]

3.The Table of Allotments 73.202(b) is amended by revising the spelling of "Owasso" (Michigan) to "Owosso".

§ 73.520 [Redesignated as § 73.672]

4. Section 73.520 is redesigned as Section 73.672.

§ 73.614 [Amended]

5. Section 73.614 is amended by removing the asterisks at the end of the first equation following paragraph (b)(1)

§ 73.682 [Amended]

6. Section 73.682 is amended by removing Schedule I.

7. Section 73.1635 is amended by revising the last sentence in paragraph (a)(4) to read as follows:

§ 73.1635 Special temporary authorizations (STA).

(a) * * *

(4) * * * The permittee or licensee must demonstrate that any further extensions requested are necessary and that all steps to resume normal operation are being undertaken in an expeditions and timely fashion.

* * * * *

8. Section 73.3522(a)(6) is amended by revising the bracketed information starting at the fourth sentence to read as follows:

§ 73.3522 Amendment of applications.

(a) * * *

(6) * * * [For minimum filing requirements see § 73.3564(a). Examples of tender defects appear at 50 FR 19936 at 19945–46 (May 13, 1985), *reprinted as* Appendix D, *Report and Order*, MM Docket No. Docket No. 91-347, 7 FCC Red 5074, 5083–88 (1992). For examples of acceptance defects see 49 FR 47331.]* * *

* * * * *

§ 73.3545 [Amended]

9. Section 73.3545 is amended by removing the reference to "section 325(b)" in the first sentence and adding "section 325(c)" in its place.

§ 73.3555 [Amended]

10. Section 73.3555 is amended by removing the phrase "FM commercial stations" in paragraph (a)(1)(ii) and adding "2 FM commercial stations" in its place, and by removing the reference to "a proxy for each data." in the note following paragraph (a)(1)(ii) and adding in its place "a proxy for such data."

11. Section 73.3564 is amended by revising the first sentence in paragraph (a)(2) to read as follows:

§ 73.3564 Acceptance of applications.

(a) * * *

(2) The application must not omit more than 3 of the second tier items specified in Appendix C,. *Report and Order*, MM Docket No. 91-347, 7 FCC Red 5074, 5081–82 (1992).* * *

* * * * *

§ 73.3580 [Amended]

12. Section 73.3580 is amended by removing the reference to "section 325(b)" in the first sentence of paragraph (a)(6), and adding "section 325(c)" in its place.

§ 75.3594 [Amended]

13. Section 73.3594 is amended by removing the reference to "section 325(b)" in the first sentence of paragraph (a)(2), and adding "section 325(c)" in its place.

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

14. The authority citation for part 74 continues to read as follows:

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

§ 74.602 [Amended]

15. Section 74.602(e) is amended by moving the reference to "broadcast network—work entities" and adding "broadcast network entities" in its place.

§ 74.637 [Amended]

16. The table at the end of § 74.637 is amended by removing the reference to "20" under the column headed "Maximum authorized bandwidth (MHz)" and adding "25" under that same column in its place.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93-24161 Filed 9-30-93; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 90

[PR Docket No. 90-481; FCC 93-411]

Construction, Licensing, and Operation of Private Land Mobile Radio Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: The Commission adopted a Memorandum Opinion and Order dealing with petitions for reconsideration of the Report and Order in this proceeding. The petitions addressed various aspects of the Report and Order primarily relating to the finder's preference program, which was established by the Report and Order. The Commission also, on its own motion, modified and clarified certain of the rules adopted in the Report and Order to improve private land mobile radio services to the public.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Peter Daronco, Rules Branch, Private Radio Bureau, (202) 632-7125.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, PR Docket No. 90-481, FCC 93-411, adopted August 20, 1993, and released September 13, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, telephone (202) 857-3800.

Summary of Memorandum Opinion and Order

1. In the Report and Order in PR Docket No. 90-481, 56 FR 65857 (December 19, 1991), the Commission modified and clarified various compliance and licensing rules in the Private Land Mobile Radio Services. The Report and Order, in parts pertinent to the petitions for reconsideration, established a new "two-month" database-deletion policy to make frequencies encumbered by expired licenses available for reassignment more rapidly. The Report and Order also specified that frequency coordinators may not recommend a channel associated with an expired license for an application received before the Commission made the channel available by deleting the expired license from the database. The one exception to this policy allowed a coordinator to recommend a channel for an application submitted prior to the deletion of the license associated with that channel from the database if the applicant did not specify a particular channel but instead relied on the coordinator to select a channel. The Report and Order also established a finder's preference program to give an incentive to individuals to assist the Commission in recovering unused channels. The Report and Order also sheltered certain public safety channels from the finder's program, specified eligibility criteria to receive a finder's award, and indicated that a preference may only be awarded for identified violations of the Commission's construction and operation rules.

2. The Associated Public-Safety Communications Officers, Inc. (APCO), the Industrial Telecommunications Association, Inc. (ITA) and the National Association of Business and Educational Radio, Inc. (NABER) petitioned the Commission to reconsider certain aspects of the Report and Order.

3. ITA, in its petition for reconsideration, contends that the exception for applicants not specifying a channel should be eliminated because it is unworkable and would be abused to the detriment of more diligent applicants that monitor the Commission's database and submit an application for a specific channel upon observing that that channel has become available. On reconsideration, the Commission granted ITA's request and deleted the exception so that all applications will be treated the same. In so doing, the Commission decided to allow frequency coordinators to select a channel associated with an expired license for recommendation to the Commission before the channel is actually available on the database, provided that such coordinator identifies the call sign of the license that it expects to be deleted at the time the Commission receives the application. The Commission noted, however, that it will deny any application for a channel it receives before such channel is available.

4. APCO, in its petition for reconsideration, asks the Commission to clarify that the finder's preference rules exempt all public safety channels below 800 MHz vacated by licensees migrating to 821-824/866-869 MHz channels pursuant to a Regional Safety Plan. The Commission declined to adopt APCO's interpretation but clarified that 821-824/866-869 MHz channels and public safety channels below 800 MHz actually listed in the applicable Regional Plan are generally exempt from the finder's program.

5. ITA also contends that the Commission should delete the second public safety-related restriction to the finder's program, which provides that 800 MHz Public Safety Pool channels occupied by Public Safety Pool eligibles may only be targeted by other 800 MHz Public Safety Pool eligibles. The Commission concluded that ITA presented no new arguments on reconsideration to warrant changing this determination.

6. ITA also asked that the Commission extend the scope of the finder's program to include violations of loading rules by some 800 MHz stations. The Commission declined to adopt ITA's request at this time because the program is relatively new and the Commission would need more experience in implementing the finder's program before extending the scope of the

program to additional areas. The Commission also noted that the Report and Order granted the Private Radio Bureau authority to extend the program in the future if it determines that the burden of additional requests could be absorbed and the public interest would be served.

7. ITA and NABER asked the Commission to clarify whether a preference award guarantees a successful finder licensing at a site other than the target's. The Commission clarified that relocation of the channel(s) or modification of the operating parameters, such as Effective Radiated Power, are not part of a finder's preference. The Commission, noting that finders are not applicants, also rejected NABER's request to require finders to submit their requests to frequency coordinator(s).

8. The Commission also clarified that finders cannot target expired licenses and that a successful finder has 90 days from the date of its award letter to file an acceptable application with the Commission, not a frequency coordinator. The Commission has also modified its rules so that (1) nonfeeable correspondence related to the program must be addressed to Federal Communications Commission, Finder's Preference Program, 1270 Fairfield Road, Gettysburg, PA 17325–7245, (2) finders will generally have one opportunity to resubmit a request returned for correction(s), (3) finders must file with the Commission an original plus three copies of the request and need not serve the target licensee, and (4) target licensees filing a response to a finder's request must file with the Commission an original and two copies of its response, and serve a complete copy on the finder.

Final Regulatory Flexibility Analysis

The Commission prepared a Final Regulatory Flexiblity Analysis for the *Report and Order*. The rules adopted in this Memorandum Opinion and Order will not materially modify the effect of the instant proceeding on small businesses.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Radio.

Amendatory Text

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

2. Section 90.173 is amended by revising paragraph (k) to read as follows:

§ 90.173 Policies governing the assignment of frequencies.

* * * * *

(k) Notwithstanding any other provisions of this part, any eligible person may seek a dispositive preference for a channel assigned on an exclusive basis in the 220–222 MHz, 470–512 MHz, and 800/900 MHz bands by submitting information that leads to the recovery of channels in these bands. Recovery of such channels must result from information provided regarding the failure of existing licensees to comply with the provisions of §§ 90.155, 90.157, 90.629, 90.631 (e) or (f), or 90.633 (c) or (d).

(1) *Eligibility for preference.* A finder must be eligible to be a licensee in the private land mobile radio services and must be eligible to be licensed in the Service, Category or Pool, as applicable, of the channels targeted by its request on either a primary basis or through intercategory sharing—except a finder's preference for 800 MHz Public Safety Category channels authorized to 800 MHz Public Safety Category licensees shall only be available to 800 MHz Public Safety Category eligibles.

(2) *Timeliness of finder's request and application.* The Commission shall dismiss without action all untimely finder's requests. A preference request based on a construction or placed-in-operation violation and filed less than 180 days after the construction deadline of the target license is considered untimely. A request targeting a license under Commission review or investigation is also considered untimely. A finder awarded a preference must file an application for the targeted channel(s) with the Commission within 90 days of the date the preference is awarded; the finder shall lose its preference if it does not timely file and prosecute such application. Where more than one finder obtains a preference for the same channel(s), the Commission will grant the license to operate on the channel(s) to one of these applicants through its random selection procedures. See § 1.972 of this chapter. Preferences are not assignable or transferable except under the same standards provided for involuntary assignment or transfer of certain authorizations. See § 1.924(c) of this chapter.

(3) *Contents of request.* The finder's preference request (the original and three (3) complete copies) shall be filed with the appropriate fee at the following address: Federal Communications Commission, Feeable Correspondence, P.O. Box 358305, Pittsburgh, PA 15251–5305. See § 1.1102(14) of this chapter for fee requirements (including the use of fee Form 155). All finder's program correspondence not requiring payment of a fee shall be addressed to: Federal Communications Commission, Finder's Preference Program, 1270 Fairfield Road, Gettysburg, PA 17325–7245. The finder shall state that it is requesting a preference. The request shall contain detailed information to establish a *prima facie* violation including: the name and address of the licensee allegedly violating the applicable rules; the licensee's call sign(s), frequencies, and the authorized station location(s); the Commission's rule(s) that the licensee is allegedly violating, including the dates or benchmarks the licensee has failed to meet; and a detailed statement as to the specific basis for the finder's knowledge that the licensee is violating the rules specified in this section. All preference requests shall be in the form of a sworn affidavit or a declaration dated and subscribed by the finder and any other declarant as true and under penalty of perjury as set forth in § 1.16 of this chapter.

(4) *Processing of request.* Requests containing general and conclusory statements shall be dismissed summarily; requests that do not state a *prima facie* violation shall also be dismissed. A request returned to the applicant for correction shall be processed in its original position in the processing line if the corrected request is resubmitted to the Commission within 60 days of the date of the return notice. If the Commission determines that a request has met all procedural requirements and has stated a *prima facie* violation, the Commission shall forward the request to the target licensee's address of record for the subject license and to any "last known address" provided by the finder. The target licensee may then file a response; any such response (an original and two copies) must be filed within 30 days of the date of the Commission's letter unless such letter specifies a different time period. The target licensee shall serve a complete copy of its response on the finder. See § 1.47 of this chapter.

(5) *Consensual preference requests.* The dispositive preference provided for in this subsection also may be awarded to any person who arranges for an existing licensee to voluntarily request license cancellation because the licensee anticipates that it will be unable to timely construct and place its licensed facilities in operation. See

§§ 90.155, 90.629, 90.631 (e) and (f), 90.633 (c) and (d). In the instance of such consensual preference requests, both the finder and licensee must certify that they have not and will not give or receive any direct or indirect compensation in connection with the requested license cancellation, and the finder must assume the former licensee's deadline for constructing and placing the licensed facility in operation.

(6) *Public safety plans.* The Commission will not accept finders' preference requests when the channels sought are those encompassed by the National Plan for Public Safety (the 821–824/866–869 MHz channels) or are channels specifically identified in a Regional Public Safety Plan(s) on file with the Commission—unless the preference request is accompanied by a written statement from the relevant Regional Planning Committee(s) indicating that the request is not inconsistent with the Region's Public Safety Plan.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–23785 Filed 9–30–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 930219–3069; I.D. 092493A]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of commercial halibut fishing areas.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes this in-season action closing certain commercial halibut fishing areas pursuant to IPHC regulations approved by the United States Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help rebuild and sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: September 22, 1993.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, telephone 907–586–7221; Rolland A. Schmitten, Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way, NE., Bldg. 1, Seattle, Washington 98115, telephone 206–526–6140; or Donald McCaughran, Executive Director, International Pacific Halibut Commission, P.O. Box 95009, University Station, Seattle, Washington 98195, telephone 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this in-season action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America (58 FR 17791, April 6, 1993). On behalf of the IPHC, this in-season action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the in-season action of the restrictions and requirements established therein.

In-Season Action

1993 Halibut Landing Report No. 16

Areas 2C, 3A, and 3B Closed

The International Pacific Halibut Commission has determined that the catch limits for Areas 2C, 3A, and 3B have been exceeded and these areas are closed to commercial halibut fishing for the remainder of 1993. Preliminary landing estimates for 1993 are as follows:

Area	Catch limit (millions of lbs.)	Fishing period	Landings (millions of lbs.)
2C	10.0	6/10–11	5.35
		9/08–10	5.80
			11.15
3A	20.7	6/10–11	13.70
		9/08–09	9.15
			22.85
3B	6.5	6/10–11	4.60
		9/08–09	2.50
			7.10

Area 2B Update

Canadian (Area 2B) halibut landings, as of September 17, total 9.2 million pounds from the 10.5 million pound catch limit. This fishery will continue until all Individual Vessel Quotas have been taken, or October 31, whichever is earlier.

Area 4E Update

The catch limit for Area 4E is 120,000 pounds. As of September 20, 53,000 have been taken: 23,000 pounds in the southeast (Bristol Bay) portion and 30,000 pounds in the northwest (Nelson Island/Nunivak Island) portion. This fishery will close when the catch limit is taken, or October 31, whichever is earlier.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties.

Dated: September 27, 1993.

David S. Crestin,

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

[FR Doc. 93–24112 Filed 9–27–93; 4:57 pm]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 920944–2302; I.D. 092493B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Change in observer coverage.

SUMMARY: NMFS requires that all vessels equal to or greater than 60 feet in length overall (LOA) and all shoreside processing facilities accommodate a NMFS-certified observer while engaged in fishing for, or receiving groundfish from, Community Development Quotas (CDQ) in the Bering Sea and Aleutian Islands management area (BSAI) during 1993, except catcher vessels delivering only unsorted codends to observed motherships. This action is necessary to monitor each allocated CDQ effectively.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), September 30, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Martin Loefflad, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S.

vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675. Requirements for observer coverage are contained in § 675.25. This action implements a change in those coverage requirements as authorized under §§ 675.25(c)(1)(i) and (c)(2)(i).

The Director of the Alaska Region, NMFS, is requiring all vessels equal to or greater than 60 feet LOA and all shoreside processing facilities to accommodate a NMFS-certified observer while engaged in fishing for, or receiving groundfish from CDQs, except catcher vessels delivering only unsorted codends to observed motherships.

Proposal of this change in observer coverage requirements was published in the **Federal Register** (58 FR 45878, August 31, 1993) requesting public comment. The public comment period ended on September 15, 1993, and no comments were received.

Classification

This action is taken under § 675.25 and is in compliance with E.O. 12291.

The Assistant Administrator for Fisheries, NOAA, (AA) has determined, under section 553(d)(3) of the Administrative Procedure Act, that good cause exists for waiving the 30-day delayed effectiveness period for this rule. CDQ fishing is currently taking place without these mandatory coverage requirements in place. Observer coverage is needed to provide catch information used as the basis for monitoring these quotas. Without the information this coverage provides, NMFS will not be able to track CDQ in a manner that insures the quotas are not exceeded. Therefore, the AA is waiving the 30-day delayed effectiveness period for this rule so that it may be effective immediately to achieve the desired CDQ management objective of harvesting within the allotted quotas.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: September 27, 1993.

David S. Crestin,

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

[FR Doc. 93–24116 Filed 9–30–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 189
Friday, October 1, 1993

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.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

5 CFR Part 2502

Freedom of Information Act Regulations

AGENCY: Office of Administration, Executive Office of the President.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the Freedom of Information Act regulations to reflect changes in the current organizational structure and procedures of the Office of Administration.

DATES: Comments must be submitted on or before November 30, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Bruce L. Overton, General Counsel, Office of Administration, Executive Office of the President, Old Executive Office Building, Room 468, Washington, DC 20503, (202) 395–2273.

FOR FURTHER INFORMATION CONTACT: Stacia L. Cropper, (202) 395–6963.

SUPPLEMENTARY INFORMATION: The Office of Administration was created by Executive Order 12028 and Reorganization Plan No. 1 of 1977 and charged with providing administrative and support services to the Executive Office of the President.

By this notice, the Office of Administration is proposing amendments to 5 CFR part 2502 to reflect the current structure of the Office of Administration.

Bruce L. Overton,
General Counsel.

List of Subjects in 5 CFR Part 2502

Courts, Freedom of Information.

PART 2502—AVAILABILITY OF RECORDS

1. The authority citation for part 2502 continues to read as follows:

Authority: 5 U.S.C. 552, as amended by Public Law 93–502 and Public Law 99–570.

2. Section 2502.3(a)(2) (i) through (iii) is revised to read as follows:

§ 2502.3 Organization and functions.

* * * * *

(a) * * *

(2) Three Deputy Assistant Directors and their staffs who are responsible for the following divisions:

(i) General Services
(ii) Information Management
(iii) Resources Management

* * * * *

3. Section 2502.5 is revised to read as follows:

§ 2502.5 Records of other agencies.

Where a request is for a record that originated in another agency and that is also an agency record of the Office of Administration, the request may be referred, as appropriate, to the originating agency for processing, and the person submitting the request will be so notified. Any decision made by that agency with respect to such records will be honored by the Office of Administration. Requests for records that originated in another agency and are not agency records of the Office of Administration will not be referred to the originating agency.

4. Section 2502.9(b)(5) is revised to read as follows:

§ 2502.9 Responses—form and content.

* * * * *

(b) * * *

(5) A statement that the denial may be appealed to the Assistant Director of the Office of Administration within 30 days of receipt of the denial or partial denial.

* * * * *

5. The heading of and paragraphs (a) through (c) of § 2502.10 are revised to read as follows:

§ 2502.10 Appeals to the Assistant Director from initial denials.

(a) When the General Counsel or his or her designee has denied a request for records in whole or in part, the person making the request may, within 30 days of its receipt, appeal the denial to the Assistant Director of the Office of Administration. The appeal must be in writing, addressed to the Assistant Director, Office of Administration, 725 17th Street NW, Washington, DC 20503 and clearly labeled as a "Freedom of Information Act Appeal".

(b) The Assistant Director will act upon the appeal within 20 workdays of its receipt. The Assistant Director may extend the 20 day period of time by any number of workdays that could have been claimed and consumed by the General Counsel or his or her designee under § 2502.9 but that were not claimed and consumed in making the initial determination. The Office of Administration's action on an appeal shall be in writing, signed by the Assistant Director.

(c) If the decision is in favor of the person making the request, the Assistant Director shall order records promptly made available to the person making the request.

* * * * *

6. Section 2502.31 is revised to read as follows:

§ 2502.31 Production prohibited unless approved by the Assistant Director.

No employee or former employee of the Office of Administration shall, in response to a demand of a court or other authority, produce any material contained in the files of the Office of Administration or disclose any information or produce any material acquired as part of the performance of his or official status without the prior approval of the Assistant Director.

7. Section 2502.32 is revised to read as follows:

§ 2502.32 Procedure in the event of a demand for disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Office of Administration for the production of material or the disclosure of information described in § 2502.31, he or she shall immediately notify the Assistant Director. If possible, the Assistant Director shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If a response to the demand is required before instructions from the Assistant Director are received, an attorney designated for that purpose by the Office of Administration shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been or is being, as the

case may be, referred for prompt consideration by the Assistant Director. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Assistant Director.

8. Section 2502.33 is revised to read as follows:

§ 2502.33 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 2502.32(b) pending receipt of instructions from the Assistant Director, or if the court or other authority rules that the demand must be complied with irrespective of the instruction from the Assistant Director not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand. (United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951)).

[FR Doc. 93–24002 Filed 9–30–93; 8:45 am]
BILLING CODE 3115–01–M

5 CFR Part 2504

Privacy Act Regulations

AGENCY: Office of Administration, Executive Office of the President.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update regulations to reflect changes in handling requests and record keeping procedures under the Privacy Act.

DATES: Comments must be submitted on or before November 30, 1993.

ADDRESS: All comments concerning these proposed regulations should be addressed to Bruce L. Overton, General Counsel, Office of Administration, Executive Office of the President, Old Executive Office Building, Room 468, Washington, DC 20503, (202) 395–2273.

FOR FURTHER INFORMATION CONTACT:

Stacia L. Cropper, (202) 395–6963.

SUPPLEMENTARY INFORMATION: The Office of Administration was created by Executive Order 12028 and Reorganization Plan No. 1 of 1977 and charged with providing administrative support and services to the Executive Office of the President (EOP).

By this notice, the Office of Administration is proposing amendments to 5 CFR part 2504 to reflect the current structure of the Office of Administration.

Bruce L. Overton,
General Counsel.

List of Subjects in 5 CFR Part 2504

Privacy.

PART 2504—PRIVACY ACT REGULATIONS

1. The authority citation for part 2504 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 2504.2(d) is revised to read as follows:

§ 2504.2 Definitions.

* * * * *

(d) *Record* means any item collection or grouping of information about an individual that is maintained by the Office, including but not limited to education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, identifying number, symbol, or other identifiers assigned to the individual, such as a finger or voice print or photography. Record does not include computer files associated with an individual employee's computer account and not systematically maintained by the agency.

* * * * *

3. Section 2504.16 (a) and (c) are revised to read as follows:

§ 2504.16 Appeals process.

(a) Within 20 work days of receiving the request for review, a review group composed of the Privacy Act Officer, the General Counsel and the Official having operational control over the record, will propose a determination on the appeal for the Assistant Director's final decision. If a final determination cannot be made in 20 days, the requestor will be informed of the reasons for the delay and the date on which a final decision can be expected. Such extensions are unusual and should not exceed an additional 30 work days.

(b) * * *

(c) If the initial denial of a request to amend a record is reversed, the Office will correct the record as requested and advise the individual of the correction. If the original decision is upheld, the requestor will be so advised and informed in writing of the right to judicial review pursuant to 5 U.S.C. 552(a)(g). In addition, the requestor will be advised of his (or her) right to file a concise statement of disagreement with the Assistant Director. The statement of disagreement should include an explanation of why the requestor believes the record is inaccurate, irrelevant, untimely, or incomplete. The Assistant Director shall maintain the statement of disagreement with the disputed record, and shall include a copy of the statement of disagreement in any disclosure of the record. Additionally, the Privacy Act Officer shall provide a copy of the statement of disagreement to any person or agency to whom the record has been disclosed, if the disclosure was made pursuant to § 2504.10 (5 U.S.C. 552(a)(c)).

4. Section 2504.17 (b) through (d) is revised to read as follows:

§ 2504.17 Fees.

* * * * *

(b) Records will be photocopied for 15¢ per page for four pages or more (except for paragraphs (a)(1), (2), (3), and (4) of this section). If the record is larger than 8½×14 inches, the fee will be the cost of reproducing the record through Government or commercial sources.

(c) Fees shall be paid in full prior to issuance of requested copies. Payment shall be by personal check or money order payable to the Treasurer of the United States, and mailed or delivered to the Executive Secretary, Office of Administration, 725 17th Street, NW., Washington, DC 20503.

(d) The Privacy Act Officer may waive the fee if: (1) The cost of collecting the fee exceeds the amount collected; or (2) The production of the copies at no charge is in the best interest of the government.

* * * * *

[FR Doc. 93–24003 Filed 9–30–93; 8:45 am]
BILLING CODE 3115–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ANM–21]

Proposed Amendment to Class E Airspace; Blanding, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Blanding, Utah, Class E Airspace to accommodate a new instrument approach procedure and missed approach holding pattern at Blanding Municipal Airport, Blanding, Utah. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the

designation "Class E airspace." The area would be depicted on aeronautical charts for pilots.

DATES: Comments must be received on or before November 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–21, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–537, Federal Aviation Administration, Docket No. 93–ANM–21, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they 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-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–21." The postcard will be date/time stamped and returned to the commenter. All communications received on or 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 light of comments received. All comments submitted will be available for examination at the address listed above both before an 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, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. 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 amend Class E airspace at Blanding, Utah, to accommodate a new instrument approach procedure and missed approach holding pattern a Blanding Municipal Airport. The area would be depicted on aeronautical charts for pilot reference. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class E designation listed in this document would be published subsequently in the Order.

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

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1345(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Blanding, UT [Revised]

Blanding Municipal Airport, UT
(Lat. 37°4'59" N, Long. 109°29'00" W)
Blanding NDB
(Lat. 37°31'03" N, Long. 109°29'34" W)
Dove Creek VORTAC
(Lat. 37°48'32" N, Long. 108°55'53" W)

The airspace extending upward from 700 feet above the surface within a 5.3-mile radius of the Blanding Municipal Airport, and within 5 miles east and 3.1 miles west of the 188 degree bearing from the Blanding NDB extending from the 5.3-mile radius to 10.1 miles south of the NDB; that airspace extending upward from 1,200 feet above the surface within 8.3 miles east and 5 miles west of the 188 and 008 degree bearings from the Blanding NDB extending from 16.1 miles south to 6.1 miles north of the NDB, and within 4.3 miles each side of a direct line between the Blanding NDB and the Dove Creek VORTAC.

* * * * *

Issued in Seattle, Washington, on September 14, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–24148 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 93–ANM–29]

Proposed Amendment to Class E Airspace; Moab, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Moab, Utah, Class E Airspace

to accomodate a new instrument approach procedure at Canyonlands Field Airport, Moab, Utah. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area would be depicted on aeronautical charts for pilots.

DATES: Comments must be received on or before November 15, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–29, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–537, Federal Aviation Administration, Docket No. 93–ANM–29, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone (206) 227–2537.

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-related aspects of the proposal. Communications should identify the airspace docket number 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. 93–ANM–29." The postcard will be date/time stamped and returned to the commenter. All communications received on or 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 light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. 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 amend Class E airspace at Moab, Utah, to accommodate a new instrument approach procedure at Canyonlands Field Airport. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

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

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Moab, UT [Revised]

Canyonlands Field Airport, UT
(Lat. 38°45'18"N, Long. 109°45'17"W)
Moab VOR/DME
(Lat. 38°45'22"N, Long. 109°44'58"W)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of the Canyonlands Field Airport, and within 6.1 miles northeast and 8.7 miles southwest of the Moab VOR/DME 301° radial extending from the 8.7-mile radius to 16.1 miles northwest of the airport and within 2 miles each side of the 040° bearing from Canyonlands Field Airport extending from the 8.7-mile radius to 10 miles northeast of the airport; that airspace extending upward from 1,200 feet above the surface bounded on the north by V–134, on the east by V–391, on the south by V–244, and on the west by V–208, excluding the Price Carbon County Airport, Utah, and the Grand Junction, Walker Field, Co. Class E Airspace Areas and all Federal airways.

* * * * *

Issued in Seattle, Washington, on September 14, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–24147 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM93–24–000]

Revision of Fuel Cost Adjustment Clause Regulation Relating to Fuel Purchases From Company-Owned or Controlled Source; A Notice of Proposed Rulemaking

September 24, 1993.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to state that where a regulatory body has jurisdiction over the price of fuel purchased by a utility from a company-owned or company-controlled source, and exercises that jurisdiction to approve such price, the Commission will presume, subject to rebuttal, that the cost of fuel so purchased is reasonable and includable in the fuel adjustment clause.

DATES: An original and 14 copies of the written comments on this proposed rule change must be filed with the Commission by November 1, 1993. All comments should reference Docket No. RM93–24–000.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Wayne W. Miller, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0466.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to revise 18 CFR 35.14(a)(7) to make clear that where a regulatory body has jurisdiction over the price of fuel purchased by a utility from a company-owned or controlled source, and exercises that jurisdiction to approve such price, the cost of fuel so purchased shall be presumed, subject to rebuttal (rather than conclusively "deemed"), to be reasonable and includable in the fuel cost adjustment clause.

II. Public Reporting Burden

This proposed rule, if adopted, will not have an impact on the reporting burden or the information collection requirements of this regulatory section. These requirements were previously submitted to the Office of Management and Budget and assigned control number 1902–0096.

Interested persons may send comments regarding this collection of information to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, (202) 208–1415]; and to the Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

III. Discussion

A. Section 35.14(a)(7)

Section 35.14(a)(7) addresses contracts governing utilities' purchases of fuel from company-owned or controlled suppliers and the recovery of the costs of the fuel in the fuel cost adjustment clause. It provides, in pertinent part, that where the utility purchases fuel from a company-owned or controlled source, the price of which is subject to the jurisdiction of a regulatory body, such cost shall be "deemed" to be reasonable and includable in the fuel cost adjustment clause.

B. The Ohio Power Proceeding

On remand from the Supreme Court in *Arcadia* v. *Ohio Power Company*, 111 S. Ct. 415 (1990), the DC Circuit, in *Ohio Power Company* v. *FERC*, 954 F.2d 779 (DC Cir.), *cert. denied*, 113 S. Ct. 483 (1992) (*Ohio Power*), held, *inter alia*, that § 35.14(a)(7) establishes a conclusive presumption that the price for an inter-affiliate fuel purchase subject to the jurisdiction of a regulatory body is just and reasonable and, accordingly, cannot be upset by the Commission. In analyzing the meaning of § 35.14(a)(7), the court focused on the meaning of the word "deemed," finding that it establishes a conclusive presumption regarding the reasonableness of an inter-affiliate fuel price subject to another regulatory body's jurisdiction. The court rejected the Commission's position that the word "deemed" sets only a rebuttable presumption. Thus, according to the court, the Commission must accept as reasonable and conclusively lawful whatever price the other regulatory body approves for an inter-affiliate fuel purchase transaction.[1]

C. The Need to Revise § 35.14(a)(7) in Light of the Ohio Power Proceeding

In light of *Ohio Power*, the Commission believes it is necessary to amend § 35.14(a)(7) to state that when a regulatory body has jurisdiction over the price of fuel purchased by a utility from a company-owned or controlled source and exercises that jurisdiction by approving such price, such cost shall be "presumed, subject to rebuttal" (rather than conclusively "deemed"), to be reasonable and includable in the fuel cost adjustment clause.

Even if the standards of review of other regulatory bodies were identical to those of this Commission, and even if a detailed review was made by such a body,[2] the Commission has an

[1] The DC Circuit also determined that Congress, in section 13(b) of the Public Utility Holding Company Act of 1935 (PUHCA): (1) authorized the Securities and Exchange Commission (SEC) to review the price of inter-affiliate fuel purchases among members of a registered public utility holding company system; and (2) barred the Commission from altering that SEC-reviewed price pursuant to its "just and reasonable" ratemaking authority under the Federal Power Act (FPA). 954 F.2d at 784–86. The court found that the SEC-approved price acts as both a ceiling and a floor for the price of affiliate fuel. *Id.* at 782–85.

[2] Section 35.14(a)(7), as presently promulgated and interpreted by the court, provides for a presumption of reasonableness to attach whenever the price of the fuel "is subject to the jurisdiction of a regulatory body." The regulation does not require that the standard of review applied by that regulatory body be the "just and reasonable" standard of the FPA. Likewise, the regulation does not require that the regulatory body conduct a particular review or, indeed, conduct any review at all. So long as the price of fuel is merely subject to the regulatory body's jurisdiction, the regulation provides for a conclusive presumption of reasonableness § 35.14(a)(7) to provide that only if:

Continued

independent obligation under sections 205(a) and 206(a) of the FPA [3] to ensure that rates are "just and reasonable." This obligation requires the Commission to independently review rates subject to its jurisdiction to ensure that they are "just and reasonable." While the Commission can give deference to decisions of another regulatory body and still fulfill its statutory obligation, it cannot in effect delegate its jurisdictional responsibilities to others.[4] In addition, the Commission must exercise greater regulatory scrutiny when affiliate fuel costs are at issue; while there may be a presumption of reasonableness as to costs incurred in arm's-length bargaining, there is no such presumption of reasonableness as to affiliate costs. See, *e.g.*, 954 F.2d at 785 (referring to economic incentive for associated companies to pass through inflated costs for goods); *accord, e.g., Philadelphia Electric Company*, 58 FERC ¶61,060 at 61,134 (1992) (noting that in recent orders the Commission explained that an affiliated relationship between buyers and sellers raises potential for self-dealing and other forms of abuse); *Louisiana Public Service Commission* v. *Arkansas Power & Light Company, et al.*, 44 FERC ¶61,392 at 62,269 (1988) (agreement between affiliated entities cannot be presumed to be as fair as compared to agreements between independent entities); *Public Service Co. of New Mexico*, Opinion No. 133, 17 FERC ¶61,123 at 61,245 (1981), *order on reh'g*, Opinion No. 133–A, 18 FERC ¶61,036 (1982), *aff'd in relevant part*, 832 F.2d 1201, 1213 (10th Cir. 1987) (affiliate coal purchases deserve "special scrutiny"); *Louisville Hydro-Electric Co.*, 1 FPC 130, 133, 135–36, 139–42 (1933), *aff'd*, 129 F.2d 126 (6th Cir. 1942), *cert. denied*, 318 U.S. 761 (1943) (no arm's-length bargaining or independence of action is present in affiliate transactions, and as a consequence affiliate transactions deserve special scrutiny); *cf. Western Distributing Company* v. *Public Service Comm'n of Kansas*, 285 U.S. 119, 124–25 (1932). Thus, the Commission believes that § 35.14(a)(7) should be amended to provide that for affiliate transactions the presumption of reasonableness provided for by the regulation is merely rebuttable and is not conclusive.

Amending § 35.14(a)(7) is also consistent with the Commission's mandate under section 205(f) of the FPA [5] to undertake review of automatic adjustment clauses, including fuel cost adjustment clauses, to ensure "economical purchase and use of fuel." Given an express Congressional mandate to ensure "economical purchase and use of fuel," the Commission believes § 35.14(a)(7) should be amended to eliminate what otherwise would be an absolute bar to Commission inquiry into affiliate fuel prices.[6]

In sum, by amending § 35.14(a)(7) to clearly specify that, where another regulatory body has jurisdiction over affiliate fuel costs and approves such costs, there will be a rebuttable presumption of reasonableness of affiliate fuel costs, rather than a conclusive presumption, the Commission is making clear that it has no intention of abdicating its regulatory responsibilities under sections 205 and 206 of the FPA.[7]

IV. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[8] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment—such as electric rate filings under sections 205 and 206 of the FPA and the establishment of just and reasonable rates.[9] The proposed rule involves such matters. Accordingly, no environmental consideration is necessary.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act [10] requires rulemakings to either contain a description and analysis of the impact the proposed rule will have on small entities or a certification that the rule will not have a substantial economic impact on a substantial number of small entities. Most public utilities to whom the proposed rule would apply do not fall within the definition of small entity. Consequently, the Commission certifies that this proposed rule will not have "a significant economic impact on a substantial number of small entities."

VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations [11] require that OMB approve certain information collection requirements imposed by an agency. This proposed rule neither contains new information collection requirements nor significantly modifies any existing information collection requirements in part 35; therefore, it is not subject to OMB approval. However, the Commission will submit a copy of this proposed rule to OMB for information purposes only.

Interested persons may send comments regarding collection of information to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, (202) 208–1415]; and to the Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

VII. Public Comment Procedures

The Commission invites interested persons to submit written comments on the matters addressed in this Notice of Proposed Rulemaking. An original and

(a) A regulatory body has jurisdiction over the price of fuel purchased by a utility from a company-owned or controlled source; and (b) that regulatory body approves such price, will a rebuttable presumption of reasonableness attach.

[3] 16 U.S.C. 824d(a) and 824e(a).

[4] Additionally, the regulation at present is not limited to a particular regulatory body, and thus extends not only to the SEC but to state commissions and other, local regulatory bodies as well; that is, so long as either the SEC, or a state commission, or a local regulatory body has jurisdiction over the price of the fuel, the conclusive presumption of reasonableness would attach. In this regard, we also note that the regulation is silent as to what happens if two regulatory bodies (*e.g.*, the SEC and a state commission, or two state commissions) have jurisdiction and reach different conclusions as to the reasonableness of the price; the regulation does not identify which of the two regulatory bodies, if either, would bind the Commission.

[5] 16 U.S.C. 824d(f).

[6] Such an amendment is also consistent with the Commission's longstanding position, reiterated as recently as Louisiana Power and Light Company, Opinion No. 366, 57 FERC ¶61,101 at 61,388–89 (1991), that even though costs may be passed through a fuel cost adjustment clause, they nevertheless remain open to later scrutiny. *Accord, e.g., Boston Edison Company* v. *FERC*, 856 F.2d 361, 370 (1st Cir. 1988); *Southern California Edison Company* v. *FERC*, 805 F.2d 1068, 1070–72 (D.C. Cir. 1986); Boston Edison Company, Opinion No. 376, 61 FERC ¶61,026 at 61,145 & n.103 (1992); Alamito Company, 33 FERC ¶61,286 at 61,574 (1985); Appalachian Power Company, 23 FERC ¶61,032 at 61,088 (1983).

[7] The Commission recently stated, in *Municipal Resale Service Customers* v. *Ohio Power Company*, 64 FERC ¶61,034 at 61,334–35 (1993), that other bars to Commission review of the reasonableness of rates that reflect affiliate fuel costs exist in particular circumstances. Amending § 35.14(a)(7) is thus not sufficient to overcome, for example, the DC Circuit's other (and more far-reaching) holding in *Ohio Power* that Congress, in authorizing the SEC under PUHCA to review affiliate fuel prices, acted to constrain this Commission from effectively altering such prices under its "just and reasonable" ratemaking authority. See *supra* note 1. Nevertheless, while we cannot remove all bars, we can and should remove those bars that are within our ability to remove.

[8] Regulations Implementing the National Environmental Policy Act, 52 FR 47987 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–90 ¶30,783 (1987).

[9] 18 CFR 380.4(a)(16).

[10] 5 U.S.C. 601–612.

[11] 5 CFR 1320.13.

14 copies of the comments must be filed with the Commission no later than November 1, 1993. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM93–24–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capitol Street NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend part 35, chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 35.14 is amended by revising the second sentence of paragraph (a)(7) to read as follows:

§ 35.14 Fuel cost and purchased economic power adjustment clauses.

(a) * * *

(7) * * * Where the utility purchases fuel from a company-owned or controlled source, the price of which is subject to the jurisdiction of a regulatory body, and where the price of such fuel has been approved by that regulatory body, such costs shall be presumed, subject to rebuttal, to be reasonable and includable in the adjustment clause.* * *

* * * * *

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24169 Filed 9–30–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 990

[Docket No. R–93–1681; FR–2971–P–01]

RIN 2577–AA99

Low-Income Public Housing; Performance Funding System: Cooling Degree Days

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements Section 508 of the Cranston-Gonzalez National Affordable Housing Act requires that the Secretary of HUD include a cooling degree day adjustment factor in determining the component of subsidy eligibility relating to utility consumption under the Performance Funding System. The Act further provides that the method by which a cooling degree day adjustment factor is included shall be identical to the method by which the heating degree day factor is included.

DATES: Comments must be received by November 30, 1993 to assure their consideration.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours in room 10276.

FOR FURTHER INFORMATION CONTACT: For information concerning part 990, Mr. John T. Comerford, Director, Financial Management Division, Office of Assisted Housing, Public and Indian Housing, room 4212, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410, telephone (202) 708–1872.

For information concerning part 905, Mr. Dominic Nessi, Director, Office of Native American Programs, room 4140, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410, telephone (202) 708–1015.

Hearing or speech impaired individuals may call HUD's TDD number, (202) 708–0850. [These telephone numbers are not toll-free.]

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Statement

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. Information on the estimated public reporting burden is provided in section IV. H. Comments regarding this burden or any other aspect of this collection of information, including suggestions for reducing this burden, should be sent to the U.S. Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503.

II. Statutory Requirement

Section 508 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (104 Stat. 4187) directs the Department to include a cooling degree day adjustment factor to utility consumption in the Performance Funding System (PFS). The Act goes on to state that, "The method by which a cooling degree day adjustment factor is included shall be identical to the method by which the heating degree day adjustment factor is included."

Consistent with the explicit policy stated in the statute, this proposed rule contains a literal implementation of the statutory language. However, the Department is concerned that its implementation of this provision raises some basic questions and could create some major distortions in the funding system. Because of this, it has been determined appropriate to open a discussion of policy alternatives in this Notice of Proposed Rulemaking and to invite public comment on the issues surrounding implementation of this statutory provision.

Because of the potential importance of this change, and because the Department is aware that there are additional factors to consider in calculating cooling load and cost other than ambient temperatures, this Preamble describes three alternate scenarios for addressing the issue of heating and cooling degree day adjustment in the PFS formula. We are inviting public comment on these alternate approaches or suggestions of additional alternatives in anticipation of further rulemaking in the future. The Department will review any public

comments received in response to this invitation in the context of developing a Final Rule and subsequent handbook instructions.

III. Background

First, it is necessary to describe how the heating degree day (HDD) factor works under the current regulation.

At the beginning of the year, the PFS uses a Housing Agency's (HA's) average consumption for a specified three year period as the best estimate of consumption in the coming year. At the end of the year there is a 50/50 sharing with the Department of the cost of savings of any consumption over or below this estimate. This builds in an incentive to decrease consumption because HAs get to keep half of the savings, and protects HAs from the full impact of increases in consumption. Before the 50/50 calculation is made, the estimated full consumption of any meter measuring a utility that is used for heat is adjusted to reflect the difference in heating degree days between the three years used in the estimate and the actual heating degree days in the year which has just ended.

In developing the current system, the Department elected to require HAs to adjust the full consumption of each meter used to measure a utility that supplies heat. An alternate way to design the adjustment would be to take the consumption of any meter supplying both heating and other services and isolating or estimating the amount of consumption attributable to heating and performing the HDD adjustment on that portion. This is possible to do meter by meter. An engineer could look at the month by month electric consumption of a project, the heating degree days or cooling degree days for each month, and estimate how much of the electric consumption in the winter months, was used to supply heat.

While this would be possible, it would be administratively burdensome to require HAs and Field Offices to do something like this for each meter used to supply more than heat. The whole design of the PFS has been an attempt to balance taking detailed HA factors into account against imposing administrative complexity. The current system fits exactly in all cases where a separate meter exists for the heating system, and where oil or steam is used to heat. It has a less accurate fit in cases where a meter measures gas used for heat in combination with hot water and/or cooking. It has the worst fit in cases where a project is heated with electricity and the same meter is used for lighting, appliances, and/or air conditioning.

A literal interpretation of statutory language on cooling degree days poses a potential problem in that the cooling degree day adjustment will be applied to the electric consumption in almost all cases. This means that if a summer is ten percent cooler than the years in the rolling base, the total estimated annual electric consumption for the meter will be reduced by ten percent. We are concerned that there are likely to be many more cases of over or under adjustment with cooling degree days than with heating degree days because cooling is far more likely to be supplied from a meter which also supplies other services.

IV. Proposed Rule

The proposed rule would amend §§ 905.102 and 990.102 (Definitions), §§ 907.715 and 990.107 (Computation of Utilities Expense Level), and §§ 905.730(c) and 990.110(c) (Adjustments to Utilities Expense Level), in order to apply a Cooling Degree Day (CDD) adjustment to the utilities used for air conditioning, which will be identical to the Heating Degree Day adjustment currently applied to the utilities used for space heating.

In developing this proposed rule, the Department has struggled to design a cooling degree day adjustment that would be both equitable and administratively feasible. We explored several alternative approaches and we recognize that there are difficulties inherent in all of the following approaches to implementing a cooling degree day factor adjustment. Comments and suggestions on these or any other approaches that comply with the statutory language are invited. The proposed rule embodies the first approach.

1. Implement cooling degree day adjustment exactly like the heating degree day adjustment. While this is explicitly consistent with statutory direction and administratively feasible to apply, it creates distortions in funding for HAs that provide air conditioning from the same meter that supplies lighting and appliances.

For example, an HA that has one meter to measure its electric consumption, in a project in which there is air conditioning, would adjust the total consumption of this meter by the difference in CDDs between the year that has just ended and the average CDDs for the rolling base period. This would be true even if there were only a few window air conditioning units in the project. This meter measures electric consumption used for appliances and lighting in addition to air conditioning. The following table shows what happens under the current PFS, and under this proposal, when the CDDs for a year are 10 percent higher or lower than those in the rolling base period. For purposes of this example, we have assumed that the actual impact of the 10 percent variation in weather on HA consumption was on three months of the year. As previously explained, the year end adjustment allows HAs to keep half of the savings due to actual consumption lower than the adjusted rolling base and does not fund HAs for half of the increased consumption due to actual consumption higher than the adjusted rolling base. The table shows that the impact of applying the CDD change factor to the total consumption of a meter when only a portion of the meter's consumption is for cooling could result in a substantial distortion of the funding levels for an HA.

CDD season as compared to rolling base	10 percent colder		10 percent warmer	
Regulation	Current PFS	Proposed rule	Current PFS	Proposed rule
Rolling Base	3000 KWH	3000 KWH	3000 KWH	3000 KWH
Rolling Base adjusted for CDD Change Factor	NA	2700 KWH	NA	3300 KWH
Actual Consumption	2925 KWH	2925 KWH	3075 KWH	3075 KWH
PFS Year-End Adjustment [½ of difference between Rolling Base (adjusted if applicable) and Actual Consumption]:				
HA funded for higher level of consumption than actually experienced	37.5 KWH		37.5 KWH	
HA actual consumption not funded by PFS		112.5 KWH		112.5 KWH

2. Isolate the consumption of the meter estimated to be used for heating or cooling by tracking the monthly consumption, and perform an adjustment for cooling and heating degree days to the portion of utilities estimated to be used for heating or cooling. While this tailors the adjustment to individual circumstances and does not create distortions in funding, it would be very burdensome for HAs and Field Offices. The utilities forms which currently report utility consumption by annual totals for each type of utility and deal with degree day adjustments based on annual totals would have to be altered to report on and adjust consumption month by month. An analysis would have to be performed annually to determine, based on the months with no HDDs or CDDs, what portion of the meter use is for heating and air conditioning, and adjusting just that portion by the HDD or CDD change factor for the months with HDDs and CDDs. Instead of one PFS Form for the initial fiscal year calculation, and one for the year-end adjustment, there would need to be a separate form for each utility to show the consumption for each month of the fiscal year. We are concerned about the HA and HUD staff resources that would be required to perform and monitor these calculations.

3. Drop all degree day adjustments in the PFS. It is important to note in this context that public housing residents who buy their own utilities have a utility allowance that is not adjusted for weather. This approach would greatly simplify the PFS. It would eliminate the need to separately track the consumption of each meter used to supply heating or air conditioning. This would reduce paperwork and the administrative burden on the Department and the Housing Agencies. It would eliminate the need to wait for publication of the degree day factors before adjustments can be made. This three month delay also affects the ability to develop ratings under the Public Housing Management Assessment Program (PHMAP). On the negative side, HAs would get only 50 percent adjustment for consumption, without further adjustment to reflect weather conditions. Assuming that weather averages out over time, there would be no long term penalty or bonus.

V. Findings and Certifications

A. Environmental Review

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981, and therefore no regulatory impact analysis is necessary. It will not have an annual effect on the economy of $100 million or more. Furthermore, it will not cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule may result in changes in the level of operating subsidy eligibility for certain public housing agencies, but we have no reason to believe that it would have disproportionate effect on small HAs.

D. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have federalism implications and, thus, are not subject to review under the Order. The rule refines an established formula under which HUD calculates operating subsidies for low-income housing developments, but contains no requirement for explicit action by local officials and will not interfere with State or local governmental functions.

E. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule would not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

F. Regulatory Agenda

This rule is listed as item 1568 under the Office of Public and Indian Housing in the Department's semiannual agenda of regulations published on April 26, 1993 (58 FR 24382, 24435), under Executive Order 12291 and the Regulatory Flexibility Act.

G. Catalog

The Catalog of Federal Domestic Assistance Program numbers for this rule are 14.146 and 14.147.

H. Public Reporting Burden

The Department has estimated the public reporting burden involved in the information collections contained in the rule as shown below. The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

PUBLIC REPORTING BURDEN

[Performance Funding System: Cooling Degree Days]

Section of regulation	No. of respondents	No. responses/ respondent	Hours per response	Total hours
905.715(d)				
905.730(c)				

PUBLIC REPORTING BURDEN—Continued

[Performance Funding System: Cooling Degree Days]

Section of regulation	No. of respondents	No. responses/respondent	Hours per response	Total hours
990.107(d) 990.110(c)	1,486	1	1½	2,229

List of Subjects

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, Homeownership, Public housing, Reporting and record keeping requirements.

24 CFR Part 990

Grant programs—housing and community development; Public housing, Reporting and record keeping requirements.

Accordingly, 24 CFR Parts 905 and 990 are proposed to be revised as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 would continue to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee, and 3535(d).

2. In § 905.102, a new definition of *Cooling Degree Days* would be added, in alphabetical order; the second sentence of the definition of "Allowable Utilities Consumption Level (AUCL)" would be revised; and the definition of "Change Factor" would be revised, to read as follows:

§ 905.102 Definitions.

* * * * *

Allowable Utilities Consumption Level (AUCL). * * * After the end of the Requested Budget Year, the AUCL for the utility(ies) used for space heating and (where applicable) for air conditioning will be adjusted by a Change Factor, as described in this section.

* * * * *

Change Factor. The Change Factor applied to the consumption of a meter used to provide space heating is the ratio of the affected IHA fiscal year heating degree days (HDDs) divided by the average annual HDDs of the Rolling Base Period. The Change Factor applied to the consumption of a meter used to provide air conditioning is the ratio of the affected IHA fiscal year cooling degree days (CDDs) divided by the average annual CDDs of the Rolling Base Period. The Change Factor applied to the consumption of a meter used to provide both space heating and air conditioning is the ratio of the sum of the affected IHA fiscal year Heating Degree Days (HDDs) and Cooling Degree Days (CDDs) divided by the sum of the average annual HDDs and CDDs of the Rolling Base Period.

* * * * *

Cooling Degree Days. The annual arithmetic sum of the positive difference (those over 65 degrees) of the average of the lowest and highest daily outside temperatures in degrees Fahrenheit, subtracted from 65 degrees Fahrenheit.

* * * * *

3. In § 905.715, the last sentence of paragraph (a), paragraph (c)(4)(ii), the introductory text of paragraph (d), the introductory text of paragraph (d)(1)(i) preceding the example, the introductory text of paragraph (d)(1)(ii) preceding the example, paragraph (d)(2)(i) and paragraph (f) would be revised, and paragraph (d)(2)(iii) would be added, to read as follows:

§ 905.715 Computation of utilities expense level.

(a) * * * The AUCL for utilities for space heating and for air conditioning will be adjusted after the end of the affected fiscal year pursuant to the instructions of paragraph (d) of this section.

* * * * *

(c) * * *

(4) * * *

(ii) See § 905.730(c)(2)(ii) for the method of adjusting the AUCL for heating degree days and for cooling degree days.

* * * * *

(d) *Adjustment to utilities used for space heating and for air conditioning.* For project utilities with consumption data for the entire Rolling Base Period, and for New Projects, consumption of utilities used for space heating and for air conditioning shall be adjusted, after the end of the affected year, using a Change Factor as follows:

(1) *Adjustment of the Rolling Base Period data*—(i) *Use of Change Factors.* A Change Factor will be developed each year that indicates the relationship of the affected IHA fiscal year HDDs to the average HDDs of the Rolling Base Period. This Change Factor is to be used to establish an AUCL for utilities used for space heating that reflects the severity of the winter weather of the affected IHA fiscal year. Similarly, a Change Factor will be developed by HUD that indicates the relationship of the affected IHA fiscal year CDDs to the average CDDs of the Rolling Base Period. The Change Factors are developed by the National Climatic Center of the Department of Commerce for each established standard weather division of the country, by IHA fiscal year. Change Factors will be supplied by HUD to the IHAs. When a Change Factor is greater than 1.000, it means that the HDDs (or CDDs) of the affected fiscal year were greater than the average annual HDDs (or CDDs) of the Rolling Base Period. An example of the effect of the Change Factor on the Rolling Base Period consumption is: * * *

(ii) *Application of Change Factor to consumption of the Rolling Base Period.* The Change Factor is to be applied only to the consumption readings of meters of utilities, or gallons of oil, or tons of coal used for the purpose of generating heat or air conditioning, for dwelling units and other IHA-associated buildings. The Change Factor shall not be applied to the consumption readings of meters of utilities not used for the purpose of generating heat or air conditioning; e.g., water and sewer or electricity used solely for non-heating and non-cooling purposes. The Change Factor shall be applied to the total consumption reading of meters of utilities, or gallons of oil, or tons of coal, used for heating (or air conditioning) even though the same meter or same energy source is used for other purposes; e.g., heating and cooking gas usage metered on the same meter, or oil used for space heating and also heating of water. Such consumption for each fiscal year of the Rolling Base Period

shall be adjusted by the Change Factor. The adjusted consumption for each year shall be totalled. These totals then will be averaged. The consumption readings of meters of utilities not used for heating (or cooling), which are not adjusted by the Change Factor, shall be included in the total consumption.

* * * * *

(2) *Adjusted consumption for New Projects*—(i) *Use of Change Factor.* For New Projects, the IHA shall apply the Change Factor to the HUD-approved consumption level of utilities used for heating and for cooling.

* * * * *

(iii) *Application of Change Factor to consumption of New Projects.* The annual AUCL for New Projects shall be adjusted by applying the Change Factor to the estimated consumption where the utility is used for heating or for cooling, in part or in total. This consumption shall be from a comparable project during the permissible Rolling Base Period. Any other consumption of this utility that is not used for heating, or for cooling, shall not be adjusted by the Change Factor, but the estimated annual consumption based upon data from a comparable project during the permissible Rolling Base Period shall be added to the adjusted consumption.

* * * * *

(f) *Adjustments.* IHAs shall request adjustments of Utilities Expense Levels in accordance with § 905.730(c), which requires an adjustment based upon a comparison between actual experience and estimates of consumption (after adjustment for heating degree days and for cooling degree days, in accordance with paragraph (d) of this section) and of utility rates.

* * * * *

§ 905.730 [Amended]

4. In § 905.730, paragraph (c)(2) would be amended by adding, in paragraph (c)(2)(i), after the term "heating degree days", the phrase, "and cooling degree days,"; by adding, in the second sentence of paragraph (c)(2)(ii), after the phrase, "space heating utilities", the phrase "and for air conditioning utilities,"; by adding, in the third sentence of paragraph (c)(2)(ii), after the phrase "heating degree day", the phrase "and cooling degree day". In addition, in § 905.730, paragraph (e)(1)(i) would be amended by adding, after the phrase "Heating Degree Days", the phrase "and Cooling Degree Days".

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

5. The authority citation for part 990 would continue to read as follows:

Authority: 42 U.S.C. 1437(g) and 3535(d).

6. In § 990.102, a new definition of *Cooling Degree Days* would be added, in alphabetical order; the second sentence of the definition of "Allowable Utilities Consumption Level (AUCL)" would be revised; and the definition of "Change Factor" would be revised, to read as follows:

§ 990.102 Definitions.

* * * * *

Allowable Utilities Consumption Level (AUCL). * * * After the end of the Requested Budget Year, the AUCL for the utility(ies) used for space heating and (where applicable) for air conditioning will be adjusted by a Change Factor, as described in this section.

* * * * *

Change Factor. The Change Factor applied to the consumption of a meter used to provide space heating is the ratio of the affected PHA fiscal year heating degree days (HDDs) divided by the average annual HDDs of the Rolling Base Period. The Change Factor applied to the consumption of meter used to provide air conditioning is the ratio of the affected PHA fiscal year cooling degree days (CDDs) divided by the average annual CDDs of the Rolling Base Period. The Change Factor applied to the consumption of a meter used to provide both space heating and air conditioning is the ratio of *the sum of* the affected PHA fiscal year Heating Degree Days (HDDs) and Cooling Degree Days (CDDs) divided by *the sum of* the average annual HDDs and CDDs of the Rolling Base Period.

* * * * *

Cooling Degree Days. The annual arithmetic sum of the positive difference (those over 65 degrees) of the average of the lowest and highest daily outside temperatures in degrees Fahrenheit, subtracted from 65 degrees Fahrenheit.

* * * * *

7. In § 990.107, the last sentence of paragraph (a), paragraph (c)(4)(ii), the introductory text of paragraph (d), the introductory text of paragraph (d)(1)(i) preceding the example, the introductory text of paragraph (d)(1)(iii) preceding the example, paragraph (d)(2)(i) and paragraph (f) would be revised, and paragraph (d)(2)(iii) would revised, to read as follows:

§ 990.107 Computation of utilities expense level.

(a) * * * The AUCL for utilities for space heating and for air conditioning will be adjusted after the end of the affected fiscal year pursuant to the instructions of paragraph (d) of this section.

* * * * *

(c) * * *

(4) * * *

(ii) See § 990.110(c)(2)(ii) for the method of adjusting the AUCL for heating degree days and for cooling degree days.

* * * * *

(d) *Adjustment to utilities used for space heating and for air conditioning.* For project utilities with consumption data for the entire Rolling Base Period, and for New Projects, consumption of utilities used for space heating and for air conditioning shall be adjusted, after the end of the affected year, using a Change Factor as follows:

(1) *Adjustment of the Rolling Base Period data*—(i) *Use of Change Factors.* A Change Factor will be developed each year that indicates the relationship of the affected PHA fiscal year HDDs to the average HDDs of the Rolling Base Period. This Change Factor is to be used to establish an AUCL for utilities used for space heating that reflects the severity of the winter weather of the affected PHA fiscal year. Similarly, a Change Factor will be developed by HUD that indicates the relationship of the affected PHA fiscal year CDDs to the average CDDs of the Rolling Base Period. The Change Factors are developed by the National Climatic Center of the Department of Commerce for each established standard weather division of the country, by PHA fiscal year. Change Factors will be supplied by HUD to the PHAs. When a Change Factor is greater than 1.000, it means that the HDDs (or CDDs) of the affected fiscal year were greater than the average annual HDDs (or CDDs) of the Rolling Base Period. An example of the effect of the Change Factor on the Rolling Base Period consumption is: * * *

(iii) *Application of Change Factor to consumption of the Rolling Base Period.* The Change Factor is to be applied only to the consumption readings of meters of utilities, or gallons of oil, or tons of coal used for the purpose of generating heat or air conditioning, for dwelling units and other PHA-associated buildings. The change Factor shall not be applied to the consumption readings of meters of utilities not used for the purpose of generating heat or air conditioning; e.g., water and sewer or electricity used solely for non-heating and non-cooling purposes. The Change Factor shall be applied to the total consumption reading of meters of utilities, or gallons of oil, or tons of coal, used for heating (or air conditioning) even though the same meter or same

energy source is used for other purposes; e.g., heating and cooking gas usage metered on the same meter, or oil used for space heating and also heating of water. Such consumption for each fiscal year of the Rolling Base Period shall be adjusted by the Change Factor. The adjusted consumption for each year shall be totalled. These totals then will be averaged. The consumption readings of meters of utilities not used for heating or cooling, which are not adjusted by the Change Factor, shall be included in the total consumption.

* * * * *

(2) *Adjusted consumption for New Projects*—(i) *Use of Change Factor.* For New Projects, the PHA shall apply the Change Factor to the HUD-approved consumption level of utilities used for heating and for cooling.

* * * * *

(iii) *Application of Change Factor to consumption of New Projects.* The annual AUCL for New Projects shall be adjusted by applying the Change Factor to the estimated consumption where the utility is used for heating or for cooling, in part or in total. This consumption shall be from a comparable project during the permissible Rolling Base Period. Any other consumption of this utility that is not used for heating, or for cooling, shall not be adjusted by the Change Factor, but the estimated annual consumption based upon data from a comparable project during the permissible Rolling Base Period shall be added to the adjusted consumption.

* * * * *

(f) *Adjustments.* PHAs shall request adjustments of Utilities Expense Levels in accordance with § 990.110(c), which requires an adjustment based upon a comparison between actual experience and estimates of consumption (after adjustment for heating degree days and for cooling degree days, in accordance with paragraph (d) of this section) and of utility rates.

* * * * *

§ 990.110 [Amended]

8. In § 990.110, paragraph (c)(2) would be amended by adding, in paragraph (i), after the term "Heating Degree Days", the phrase, "and Cooling Degree Days,"; by adding, in the second sentence of paragraph (ii), after the phrase, "space heating utilities", the phrase "and for air conditioning utilities,"; by adding, in the third sentence of paragraph (ii), after the phrase "heating degree day", the phrase "and cooling degree day". In addition, in § 990.110, paragraph (e)(1)(i) would be amended by adding, after the phrase "Heating Degree Days", the phrase "and Cooling Degree Days".

Dated: August 17, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–23233 Filed 9–30–93; 8:45 am]

BILLING CODE 4210–33–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1609

Guidelines on Harassment Based on Race, Color, Religion, Gender, National Origin, Age, or Disability

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission is issuing Guidelines covering harassment that is based upon race, color, religion, gender (excluding harassment that is sexual in nature, which is covered by the Commission's Guidelines on Discrimination Because of Sex), national origin, age, or disability. The Commission has determined that it would be useful to have consolidated guidelines that set forth the standards for determining whether conduct in the workplace constitutes illegal harassment under the various antidiscrimination statutes. Thus, these Guidelines consolidate, clarify and explicate the Commission's position on a number of issues relating to harassment. The Guidelines supersede the Commission's Guidelines on Discrimination Because of National Origin.

DATES: Comments must be received by November 30, 1993.

ADDRESSES: Comments should be addressed to the Office of the Executive Secretariat, EEOC, 10th Floor, 1801 L Street, NW., Washington, DC 20507. Copies of comments submitted by the public will be available for review at the Commission's library, room 6502, 1801 L Street, NW., Washington, DC, between the hours of 9:30 a.m. and 5 p.m. Copies of this notice of proposed rulemaking are available in the following alternative formats: Large print, braille, electronic file on computer disk, and audio tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4895 (voice) or (202) 663–4399 (TDD).

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Thornton, Deputy Legal Counsel, or Dianna B. Johnston, Assistant Legal Counsel, Office of Legal Counsel, EEOC, 1801 L Street, NW., Washington, DC 20507; telephone (202) 663–4679 (voice) or (202) 663–7026 (TDD).

SUPPLEMENTARY INFORMATION: This proposed rule is not a major rule for purpose of Executive Order 12291.

The Commission has long recognized that harassment on the basis of race, color, religion, sex, or national origin violates section 703 of title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.* (title VII). The Commission has also recognized that harassment based on age is prohibited by the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.* (ADEA). The Commission has interpreted the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq.*, and the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.* (ADA), as prohibiting harassment based on a person's disability. Regarding the ADA, see § 1630.12 of the Commission's regulations on Equal Employment Opportunity for Individuals With Disabilities, 56 FR 35,737 (1991) (codified at 29 CFR 1630.12) (1992).

For more than twenty years, the federal courts have held that harassment violates the statutory prohibition against discrimination in the terms and conditions of employment.[1] The Commission has held and continues to hold that an employer has a duty to maintain a working environment free of harassment based on race, color, religion, sex, national origin, age, or disability, and that the duty requires positive action where necessary to eliminate such practices or remedy their effects. The Commission has previously issued guidelines on sex-based harassment that is sexual in nature, EEOC Guidelines on Discrimination Because of Sex, 29 CFR 1604.11 (1992), and guidelines on national origin harassment. EEOC Guidelines on Discrimination Because of National Origin, 29 CFR 1606.8 (1992).

For several reasons, the Commission has determined that there is a need for new guidelines that emphasize that

[1] See, *e.g., Rogers* v. *EEOC*, 454 F.2d 234 (5th Cir. 1971) (segregation of employer's patients on the basis of national origin could create discriminatory work environment for Spanish-surnamed employee affecting the terms, conditions, and privileges of her employment), *cert. denied*, 406 U.S. 957 (1972); *EEOC* v. *International Longshoremen's Ass'n*, 511 F.2d 273 (5th Cir.) (by racially segregating union locals, union denied equal employment opportunities because of the psychological harm inflicted), *cert. denied*, 423 U.S. 994 (1975); *Weiss* v. *United States*, 595 F. Supp. 1050 (E.D. Va. 1984) (patterned use of religious slurs and taunts by co-worker and supervisor against plaintiff violated plaintiff's right to non-discriminatory terms and conditions of employment).

harassment based upon race, color, religion, gender,[2] age, or disability is egregious and prohibited by title VII, the ADEA, the ADA, and the Rehabilitation Act.[3] First, the Commission has determined that it would be useful to have consistent and consolidated guidelines that set forth the standards for determining whether conduct in the workplace constitutes illegal harassment under the various antidiscrimination statutes. Second, because of all the recent attention on the subject of sexual harassment, the Commission believes it important to reiterate and emphasize that harassment on any of the bases covered by the Federal antidiscrimination statutes is unlawful. Third, doing so at this time is particularly useful because of the recent enactment of the Americans with Disabilities Act. Fourth, these guidelines offer more detailed information about what is prohibited than did the national origin guidelines. Finally, they put in guideline form the rule that sex harassment is not limited to harassment that is sexual in nature, but also includes harassment due to gender-based animus.

Section 1606.8 of the National Origin Guidelines will be incorporated into and superseded by these proposed Guidelines on Harassment. This does not represent a change in the Commission's position on harassment; rather, it is an effort to combine and clarify.

Sexual harassment continues to be addressed in separate guidelines because it raises issues about human interaction that are to some extent unique in comparison to other harassment and, thus, may warrant separate emphasis. In addition to the guidelines, more extensive guidance on sexual harassment can be found in EEOC Policy Guidance No. N–915–050, "Current Issues of Sexual Harassment," March 19, 1990 (Sexual Harassment Policy Guidance). The Commission's Sex Discrimination Guidelines remain in effect and there is no change in the Commission's policy regarding sexual harassment.

Proposed § 1609.1(a) reiterates the Commission's position that harassment on the basis of race, color, religion, gender, national origin, age, or disability constitutes discrimination in the terms, conditions and privileges of employment and, as such, violates title VII, the ADEA, the ADA, or the Rehabilitation Act, as applicable. The Supreme Court, in *Meritor Savings Bank* v. *Vinson*, 477 U.S. 57 (1986), endorsed the Commission's position that title VII affords employees the right to work in an environment free from discriminatory intimidation, insult, and ridicule. See also *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 180 (1989) (Court acknowledged that racial harassment was actionable under section 703(a)(1) of title VII).

Proposed § 1609.1(b) sets out the criteria for determining whether an action constitutes unlawful behavior. These criteria are that the conduct: (i) Has the purpose or effect of creating an intimidating, hostile, or offensive work environment; (ii) has the purpose or effect of unreasonably interfering with an individual's work performance; or (iii) otherwise adversely affects an individual's employment opportunities.

It also defines and gives examples of the types of verbal and physical conduct in the workplace that constitute harassment under title VII, and ADEA, the ADA, and the Rehabilitation Act. Actionable harassment includes harassment based on an individual's race, color, religion, gender, national origin, age, or disability, as well as on the race, color, religion, gender, national origin, age, or disability of one's relatives, friends, or associates.

Proposed § 1609.1(c) sets forth the standard for determining whether the alleged harassing conduct is sufficiently severe or pervasive to alter the conditions of employment and create an intimidating, hostile, or abusive work environment. The standard is whether a reasonable person in the same or similar circumstances would find the challenged conduct intimidating, hostile, or abusive. In determining whether that standard has been met, consideration is to be given to the perspective of individuals of the claimant's race, color, religion, gender, national origin, age, or disability.[4] Recent case law on this issue emphasizes the importance of considering the perspective of the victim of the harassment rather than adopting notions of acceptable behavior that may prevail in a particular workplace. See, e.g., *Ellison* v. *Brady*, 924 F.2d 872, 878–79, 55 EPD ¶ 40,520 (9th Cir. 1991); *Robinson* v. *Jacksonville Shipyards*, 760 F.Supp.. 1486, 55 EPD ¶ 40,535 (M.D. Fla. 1991). As the Ellison court observed, applying existing standards of acceptable behavior runs the risk of reinforcing the prevailing level of discrimination. "Harassers could continue to harass merely because a particular discriminatory practice was common * * *." 924 F.2d at 878.

The Commission explicitly rejects the notion that in order to prove a violation, the plaintiff must prove not only that a reasonable person would find the conduct sufficiently offensive to create a hostile work environment, but also that his/her psychological well-being was affected. Compare *Harris* v. *Forklift Systems*, _____F. Supp. _____, 60 EPD ¶ 42,070 (M.D. Tenn. 1990) (plaintiff must prove psychological injury) , *aff'd per curiam*, _____F.2d _____, 60 EPD ¶ 42,071 (6th Cir. 1992), with *Ellison* v. *Brady*, 924 F.2d 872, 878 n.1 (9th Cir. 1991) (plaintiff need not demonstrate psychological effects). The Supreme Court has granted *certiorari* in *Harris*, _____U.S. _____, 60 EDP ¶ 42,072 (1993), and the Commission has joined the Department of Justice in an *amicus curiae* brief opposing the Sixth Circuit rule. Brief for the United States and the EEOC (April 1993) (No. 92–1168).

As noted above, the determination of whether the complained of conduct violates antidiscrimination laws turns on its severity and pervasiveness. Those factors interact. Courts do not typically find violations based on isolated or sporadic use of verbal slurs or epithets; nevertheless, they recognize that an isolated instance of such conduct—particularly when perpetrated by a supervisor—can corrode the entire employment relationship and create a hostile environment. For example, a supervisor's isolated use of inflammatory and patently offensive racial epithets and slurs such as "nigger" and "spic" may be enough to establish a violation. See, *e.g.*, *Rogers* v. *Western-Southern Life Ins. Co.*, 792 F. Supp. 628 (E.D. Wis. 1992) (supervisor's infrequent use of racial comments such as "nigger" and "you Black guys are "too f***ing dumb to be insurance

[2] There are forms of harassment that are gender-based but non-sexual in nature. See *Hall* v. *Gus Construction Co.*, 842 F.2d 1010, 1014 (8th Cir. 1988) (harassment that is not of a sexual nature but would not have occurred but for the sex of the victim is actionable under title VIII); *Robinson* v. *Jacksonville Shipyards*, 760 F. Supp. 1486, 1522 (M.D. Fla. 1991) (harassing behavior lacking sexually explicit content but directed at women and motivated by animus against women is sex discrimination).

Although the Commission has always recognized that gender-based harassment is actionable, the Guidelines on Discrimination Because of Sex describe only conduct of a sexual nature. These proposed guidelines simply state the applicable rule in guideline form. See *Hall* v. *Gus Construction Co.*, 842 F.2d 1010, 1014-(8th Cir. 1988) (EEOC Guidelines emphasize explicitly sexual behavior but do not state that other types of harassment should not be considered).

[3] Indeed, much of sexual harassment law derives from principles developed in the area of racial and national origin harassment. See *Meritor Savings Bank* v. *Vinson*, 477 U.S. 57, 65–66 (1986) (discusses principles of hostile environment harassment developed in racial and national origin harassment cases and applied to sexual harassment).

[4] This standard is consistent with the standard applied to sexual harassment, as set out in the Sexual Harassment Policy Guidance.

agents" created a hostile work environment). See also *Daniels* v. *Essex Group, Inc.*, 937 F.2d 1264, 1274 & n. 4 (7th Cir. 1991) (court noted that even where harasser was a co-worker, one egregious incident, such as performing KKK ritual in workplace, would create hostile environment).

Under title VII, the ADEA, the ADA, and the Rehabilitation Act, all employees should be afforded a working environment free of discriminatory intimidation. Thus, proposed § 1609.1(d) provides that employees have standing to challenge a hostile or abusive work environment even if the harassment is not targeted specifically at them. See, *e.g.*, *Rogers* v. *EEOC*, 454 F.2d 234 (5th Cir. 1971) (discriminatory work environment was created for Spanish-surnamed employee by segregation of employer's patients on the basis of national origin), *cert. denied*, 406 U.S. 957 (1972); *Robinson* v. *Jacksonville Shipyards*, 760 F. Supp. 1486 (M.D. Fla. 1991) ("behavior that is not directed at a particular individual or group of individuals, but is disproportionately more offensive or demeaning to one sex [can be challenged]").

Proposed § 1609.1(e) states that, in determining whether the alleged conduct constitutes harassment, the Commission will look at the record as a whole and the totality of the circumstances, including the nature of the conduct and the context in which it occurs. Whether particular conduct in the workplace is harassing in nature and rises to the level of creating a hostile or abusive work environment depends upon the facts of each case and must be determined on a case-by-case basis.

Proposed § 1609.2(a) applies agency principles to the issue of employer liability for harassment by the employer's agents and supervisory employees. The Supreme Court in *Meritor Savings Bank* v. *Vinson*, 477 U.S. 57 (1986), declined to issue a definitive rule on the issue of employer liability for claims of environmental harassment, but ruled "that Congress wanted courts to look to agency principles for guidance in this area." *Id.* at 72.

Subsection (i) of § 1609.2(a) states that the employer is liable where it knew or should have known of the conduct and failed to take immediate and appropriate corrective action. A written or verbal grievance or complaint, or a charge filed with the EEOC, provides actual notice. Evidence that the harassment is pervasive may establish constructive knowledge.

Subsection (ii) states that the employer is liable for the acts of its supervisors, regardless of whether the employer knew or should have known of the conduct, if the harassing supervisory employee is acting in an "agency capacity." It notes that the Commission will examine the circumstances of the particular employment relationship and the job functions performed by the harassing individual in determining whether the harassing individual is acting in an "agency capacity."

If the employer fails to establish an explicit policy against harassment, or fails to establish a reasonably accessible procedure by which victims of harassment can make their complaints known to appropriate officials, apparent authority to act as the employer's agent is established. In the absence of an explicit policy against harassment and a complaint procedure, employees could reasonably believe that a harassing supervisor's actions will be ignored, tolerated, or even condoned by the employer. This is the same standard of liability for harassment by supervisors applied by the Commission to cases of sexual harassment. See Sexual Harassment Policy Guidance.

Proposed § 1609.2(b) provides that an employer is responsible for acts of harassment in the workplace by an individual's co-workers where the employer, its agents, or supervisory employees knew or should have known of the conduct, unless the employer can show that it took immediate and appropriate corrective action. This section recognizes that an employer is only liable for non-supervisory employee harassment where it was aware or should have been aware of the harassing conduct.

Proposed § 1609.2(c) provides that, because an employer is obligated to maintain a work environment free of harassment, its liability may extend to acts of non-employees. It states that an employer may be responsible for the acts of non-employees with respect to environmental harassment of employees where the employer, its agents, or supervisory employees knew or should have known of the conduct and failed to take immediate and appropriate corrective action, as feasible. Important factors to consider are the extent of the employer's control over the non-employees and the employer's legal responsibility for the conduct of such non-employees.

Proposed § 1609.2(d) sets forth the Commission's position that taking measures to prevent harassment is the best way to eliminate harassment. It states that an employer should take all steps necessary to prevent harassment from occurring, including having an explicit policy against harassment that is clearly and regularly communicated to employees, explaining sanctions for harassment, developing methods to sensitize all supervisory and non-supervisory employees to issues of harassment, and informing employees of their right to raise and how to raise the issue of harassment under title VII, the ADEA, the ADA, and the Rehabilitation Act. Establishing an effective complaint procedure by which employees can make their complaints known to appropriate officials who are in a position to act on complaints is an important preventive measure.

Regulatory Flexibility Act

The proposed guidelines, if promulgated in final form, are not expected to have a significant economic impact on small business entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 29 CFR Part 1609

Race, color, religion, gender, national origin, age, and disability discrimination.

For the Commission.

Tony E. Gallegos,

Chairman.

For the reasons set forth in the Preamble, the EEOC proposes to add 29 CFR part 1609, §§ 1609.1 and 1609.2, as follows:

PART 1609—GUIDELINES ON HARASSMENT BASED ON RACE, COLOR, RELIGION, GENDER, NATIONAL ORIGIN, AGE, OR DISABILITY

Sec.

1609.1 Harassment.
1609.2 Employer Liability for Harassment.

Authority: 42 U.S.C. 2000e *et seq.*; 29 U.S.C. 621 *et seq.*; 29 U.S.C. 12101, *et seq.*; 29 U.S.C. 701, *et seq.*

§ 1609.1 Harassment.

(a) Harassment on the basis of race, color, religion, gender,[1] national origin,[2] age, or disability constitutes discrimination in the terms, conditions, and privileges of employment and, as such, violates title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.* (title VII); the Age Discrimination in Employment Act, as amended, 29 U.S.C. 621 *et seq.* (ADEA);

[1] These Guidelines cover sex-based harassment that is non-sexual in nature. Sexual harassment is covered by the Commission's Guidelines on Discrimination Because of Sex, 29 CFR 1604.11 (1992).

[2] Because they are more comprehensive, these Guidelines supersede § 1606.8 of the Commission's Guidelines on Discrimination Because of National Origin, 29 CFR 1606.8 (1992).

the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* (ADA); or the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq.*, as applicable.

(b)(1) Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, national origin, age, or disability, or that of his/her relatives, friends, or associates, and that:

(i) Has the purpose or effect of creating an intimidating, hostile, or offensive work environment;

(ii) Has the purpose or effect of unreasonably interfering with an individual's work performance; or

(iii) Otherwise adversely affects an individual's employment opportunities.

(2) Harassing conduct includes, but is not limited to, the following:

(i) Epithets, slurs, negative stereotyping, or threatening, intimidating, or hostile acts, that relate to race, color, religion, gender, national origin, age, or disability; [3] and

(ii) Written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of race, color, religion, gender, national origin, age, or disability and that is placed on walls, bulletin boards, or elsewhere on the employer's premises, or circulated in the workplace.

(c) The standard for determining whether verbal or physical conduct relating to race, color, religion, gender, national origin, age, or disability is sufficiently severe [4] or pervasive to create a hostile or abusive work environment is whether a reasonable person in the same or similar circumstances would find the conduct intimidating, hostile, or abusive. The "reasonable person" standard includes consideration of the perspective of persons of the alleged victim's race, color, religion, gender, national origin, age, or disability. It is not necessary to make an additional showing of psychological harm.

(d) An employer, employment agency, joint apprenticeship committee, or labor organization (hereinafter collectively referred to as "employer") has an affirmative duty to maintain a working environment free of harassment on any of these bases.[5] Harassing conduct may be challenged even if the complaining employee(s) are not specifically intended targets of the conduct.

(e) In determining whether the alleged conduct constitutes harassment, the Commission will look at the record as a whole and at the totality of the circumstances, including the nature of the conduct and the context in which it occurred. The determination of the legality of a particular action will be made from the facts, on a case-by-case basis.

§ 1609.2 Employer liability for harassment.

(a) An employer is liable for its conduct and that of its agents and supervisory employees with respect to workplace harassment on the basis of race, color, religion, gender, national origin, age, or disability:

(1) Where the employer knew or should have known of the conduct and failed to take immediate and appropriate corrective action; or

(2) Regardless of whether the employer knew or should have known of the conduct, where the harassing supervisory employee is acting in an "agency capacity." To determine whether the harassing individual is acting in an "agency capacity," the circumstances of the particular employment relationship and the job functions performed by the harassing individual shall be examined. "Apparent authority" to act on the employer's behalf shall be established where the employer fails to institute an explicit policy against harassment that is clearly and regularly communicated to employees, or fails to establish a reasonably accessible procedure by which victims of harassment can make their complaints known to appropriate officials who are in a position to act on complaints.

(b) With respect to conduct between co-workers, an employer is responsible for acts of harassment in the workplace that relate to race, color, religion, gender, national origin, age, or disability where the employer or its agents or supervisory employees knew or should have known of the conduct, and the employer failed to take immediate and appropriate corrective action.

(c) An employer may also be responsible for the acts of non-employees with respect to harassment of employees in the workplace related to race, color, religion, gender, national origin, age, or disability where the employer or its agents or supervisory employees knew or should have known of the conduct and failed to take immediate and appropriate corrective action, as feasible. In reviewing these cases, the Commission will consider the extent of the employer's control over non-employees and any other legal responsibility that the employer may have had with respect to the conduct of such non-employees on a case-by-case basis.

(d) Prevention is the best tool for the elimination of harassment. An employer should take all steps necessary to prevent harassment from occurring, including having an explicit policy against harassment that is clearly and regularly communicated to employees, explaining sanctions for harassment, developing methods to sensitize all supervisory and non-supervisory employees on issues of harassment, and informing employees of their right to raise, and the procedures for raising, the issue of harassment under title VII, the ADEA, the ADA, and the Rehabilitation Act. An employer should provide an effective complaint procedure by which employees can make their complaints known to appropriate officials who are in a position to act on them.

[FR Doc. 93–23869 Filed 9–30–93; 8:45 am]
BILLING CODE 6750–01–M

[3] This includes acts that purport to be "jokes" or "pranks," but that are hostile or demeaning with regard to race, color, religion, gender, national origin, age, or disability. *Snell* v. *Suffolk County*, 782 F.2d 1094, 1098 (2d Cir. 1986) (dressing Hispanic prisoner in straw hat with sign saying "spic" and "[plaintiff's] son") *Rochon* v. *FBI*, 691 F. Supp. 1548, 1551 n.1 (D.D.C. 1988) (characterizing as "pranks" such things as hate mail, threats of castration, use of defaced photographs—including one of plaintiff's children—and forging plaintiff's name to an insurance policy against death and dismemberment is almost as disturbing as the acts themselves).

[4] See, *e.g.*, *Rodgers* v. *Western-Southern Life Ins. Co.*, 792 F. Supp. 628 (E.D. Wis. 1992) (supervisor's infrequent use of racial comments such as "nigger" and "you Black guys are too f***ing dumb to be insurance agents," created a hostile work environment). See also *Daniels* v. *Essex Group, Inc.*, 937 F.2d 1264, 1274 & n.4 (7th Cir. 1991) (court noted that even where harasser was a co-worker, one egregious incident, such as performing KKK ritual in workplace, would create hostile environment).

[5] See Commission Decision Nos. YSF 9–106 (racial harassment), 72–1114 (religious harassment), 71–2725 (gender-based harassment), CCH EEOC Decisions (1973) ¶¶ 6030, 6347, and 6290, respectively; Commission Decision No. 76–41, CCH EEOC Decisions (1983) ¶ 6632 (national origin harassment).

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Bank Secrecy Act Regulations; Transmittal Orders for Funds Transfers and Transmittals of Funds by Financial Institutions; Correction

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule; correction; extension of comment period.

SUMMARY: On August 31, 1993, the Department of the Treasury (Treasury) published a Notice of Proposed Rulemaking Relating to Transmittal Orders for Funds Transfers and Transmittals of Funds by Financial Institutions. 58 FR 46021. The Department of Treasury is making a

technical correction to this proposed rule. In view of this technical correction, the comment period is extended by two weeks.

DATES: Comments are due on or before October 18, 1993.

FOR FURTHER INFORMATION CONTACT: A. Carlos Correa, Office of Financial Enforcement, (202) 622–0400.

SUPPLEMENTARY INFORMATION: In the previous proposal, it was proposed that a financial institution include the name and address of the transmittor of the payment order in any transmittal order. Similarly, an intermediary bank or financial institution would have to include this information if received. The notice should instead provide that the name, address and deposit account number of the transmittor, if the payment is ordered from a deposit account, must be included.

Technical Corrections

(1) On page 46024, middle column, proposed § 103.33(h)(1)(i)(A) is revised to read as follows:

* * * * *

(A) The name and address of the transmittor and the deposit account number of the transmittor, if the payment is ordered from a deposit account;

* * * * *

(2) On page 46024, middle column, proposed § 103.33(h)(1)(ii)(A) is revised to read as follows:

* * * * *

(A) The name and address of the transmittor and the deposit account number of the transmittor;

* * * * *

(3) On page 46024, last column, proposed § 103.33(h)(1)(iii)(A) is revised to read as follows:

* * * * *

(A) The name and address of the transmittor and the deposit account number of the transmittor;

* * * * *

Dated: September 27, 1993.

Faith S. Hochberg,

Acting Assistant Secretary (Enforcement).

[FR Doc. 93–24166 Filed 9–30–93; 8:45 am]

BILLING CODE 4810–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD–FRL–4782–5]

RIN 2060–AE09

Application Sequence for Clean Air Act Section 179 Sanctions

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA is proposing a rule governing the order in which the sanctions shall apply under section 179 of the Clean Air Act (Act), as amended, after the EPA makes a finding specific to any State Implementation Plan (SIP) or plan revision required under the Act's nonattainment area provisions and any such implementation plan or revision for which the EPA has made a SIP call. The EPA is proposing that the offset sanction apply in an area 18 months after the date on which the EPA makes a finding with regard to that area and that the highway sanction apply in that area six months following application of the offset sanction. Once this rule is effective, sanctions will apply automatically in the sequence prescribed in all instances in which sanctions are required following applicable findings that the EPA has already made or that the EPA will make in the future, except when the EPA proposes in a separate rulemaking to change the sanction sequence. The public will have an opportunity to comment on any such separate rulemaking. Since the EPA's general approach in applying sanctions under section 179 will be to sequence them in the manner prescribed in this document, this proposal represents the public's opportunity to comment on the sequence in which sanctions shall generally apply under section 179 for the applicable findings the EPA has made or will make in the future.

DATES: Written comments on the proposed EPA action must be received by the EPA at the address indicated in the **ADDRESSES** section on or before November 1, 1993.

ADDRESSES: Written comments should be submitted to the EPA at the docket address indicated. The public docket for this action, A–93–28, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, room M–1500, 1st Floor, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Stoneman, Sulfur Dioxide/Particulate Matter Programs Branch, MD–15, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–0823.

SUPPLEMENTARY INFORMATION: The content of today's preamble is listed in the following outline:

I. Background
- A. Clean Air Act Amendments of 1990
- B. Title I Requirements of the Act
- C. EPA Action on SIP's
- D. Consequences of State Failure

II. Today's Action
- A. Proposal
- B. Sanction Sequencing Proposal
- C. Sanction Effectuation
- D. Opportunity for Comment

III. Miscellaneous
- A. Executive Order 12291
- B. Regulatory Flexibility Act
- C. Paperwork Reduction Act

I. Background

A. Clean Air Act Amendments of 1990

The Act, as amended in 1977, contained provisions requiring States to develop SIP's for areas that are designated nonattainment (i.e., nonattainment areas) based on their failure to attain the national ambient air quality standards (NAAQS) for ozone, carbon monoxide (CO), particulate matter (PM–10), sulfur dioxide (SO_2), nitrogen dioxide (NO_2), or lead. Title I of the Clean Air Act Amendments of 1990 [1] (CAAA) revamped the requirements for nonattainment areas. Title I made numerous changes in SIP requirements in general, including provisions governing the EPA's processing of SIP revisions. In addition, the CAAA specifically provided for certain consequences for State failure to meet SIP requirements.

On April 16, 1992 (57 FR 13498) and April 28, 1992 (57 FR 18070), the EPA published a General Preamble for title I of the CAAA that describes the EPA's preliminary views on how the EPA should interpret various provisions of title I of the amended Act, primarily those concerning SIP revisions required for nonattainment areas. This document will refer frequently to the General Preamble for more information on title I provisions summarized here. Note that the public will have the opportunity to comment on the relevant issues expressed in the General Preamble when the EPA proposes to take approval or disapproval action pursuant to notice-and-comment rulemaking on SIP

[1] Public Law No. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

revisions submitted by States. The General Preamble is intended to serve as an advance notice of how the EPA generally intends, in those subsequent rulemakings, to take action on SIP submissions and to interpret various title I provisions.

B. Title I Requirements of the Act

Title I of the CAAA (Provisions for Attainment and Maintenance of NAAQS) primarily amends and supplements title I of the Act (Air Pollution Prevention and Control), addressing on a comprehensive basis the provisions concerning NAAQS attainment by areas designated nonattainment under section 107(d) (42 U.S.C. 7407(d)) of the Act. The General Preamble discusses those requirements which States must address. In some cases, States must satisfy the requirements through a formal submittal to the EPA of a SIP revision, while other requirements necessitate only that States perform certain activities. Four areas of key requirements will be discussed below:

1. Designations/Classifications

The designation and classification requirements in the CAAA amend section 107, the designation provisions, and create new classification provisions in part D (Plan Requirements for Nonattainment Areas) of title I of the Act. The new requirements provide that areas violating the NAAQS (or contributing to a nearby violation of the NAAQS) must be designated nonattainment (section 107(d)). An area may be redesignated to attainment following, among other things, a demonstration that the NAAQS have been attained (section 107(d)(3)(E)).[2] In addition, the amended Act provides for the classification of nonattainment areas based on the severity of the nonattainment problem (sections 181, 186, and 188). Designations and classifications are discussed in the General Preamble at 57 FR 13501–13552 for ozone, CO, PM–10, SO_2, lead, and NO_2 in the specific SIP requirement sections for each pollutant.

2. General Requirements

The CAAA revise various general requirements in section 110 (42 U.S.C. 7410) of the Act. These requirements apply to all plans regardless of the attainment demonstration required. Among other things, these general requirements include procedures for the EPA's review of SIP submittals (section 110(k)), authority for approval of SIP revisions (section 110(l)), and a revised list of requirements for all plans (section 110(a)(2)). The EPA's SIP review procedures are discussed in the General Preamble at pages 13565–13566, and the section 110(a)(2) requirements are discussed in the General Preamble at pages 13556–13557.

3. Part D, Subpart 1 Requirements

The CAAA provide numerous revisions to the general requirements for all designated nonattainment areas, which are set forth in part D, subpart 1. In subpart 1, Congress repealed the 1987 attainment deadlines for ozone and CO and established new attainment deadlines based on an area's classification. Subpart 1 also includes a process governing sanctions for State failure to meet statutory requirements, which is discussed in the General Preamble at pages 13566–13567. Beyond that, it includes revised new source review permit requirements (section 172(c)(5) and section 173, 42 U.S.C. 7503), which are discussed in the General Preamble at pages 13552–13556.

4. Pollutant-Specific Requirements

Pollutant-specific requirements for designated ozone, CO, PM–10, SO_2, NO_2, and lead nonattainment areas are found in part D at subparts 2, 3, 4, and 5, respectively. The EPA has determined that where a conflict exists, the pollutant-specific requirements override the general requirements of part D, subpart 1. Among other things, these pollutant-specific requirements include statutory deadlines by which various elements of the SIP must be submitted to the EPA (e.g., emission inventory, control strategy, attainment demonstration, etc.), as well as statutory deadlines by which nonattainment areas must attain the NAAQS for the different pollutants. The pollutant-specific requirements are discussed in the General Preamble at pages 13501–13552.

C. EPA Action on SIP's

As mentioned above in section I.B.2, section 110(k) contains provisions governing the EPA's review of SIP submittals. The Act provides for a two-stage review of a State plan submittal to the EPA: A determination of whether the SIP is complete, followed by a review of the plan's approvability. The review process is discussed in the General Preamble at 57 FR 13565–13566.

1. Completeness Review

Section 110(k)(1) requires the EPA to promulgate, by August 15, 1991 (within nine months of enactment), minimum criteria that any SIP submittal must meet. The EPA satisfied this requirement by promulgating the criteria on August 26, 1991 (56 FR 42216). The purpose of the completeness review is to provide a procedure for assessing whether a SIP submittal is complete and, therefore, adequate to trigger the Act requirement that the EPA review and take action on the submittal. Thus, the completeness criteria provide criteria that enable States to prepare adequate SIP submittals and a procedure to enable the EPA reviewers to promptly screen SIP submittals, identify those that are incomplete, and return them to the State for corrective action without being required to go through rulemaking.

If a submittal is determined to be complete, the EPA will inform the State by letter of its determination and begin the formal review for approvability. If a submittal is determined to be incomplete, the EPA will notify the State by letter listing the deficiencies. Consistent with section 110(k)(1)(B), the EPA will attempt to make completeness determinations within 60 days of receiving a submittal. However, a submittal will be deemed complete if a completeness determination is not made by the EPA within six months of the EPA's receipt of the submittal.

2. EPA Approval/Disapproval Action

Following the completeness review, the EPA reviews each complete plan for approvability. Under the Act, the EPA may issue a full approval, or full disapproval, or may grant a partial approval, limited approval, or a conditional approval.

a. Full, partial, and limited approval and disapproval. The EPA has authority to fully approve or disapprove a State SIP submittal under section 110(k)(3) (42 U.S.C. 7410(k)(3)). However, in some instances, a State's submission of a SIP or SIP revision will include a provision that does not comply with one or more applicable requirements of the Act. The Agency must disapprove those portions of a SIP submittal that do not meet the applicable requirements of the Act (section 110(k)(3)). Where the deficient portions of a SIP submittal are separable, the EPA will partially approve the remainder of the SIP and disapprove those deficient parts. However, there may be instances where inseparable portions of the SIP submittal are deficient. The EPA has interpreted the Act to provide flexibility

[2] For EPA procedures on being redesignated from nonattainment to attainment, see memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" from John Calcagni to Air Division Directors, Regions I-X, September 4, 1992, which is contained in the docket.

in the instance where a submittal as a whole serves to improve air quality by providing progress toward attainment, reasonable further progress, and/or reasonably available control technology, yet fails to comply with all of the Act's requirements. Such an action, called a limited approval, is not considered a complete action on the SIP submittal. To complete the action, the EPA must also issue a limited disapproval whereby the Agency disapproves the SIP revision request as a whole for failing to meet one or more requirements of the Act.

b. Conditional approval. Under section 110(k)(4), the Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a specified date that is no later than 1 year after the date of the EPA approval of the plan revision that included that commitment. If the EPA finds that the State fails to meet the commitment within that approved time period, the conditional approval would automatically convert into a disapproval.

D. Consequences of State Failure

1. Section 179(a) Scope and Findings

The CAAA revise the law concerning sanctions[3] to address State failures to comply with the requirements of the Act. Under section 179(a) (42 U.S.C. 7509(a)) of the Act, for any plan or plan revision required under part D or required in response to a finding of substantial inadequacy under section 110(k)(5) (42 U.S.C. 7410(k)(5))[4], the Act sets forth four findings[5] that the EPA can make, which may lead to the application of one or both of the sanctions specified under section 179(b) (42 U.S.C. 7509(b)). The four findings are: (1) A finding under section 179(a)(1) that a State has failed, for a nonattainment area, to submit a SIP or an element of a SIP, or that the SIP or SIP element submitted fails to meet the completeness criteria established pursuant to section 110(k); (2) a finding under section 179(a)(2) where the EPA disapproves a SIP submission for a nonattainment area based on its failure to meet one or more plan elements required by the Act; (3) a finding under section 179(a)(3) that the State has not made any other submission required by the Act (including an adequate maintenance plan) or has failed to make any other submission that meets the completeness criteria or has made a required submission that is disapproved by the EPA for not meeting the Act's requirements; or (4) a finding under section 179(a)(4) that a requirement of an approved plan is not being implemented.

2. Implications of Proposed Rulemaking

a. Implementation of the sanctions. Section 179(a) provides that unless the deficiency prompting the finding (i.e., nonsubmittal, disapproval, and nonimplementation) has been corrected within the time periods prescribed therein one of the sanctions in section 179(b) "shall apply, as selected by the Administrator." Therefore, sanctions will apply automatically in the sequence prescribed herein in all instances in which sanctions are applied under section 179(a) following findings under section 179(a)(1)–(4) for part D plans or plan revisions (including calls for part D plans) that the EPA has already made or that the EPA will make in the future, except when the EPA takes a separate action to select sanctions. Note, though, that if the sanction clock elapses for any findings before this action is final and effective and the EPA has not taken independent sanction selection action, the EPA interprets section 179(a) that sanctions shall not apply until the EPA makes the sanction selection through notice-and-comment rulemaking.

The EPA intends to notify States of the automatic application of sanctions by letter from the EPA Regional Administrator to the State Governor notifying the State of the date on which sanctions begin. The EPA will also publish a notice in the **Federal Register** in which the EPA will amend the language being codified by this rulemaking to indicate what areas are subject to the offset and highway sanctions (see § 52.31(e) of today's proposed rule). In addition, if removal of the sanction(s) is warranted (see section III.B.), the EPA will notify the State by letter that the sanction(s) is being removed and amend the regulatory language to reflect that the area is no longer subject to the sanction(s).

b. Making findings. The EPA makes section 179(a) findings of failure to submit and findings of incompleteness via letters from the EPA Regional Administrators to State Governors or other State officers to whom authority has been delegated.[6] The letter itself triggers the sanctions clock. To make findings of failure to submit and findings of incompleteness under section 179(a)(1) and section 179(a)(3), the EPA is not required to go through notice-and-comment rulemaking.[7] For section 179(a)(2) and section 179(a)(3)(B) findings of disapproval, the **Federal Register** notice in which the EPA takes final action disapproving the submittal (typically after notice-and-comment) initiates the sanctions clock. For section 179(a)(4) findings of nonimplementation, the sanctions clock starts when the EPA makes a finding of nonimplementation in the **Federal Register** through notice-and-comment rulemaking.

c. Sanctions clock.[8] Once the sanctions clock has started upon the

[3] The CAAA also revised the Act's provisions concerning Federal implementation plans (FIP's). Under section 110(c)(1), the FIP requirement is triggered by an EPA finding that a State has failed to make a required submittal or that a received submittal does not satisfy the minimum completeness criteria established under section 110(k)(1)(A), or an EPA disapproval of a SIP submittal in whole or in part. However, since FIP's are not the subject of this notice, these provisions are not addressed here.

[4] A finding of substantial inadequacy under section 110(k)(5)—known as a "SIP call"—is made whenever EPA finds that a plan for any area is substantially inadequate to attain or maintain the relevant NAAQS.

[5] Section 179(a) refers to findings, disapprovals, and determinations. These will all be referred to by the one term "findings."

[6] 7–62, Finding of Failure to Submit a Required State Implementation Plan or Any Other Required Submission of the Act, Clean Air Act, Delegations Manual, 12/13/91.

[7] Under section 110(k)(1), the Act provides EPA with a 60-day period in which to determine whether a submittal is complete. The EPA makes this completeness determination by letter sent to the State (40 CFR part 51, appendix V). However, prior to determining whether something is complete, EPA must determine whether the State made a submittal or whether the State failed to submit the required SIP element or elements. Therefore, EPA must make such a determination prior to the time that EPA would be required to determine whether a submittal is complete. Since EPA has less than 60 days to determine whether a State failed to make a required submittal or submitted a complete SIP, and it is impossible to provide notice-and-comment in 60 days, EPA believes that Congress clearly intended that EPA should not go through notice-and-comment rulemaking prior to making findings of failure to submit.

In addition, even if EPA's findings of failure to submit were subject to rulemaking procedures under the APA, EPA believes that the good cause exception to the rulemaking requirement applies (APA section 553(b)(B)). Section 553(b)(B) of the APA provides that the Agency need not provide notice and an opportunity for comment if the Agency for good cause determines that notice and comment are "impracticable, unnecessary, or contrary to the public interest." With regard to findings of failure to submit, notice and comment are unnecessary. The finding of failure to submit does not require any judgment on the part of the Agency. The issue is clear in that the Agency must state whether or not it has received any submittal from the State in response to a specific statutory requirement. No substantive review is required for such a determination. If the Agency has received a submittal, it will perform a completeness determination. If the Agency has not received anything, then the State has failed to submit the required plan or plan element under section 179(a)(1). Because there is nothing on which to comment, notice-and-comment rulemaking are unnecessary.

[8] For general guidance on EPA's interpretation of how the sanctions clock functions and what is

EPA making a finding under section 179(a), in order to stop the clock, the EPA must determine that the State has corrected the deficiency that prompted the finding. Similarly, to remove section 179(b) sanctions applied under section 179(a), the State must correct the deficiency prompting the finding that resulted in sanction(s) application.

For a section 179(a)(1) finding that a State has failed to submit a SIP or an element of a SIP, or that the SIP or SIP element submitted fails to meet the completeness criteria of section 110(k), the EPA will stop the sanctions clock or remove the sanction upon the EPA's determination that the State has submitted the missing plan or plan element and that the submittal meets the completeness criteria established pursuant to section 110(k)(1).[9] If the EPA disapproves a SIP submission based on its failure to meet one or more plan elements required by the Act, to correct the deficiency for purposes of stopping the sanctions clock or removing the sanction, the State must submit a revised SIP to the EPA and the EPA must approve that submittal pursuant to section 110(k). For a finding that a requirement of an approved plan is not being implemented, the EPA will stop the sanctions clock or remove the sanction through notice-and-comment rulemaking upon a determination that the State is implementing the approved plan or part of a plan.

The EPA has made section 179(a)(1) findings of failure to submit for numerous submittals due under the amended Act. In October 1991, the EPA made findings that nine States and the District of Columbia failed to submit certain corrections to volatile organic compounds (VOC's) regulations (due May 15, 1991) required under section 182(a)(2)(A) for certain ozone nonattainment areas (56 FR 54554, October 22, 1991). As of June 1993, the following District of Columbia ozone area[10] has still not submitted the complete regulation corrections required:

EPA region	Ozone nonattainment area
III	District of Columbia.

Thus, sanctions are due in this ozone area in April 1993 if the deficiency is not corrected with submittal of a plan the EPA finds complete. However, since the EPA interprets section 179(a) that sanctions shall not apply until the EPA makes the sanction selection via notice-and-comment rulemaking, sanctions shall apply in these areas when this sanction selection action is final and effective, or when any separate sanction selection action the EPA takes is final and effective. (Section III.A. discusses sanction implementation in greater detail.)

Note that with regard to the District of Columbia, temporary corrections to VOC's regulations have been adopted by the district and are both enforceable and effective. However, the District of Columbia must make these regulations permanent and formally submit them to the EPA as a SIP revision and the EPA must find them complete in order for the sanction clock to stop. (Section III.C. discusses in detail how the sanction clock stops under section 179(a).)

In December 1991, the EPA made findings that 11 States failed to submit a required PM–10 SIP submittal or failed to submit a required complete PM–10 SIP due November 15, 1991 for 27 moderate PM–10 nonattainment areas (57 FR 19906, May 8, 1992). In March 1992, the EPA made a finding that one State failed to submit a required complete PM–10 SIP due November 15, 1991 for one PM–10 area. In May 1992, the EPA made a finding that one State failed to submit a required complete PM–10 SIP due November 15, 1991 for two PM–10 areas. As of June 1993, the following 13 moderate PM–10 nonattainment areas[11] in seven States have still not submitted complete plans:

EPA region	PM–10 nonattainment area
I	New Haven, CT.
II	Guaynabo, PR.
III	Clairton, PA.
V	Lake County, IN.
IX	Douglas, AZ.
IX	Nogales, AZ.
IX	Phoenix, AZ (sanctions due September 1993).
IX	Rillito, AZ (sanctions due November 1993).
IX	Yuma, AZ (sanctions due November 1993).
IX	Imperial Valley, CA.
IX	Searles Valley, CA.
X	Bonner County, ID.
X	Pocatello, ID.

Thus, the first sanction is due in these PM–10 areas in mid-June 1993 (except in three areas, as noted in the table) if the deficiency is not corrected with submittal of a plan the EPA finds complete. However, as noted above, since the EPA interprets section 179(a) that sanctions shall not apply until the EPA makes the sanction selection via notice-and-comment rulemaking, sanctions shall apply in these areas when this sanction selection action is final and effective, or when any separate sanction selection action the EPA takes is final and effective.

In June 1992, the EPA made findings that three States failed to submit required SO_2 SIP submittals due May 15, 1992 for 3 SO_2 nonattainment areas (57 FR 48614, October 27, 1992). As of June 1993, the following three SO_2 areas[12] have still not submitted complete plans and thus the first sanction is due in December 1993 if the deficiency is not corrected with submittal of a plan the EPA finds complete:

EPA region	SO_2 nonattainment area
III	Warren County (Conewango Township), PA.
III	Hancock County (New Manchester Grant), WV.
VIII	Lewis and Clark County (East Helena), MT.

In addition, in January and February 1993 under sections 179(a)(1) and (3) and section 110(m) the EPA made findings that 36 States failed to submit SIP elements or submitted incomplete SIP elements due under the Act in June and November of 1992. The EPA is publishing a notice in the **Federal Register** announcing the findings made. The first sanction for these SIP elements is due July 1994.

3. Section 179(b) Sanctions[13]

Under section 179(b), two sanctions are available for selection by the EPA following a section 179(a) finding:

a. Highway funding sanction, section 179(b)(1) (42 U.S.C. 7509(b)(1)). "The

necessary to stop it, see the memorandum entitled "Processing of State Implementation Plan (SIP) Submittals" from John Calcagni to Air Division Directors, Regions I–X, July 9, 1992. A copy of this memorandum has been placed in the docket for this rulemaking.

[9] The July 9, 1992 SIP processing guidance indicates that if the 18 month sanction clock elapses during a completeness review sanctions will not be imposed unless EPA determines the plan incomplete. Note that in light of today's proposal this is still EPA guidance.

[10] For official nonattainment area boundaries, see 40 CFR part 81.

[11] For official nonattainment area boundaries, see 40 CFR part 81.

[12] For official nonattainment area boundaries, see 40 CFR part 81.

[13] In addition, section 179(a) provides for an air pollution grant sanction that applies to grants EPA may award under section 105. However, since it is not a sanction provided under section 179(b), it is not one of the sanctions that automatically apply under section 179(a).

Administrator may impose a prohibition, applicable to a nonattainment area, on the approval by the Secretary of Transportation of any projects or the awarding by the Secretary of any grants, under title 23, United States Code, other than projects or grants for safety * * *." The safety determination will be made by the Secretary "based on accident or other appropriate data submitted by the State." The Secretary must determine that "the principal purpose of the project is an improvement in safety to resolve a demonstrated safety problem and likely will result in a significant reduction in, or avoidance of, accidents." Beyond projects and grants qualifying for the safety exemption, the prohibition also will not apply to the following:

(1) Capital programs for public transit;

(2) Construction or restriction of certain roads or lanes solely for the use of passenger buses or high occupancy vehicles;

(3) Planning for requirements for employers to reduce employee work-trip-related vehicle emissions;

(4) Highway ramp metering, traffic signalization, and related programs that improve traffic flow and achieve a net emission reduction;

(5) Fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit operations;

(6) Programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restricted zones or periods, or vehicle registration programs;

(7) Programs for breakdown and accident scene management, nonrecurring congestion, and vehicle information systems, to reduce congestion and emissions; and

(8) Such other transportation-related programs as the Administrator, in consultation with the Secretary of Transportation, finds would improve air quality and would not encourage single occupancy vehicle capacity.

In considering such measures, the State should seek to ensure adequate access to downtown, other commercial and residential areas, and avoid increasing or relocating emissions and congestion rather than reducing them.

b. Offset sanction, section 179(b)(2) (42 U.S.C. 7509(b)(2)). The offset sanction requires that when States apply the emissions offset requirements of section 173 to new or modified sources or emissions units for which a permit is required under part D, the ratio of emission reductions to increased emissions must be at least 2 to 1.

4. Application and Timing of the Section 179(b) Sanctions

Although application of section 179(b) sanctions is mandatory when the EPA makes a finding under section 179(a), it is not immediate. Instead, section 179(a) provides for a sanction "clock", allowing States 18 months from the finding to correct the deficiency that prompted the finding before sanctions must apply. Specifically, under section 179(a), 18 months after the Administrator makes a finding concerning a State failure (as described above) with respect to a specific plan or plan element required by part D, or in response to a SIP call, the highway or offset sanction of section 179(b) shall apply (as selected by the Administrator) unless the deficiency has been corrected. In addition, if the deficiency has not been corrected six months after the first sanction applies, then the second sanction shall apply. However, both sanctions shall apply after 18 months if the Administrator finds a lack of good faith on the part of the State.[14]

II. Today's Action

A. Proposal

By this document, the EPA is proposing a rule governing the order in which the sanctions shall apply under section 179 following a section 179(a) finding. This proposal is limited to the order of sanctions since, once a finding has been made, the EPA's discretion is limited to which sanction shall apply and not whether sanctions should apply.

By this document, the EPA is setting forth, as a general matter, the following order of application of sanctions. The EPA is proposing that the section 179(b)(2) offset sanction apply in an area 18 months from the date when the EPA makes a finding under section 179(a) with regard to that area. Furthermore, the EPA is proposing that the section 179(b)(1) highway sanction apply in an area six months following application of the offset sanction. The EPA is proposing to sequence the application of the section 179(b) sanctions in this manner in all cases unless the EPA decides highways sanctions apply first by individual notice-and-comment rulemaking. (Sanction application sequencing is addressed in § 52.31(d) of the proposed rule.)

[14] Any finding of a lack of good faith EPA makes under section 179(a) will be subject to notice-and-comment rulemaking.

The proposal is limited to the sequence in which sanctions shall apply under section 179(a) with respect to a finding made under subsections (1)–(4) specific to any implementation plan or plan revision required under part D and any implementation plan or revision required under part D found substantially inadequate pursuant to section 110(k)(5). In general, part D plans and plan revisions are required for areas designated nonattainment under section 107.[15] The proposal does not encompass finding the EPA can make under section 179(a) regarding SIP calls for non-part D plans or plan revisions or the sanction provisions in section 110(m) of the Act.[16] It also does not encompass any findings the EPA may make under other titles of the Act (e.g., section 502(d) for operating permitting programs). [Section 52.31(c) of the proposal addresses the rule's applicability, including the findings and SIP's affected.]

B. Sanction Sequencing Proposal

1. Background

In general, sanctions can serve at least two functions. One function is to encourage compliance with the Act's requirements. This is an important tool the EPA has available to compel areas to meet their obligations under the Act with the goal of ensuring the timely development of approvable SIP's and the implementation of those plans when approved by the EPA. A second function of sanctions is to protect and preserve air quality in areas until the deficiency prompting the sanctions-

[15] While part D generally applies to nonattainment areas, some requirements extend to other areas. For example, section 184(a) specifically created at enactment an ozone transport region called the Northeast Ozone Transport Region (NOTR), which is comprised of several mid-Atlantic and New England States (see General Preamble at page 13527). Though areas within some of these States may not be designated nonattainment, the States must submit revisions to their SIP's by certain statutory deadlines to include specific part D measures for these areas (e.g., enhanced vehicle inspection and maintenance program, reasonably available control technology on volatile organic compounds (VOC) sources, etc.).

[16] Section 110(m) of the Act grants EPA broad discretionary authority to apply either sanction listed in section 179(b) "at any time (or at any time after) a finding" under section 179(a) with respect to any portion of the State, subject to certain limitations (57 FR 44534, September 28, 1992). The selection of sanctions being made by this action, however, does not apply to the imposition of sanctions by EPA under section 110(m). Thus, the section 110(m) provisions are not addressed here. Note that sanction selection for section 110(m) findings (including the findings under section 110(m) EPA made in January/February 1993 for State failure to submit a section 507 small business assistance program) will be made through notice-and-comment rulemaking independent from this action.

initiating finding can be corrected. This function is consistent with and reinforces the overall purpose of the Act: to protect air quality so as to promote public health and welfare. See H.R. 490, 101st Cong. 2nd Sess. 228 (1990).

2. Rationale for Sanction Order

In the General Preamble at page 13567, the EPA expresses the preliminary view that the choice of which sanction to apply under section 179 will be decided on a case-by-case basis. However, today, for three reasons, the EPA is proposing that, as a general matter, the offset sanction apply at 18 months followed by the highway sanction 6 months thereafter.

One, the EPA believes that conceptually the offset sanction will, in general, provide a more certain air quality benefit in the shorter- and longer-term than the highway sanction. The offset sanction provides a more certain air quality benefit because it increases from between 1-to-1 and 1.5-to-1 [17] to 2-to-1 the ratio of emission reductions to increased emissions a new or modified source must obtain before being able to obtain a permit to construct and operate in a nonattainment area. Thus, when the offset sanction applies and new or modified major sources locate and commence operation in an area, air quality can directly benefit as emissions contributing to the problem are reduced by an amount up to twice that required "merely" to offset the new source's emissions.

On the other hand, the link between a benefit to air quality and the highway sanction can be less direct and thus more uncertain. Estimates of the air quality impact of transportation projects not implemented are for the most part less certain than estimates of the air quality impact of an emission reduction from a stationary source obtained in connection with the offset sanction. An estimate of the air quality benefit of a transportation project not implemented depends on the assumptions made about the various factors governing the extent and spatial character of the emissions-generating activity (e.g., vehicles miles traveled, traffic patterns, etc.). These assumptions reflect uncertainty. By contrast, activity factor assumptions for stationary sources are more certain and, with the predictive tools available (i.e., air quality models), the beneficial impact to air quality of the offset sanction's emission reductions can be relatively easily quantified.

Moreover, the uncertainty concerning the link between an air quality benefit and the highway sanction increases in the longer-term because estimating the potential air quality benefit achievable by the highway sanction from not implementing a highway project is more uncertain the further into the future the underlying activity factor assumptions are projected. In the nearer-term some benefit to air quality may result from the highway sanction by a cessation of project construction activity, producing a reduction in whatever construction-related emissions may have occurred. However, the benefit would be temporary whereas emission reductions resulting from implementation of the offset sanction must be achieved when the source commences construction and remain in place thereafter. Thus, the offset sanction in general provides a more certain air quality benefit than the highway sanction in the shorter- and longer-term.

Two, the offset sanction provides greater potential for more significant air quality protection because it potentially affects all categories of stationary sources and, depending on the pollutant(s) addressed in the deficiency prompting the finding, may affect all criteria pollutants (i.e., pollutants for which the EPA has promulgated a NAAQS such as CO, PM–10, etc.). By contrast, the highway sanction would affect only mobile sources and pollutants emitted by mobile sources. (Mobile sources are not, for instance, regarded as significant emitters of lead and SO_2.)

Three, in addition to air quality considerations, the 2-to-1 offset sanction is less complicated to implement and administer than the highway sanction by its very nature and because of the manner in which the EPA intends to implement it, as discussed in section II.C.1.b. below. Since the EPA will administer the offset sanction, its implementation will not require coordination and communication between the EPA and other Federal agencies and the EPA and non-air quality agencies. In addition, as discussed below, implementation of the offset sanction does not necessitate a revision to State nonattainment NSR rules and the EPA's role will consist primarily of enforcing the 2-to-1 offset requirement through section 113(a)(5).

Implementation of the highway sanction, on the other hand, will require extensive coordination between the EPA, the Department of Transportation (DOT), and State transportation and planning agencies. The administration of the highway sanction is also more burdensome because it will necessitate a continuous case-by-case review of projects (based on information submitted by the States) to determine which projects are exempt from the highway funding restrictions of the sanction and which projects are not.

Moreover, the EPA does not regard sanctions as a long-term solution to air quality problems but rather intends to work with States to resolve deficiencies as rapidly as possible. Thus, by applying the offset sanction at 18 months, if the State corrects the deficiency prompting the finding prior to six months thereafter, then the highway sanction would not apply and the EPA and other affected agencies would not be burdened with its comparatively greater implementation and administration burden.

The EPA, therefore, is proposing, as a general matter, that the offset sanction apply before the highway funding sanction following a section 179(a) finding. The EPA recognizes, however, that in specific cases the particular circumstances may lead the EPA to conclude that it is more appropriate for the highway sanction to apply first. (See section II.D. for discussion of how private persons may petition the EPA for issuance of a rule under the Administrative Procedures Act (APA) such as one proposing the highway sanction apply first.)

In some situations, it might be more appropriate for the highway sanction to apply first where the EPA determines that the highway sanction could provide more short-term air quality benefit and that the highway sanction could have a greater influence in encouraging compliance. For example, in areas that are not experiencing growth in the number of new stationary sources, the highway sanction may provide more short-term air quality benefits since the effect of an increase in the offset ratio would be very low. As another example, because of the economic impact, in some areas restricting highway funding may provide more encouragement to State and/or local officials to correct a deficiency than would an increase in the offset ratio. In any such case, the EPA will take individual notice-and-comment rulemaking action, proposing the highway sanction apply first.

C. Sanction Effectuation

1. Offset Sanction

The following discussion concerns how the offset sanction will apply. First, the scope of offset sanction applicability is addressed and, second, implementation and enforcement of the

[17] The new source review (NSR) offset ratio for nonattainment areas generally is at least 1 to 1. However, the offset ratio for NSR in ozone nonattainment areas ranges from 1.1 to 1.5, depending on the area's classification.

sanction is discussed. (Section 52.31(e) of the proposal addresses offset sanction applicability and implementation.)

a. Scope.

(1) Source applicability.

The EPA is proposing that the increased emission offset ratio of at least 2-to-1 apply to sources whose permits have not been issued by the date on which the offset sanction applies (in this proposal, 18 months from the date of a section 179(a) finding).

(2) Pollutant applicability.

When applying in an affected area, the offset sanction will require that new or modified sources or emission units, for which a permit to construct and operate is required under part D, obtain emission offsets at a ratio of at least 2-to-1. The language of section 179(b)(2) generally references the offset requirements of section 173 for new or modified sources or emission units required to obtain a permit under part D and is silent with respect to the pollutant or pollutants for which the source would be subject to this requirement.

In today's action, the EPA is proposing that, when the section 179(b)(2) offset sanction applies pursuant to section 179, it applies only to the pollutant(s) (and its/their precursors) addressed in the deficiency prompting the finding. Sources wishing to construct or modify in an area must then comply with the offset sanction for the pollutant(s) (and its/their precursors) addressed in the deficiency prompting the finding and for which the source is also subject to nonattainment NSR.[18] However, the EPA is also proposing that if the deficiency prompting the finding is general in nature and not specific to any pollutant(s) (or its/their precursors), the offset sanction applies to the criteria pollutant(s) (and its/their precursors) for which the area is designated nonattainment.[19] Sources wishing to construct or modify in an area must then comply with the offset sanction for all the criteria pollutant(s) (and its/their precursors) for which the source is also subject to nonattainment NSR.

When a source must comply with the offset sanction for a pollutant(s), in the determination of whether the source is subject to nonattainment NSR requirements for the pollutant(s), precursors should be treated in the same manner as nonattainment NSR applicability determinations generally. For PM–10 precursors, guidance is provided in the General Preamble at 57 FR 13538 and 13541–13543. The discussion in the General Preamble addresses the section 189(e) requirement that, for all PM–10 nonattainment areas, the control requirements applicable under PM–10 SIP's are also applicable to major stationary sources of PM–10 precursors, except where the EPA determines that such sources do not contribute significantly to PM–10 nonattainment in the area. The General Preamble discussion provides guidance on how and when the EPA intends to make significance determinations for PM–10 precursors for particular areas, which affects whether or not precursors must be addressed in nonattainment area NSR SIP revisions. The PM–10 precursors discussion on at 57 FR 15338 also provides guidance on how precursors should be treated for applicability purposes.

For precursors to ozone, a supplement to the General Preamble published on November 25, 1992 (57 FR 55620) provides guidance on amended SIP requirements for NO_x. Page 55624 specifically addresses the treatment of precursors to ozone in nonattainment NSR applicability determinations.

In addition, at 57 FR 55623 and 55626–55628 of the General Preamble provide guidance on section 182(f), which provides States an opportunity to demonstrate to the EPA that some or all of the amended Act's requirements should not apply to NO_x, including nonattainment NSR. Thus, for NO_x sources in ozone nonattainment areas where the NO_x nonattainment NSR requirements of section 182(f) do not apply, the sanction does not apply to NO_x (as an ozone precursor).

b. Sanction implementation and enforcement. When the offset sanction applies, the EPA intends to ensure the sanction is being implemented as permits are reviewed by reviewing authorities for completeness and approvability. As necessary, the EPA intends to enforce the 2-to-1 offset sanction through section 113(a)(5) which gives the EPA the authority to take certain actions whenever, on the basis of any available information, the EPA finds that a State is not acting in compliance with any requirement or prohibition of the Act concerning construction of new sources or modification of existing ones. Under section 113(a)(5) those actions are: (1) Issue an order prohibiting the construction or modification of any major stationary source in any area where such requirement applies; (2) issue an administrative penalty order in accordance with section 113(d); or (3) bring a civil action under section 113(b).

When the offset sanction applies pursuant to this rule, if a State lacks a nonattainment NSR program that the EPA has approved under section 110(k)(3) as meeting the amended Act NSR requirements, then the State must comply directly with the substantive new nonattainment NSR applicability and emission offset requirements of sections 171–193 (42 U.S.C. 7501–7515) of the amended Act for emission offsets (or cease under section 173 to issue permits for major new or modified sources). Where the EPA has not approved a NSR SIP revision as meeting the requirements of amended sections 171–193, the specifications of those provisions must supersede any less stringent or inconsistent State NSR requirements.

In addition, when the offset sanction applies pursuant to this rule, in cases in which States miss the statutory deadline for part D NSR SIP submittals, offsets should be applied consistent with EPA's NSR transitional guidance.[20] The guidance addresses how applications from sources should be treated when the State misses the statutory deadline for a part D NSR SIP submittal and a source has not submitted a complete application by the NSR SIP due date. The guidance states that EPA will consider these sources in compliance with the Act where the source obtains from the State a permit that is consistent with the substantive new NSR part D provisions in the amended Act. If such a source proposes to locate or modify in an area subject to the offset sanction,

[18] However, if a finding addresses one of the two ozone precursors (VOC's and nitrogen oxides (NO_x)), but does not address both precursors (for example, if EPA finds a State failed to submit a VOC rule correction for an ozone nonattainment area), then when the offset sanction applies sources must address both ozone precursors, even if the other precursor is not addressed in the deficiency prompting the finding (i.e., NO_x). This is because ozone is formed by both precursors acting in combination, not singly. Thus, addressing one ozone precursor without addressing the other might diminish the air quality benefit of the offset sanction by not reducing ozone levels. However, if EPA approves a demonstration under section 182(f) that some or all of the Act's new NO_x requirements should not apply, then, in this example, the sanction applies to NO_x (as an ozone precursor) only at sources where NO_x NSR for ozone purposes is applicable. (See discussion below in this section.)

[19] For areas subject to part D requirements but which are not designated nonattainment (e.g., transport regions, such as the NOTR), where the finding is general in nature the offset sanction applies to the pollutant(s) (and its/their precursors) identified as causing the air pollutant transport problem.

[20] See "New Source Review (NSR) Programs Transitional Guidance" memorandum from John S. Seitz to Air Division Director, Regions I–X, March 11, 1991; and "New Source Review (NSR) Program Supplemental Transitional Guidance on Applicability of New Part D NSR Permit Requirements" memorandum from John Seitz to Air Division Director, Regions I–X, September 3, 1992. These have been entered in the docket for this rulemaking.

then it must comply with the emission offset requirements established in sections 171–193 and the requirements set forth in this regulation. In other words, if a source proposes to locate or modify in an area subject to the offset sanction, mere consistency with the substantive new offset requirements of the Act is insufficient. Once today's proposed rule is made final, sources subject to the sanction must comply with the requirements of 40 CFR 52.31(a)–(e) and the substantive NSR requirements of sections 171–193 as applicable.

As indicated in the September 3, 1992 NSR transitional guidance, the relevant substantive new provisions are the new applicability thresholds, the offset requirements of section 173, and the NO_x requirements of section 182(f) for most ozone nonattainment areas and the NOTR. (The new NSR offset requirements are discussed in the General Preamble at 57 FR 13552–13554.) Although not specifically mentioned in the transitional guidance, the substantive requirements include the section 189(e) PM–10 precursors requirement addressed in the General Preamble at 57 FR 13538 and 13541–13543.

2. Highway Sanction

Under the highway sanction, as described in section I.D.2. above, the EPA imposes a prohibition on approval by the Secretary of DOT of highway projects and grants. Thus, the highway sanction is not directly implemented by the EPA. However, the EPA is in the process of developing procedures with DOT to provide for the coordinated implementation of the highway sanction. (Section 52.31(e) of the proposal addresses the highway sanction.)

D. Opportunity for Comment

As discussed above, under section 179(a), the Act requires sanctions apply within the timeframes prescribed. The only discretion afforded the EPA is which of the two section 179(b) sanctions apply at 18 months and which six months thereafter. Therefore, today the EPA is seeking comment only on its proposal that, as a general matter, the offset sanction apply at 18 months and the highway sanction apply six months thereafter following section 179(a) findings the EPA has made or will make for a required part D plan or plan revision or a call for a part D plan or plan revision. If in the future the EPA makes exceptions to this rule, then in individual notice-and-comment rulemakings the EPA will seek comment on whether the highway sanction shall apply after 18 months and the offset sanction apply six months thereafter given the circumstances at hand.

Note that the APA also provides citizens with a means that could be used to petition the EPA to propose the highway sanction apply first. The APA, 5 U.S.C. 553(e), provides that "Each agency [including the EPA] shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." This provision could conceivably be invoked by a citizen to petition the EPA to propose the highway sanction apply first with respect to a section 179(a) finding covered by this action.

III. Miscellaneous

A. Executive Order 12291

Under Executive Order 12291, the EPA must decide whether a rule is "major" and, therefore, subject to the requirements of a regulatory impact analysis (RIA). The EPA does not consider this to be a "major" rulemaking and, therefore, an RIA has not been prepared. In making this determination, the EPA considered the limited discretion afforded by the sanction provisions of section 179 and the general nature of the proposed rule.

The section 179 provisions do not afford the EPA the discretion, following a section 179(a) finding, to decide whether or not a section 179(b) sanction applies. Sanction application under section 179 is automatic under the timeframes prescribed once the EPA selects the sanction order; the EPA's only discretion concerns the ordering of sanctions as discussed above. Thus, the only relevant potential impact is the effect of applying, as a general matter, the offset sanction six months before the highway sanction. The EPA, however, does not believe this will have a major impact given the short period of time the offset sanction will apply before the highway sanction applies.

Moreover, the EPA also believes, as noted above, that, in the event imposing the highway sanction is not necessary six months following the offset sanction, because the State has corrected the deficiency prompting the finding, applying the offset sanction first eliminates the need for the EPA and other agencies to bear the greater administrative and implementation burden—compared to the offset sanction—of having to effectuate the highway sanction.

In sum, although impacts will result in the future when the sanctions apply following the EPA selection, the mandatory nature of section 179 does not afford the EPA the discretion to alter those impacts in a meaningful and significant way since the EPA can only decide the order of sanction application following section 179(a) findings. In addition, the impacts from sanctions are impossible to gauge since the universe of areas which will, in fact, fail to meet the requirements of the Act is not known. It is also not known, for those areas where sanctions apply, for what period of time the sanctions will be in place, which depends on how rapidly the State corrects the deficiency in question. The EPA does intend, though, to work with States to expeditiously correct any deficiencies prompting section 179(a) findings and use sanctions as a short-term measure.

Therefore, for all these reasons the Administrator finds this proposed rule will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written OMB comments and the EPA responses are in the docket for this rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 600 *et seq.*) requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. Agencies are required to perform a Regulatory Flexibility Analysis where the significant impacts are possible on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with populations of less than 50,000.

Because this action will have some impact, an Initial RFA Analysis has been prepared pursuant to the EPA guidelines, which has been placed in the docket to this rulemaking. For the following three reasons, the EPA believes the impact of this rule will be limited. One, any impact that may occur is limited to sources defined as "major" for nonattainment NSR purposes (generally 100 tons per year (TPY) or more of a criteria pollutant, except in the more serious ozone nonattainment areas). The major sources most likely to also be small entities as defined pursuant to the RFA are only in these more serious ozone areas where the major source TPY threshold has been

lowered under part D of the Act. Two, note that the amended Act also increases the nonattainment NSR offset ratio in the ozone nonattainment areas. The ratio ranges from 1.1 to 1.5, depending on the severity of the area's classification. Thus, any impact the 2-to-1 offset sanction will have may not be as significant in precisely those areas—severe and extreme ozone nonattainment areas—where small entities that are also major sources are most likely to exist. Three, as stated above, the only relevant impact period is 6 months in duration.

C. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

When the offset sanction applies, sources subject to it will not incur an additional information collection burden because sources are already required under the section 173 offset requirements to obtain an emission offset from between 1-to-1 and 1.5-to-1. When the offset sanction applies, it should not impose an additional information collection burden because sources will not have to provide any information in the application beyond that which it would already have to provide in the absence of the sanction. (For the information collection burden of new requirements of the amended Act for nonattainment NSR and prevention of significant deterioration, an information collection request is being prepared to support rulemaking changes to parts 51 and 52.)

When the highway sanction applies, the Secretary of DOT is required to determine which projects or grants should not be affected by the sanction and which, therefore, are exempt. This determination will be based on information readily available in existing documentation gathered for the purpose of evaluating the environmental, social, and economic impacts of different alternatives for transportation projects. These analyses are required for the preparation of environmental assessments and impact statements under the National Environmental Policy Act (NEPA). Historically, exemption determinations by DOT for sanctions have been based on such NEPA documentation and not necessitated additional information gathering and analysis by the States. In addition, since under NEPA final environmental documents must be approved by DOT, in most cases the NEPA documentation will already be in DOT's possession. Therefore, the EPA does not believe that the highway sanction, when applied, will impose an additional information collection burden on the States.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 23, 1993.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble part 52 of title 40, Code of Federal Regulations, is proposed to be amended as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

2. Subpart A is proposed to be amended by adding a new § 52.31 to read as follows:

§ 52.31 Application sequence for Clean Air Act section 179 sanctions.

(a) *Purpose.* The purpose of this section is to implement 42 U.S.C. 7509(a) of the Act, with respect to the application sequencing of the automatic sanctions under 42 U.S.C. 7509(b), following a finding made by the Administrator pursuant to 42 U.S.C. 7509(a).

(b) *Definitions.* All terms used in this section, but not specifically defined herein, shall have the meaning given them in § 52.01.

(1) *1990 Amendments* means the 1990 Amendments to the Clean Air Act (42 U.S.C. 7401 *et seq.*).

(2) *Act* means Clean Air Act, as amended in 1990 (Pub Law No. 101–549, 104 Stat. 2399).

(3) *Criteria pollutant* means pollutant for which the Administrator has promulgated a national ambient air quality standard pursuant to 42 U.S.C. 7409 (e.g., ozone, lead, sulfur dioxide, particulate matter, carbon monoxide, nitrogen dioxide).

(4) *Findings* or *Finding* refer(s) to one or more of the findings, disapprovals, and determinations described in § 52.32.

(5) *Part D* means part D of title I of the Act.

(6) *Part D SIP or SIP revision* or *Plan* means a State implementation plan or plan revision that States are required to submit or revise pursuant to part D.

(c) *Applicability.* This section shall apply to any State in which an air quality area is located for which the Administrator has made one of the following findings, with respect to any part D SIP or SIP revision required under the Act, or any part D SIP or SIP revision required in response to a finding of substantial inadequacy under 42 U.S.C. 7410(k)(5):

(1) A finding that a State has failed, for an area designated nonattainment under 42 U.S.C. 7407(d), to submit a plan, or to submit one or more of the elements (as determined by the Administrator) required by the provisions of the Act applicable to such an area, or has failed to make a submission for such an area that satisfies the minimum criteria established in relation to any such element under 42 U.S.C. 7410(k);

(2) A disapproval of a submission under 42 U.S.C. 7410(k), for an area designated nonattainment under 42 U.S.C. 7407(d), based on the submission's failure to meet one or more of the elements required by the provisions of the Act applicable to such an area;

(3)(i) A determination that a State has failed to make any submission required under the Act, other than one described under paragraph (c)(1) or (c)(2) of this section, including an adequate maintenance plan, or has failed to make any submission, required under the Act, other than one described under paragraph (c)(1) or (c)(2) of this section, that satisfies the minimum criteria established in relation to such submission under 42 U.S.C. 7410(k)(1)(A); or (ii) A disapproval in whole or in part of a submission described under paragraph (c)(3)(i) of this section; or

(4) A finding that any requirement of an approved plan (or approved part of a plan) is not being implemented.

(d) *Sanction application sequencing.*

(1) To implement 42 U.S.C. 7509(a), the offset sanction under paragraph (e)(1) of this section shall apply in an area 18 months from the date when the Administrator makes a finding under paragraph (c) of this section unless the deficiency forming the basis of the finding has been corrected. To further implement 42 U.S.C. 7509(a), the highway sanction under paragraph (e)(2) of this section shall apply in an area six months from the date the offset sanction under paragraph (e)(1) of this section applies unless the deficiency has been corrected.

(2) Notwithstanding paragraph (d)(1) of this section, nothing in this section will prohibit the EPA from determining through notice-and-comment

rulemaking that in specific circumstances the highway sanction should apply 18 months after the EPA makes one of the findings under paragraph (c) of this section and that the offset sanction should apply six months from the date the highway sanction applies.

(e) *Available sanctions and method for implementation.*

(1) *Offset sanction.* (i) As further set forth in paragraphs (e)(1)(ii)–(e)(1)(v) of this section, for the following areas, on the following dates, the State shall apply the emissions offset requirements, in accordance with 42 U.S.C. 7503 and 7509(b)(2), at a ratio of at least 2-to-1 for emission reductions to increased emissions of the following pollutant(s) and its (their) precursors for which the finding(s) under paragraph (c) of this section is (are) made:

Affected area	Date sanction applies	Pollutant(s) affected

(ii) The emissions offset requirements shall apply to new or modified sources or emissions units for which a permit is required under part D, 42 U.S.C. 7501–7515, on or after the date the sanction applies.

(iii) For purposes of applying the emissions offset requirement set forth in 42 U.S.C. 7503, at the 2-to-1 ratio required under paragraph (e)(1)(i) of this section, the State shall comply with the provisions of a State-adopted new source review program that the EPA has approved under 42 U.S.C. 7410(k)(3) as meeting the nonattainment area new source review requirements of 42 U.S.C. 7501–7515, as amended by the 1990 Amendments, or, if no such plan has been approved, the State shall comply directly with the nonattainment area new source review requirements specified in 42 U.S.C. 7501–7515, as amended by the 1990 Amendments, or cease issuing permits to construct and operate major new or modified sources. For purposes of applying the offset requirement under 42 U.S.C. 7503 where the EPA has not fully approved a State's new source review program as meeting the requirements of part D, the specifications of those provisions shall supersede any State requirement that is less stringent or inconsistent.

(iv) For purposes of applying the emission offset requirement of 42 U.S.C. 7503, the enhanced 2-to-1 ratio required under paragraph (e)(1)(i), of this section shall be limited to the pollutant(s) and its (their) precursors which is (are) of concern in the deficiency prompting the finding made under paragraph (c) of this section. If the deficiency prompting the finding under paragraph (c) of this section is not specific to a particular pollutant(s) and its (their) precursors, the 2-to-1 ratio required under paragraph (e)(1)(i) of this section shall apply to all pollutants (and their precursors) for which an area within the State listed in paragraph (e)(1)(i) of this section is designated as nonattainment.

(v) For purposes of applying the emissions offset requirement set forth in 42 U.S.C. 7503, any permit required pursuant to 42 U.S.C. 7503 issued on or after the date the offset sanction applies under paragraph (d) of this section shall be subject to the enhanced 2-to-1 ratio under paragraph (e)(1)(i) of this section.

(2) *Highway funding sanction.* For the following areas, on the following dates, the highway sanction shall apply as provided in 42 U.S.C. 7509(b)(1):

Affected area	Date sanction applies

[FR Doc. 93–24185 Filed 9–30–93; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[IL12–11–5172; FRL–4733–2]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 29, 1990, EPA promulgated Federal stationary source volatile organic compound (VOC) control measures representing reasonably available control technology (RACT) for emission sources located in six northeastern Illinois (Chicago area) counties. EPA also took final rulemaking action on certain VOC RACT rules previously adopted and submitted by the State of Illinois for inclusion in its State Implementation Plan (SIP). Included in EPA's rules was a requirement that the miscellaneous organic chemical manufacturing processes at the Stepan Company Millsdale Plant (Stepan) manufacturing facility in Elwood, Illinois be subject to the "generic" rule for miscellaneous organic chemical manufacturing processes. By letter of October 22, 1990, Stepan requested that EPA reconsider its rule as applicable to Stepan, on the basis that EPA had not adequately responded to certain comments. EPA agreed to do so, and is proposing site-specific RACT requirements for Stepan's miscellaneous organic chemical manufacturing processes and volatile organic liquid (VOL) storage tanks, which are sources of VOC. EPA solicits public comments on its proposed rulemaking action.

DATES: Comments on this proposal must be received by November 1, 1993 at the address below. A public hearing, if requested, will be held in Chicago, Illinois. Requests for a hearing should be submitted to J. Elmer Bortzer by November 1, 1993 at the address below. Interested persons may call Ms. Hattie Geisler at (312) 886–3199 to see if a hearing will be held and the date and location of the hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

ADDRESSES: Written comments on this proposed action should be addressed to J. Elmer Bortzer, Chief, Regulation Development Section (5AR–26), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604. Again, comments should be strictly limited to the subject matter of this proposal.

Docket: Pursuant to sections 307(d)(1)(B) and (N) of the Clean Air Act (CAA), 42 U.S.C. 7607(d)(1)(B) and (N), this action is subject to the procedural requirements of section 307(d). Therefore, EPA has established a public docket for this action, A–92–36, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Jacqueline Brown before visiting the Washington, DC location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Street, Chicago, Illinois 60604, (312) 886–6036.

U.S. Environmental Protection Agency, Docket No. A–92–36, Air Docket (LE–131), room M1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Steve Rosenthal, Regulation Development Branch, U.S. Environmental Protection Agency, Region 5, (312) 886–6052, at the Chicago address indicated above.

SUPPLEMENTARY INFORMATION:

I. Background

In an effort to comply with certain requirements under part D of the CAA,

42 U.S.C. 7401 *et seq.*, the Illinois Pollution Control Board (IPCB) adopted an organic emission "generic" rule on April 7, 1988. The purpose of the generic rule was to satisfy the EPA's requirements that Illinois adopt rules for major (100 tons per year (TPY) and greater) non-CTG sources.[1] This requirement is discussed in the April 4, 1979, General Preamble for Proposed Rulemaking (44 FR 20372).

Under the adopted generic rule, subpart RR "Miscellaneous Organic Chemical Manufacturing Processes" (MOCMP) regulates manufacturing processes which produce by chemical reaction one or more organic compounds that are specified in Illinois' definition of MOCMP. Subpart RR requires that subject sources either achieve an 81 percent reduction in volatile organic material (VOM)[2] or that they comply with an adjusted RACT emission limitation obtained from the IPCB.

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin against EPA and sought a judgment that EPA, among other requested actions, be required to promulgate revisions to the Illinois ozone SIP for northeastern Illinois. *Wisconsin* v. *Reilly*, No. 87–C–0395, E.D. Wis. On January 18, 1989, the District Court ordered that EPA promulgate an ozone implementation plan for northeastern Illinois within 14 months of the date of that order. On September 22, 1989, EPA and the States of Illinois and Wisconsin signed a settlement agreement in an attempt to substitute a more acceptable schedule for promulgation of a plan for the control of ozone in the Chicago area. On November 6, 1989, the District Court vacated its prior order and ordered all further proceedings stayed, pending the performance of the settlement agreement.

The settlement agreement calls for the use of a more sophisticated air quality model, allows more time for EPA to promulgate a Federal implementation plan (FIP) using the model, and requires interim emission reductions while the modeling study is being performed. The interim emission reductions consist of Federal promulgation of required VOM RACT rules for Illinois to remedy deficiencies in its State regulations.

On December 27, 1989 (54 FR 53080), EPA proposed to disapprove the Illinois generic rules (Subparts AA, II, PP, QQ, RR) largely because the applicability criteria were not consistent with EPA RACT guidance for major non-CTG sources. On that date, EPA also proposed a number of RACT rules, including a generic MOCMP rule which covers Stepan's major non-CTG operations. On June 29, 1990 (55 FR 26814), EPA took final action to disapprove the Illinois generic rules and promulgate the proposed Federal rules, including the generic MOCMP rule.

On August 28, 1990, Stepan filed a petition for review of EPA's June 29, 1990, rulemaking in the United States Court of Appeals for the Seventh Circuit. Nine other parties filed petitions for review, which were ultimately consolidated by the Court as *Illinois Environmental Regulatory Group ("IERG") et al.* v. *Reilly*, No. 90–2778.

By letter of October 22, 1990, Stepan requested that EPA reconsider its rule as applicable to Stepan, on the basis that EPA had not adequately responded to certain comments. EPA agreed to do so.

On July 1, 1991, EPA issued a three-month administrative stay pending reconsideration of the applicable FIP rules for Stepan (and one other petitioner). This stay was published on July 23, 1991, (56 FR 33712). On March 3, 1992, (57 FR 7549), EPA published an extension of the stay, but only if and as necessary to complete reconsideration of the subject rules (including any appropriate regulatory action), pursuant to EPA's authority to revise the federal rules in CAA sections 110(c) and 301(a)(1), 42 U.S.C 7410(c) and 7601(a)(1).

As a result of EPA's decision to reconsider the federal rules as applied to Stepan, EPA has conducted an analysis of Stepan's plant to determine site-specific RACT requirements for the Milldale facility. Today's notice presents the results of this analysis and proposes rulemaking accordingly.

II. Emission Source Identification

A. Batch Process Emission Sources

At the Stepan facility there are over 100 batch process emission sources which emit VOCs to the atmosphere at variable rates. The majority of the chemical feedstocks, intermediates, and products manufactured are relatively heavy molecular weight organic materials. Stepan uses non-chlorinated solvents as additives in some of its processes. As would be expected, the more significant sources of VOC emissions at the Stepan facility are those products or processes which use solvents in addition to the heavier molecular weight organic liquids.

As requested by EPA for the RACT evaluation study, Stepan provided an inventory of non-CTG batch process emission sources at the facility.

B. Volatile Organic Liquid (VOL) Storage Tank Emission Sources

Stepan also has VOC emission sources in the form of VOL storage systems. Although the majority of Stepan's VOL storage tanks contain heavy molecular weight organic liquids, there are some non-chlorinated solvent tanks. Stepan has an inventory of approximately 400 tanks, all of which have fixed roofs.

III. Technical Approach for Determining RACT

A. Introduction

The technical approach for this non-CTG RACT evaluation for the Stepan facility was developed using certain draft CTG documents recently released by the EPA for technical review. More specifically, the EPA has issued (September 1991) for review two draft CTG documents: "Control of Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks" and "Control of Volatile Organic Compound Emissions from Batch Processes." The draft CTGs are currently undergoing technical review. The Stepan RACT evaluation study has been prepared in accordance with the draft CTGs to ensure that the evaluation is consistent with the technical approach, format, and RACT conclusions of the draft CTGs.

In accordance with the draft CTGs, RACT for Stepan's batch process and VOL storage tank emission sources has not been established for specific tanks or pieces of process equipment which require controls. Rather, a set of criteria has been developed, based on the technical and economic information in the draft CTG documents, which will enable the evaluation of process equipment and storage tank control requirements on a case-by-case basis.

B. Batch Processes

In the batch process draft CTG, RACT for batch processes was based on the evaluation of alternative control devices at varying levels of control efficiency for different ranges of mass emissions and peak volumetric flow rate from the source. This approach takes into consideration the cyclical nature of batch processing emissions; within a

[1] Control techniques guideline (CTG) documents have been prepared by EPA to assist States in defining RACT for the control of VOC emissions from existing stationary sources. Each individual CTG recommends a presumptive norm of control considered reasonably available to a specific source category. Sources in categories for which no CTG exists are termed "non-CTG sources". See 44 FR 53762 (September 14, 1979).

[2] The State of Illinois uses the term "VOM" in its regulations. For the purposes of this RACT analysis, this term is considered equivalent to EPA's term "volatile organic compounds (VOC)".

given process there may be a tremendous variation in volumetric flow rate and/or VOC concentration in the gas stream.

One of the difficulties in controlling emissions from batch processes is that the emissions control units generally must be sized to accommodate the peak emission and flow levels; using average emission concentration and flow rate values may result in the selection of a control device which is ineffective during periods of peak emissions. Therefore, the RACT control evaluation for batch reactor processes is based on annual mass emissions and maximum average (15-minute) flow rate.

In addition to the evaluation of individual sources, the proposed rule requires that groups of sources within a geographically-accessible process area be evaluated in combination to determine if controls are warranted on a group basis. The batch process train which should be evaluated is the reactor used to synthesize a product or intermediate, and all unit operations associated with that reactor.

Although the evaluations considered specific types of control devices, the RACT determination is based on achieving a certain level of control and does not dictate the type of control system which must be applied.

C. Volatile Organic Liquid Storage Tanks

The storage tank draft CTG develops RACT control criteria for storage tanks based on VOL storage tank size, the number of tank turnovers, and the vapor pressure of the organic liquid. A threshold exemption level has been proposed (based on vapor pressure and tank size) below which controls would not be required on a fixed-roof tank. For tanks above the exemption levels, criteria have been developed which indicate when controls would be required, and what type of control system could be used to achieve RACT.

In the storage tank draft CTG, fixed roof tanks containing VOLs with vapor pressures greater than 0.5 pounds per square inch absolute (psia) were subjected to a detailed analysis for the determination of RACT. For the facility-specific RACT assessment conducted for Stepan, this has been expanded to include additional analysis of low vapor pressure tanks.

IV. Control Technology Evaluation

Numerous alternative control technologies were evaluated as potential candidates for RACT retrofit for the Stepan facility. Only a few control options were selected for the detailed analysis, however, due to their wide range of applicability.

A. Batch Process Applications

For batch process applications, thermal incinerators and refrigerated vent condensers were considered as potentially appropriate emissions control technologies capable of reducing emissions from Stepan's process emission sources by at least 90 percent.

B. Volatile Organic Liquid Storage Tank Applications

For VOL storage tanks, two internal floating roof options are sufficiently effective at reducing tank emissions to constitute RACT. These are an internal floating roof with a vapor-mounted primary seal and a secondary seal, or an internal floating roof with a liquid mounted primary seal, both with gasketed fittings. A 90 percent efficient capture and control system constitutes an acceptable alternative to an internal floating roof with the above-mentioned seals.

The storage tank draft CTG evaluated control options at three different vapor pressures: 0.5, 0.75, and 1.0 psia. Additional evaluation of floating roofs was necessary to determine RACT for tanks containing low vapor pressure (less than 0.5 psia) liquids.

V. RACT Criteria

A. Introduction

The proposed rule provides procedures for determining RACT for emission sources (or combinations of sources) at the Stepan facility in accordance with the RACT criteria. These RACT criteria for batch processes have been developed using a similar approach to that used to develop the Summary of RACT Option Cutoffs in revised Table 6–1 from the draft CTG. The RACT criteria for storage tanks have been developed using the cost-effectiveness graphs in Section 6.0 of the storage tank draft CTG and from additional cost analyses conducted as part of this RACT evaluation for internal floating roofs on low-vapor pressure VOL storage tanks.

Using the RACT criteria, it will be necessary to evaluate individual pieces of equipment, groups of equipment within a process area, and tanks to determine if controls should be applied.

For each type of system (batch processes and VOL storage systems), a threshold exemption level has been proposed, below which emissions controls are not required.

B. Batch Process Applications

Based on the RACT exemptions in the draft batch process CTG, a table presenting a series of equations has been developed which is included in this proposed rule. RACT may be determined from these equations based on mass emissions, volatility, and maximum average (15-minute) flow rate. To determine RACT for batch processes at the Stepan facility, the following procedures are presented.

1. Emissions Estimation

The RACT criteria presented in this proposed rule are to be applied to batch process sources (or groups of sources) based on the uncontrolled emission rate. For reactors which have a product condenser (i.e., condensers which recover product and are an integral part of the process), the product condenser is not considered a control device. Therefore, uncontrolled emissions are to be calculated after the product recovery condensers.

Unlike product condensers, vent condensers which primarily serve the function of reducing emissions to the atmosphere, not recovering product, are considered emissions control devices. For processes which have vent condensers primarily as pollution control devices, uncontrolled emissions are calculated prior to the vent condenser. The batch process draft CTG provides guidance on emission estimation methodologies from different types of batch reactor processes.

2. Threshold Exemption Criteria

In this proposal, that batch processes which emit VOCs to the atmosphere at a rate of less than 35,000 pounds per year, prior to any emissions control device, will be exempted from emissions control requirements. The threshold exemption level applies both to individual batch process emission sources and to groups of compatible sources within a process area. Sources which should be evaluated in the aggregate include a complete batch process train, including the reactor used to synthesize a product or intermediate and all unit operations associated with that reactor.

If an emission source or combination of sources emits 35,000 pounds per year or more, further examination is required to determine if the source or sources are required to apply RACT.

3. Volatility Range Determination

If an emission source or group of sources exceeds the mass emissions threshold exemption criteria of 35,000 pounds VOC per year, the next step in determining the applicability of RACT is to determine the range of volatility of the organic vapor. In the draft CTG,

three ranges of volatilities are defined as follows:

Low Volatility—vapor pressure of less than 75 mm Hg (1.5 psia) at 20 degrees centigrade

Medium Volatility—vapor pressure greater than or equal to 75 mm Hg (1.5 psia) and less than or equal to 150 mm Hg (3.0 psia) at 20 degrees centigrade

High Volatility—vapor pressure greater than 150 mm Hg (3.0 psia) at 20 degrees centigrade

To determine the vapor pressure of exhaust gas streams with multiple VOCs, a weighted average of the vapor pressures of the different components should be calculated to determine the appropriate volatility range. Procedures for calculating vapor pressures from multiple-VOC liquids are contained in 40 CFR 52.741(a)(8).

4. Flow Rate Determination

Maximum average flow rate over a 15-minute period is determined via measurements of volumetric flow rate in accordance with U.S. EPA Methods 1 and 2 (40 CFR part 60, appendix A). For sources which exceed the threshold exemption criteria in the aggregate (as previously defined), where it is possible to measure the combined flow rate (i.e., the sources vent into common ductwork), the actual maximum average flow rate should be used. If this is not possible, aggregated sources should be evaluated on an individual basis to determine the maximum average flow rate for each source. The sum of the individual flow rates is then determined. For comparison against the flow rate criteria, 75 percent of the sum of the individual maximum average flow rates is used in determining RACT requirements for aggregated sources.

5. RACT Control Determination

The next step is to determine if RACT applies, using the equations in Table 1. This step is to be performed on a yearly basis (subsequent to final promulgation of this proposed rule). The source's maximum average flow rate (or 75 percent of the sum of the individual source maximum average flow rates for aggregated sources) is compared with the flow rate calculated from the equations, using the corresponding mass emissions under the selected volatility range. If the actual maximum average flow rate is less than the flow rate given by the equation, RACT-level emission controls (at a 90 percent control level) are required for this source.

If the maximum 15-minute average flow rate is equal to or greater than the flow by the equation, emission controls are not required. If the equation gives 0 or a negative flow, emission controls are also not required.

C. Volatile Organic Liquid Storage Tank Applications

Based on the graphs in the storage tank draft CTG, tank size and vapor pressure cut-off levels have been proposed for this RACT assessment. To determine RACT for VOL storage tanks at the Stepan facility using Table 2, the following procedures are provided.

1. Tank Size Threshold Exemption Criteria

EPA proposes that tanks below 40,000 gallons in size be exempt from emissions control requirements. Tanks containing VOL which are 40,000 gallons or greater in size are subject to further review to determine RACT.

2. Volatility Determination and Threshold Exemption Criteria

The second criterion is the maximum true vapor pressure of the liquid within the storage tank. To determine RACT for VOL storage tanks at or above 40,000 gallons, the maximum true vapor pressure at actual tank storage temperature is used.

For tanks greater than or equal to 40,000 gallons in size which contain liquid with a maximum true vapor pressure greater than or equal to 0.75 psia, emission controls consisting of an internal floating roof or a 90 percent efficient capture and control system are RACT. The internal floating roof must have either a vapor-mounted primary seal and a secondary seal, or have a liquid-mounted primary seal.

For tanks greater than or equal to 40,000 gallons in size which contain liquid with a maximum true vapor pressure less than 0.75 psia, additional evaluation is required. The cut-off levels are presented in Table 2. From the Table, RACT for different storage tanks can be determined.

3. Low Vapor Pressure Tanks

EPA proposes that tanks containing VOLs with maximum true vapor pressures of less than 0.05 psia be exempt from controls.

Additional analysis was conducted for the evaluation of RACT for tanks containing liquids with vapor pressures equal to or greater than 0.05 psia and less than 0.5 psia. (The range of vapor pressures below 0.5 psia was not examined in the draft CTG, but was studied for this evaluation since Stepan stores a large number of compounds with low volatility.) The following additional vapor pressures were evaluated: 0.05, 0.1, and 0.25 psia.

Proposed tank size cut-off levels for low vapor pressure tanks (i.e., less than 0.5 psia) are included in Table 2. The lower vapor pressure cases, i.e., 0.05, 0.1, and 0.25 psia, were developed in order to tailor RACT to the low vapor pressure of the organic compounds stored by Stepan. These cases were generated based on the cost analysis of emissions control for low vapor pressure tanks and an assumed rate of 10 turnovers per year.

To use Table 2, tanks of a size equal to or larger than a size shown on the table which contain a liquid of vapor pressure equal to or greater than the corresponding vapor pressure shown in the table must be controlled by a 90% efficient capture and control system or by an internal floating roof. To evaluate tank sizes between those shown in Table 2, it will be necessary to interpolate between volumes to find the corresponding vapor pressure cutoff.

VI. Testing

A. Batch Processes

The uncontrolled emissions from Stepan's batch processes shall be determined by the equations in Chapter 3 of the draft CTG for batch processes unless EPA specifically requires that the test methods in 40 CFR 52.741(a)(4) be used to determine uncontrolled VOC emissions from any batch process(es).

EPA may require performance testing to demonstrate the efficiency of any control device installed on a batch process emission source to comply with this RACT requirement. Performance testing shall be conducted in accordance with the procedures referenced in paragraphs (a)(4) (iii), (iv), (v), and (vi) in 40 CFR 52.741. EPA may allow alternative method(s) for demonstrating the efficiency of any control device used by Stepan.

B. Volatile Organic Liquid Storage Tanks

For each storage tank which is larger than the specified threshold exemption size of 40,000 gallons, the vapor pressure of the contained VOL shall be determined. Prior to the initial filling of new tanks or prior to refilling existing tanks with a new VOL, the highest maximum true vapor pressure of the VOL to be stored shall be determined using the methods referenced in 40 CFR 52.741(a)(8).

VII. Monitoring

A. Batch Processes

An operating plan shall be prepared for each source or group of sources that is equipped with a closed vent system and emissions control device (e.g.,

thermal incinerator, carbon adsorption unit, flare, or vent condenser). The operating plan shall be submitted to EPA. The operating plan shall provide documentation demonstrating that the control device will achieve the required control efficiency during maximum loading conditions. This documentation shall include a description of the gas stream which enters the control device, including flow rate and VOC content under varying conditions, and manufacturer's design specifications for the control device. If the control device or the closed vent capture system receives vapors, gases, or liquids other than fuels from sources that are not designated sources under the RACT rule, the efficiency demonstration should include consideration of all vapors, gases, and liquids received by the closed vent capture system and control device. In addition, the operating plan must include a description of the parameter or parameters to be monitored to ensure that the control device will be operated in conformance with its design and an explanation of the criteria used for selection of the parameter(s). The monitor will operate at all times that the control device is in operation.

B. Volatile Organic Liquid Storage Tanks

After installing an internal floating roof, Stepan shall visually inspect the internal floating roof, the primary seal, and the secondary seal prior to filling the storage vessel with VOL. If there are holes, tears, or other openings in the primary seal, the secondary seal, or the seal fabric or defects in the internal floating roof, Stepan shall repair the items before filling the storage vessel. An external, visual inspection of the internal floating roof and the primary seal or an external inspection of the secondary seal through manholes and roof hatches on the fixed roof shall be performed at least once every 12 months after the initial fill.

If the internal floating roof is not resting on the surface of the VOL inside the storage vessel, or there is liquid accumulated on the roof, or the seal is detached, or there are holes or tears in the seal fabric, Stepan shall repair the item or empty and remove the storage vessel from service within 30 days. If a failure that is detected during the inspection cannot be repaired within 30 days and if the vessel cannot be emptied within 30 days, an extension can be requested from EPA. Such an extension should document that alternative storage capacity is unavailable and specify a schedule of actions Stepan will take to ensure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

In addition, Stepan is required to inspect visually the internal floating roof, the primary seal, the secondary seal, gaskets, slotted membranes, and sleeve seals each time the storage vessel is emptied and degassed or at a minimum of once every 10 years. If the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, or the gaskets no longer close off the liquid surfaces from the atmosphere, or the slotted membrane has more than 10 percent open area, Stepan is required to repair the items, as necessary, so that none of the conditions specified in this paragraph exist before refilling the storage vessel with VOL.

In the event that Stepan elects to control emissions from a VOL storage tank using a closed vent system and control device rather than an internal floating roof, the monitoring requirements specified for batch processes in Section VII.A of this notice will apply.

VIII. Recordkeeping

A. Batch Processes

EPA proposes that recordkeeping requirements for the Stepan facility shall be consistent with 40 CFR 52.741(y)—Recordkeeping and reporting for non-CTG sources. This includes provisions to keep a copy of monitoring data, operating plans, and maintenance logs for each control device installed as a result of this RACT determination. In addition, all records related to Stepan's annual RACT control determination must be made available for review. All records shall be kept for a three-year period.

B. Volatile Organic Liquid Storage Tanks

In this proposed rulemaking, Stepan is required to keep a record of each internal floating roof inspection conducted. Each record shall identify the storage tank on which the inspection was performed and shall contain the date of the inspection and the observed condition of each component of the control equipment (seals, internal floating roof, and fittings). If any deficiencies are detected during the annual visual inspection, a report shall be prepared that identifies the storage tank, the nature of the defects, and the date the storage tank was emptied or the nature and date of the repair. After each inspection during which holes or tears in the seal or seal fabric, or defects in the internal floating roof, or other control equipment defects are detected, a report shall be prepared that identifies the storage tank and the reason it did not meet the specification and lists each repair made.

Stepan shall keep a record of each storage tank with a design capacity equal to or greater than the tank capacity cut-off value on the applicable RACT criteria table, which stores a liquid with a maximum true vapor pressure equal to or greater than the corresponding vapor pressure cut-off. The corresponding vapor pressure cut-off shall be determined by interpolation if the tank size is between 40,000 gallons and 3,300,000 gallons, but not 250,000 or 1,500,000 gallons. The record shall contain the VOL stored, the period of storage, and the maximum true vapor pressure of that VOL during the respective storage period. Records shall be kept for a three-year period.

In the event that Stepan elects to control emissions from a VOL storage tank using a closed vent system and control device rather than an internal floating roof, the recordkeeping requirements discussed for batch processes in Section VIII.A of this notice will apply.

IX. Compliance Date

A compliance period of 12 months from the date of EPA's final promulgation is proposed for Stepan to complete the RACT evaluation of the facility's batch process and VOL storage tank emission sources, comply with any applicable control requirements, and report the results of the evaluation to EPA.

X. Summary and Conclusions

Through this proposed rule, RACT criteria for Stepan are proposed for batch process and VOL storage tanks which have the potential to emit VOCs to the atmosphere. These criteria consist of cut-offs that establish which of Stepan's VOL storage tanks and batch processes must install controls. RACT consists of an overall VOC reduction of 90 percent by a control device for batch process and VOL storage tanks; or the use of an internal floating roof, with appropriate seals, for VOL storage tanks. Recordkeeping and monitoring requirements have also been proposed. Compliance with these requirements is required one year from EPA's final promulgation of these rules.

Public comment is solicited on this proposal for the Stepan Company Millsdale Plant. Public comment is specifically solicited on the annual emission reduction and annualized cost that would result from this rulemaking,

the criteria used in making this RACT determination, and the cutoff levels set in this RACT determination. Public comments received by the date shown above will be considered in the development of EPA's final rule.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less that 50,000.

This action involves only one source, Stepan Company. Stepan Company is not a small entity. Therefore, EPA certifies that this RACT promulgation does not have a significant impact on a substantial number of small entities.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

OMB has approved the information collection requirements contained in the FIP for Ozone in the Chicago Area under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0203.

Since this proposed action involves only one source, an information collection request (ICR) document is not required. The effect of this proposed rule will be to reduce the reporting and recordkeeping requirements on this one source from those estimated in the Chicago FIP ICR. Thus, the burden on this one source is estimated to be 6 hours for reporting and 14 hours for recordkeeping, or a reduction of 240 hours. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM–223Y); Environmental Protection Agency; 401 M Street, SW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: September 9, 1993.

Carol M. Browner,

Administrator.

TABLE 1.—CUTOFF LEVELS FOR BATCH REACTORS

Volatility	Equation
low	FR=AE(0.067)−2268
moderate	FR=AE(0.044)−1600
high	FR=AE(0.020)−700

where:

FR=maximum (15-minute average) flowrate (cubic ft/minute)

AE=annual emission total (lbs/year)

volatility:

low—less than 1.5 psia at 20 degrees C

moderate—greater than or equal to 1.5 psia and less than or equal to 3.0 psia at 20 degrees C

high—greater than 3.0 psia at 20 degrees C

To determine if 90% emission reduction is required, use the actual measured (or determined by engineering calculation) annual emission total in the equation above which corresponds to the volatility of emissions from the source. Compare the FR given by this equation to the actual maximum 15-minute average flowrate determined from the source. If the actual flowrate is less than the FR given by the above equation, control is required. If the actual maximum 15-minute average flowrate is larger than or equal to the FR given by the equation, no control is required. If the FR given by the equation is 0 or is negative, no control is required.

TABLE 2.—CUTOFFS FOR STORAGE TANKS

Tank size (gallons)	Maximum true vapor pressure (psia)
40,000	0.75
250,000	0.25

TABLE 2.—CUTOFFS FOR STORAGE TANKS—Continued

Tank size (gallons)	Maximum true vapor pressure (psia)
1,500,000	0.10
3,300,000	0.05

Tanks of a size equal to or larger than a size shown in this table and containing a liquid of vapor pressure greater than or equal to the corresponding vapor pressure must be controlled. All tanks equal to or larger than 40,000 gallons and containing a liquid of vapor pressure 0.75 psia or greater must be controlled. Tanks smaller than 40,000 gallons do not require control. Tanks which store only liquids with vapor pressure less than 0.05 psia do not require control. For tanks sized between 40,000 and 3,300,000 gallons, interpolate between table values to determine the vapor pressure of the liquid below which no control is required.

For the reasons set forth in the preamble, it is proposed that chapter I, title 40 of the Code of Federal Regulations be amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.741(a)(3) is amended by adding the following definitions (in alphabetical order) to read as follows:

§ 52.741 Control Strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry and Will Counties.

(a) * * *

(3) * * *

* * * * *

Batch process means a non-continuous industrial process including, but not limited to, reactors, filters, dryers, distillation columns, extractors, crystallizers, blend tanks, neutralizer tanks, digesters, in process surge tanks, and product separators.

* * * * *

Liquid mounted seal means a foam or liquid-filled primary seal mounted around the circumference of the tanks so as to be in continuous contact with the liquid between the tank wall and the floating roof.

* * * * *

Mass emissions means the annual rate of emissions of VOCs to the atmosphere in units of pounds VOC/year.

* * * * *

Maximum average flow rate means the maximum flow rate achieved over a 15-minute period.

* * * * *

Maximum true vapor pressure means the equilibrium partial pressure exerted by the stored volatile organic liquid (VOL) at the temperature equal to:

(A) The highest calendar-month average of the VOL storage temperature; or

(B) The local maximum monthly average temperature as reported by the National Weather Service for VOLs stored at the ambient temperature as determined:

(1) In accordance with methods described in American Petroleum Institute Bulletin 2517, Evaporation Loss from External Floating Roof Tanks;

(2) As obtained from standard reference texts; or

(3) As determined by ASTM Method D2879–83.

* * * * *

Process vent means any non-fugitive source of gaseous VOC emissions to the atmosphere resulting from non-combustion emission sources. This includes all process equipment vents and stacks, as well as building ventilation exhausts (i.e., from hoods or ventilation sweeps). Not included in this definition are exhaust streams from combustion sources such as boilers and incinerators.

* * * * *

3. Section 52.741(a)(3) is amended by revising the definitions for "Floating roof" and "Storage tank or storage vessel" to read as follows:

§ 52.741 [Amended]

* * * * *

Floating roof means a storage tank or vessel cover consisting of a double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the contained volatile organic liquid (VOL), and which is equipped with a closure seal or seals to close the space between the roof edge and tank wall.

* * * * *

Storage tank or storage vessel means any tank, vessel, reservoir, or container used for the storage of VOL compounds, excluding:

(A) Pressure vessels which are designed to operate in excess of 15 pounds per square inch gauge without emissions to the atmosphere except under emergency conditions;

(B) Subsurface caverns or porous rock reservoirs;

(C) Underground tanks if the total volume of VOLs added to and taken from a tank annually does not exceed twice the volume of the tank; or

(D) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of liquids or vapors.

* * * * *

4. Section 52.741 is amended by adding paragraph (a)(4)(ix) to read as follows:

§ 52.741 [Amended]

(a) * * *

(4) * * *

(ix) Maximum average flow rate measurement.

(A) *Applicability.* The requirements of paragraph (a)(4)(ix) of this section shall apply to the measurement of maximum average flow rate from batch processes at the Stepan Chemical Company, Millsdale Plant, in Elwood, Illinois for the purposes of determining conformance with the RACT criteria specified in paragraph (w)(3)(iii) of this section.

(B) *Specific Requirements.* The maximum average flow rate for a batch process shall be measured in accordance with USEPA Methods 1 and 2, 40 CFR part 60, appendix A.

(1) For a single batch process source, the maximum average flow rate is determined by measuring the 15-minute period which includes the highest volumetric flow rate achieved by the source under normal operating conditions. The maximum average flow rate is the average volumetric flow rate measured over this 15-minute period.

(2) For aggregated sources, the maximum average flow rate is determined by measuring the 15-minute period which includes the highest volumetric flow rate achieved by the combined sources under normal operating conditions. Measurements are to be made at a stack or duct location which includes the exhaust flow from all of the aggregated sources.

(3) For aggregated sources for which there is no common ductwork or stack location where volumetric flow rate measurements could be made that would be representative of the exhaust flow from all of the sources under consideration, an alternate procedure is provided. To determine the maximum average flow rate for multiple sources which cannot be measured in aggregate, the maximum average flow rate for each source shall be determined on an individual basis in accordance with the procedures in § 52.741(a)(4)(ix)(B)*(1)*. The maximum average flow rate for the aggregated sources is equivalent to 75 percent of the sum of the individual maximum 15-minute average flow rates for each individual source.

* * * * *

4. Section 52.741 is amended by adding paragraph (w)(3)(iii) to read as follows:

§ 52.741 [Amended]

* * * * *

(w) * * *

(3) * * *

(iii) The batch processes and VOL storage tanks at Stepan Company, Millsdale Plant, Elwood, Illinois, are required to comply with the provisions in paragraph (w)(3)(iii) of this section instead of paragraph (w)(3)(i) or (w)(3)(ii) of this section, or 35 ILL. Adm. Code 218 Subpart B or 35 ILL. Adm. Code 215 Subpart B.

(A) *Applicability.* The affected emission sources at the facility are all VOL storage tanks at the facility and batch process emission sources at the following production areas: Blended detergent area, Amides production, Drum dry process, Spray dry process, Methyl esters production, "G" Unit neutralization system, "C&F" Unit, Multi-purpose reactor, "M Building" processes, Quat/urea prilling process, Quats process, E&G Unit, Tors sulfonation phase 2, Urethane foams and resins process, Alcohol distillation column, Hydrotropes process, Ethylene oxide alkoxylation facility, and the Toximul and sulfonate process.

(B) *RACT Controls—Batch Process Emission Sources.* Batch process emission sources at the Stepan facility which meet the RACT criteria presented in § 52.741(w)(3)(iii)(D) must reduce emissions of VOC, by the date that the RACT control determination (in which it is established that the RACT criteria have been met) is required, by using emission capture and control techniques which achieve an overall reduction in uncontrolled VOC emissions of at least 90 percent.

(C) *RACT Controls—VOL Storage Tanks.* VOL storage tanks at the Stepan facility which meet the RACT criteria presented in § 52.741(w)(3)(iii)(E) must reduce uncontrolled emissions of volatile organic compounds (VOC), by the date that the RACT control determination (in which it is established that the RACT criteria have been met) is required, by 90 percent through use of an add-on control device, or use, an internal floating roof with a vapor-mounted primary seal and secondary seal and gasketed fittings, or an internal floating roof with a liquid mounted primary seal only and gasketed fittings.

(D) *RACT Criteria—Batch Process Emission Sources.*

(1) Applicability. The provisions of § 52.741(w)(3)(iii)(D) apply to batch process emission sources in Stepan's

batch process areas listed in § 52.741(w)(3)(iii)(A).

(2) Procedures for determining RACT.

(*i*) Determination of uncontrolled emissions. For each batch process source, annual mass emissions of VOC on an uncontrolled basis shall be calculated, by [insert date 12 months from date of EPA's final rule] and at the end of every subsequent 12 month period. Product recovery condensers which serve the primary function of recovering product and as such are an integral part of the batch process are not considered air pollution control devices; therefore, uncontrolled mass emissions are to be calculated after product recovery condensers. Vent condensers which serve the primary function to reduce atmospheric emissions of VOC are considered air pollution control devices; therefore, uncontrolled emissions are to be calculated before vent condensers. Uncontrolled mass emissions are to be calculated using the equations in Chapter 3 of the draft CTG for batch processes unless EPA specifically requires that the test methods in § 52.741(a)(4) be used to determine uncontrolled VOC emissions from any batch process(es).

(*ii*) Determination of uncontrolled emissions from aggregated sources. In addition to evaluating batch process emission sources on an individual basis, annual mass emissions of VOC shall be calculated for aggregated batch process emission sources. Sources which shall be evaluated in the aggregate include a complete batch process train, including the reactor used to synthesize a product or intermediate and all unit operations associated with that reactor. Each batch process emission source will therefore be evaluated twice, individually, and as part of an aggregated source.

(*iii*) Threshold exemption criteria based on mass emissions. Batch process emission sources that emit less than 35,000 lb/yr VOC are exempt from emission control requirements. Both individual and aggregated batch process emission sources are to be compared to this threshold exemption criteria, using the procedures for calculating mass emissions in § 52.741(w)(3)(iii)(D)*(2)*(*i*) and (*ii*).

(*iv*) Existing control device exclusion. Batch process emission sources at the Stepan facility which have existing vent condenser emissions controls may not remove those control devices, regardless of whether the source's mass emissions of VOC meet the threshold exemption criteria in § 52.741(w)(3)(iii)(D)*(2)*(*iii*).

(*v*) Volatility range determination. Each batch process emission source and each aggregated batch process emission source which exceeds the threshold exemption criteria in § 52.741(w)(3)(iii)(D)*(2)*(*iii*) (with emissions of 35,000 lb/yr VOC or greater) shall next determine the volatility range of the organic vapor in the emissions stream. Three ranges of volatility are defined as follows:

Low volatility: vapor pressure of less than 75 mm Hg (1.5) psia at 20 degrees C

Medium volatility: vapor pressure greater than or equal to 75 mm Hg (1.5 psia) and less than or equal to 150 mm Hg (3.0 psia) at 20 degrees C

High volatility: vapor pressure greater than 150 mm Hg (3.0 psia) at 20 degrees C

Vapor pressure shall be determined in accordance with the procedures of § 52.741(a)(8).

(*vi*) *Maximum average flow rate determination.* Each batch process emission source and each aggregated batch process emission source which exceeds the threshold exemption criteria in § 52.741(w)(3)(iii)(D)*(2)*(*iii*) (with emissions of 35,000 lb/yr VOC or greater) shall next determine the maximum average flow rate in accordance with the procedures in § 52.741(a)(4)(ix).

(*vii*) *RACT control determination.* Each batch process emission source and each aggregated batch process emission source which exceeds the threshold exemption criteria in § 52.741(w)(3)(iii)(D)*(2)*(*iii*) (with emissions of 35,000 lb/yr VOC or greater) shall next determine if RACT applies, using the equations in Table 1. Compare each source and aggregated source's maximum average flow rate, as determined in § 52.741(w)(3)(iii)(D)*(2)*(*vi*), with the flow rate calculated by the equations in Table 1 for the corresponding mass emissions, as determined in § 52.741(w)(3)(iii)(D)*(2)* (*i*) and (*ii*), for the selected volatility range, as determined in § 52.741(w)(3)(iii)(D)*(2)*(*v*). If the maximum 15-minute average flow rate is less than the flow rate calculated by the equation, emission controls in accordance with § 52.741(w)(3)(iii)(B) are RACT for this source. If the maximum 15-minute average flow rate is equal to or greater than the flow calculated by the equation, emission controls are not required. If the flow rate calculated by the equation is negative or 0, then emission controls are not required. This RACT control determination is to be performed by [insert date 12 months from the date of EPA's final rule] and at the end of every subsequent 12 month period.

(E) RACT Criteria—VOL Storage Tanks.

(1) Applicability. The provisions of this subpart apply to all VOL storage tanks at the Stepan facility.

(2) Procedures for determining RACT.

(*i*) *Tank size threshold exemption criteria.* VOL storage tanks below 40,000 gallons in size are exempted from emissions control requirements. Tanks containing VOL which are 40,000 gallons or greater are subject to further review to determine RACT.

(*ii*) *Volatility determination and volatility exemption.* For VOL storage tanks above the tank size threshold exemption criteria in § 52.741(w)(3)(iii)(E)*(2)*(*i*) (tanks equal to or greater than 40,000 gallons) the maximum true vapor pressure shall be determined in accordance with the procedures provided in the definition found in § 52.741(a)(3). VOL storage tanks containing VOLs with a maximum true vapor pressure of less than 0.05 psia are exempt from control requirements.

(*iii*) *Determination of RACT.* For VOL storage tanks equal to or above 40,000 gallons, and which contain liquid with a maximum true vapor pressure greater than or equal to 0.75 psia, emissions control in accordance with § 52.741(w)(3)(iii)(C) is RACT.

(*iv*) *Low vapor pressure VOL storage tanks.* For VOL storage tanks equal to or above 40,000 gallons containing VOL with a maximum true vapor pressure at or above 0.05 psia, and which contain liquid with a maximum true vapor pressure less than 0.75 psia, RACT is determined using Table 2. To determine RACT for a low vapor pressure VOL storage tank containing a liquid with a vapor pressure given in Table 2 (corresponding to the maximum true vapor pressure of the VOL), compare the size of the tank to the tank size on the Table. If the tank size is equal to or greater than the tank size on the Table, controls in accordance with § 52.741(w)(3)(iii)(C) are RACT.

(*v*) To evaluate tanks containing liquids with vapor pressures between those listed on Table 2, interpolation is required to obtain the tank size cut-off for tanks containing liquids with vapor pressures between greater than 0.25 and less than 0.75 psia. Using Table 2, interpolation is also necessary to obtain the tank size cut-off for vapor pressures greater than 0.05 and less than 0.10 psia, and greater than 0.10 and less than 0.25 psia.

(*vi*) RACT determinations, as described in § 52.741(w)(3)(iii)(E)*(2)* must be performed by (insert date 12 months from the date of EPA's final

rule) and at the end of every subsequent 12 month period.

(F) *Testing—(1) Applicability.* At the discretion of the EPA, performance testing may be required to demonstrate the efficiency of any closed vent system and control device that may be installed on a batch process emission source.

(2) Testing procedures for batch process emissions controls. Performance testing shall be conducted in accordance with the procedures referenced in paragraphs (a)(4) (iii), (iv), (v), and (vi) of this section.

(3) Testing procedures for VOL storage tanks. For VOL storage tanks above the tank size threshold exemption criteria in § 52.741(w)(3)(iii)(E)*(2)(i)*, the maximum true vapor pressure of the contained VOL shall be determined. Prior to the initial filling of new tanks or prior to refilling existing tanks with a new VOL, the highest maximum true vapor pressures for any VOL to be stored shall be determined using the methods referenced in § 52.741(a)(8).

(G) *Monitoring. (1)* Operating plan for closed batch process emission control devices. An operating plan shall be prepared for each source or group of sources that is equipped with a closed vent system and emissions control device. The operating plan shall be submitted to EPA by (insert date 12 months from the date of EPA's final rule) or by the date a determination is made that an emission control device is required. The operating plan shall provide documentation demonstrating that the control device will achieve the required control efficiency during maximum loading conditions. This documentation shall include a description of the gas stream which enters the control device, including flow rate and VOC content under varying conditions, and manufacturer's design specifications for the control device. If the control device or the closed vent capture system receives vapors, gases, or liquids other than fuels from sources that are not designated sources under the RACT rule, the efficiency demonstration should include consideration of all vapors, gases, and liquids received by the closed vent capture system and control device. In addition, the operating plan should include a description of the parameter or parameters to be monitored to ensure that the control device will be operated in conformance with its design and an explanation of the criteria used for selection of the parameter(s).

(2) Internal floating roof monitoring and inspection procedures. After installing an internal floating roof, and prior to filling the storage vessel, a visual inspection of the internal floating roof, the primary seal, and the secondary seal is required. If there are holes, tears, or other openings in the primary seal, the secondary seal, or the seal fabric or defects in the internal floating roof, these items shall be repaired before filling the storage vessel. An external, visual inspection of the internal floating roof and the primary seal or the secondary seal by external inspection through manholes and roof hatches on the fixed roof shall be performed at least once every 12 months after the initial fill. If the internal floating roof is not resting on the surface of the VOL inside the storage vessel, or there is liquid accumulated on the roof, or the seal is detached, or there are holes or tears in the seal fabric, the item shall be repaired or the storage vessel shall be emptied and removed from service within 30 days. If a failure that is detected during the inspection cannot be repaired within 30 days and if the vessel cannot be emptied within 30 days, an extension can be requested from EPA. Such an extension should document that alternative storage capacity is unavailable and specify a schedule of actions that will be taken to ensure that the control equipment will be repaired or the vessel will be emptied as soon as possible. In addition, a visual inspection of the internal floating roof, the primary seal, the secondary seal, gaskets, slotted membranes and sleeve seals is required each time the storage vessel is emptied and degassed or at a minimum of once every 10 years. If the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, or the gaskets no longer close off the liquid surfaces from the atmosphere, or the slotted membrane has more than 10 percent open area, repair of these items would be required, as necessary, so that none of the conditions specified in this paragraph exist before refilling the storage vessel with VOL.

(H) *Recordkeeping and Reporting. (1)* Recordkeeping requirements for the affected sources at the Stepan facility, as described in § 52.741(w)(3)(iii)(A), shall be consistent with paragraph (y) of § 52.741—Recordkeeping and reporting for non-CTG sources. In addition, all records related to Stepan's annual batch process RACT determination must be made available for EPA review. All records shall be kept for a three-year period.

* * * * *

6. Section 52.741 is amended by adding paragraph (y)(2)(iv) to read as follows:

§ 52.741 [Amended]

* * * * *

(y) * * *

(2) * * *

(iv) Stepan shall keep a record of each internal floating roof inspection conducted. Each record shall identify the storage tank on which the inspection was performed and shall contain the date of the inspection and the observed condition of each component of the control equipment (seals, internal floating roof, and fittings). If any deficiencies are detected during the annual visual inspection, a report shall be prepared that identifies the storage tank, the nature of the defects, and the date the storage tank was emptied or the nature and date of the repair. After each inspection during which holes or tears in the seal or seal fabric, or defects in the internal floating roof, or other control equipment defects are detected, a report shall be prepared that identifies the storage tank and the reason it did not meet the specification and lists each repair made. Stepan shall keep a record of the VOL stored, the period of storage, and the maximum true vapor pressure of that VOL during the respective storage period. Records shall be kept for a three-year period.

7. Section 52.741 is amended by adding tables 1 and 2 to the end of the section preceding Appendix A to read as follows:

§ 52.741 [Amended]

* * * * *

TABLE 1 TO § 52.741.—CUTOFF LEVELS FOR BATCH REACTORS

Volatility	Equation
low	FR=AE(0.067) – 2268
moderate	FR=AE(0.044) – 1600
high	FR=AE(0.020) – 700

where:

FR=maximum (15-minute average) flowrate (cubic ft/minute)

AE=annual emission total (lbs/year)

volatility:

low—less than 1.5 psia at 20 degrees C

moderate—greater than or equal to 1.5 psia and less than or equal to 3.0 psia at 20 degrees C

high—greater than 3.0 psia at 20 degrees C

To determine if 90% emission reduction is required, use the actual measured (or determined by engineering calculation) annual emission total in the equation above which corresponds to the volatility of emissions from the source. Compare the FR given by this equation to the actual maximum 15-minute average flowrate determined from the source. If the actual flowrate is less than the FR given by the above equation, control is required. If the actual maximum 15-minute average flowrate

is larger than or equal to the FR given by the equation, no control is required. If the FR given by the equation is 0 or is negative, no control is required.

TABLE 2 TO § 52.741.—CUTOFFS FOR STORAGE TANKS

Tank size (gallons)	Maximum true vapor pressure (psia)
40,000	0.75
250,000	0.25
1,500,000	0.10
3,300,000	0.05

Tanks of a size equal to or larger than a size shown in this table and containing a liquid of vapor pressure greater than or equal to the corresponding vapor pressure must be controlled. All tanks equal to or larger than 40,000 gallons and containing a liquid of vapor pressure 0.75 psia or greater must be controlled. Tanks smaller than 40,000 gallons do not require control. Tanks which store only liquids with vapor pressure less than 0.05 psia do not require control. For tanks sized between 40,000 and 3,300,000 gallons, interpolate between table values to determine the vapor pressure of the liquid below which no control is required.

[FR Doc. 93–23857 Filed 9–30–93; 8:45 am]
BILLING CODE 6560–60–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 440 and 441

[MB–028–P]

RIN 0938–AE72

Medicaid Program; Early and Periodic Screening, Diagnosis, and Treatment Services Defined

AGENCY: Health Care Financing Administration (HCFA), HHS.
ACTION: Proposed rule.

SUMMARY: This proposed rule would codify in Medicaid regulations existing policies and legislative changes concerning early and periodic screening, diagnosis, and treatment (EPSDT) services for Medicaid recipients under age 21. These policies are based on section 4101(c) of the Omnibus Budget Reconciliation Act of 1987, as amended by section 302 of the Medicare Catastrophic Coverage Act of 1988, and section 6403 of the Omnibus Budget Reconciliation Act of 1989.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 30, 1993.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–028–P, P.O. Box 7518, Baltimore, MD 21207–0518.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201; or room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB–028–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

If you wish to submit comments on the information collection requirements contained in this proposed rule, you may submit comments to: Laura Oliven, HCFA Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

FOR INFORMATION CONTACT: Linda Sizelove, (410) 966–4626

SUPPLEMENTARY INFORMATION:

I. Background

A. General

Title XIX of the Social Security Act (the Act) provides authority for States to establish Medicaid programs to furnish medical assistance to needy individuals. Section 1902(a)(10) of the Act describes most of the groups of individuals to whom medical assistance may be furnished under two broad classifications: The categorically needy (section 1902(a)(10)(A)) and the medically needy (section 1902(a)(10)(C)). Coverage of the medically needy group is at a State's option. (Three major exceptions to these categories are qualified Medicare beneficiaries described in section 1905(p) of the Act, selected low-income Medicare beneficiaries described in section 1902(a)(10)(E)(iii) of the Act, and qualified disabled and working individuals described in section 1905(s) of the Act. The individuals in these categories are not affected by this proposed rule since the benefits for these individuals include all services covered under Medicare and only those services.)

Section 1905(a)(4)(B) of the Act has, since 1969, included the cost of early and periodic screening, diagnosis, and treatment (EPSDT) services for Medicaid recipients under age 21 within the scope of medical assistance. Under section 1902(a) of the Act, which sets forth the requirements that Medicaid State plans must meet in order to receive Federal financial participation (FFP), State plans must provide for the State to furnish medical assistance for EPSDT services to all categorically needy individuals under age 21. The EPSDT benefit is optional for the medically needy population, although the majority of States have elected to furnish the service to some or all medically needy groups. If a State elects to furnish EPSDT services to any medically needy group, the entire package of EPSDT services as defined in Medicaid regulations at 42 CFR 441.56(b) and (c) and 441.57 must be furnished to that group.

Section 1902(a)(43) also requires that State plans provide for the following activities to implement the EPSDT benefit:

- Informing all Medicaid recipients under age 21, who are eligible for EPSDT under the plan, of EPSDT availability.
- Providing or arranging for requested screening services.
- Arranging for treatment of health problems found as a result of screening.

In addition, section 1916(a) of the Act exempts from Medicaid copayment requirements services furnished to recipients under age 18 (or up to age 21 at a State's option), except for any enrollment fee, premium, or similar charge that may be imposed on medically needy recipients.

B. Legislative Changes

Before 1987, section 1905(a)(4)(B) of the Act defined EPSDT services as "* * * early and periodic screening and diagnosis of individuals who are eligible under the plan and are under the age of 21 to ascertain their physical or mental defects, and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby, as may be provided in regulations of the Secretary; * * *." The statute also provided that no enrollment fee, premium or similar charge could be charged to categorically needy individuals, and no deduction, cost sharing, or similar charge could be imposed for services to individuals

under 18 years of age and, at the option of the State, individuals under 21, 20, or 19 years of age or any reasonable category of individuals 18 years or over. An enrollment fee or premium could be charged to medically needy individuals.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203, was enacted. This act was later amended, in part, by the Medicare Catastrophic Coverage Act of 1988, Public Law 100–360. Section 4101(c) of Public Law 100–203, as amended by Public Law 100–360, added a new subsection 1916(c) to the Act, that allows the States to impose a premium payment on pregnant women and infants (under age 1) who are eligible for Medicaid as categorically needy on the basis of a family income of 150 percent or more of the Federal poverty level applicable to a family of the size involved. This premium is limited to 10 percent of the amount by which family income (minus dependent child care costs) exceeds 150 percent of the Federal poverty line.

Section 6403 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239, enacted on December 19, 1989) revised section 1905(a)(4)(B) of the Act by removing the Secretary's authority to define EPSDT services and added a new section 1905(r) to the Act that defines the items and services to be included under the term "early and periodic screening, diagnostic, and treatment services." The changes made by section 6403 include——

- Modifying the definition of screening services to include blood lead level assessments appropriate for age and risk factors, and health education;
- Requiring distinct periodicity schedules for screening, dental, vision, and hearing services and requiring medically necessary interperiodic screening services;
- Adding a newly required service component of "other necessary health care, diagnostic services, treatment and other measures described in section 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan"; and
- Clarifying that nothing in the Medicaid law permits limiting program participation for EPSDT providers to those that can furnish all required EPSDT diagnostic or treatment services or prohibiting the participation of qualified providers that can furnish only one such service.

Section 6403 of Public Law 101–239 also revised section 1902(a)(43) of the Act to require that State Medicaid agencies report basic information on participation in the Medicaid child health program and section 1905(a)(4) of the Act to require that EPSDT services as defined in section 1905(r) of the Act must be furnished to Medicaid eligible individuals under age 21.

C. Existing Regulations

The EPSDT services provisions are found in existing regulations at 42 CFR part 440, subpart A, and part 441, subpart B. The EPSDT provisions of section 4101(c) of Public Law 100–203 and section 6403 of Public Law 101–239 have never been codified in regulations.

D. Manual Instructions

The EPSDT services provisions of Public Law 101–239 became effective April 1, 1990, without regard to whether final regulations to carry out the provisions had been promulgated by the effective date. To ensure implementation of the Public Law 101–239 provisions, HCFA issued State Medicaid Manual instructions in April and July 1990, and in September 1992.

II. Provisions of the Proposed Regulations

In order to conform the regulations to the provisions of section 4101(c) of Public Law 100–203, which amended section 1916(c) of the Act, and sections 6403 (a), (d), and (e) of Public Law 101–239, which amended sections 1902(a)(43), 1905(a)(4)(B), and 1905(r) of the Act, we propose to make the following changes to 42 CFR part 440, subpart A and 42 CFR part 441, subpart B.

In accordance with section 1905(r) of the Act, which defines EPSDT items and services, we would revise the definition of "EPSDT" at § 440.40(b) to include general screening services and vision, dental, and hearing services. The existing EPSDT definition specifies only screening and diagnostic services to determine physical and mental defects. We would also revise paragraph (b) to include diagnostic services as one of the corrective measures and indicate that the conditions are no longer required to be chronic but include all physical and mental conditions and illnesses discovered by the screening services.

In § 441.50, which defines the basis and scope of subpart B for EPSDT individuals under age 21, we would add section 1905(r) of the Act as the basis for defining EPSDT services.

We would change the title of § 441.56 from "Required activities" to "Notification requirements" and would maintain the existing requirements for providing notice to eligible individuals or their families regarding the EPSDT program. In paragraph (a) in accordance with section 1902(a)(43)(A) of the Act and section 5121.B. of the State Medicaid Manual, Part 5—EPSDT, which identifies the individuals who must be provided information regarding EPSDT services, we propose to add the requirement that States inform all Medicaid-eligible pregnant women and parents or guardians of Medicaid-eligible infants about the availability of EPSDT services for children under age 21 (including children eligible as newborns). A Medicaid-eligible woman's positive response to an offer of EPSDT services during her medically-confirmed pregnancy would constitute a request for EPSDT services for the child at birth. For a child eligible at birth (that is, as a newborn of a woman who is eligible for and receiving Medicaid), the request for EPSDT services would be effective with the birth of the child. For an infant who is not deemed Medicaid-eligible at birth, States would be required to inform the parents, or guardians, of the infant of the availability of EPSDT services when the infant is determined to be Medicaid eligible.

Existing paragraph (a)(2) of § 441.56 regarding the content of EPSDT information provided to individuals has been redesignated as a new paragraph (b). In accordance with section 1905 of the Act and section 5010 of the State Medicaid Manual, Part 5—EPSDT, EPSDT services are required under the Medicaid program for categorically needy individuals under age 21. The EPSDT benefit is optional for medically needy recipients under age 21.

In addition to providing EPSDT benefits as an option for the medically needy under age 21, a State may impose a monthly premium, in accordance with section 1916(c)(1) of the Act, on a categorically needy woman or infant under 1 year of age (as defined in section 1902(l)(1) (A) and (B) of the Act), who is receiving medical assistance in accordance with section 1902(a)(10)(A)(ii)(IX) of the Act, and whose family income exceeds 150 percent of the Federal poverty level applicable to a family of the size involved. Our interpretation of this statute is already included in section 3671.5 of the State Medicaid Manual, Part 3—Eligibility. (The family income must also not exceed 185 percent of the Federal poverty line in accordance with section 1902(l)(2) of the Act.) However, the limitations and other conditions on these premiums, found in section 1916(c) (2) and (3) of the Act, would be applicable. Therefore, in the redesignated paragraph (b)(3) of § 441.56, we would require the State agency to advise eligible individuals

under age 21 that EPSDT services are furnished without cost, except for any cost sharing that the State agency may impose on medically needy recipients or on categorically needy individuals whose family income exceeds certain levels.

We propose to remove the existing § 441.57 "Discretionary services" because under section 1905(r)(5) of the Act, a State no longer has the discretion to decide which optional services it would furnish to EPSDT participants.

We would add a new § 441.57 titled "Service requirements" that would identify the requirements for screening, diagnosis, and treatment in accordance with section 1905(r) of the Act, which defines EPSDT services. Section 1905(r)(1) of the Act expands the definition of "screening services" to define specific services.

In § 441.57(a)(1), we would list the existing EPSDT screening services as follows: General screenings that would include a comprehensive health and developmental history; immunizations that are currently listed under diagnosis and treatment; a comprehensive unclothed physical examination; laboratory tests; and vision, dental and hearing screenings. Under dental screening services, we would expand the requirement for initial direct referral to include a dentist or a professional dental hygienist under the supervision of a dentist. We believe this expansion would increase the availability of dental services in areas where dentists are scarce or not easy to reach. Under existing regulations, the initial direct dental referral begins at age 3 or an earlier age if determined to be medically necessary. However, in accordance with section 1905(r)(3) of the Act, we would require that dental services, including the initial referral, conform to the periodicity schedule that is established after consultation with recognized dental organizations involved in child health care (§ 441.58(b)).

Section 1905(r)(1) of the Act also added two new EPSDT screening services that we would specify in § 441.57(a). The first is an assessment of children's blood lead level appropriate for age and risk factors. This assessment is included under the heading of laboratory tests. Due to constantly changing advances in medical knowledge and technology, we do not propose to codify in regulations a definition of blood lead level assessments "appropriate" for age and risk factors. Medical knowledge of the effects of childhood lead poisoning has increased in recent years, resulting in a change in the blood lead level threshold at which the medical community recommends concern, management and intervention for children found to have elevated blood lead levels. Medical technology to assess blood lead levels has also changed in recent years as well as States' capacity and resources to utilize that technology. For these reasons, we will define appropriate blood lead level assessment by reference to various current sources of medical expertise, including, most importantly, the Public Health Service's Centers for Disease Control's (CDC) periodic statements on "Preventing Lead Poisoning in Children," and we will provide appropriate interpretive guidance to the States through the State Medicaid Manual.

The second is health education. We do not plan to define health education, except to note that it would include anticipatory guidance. Parents or guardians of children would be advised of the child's expected development and given information regarding healthy lifestyles and practices, accident and disease prevention, and risk assessment and advice on risk reduction. We expect that the initial screening or assessment would be the first indicator as to what type of education may be needed for a particular child and the child's family. Additional periodic screens and assessments would make it possible for the provider to monitor the progress of the child and make additional information available as necessary. For example, if, during the initial screening or assessment, certain risk factors appear to be present (such as high blood lead level), the parents would be educated as to how to detect and prevent lead poisoning, or both. A child diagnosed as having lead poisoning would be treated appropriately. In addition, the parents would be educated on how to find the source of the lead and how to find assistance to dispose of the lead source.

Investigations to determine the source of lead may be coverable by Medicaid. To be covered by Medicaid, investigations to determine the source of lead must be patient-specific as part of the management and treatment of a child diagnosed with an elevated blood lead level.

Medicaid Federal financial participation (FFP) is not available for environmental testing of water, paint chips, etc., because these tests are not medical in nature, but rather are used to test elements in the child's environment. The only exception to this policy is that FFP is available for a health professional's activities in investigating onsite a Medicaid eligible child's home for the source of lead poisoning. Such activities include simple experiments or tests easily performed by the health professional and designed to locate lead sources onsite. To be eligible for FFP, investigations to determine the source of lead contamination must be patient specific as part of the management and treatment of a Medicaid eligible child diagnosed with an elevated blood level. Moreover, FFP is not available for other nonmedical activities such as removal of lead sources, providing alternate housing or for analysis of samples which are sent to laboratories. These activities are appropriately funded by other Federal, State, and/or local entities, rather than under the Medicaid program.

In a new § 441.57(b), we would specify the requirement for periodic screening services in paragraph (b)(1) in accordance with section 1905(r) of the Act that mandates a State must furnish screening services "* * * at intervals which meet reasonable standards of medical and dental practice * * *." We would redesignate § 441.58(c) concerning optional State screening services as § 441.57(b)(2) and incorporate the requirement for interperiodic screening services as described in section 1905(r) of the Act. States would not be able to limit the number of medically necessary screenings a child receives. States would be required to provide for additional screens beyond those identified in the periodicity schedule, as indicated by medical necessity. In addition, a State may not require prior authorization for these interperiodic screens.

These "interperiodic screens" would be available to determine the existence of a suspected illness or condition or a change or complication to a pre-existing condition. Any condition or illness detected or suspected by an interperiodic screen would also be treated. Interperiodic screens would be used to determine if there is a problem that was not evident at the time of the regularly scheduled screen, but needs to be addressed before the next scheduled screen. For example, a child received a regularly scheduled periodic vision screen at age 5 and no problem was detected. However, at age 6, the child is referred to a school nurse by a teacher who suspects a vision problem. Even though the next scheduled vision screen is not due until the age of 7, the child would receive an interperiodic screen at age 6 in order to determine if there is a vision problem.

Another example of a medically necessary interperiodic screen would be if a child develops a condition, such as a fever or an earache, that would require

intervention by a physician. The physician encounter in these cases would be considered a medically necessary interperiodic screen to determine the underlying cause of the fever or the earache. The child would receive medical services (for example, further examination and laboratory tests) necessary to fully evaluate the illness or condition and furnish appropriate treatment. This provision would ensure that any illness, defect, or medical condition that is present would be detected and treated early.

Section 441.57(b) would also consist of the following existing provisions:

- Paragraph (b)(3)—We propose to move a provision from § 441.56(e) that requires that an agency employ processes to ensure timely initiation of any treatment, if required, within 6 months after the request for screening services.
- Paragraph (b)(4)—We propose to move a provision from § 441.59(b) that specifies that an agency need not furnish requested screening services to an EPSDT eligible child under age 21 if written verification exists that the service has already been furnished to the EPSDT eligible child, unless there is reason to suspect an illness or condition that did not exist at the time of the regular periodic screen.

In a new § 441.57(c), we would specify that an agency must furnish vision, dental, and hearing services to eligible EPSDT recipients. These requirements are currently listed in § 441.56(c) (1) and (2).

In addition, we would add a new paragraph (c)(4) to § 441.57 to require States to furnish any other health care, diagnostic services, treatment, or other measures described in section 1905(a) of the Act to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services even if the service is not covered under the State's plan. This is a new requirement under section 1905(r)(5) of the Act and is a significant change to the EPSDT benefit. For example, in the case of a State that does not pay for the cost of drugs for its medically needy population, the State would be required to furnish or pay for the cost of those drugs necessary to treat the condition of a medically needy EPSDT child, as long as the costs of the drugs are generally eligible for FFP under Medicaid.

This requirement also means that a State would pay for the cost of any additional services to an individual with a pre-existing condition. If a child was receiving a limited package of EPSDT benefits under the prior statutory requirements, section 1905(r) of the Act now requires that the child receive the full array of services listed in section 1905(a) of the Act.

In addition, while the statute does specifically state that a condition must be discovered in a screen, we believe that any encounter with a health professional practicing within the scope of his or her practice would be considered to be a screen and any ensuing medically necessary health care, diagnosis, or treatment would be considered to have been discovered by the screen. It does not matter whether the child receives the screening services while the child is Medicaid eligible nor whether the provider is participating in the Medicaid program at the time the screening services are furnished. Payment for any further treatment of a condition discovered prior to a child becoming eligible for Medicaid would be provided under the EPSDT benefit when the child becomes Medicaid eligible. Waiting for a periodic screen to be performed may be detrimental to the health of the child and therefore contrary to the intent of the law, or may be duplicative of some services already furnished. In fact, the report of the House Budget Committee that accompanied H.R. 3299 (H.R. Rep. No. 101–247, 101st Cong., 1st Sess. 399 (1989)) states that interperiodic screens may occur even in the case of a child whose physical, mental, or developmental illnesses or conditions have already been diagnosed, if there are indications that the illnesses or conditions may have become more severe or changed sufficiently so that further examination is medically necessary. Therefore, EPSDT recipients with pre-existing conditions would have access to the full array of EPSDT services despite the fact that their condition was discovered by a screen prior to their being Medicaid eligible.

In proposed § 441.57(d), we would stipulate that if a State furnishes EPSDT services to any medically needy group, it must furnish all the EPSDT services listed in § 441.57(a) through (c) to that group. We believe this requirement reflects the intent of Congress that the services listed in section 1905(a) of the Act be considered as a total package and not be separated, and that the medically needy group receive the full range of EPSDT services.

In a new § 441.57(e), we propose to allow States to establish service limits using the criteria in § 440.230(d). Historically, States have been given considerable latitude in deciding the parameters of the coverage of services available under Medicaid in each State. Nothing in Public Law 101–239 specifically addresses a State's ability to establish program limitations, except to indicate that a State must pay for costs of other necessary health care, diagnostic services, treatment, and any other measures described in section 1905(a) of the Act to correct or ameliorate defects and physical and mental illnesses and conditions.

We believe that a State may establish tentative limits on the amount of EPSDT services, as long as those limits, applied in individual cases, would not have the effect of denying necessary health care. For example, a State may generally impose a limit of 10 physical therapy visits available under the expanded EPSDT program. However, if it is determined to be medically necessary for the child to have five additional visits, the State must pay for the costs of the additional visits. Thus, the limit functions, in effect, as a general checkpoint, but additional services must be furnished beyond the limit upon a determination of medical necessity in a particular case.

In proposed § 441.57(f), in determining what is medically necessary, a State would not be required to furnish any items or services that it determines are not safe and effective or that are considered experimental. In addition, a State would have the option to cover new or investigative procedures or medical equipment that are not generally recognized as accepted modalities of medical practice or treatment, or to cover any supplies, items or services which it determines are not medical in nature.

In a new § 441.57(g), we would permit States to establish procedures designed to ensure that cost-effective treatment modalities are furnished. That is, where alternative and medically appropriate modes of treatment exist and are available, the State may choose (among the alternatives) which services are made available based on cost-effectiveness. Under section 1902(a)(30)(A) of the Act, a State plan must "provide such methods and procedures relating to the utilization of, and payment for, care and services available under the plan * * * as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care * * *." Among the methods a State may employ "to safeguard against unnecessary utilization of such care and services" is a system of prior approval of selected types of health care. These prior approval systems may be applied to any type of service and may be based on considerations of cost, safety, effectiveness, etc.

The goal of prior approval is to assure that the proposed care and services are actually needed, that they are furnished in reasonably economically efficient settings, and that the proposed service and materials conform to commonly accepted standards. For example, in the case of a child who requires a level of care comparable to that furnished in an institutional setting, the State would be free to consider the medically reasonable and appropriate alternatives, including various home, community-based, and institutional alternatives, and choose the most cost-effective alternative. As a result, in certain situations, it may be appropriate for the child to be maintained in the community. However, if community-based care is not cost effective, the State may choose to make appropriate institutional care available. These determinations necessarily would be made on a case-by-case basis. We emphasize that we believe this approach would ensure that a child would receive care consistent with his or her treatment needs, but that States would retain some flexibility in determining the cost-effective settings that would be paid by Medicaid.

In proposed § 441.57(h), we would not require a State to pay the costs of the services described in section 1905(a) of the Act through every possible setting or type of provider if the State can demonstrate sufficient access to services. We note that the thrust of the Public Law 101–239 requirements was to ensure that the services listed in section 1905(a) of the Act that are necessary to correct or ameliorate defects and existing illnesses and conditions are available to Medicaid eligible individuals under age 21. However, the list of services in section 1905(a) of the Act is characterized not only by service type but also by setting. That is, some services, such as inpatient and outpatient hospital, clinic, home health services, are inherently setting oriented. In contrast, other services, such as nurse practitioner services, physicians' services, or physical therapy, are not specific to a particular setting and may be furnished by a given type of practitioner in a wide variety of settings.

We see nothing in Public Law 101–239 that would require the States to make these services available through every possible setting or provider type. For example, physical therapy is an optional service under section 1905(a)(11) of the Act. However, even in those States that do not elect to cover physical therapy services under the Medicaid physical therapy benefit, those services are nonetheless available through other benefits. That is, physical therapy services are generally covered as an outpatient hospital service by hospitals, and outpatient hospital services are a required Medicaid service. Similarly, physical therapy services may be available through other mandatory benefits such as federally qualified health centers (FQHCs) and home health. Physical therapy services may also be available as an optional service under the clinic or rehabilitation benefit under Medicaid. Therefore, if adequate access to physical therapy services is available under a State's outpatient hospital benefit or FQHC benefit, the State would not be required under the EPSDT program to furnish physical therapy services under any other optional benefit category, including independent practitioners.

Section 441.58 specifies that the State agency must implement a periodicity schedule for screening services. We would revise the introductory language in this provision to require an agency to implement "distinct" periodicity schedules for the general health, vision, dental, and hearing screening services. As stated in the existing paragraph (a), each periodicity schedule would reflect intervals that meet reasonable standards of medical and dental practice as determined by the State after consultation with recognized medical organizations involved in child health care. It is expected that each of these services (that is, screening, vision, dental, and hearing services) would follow a different schedule depending on the age of the child. For example, young children may need more frequent general screening services to keep up to date with their required immunizations. Children reaching their teen years, on the other hand, may require dental screens on a more frequent basis.

As explained earlier in this preamble, we propose to move the information contained in existing § 441.59 concerning treatment of requests for EPSDT screening to § 441.57 (Service requirements). In a new § 441.59, we would specify the recordkeeping and reporting requirements for the EPSDT program. In § 441.59(a), we would list the recordkeeping requirements that appear in existing § 441.56(d). We would also require States to maintain documentation to verify that periodicity schedules are developed after consultations with recognized medical and dental organizations involved in child health care as described in § 441.58(a) concerning periodicity scheduling for screening purposes. Section 441.59(b) would identify the new reporting requirements in accordance with section 1902(a)(43) of the Act, as amended by section 6403(b) of Public Law 101–239, which mandated the provision of an annual EPSDT report.

In accordance with section 1905(r) of the Act, as amended by section 6403(c) of Public Law 101–239, HCFA is required to set annual participation goals, not later than July 1 of each year, for participation by eligible individuals in each State for EPSDT services. The actual standard will not appear in regulations, but instructions describing the methods for setting annual and State-specific participation goals for EPSDT services were published in the State Medicaid Manual, Part 5, Transmittal No. 4, dated July 1990.

We would require the State agency to report to HCFA annually by April 1 (beginning April 1, 1991) on Form HCFA–416 (which replaced the quarterly reporting Form HCFA–420) the following information relating to EPSDT services furnished under the plan during the prior fiscal year:

- The number of children who received health screening services.
- The number of children referred for corrective treatment as a result of EPSDT health screening services.
- The number of children receiving hearing, vision, and dental services.
- The State agency's results in attaining the participation goals set by HCFA.

The number of children who received health screening services would be defined as the number of children who have received the complete package of screening services described in section 1905(r)(1)(B). Only these complete screens would be counted for the purpose of determining the State's performance with respect to the EPSDT participation goal. Individual encounters, or interperiodic screens, although considered screens for diagnosis and treatment purposes under section 1905(r)(5), are not counted in the State's annual participation report. In addition, the report would identify EPSDT recipients by age group and Medicaid eligibility coverage group. Further instructions for completing Form HCFA–416 were included in the State Medicaid Manual, Part 2, Transmittal No. 67, dated July 1990.

In § 441.60, concerning continuing care providers, we propose to make various technical changes to reflect newly redesignated CFR section numbers. In paragraph (a)(4), for those providers furnishing dental services, we would expand the requirement for initial direct referral to include a dentist or a professional dentist hygienist under the supervision of a dentist. As stated earlier in this preamble, we believe this

revision would increase the availability of dental services in those areas where dentists are scarce or not easy to reach. Paragraph (d) would also be revised to reflect that we would no longer deem an agency to meet the requirements of subpart B (EPSDT). Instead, an agency would be required to provide assurances to HCFA that the continuing care providers are furnishing the services specified in the agreement with the agency and that the agency meets the EPSDT requirements in subpart B of part 441. We believe this proposed revision would ensure that eligible EPSDT recipients enrolled under continuing care arrangements are receiving the services specified under the terms of the agreements.

In § 441.61 regarding utilization of providers and coordination with related programs, we would add two new paragraphs (d) and (e). In paragraph (d), we propose that, with respect to the general health screening services component of EPSDT screening services described in § 441.57(a)(l), the States may limit providers to those providers who can furnish the entire package of these screening services. In paragraph (e), however, we propose that the States may not limit providers of EPSDT diagnostic and treatment services, described in §§ 441.57 (a) and (c), to those who are qualified to furnish all of the items or services required under EPSDT. Such a limitation is expressly prohibited by statute. (See section 1905(r) of the Act). Moreover, we do not believe it is a reasonable qualification to require that a single EPSDT provider be able to furnish all aspects of EPSDT services, including screening, vision, dental, hearing and other services. We would also specify that a State agency may not prevent a provider who is qualified to furnish one or more EPSDT diagnostic or treatment services (but not all) from participating in the EPSDT program, consistent with the mandate of section 1905(r) of the Act.

It is reasonable, however, to require that a single EPSDT provider be qualified to furnish all elements (particularly related elements) of a single service under section 1905(r) of the Act. Therefore, States may choose to limit providers of EPSDT periodic general screening services to those who can furnish the entire package of screening services, and not just one service included in the screening (for example, a mental health assessment). In this manner, a State would ensure that the recipient receives a comprehensive physical and mental examination. However, the State may not require that the provider of an interperiodic screening be qualified to furnish all elements of the general screening service.

With the expansion of services to be provided to EPSDT recipients, it is possible that some States may find it necessary to recruit providers of services not previously covered under the State plan. However, States would still retain the flexibility to set the standards to be met by an entity seeking to be a qualified Medicaid provider. States would continue to use the same basic guidelines used for qualifying providers of other Medicaid services in their State plans. Of course, under § 431.51(c)(2) regarding the free choice of providers, States may set reasonable standards relating to the qualifications of providers and these standards need not be changed to accept all providers seeking to be qualified. However, we propose that any limits set by a State be reasonable and ensure that there is access available to all individuals seeking the service. We expect that States would enroll qualified providers from both the public and private sectors.

III. Issues

There are several issues that have been raised by States regarding the implementation of this legislation. We have summarized these issues and our responses in this document.

States have asked our position in a situation in which an infant is born with a defect or condition discovered during the first neonatal examination that was not properly coded as an EPSDT screen. As discussed in section II of this preamble, and as described in section 5121.C of the State Medicaid Manual, Part 5—EPSDT, all Medicaid-eligible pregnant women must be informed about the EPSDT program. Even if a pregnant woman declines EPSDT services initially, it is permissible for her to request EPSDT services at a later date. Her child would promptly receive an EPSDT screen. We believe that if the child is Medicaid-eligible, deemed so because the mother is eligible, the first neonatal examination would be considered the child's first screen in the periodicity schedule and any condition or defect found at that time would be treatable with the wide array of EPSDT services available under section 1905(a) of the Act. (We are aware that not all States have specific codes for EPSDT services. Nevertheless, even if the examination is not coded as an EPSDT screen, the State could not use the absence of a code as a basis for denying necessary services to an otherwise eligible EPSDT recipient.)

Another issue that has been raised is whether organ transplants would be a covered service for EPSDT recipients.

Organ transplants are not explicitly included as a service under the definition of "medical assistance" in section 1905(a) of the Act. The provisions addressing organ procurement services are located at section 1903(i) of the Act. Section 1903(i) of the Act, which describes those items and services not subject to payment under State plans, makes organ transplants optional. However, we have decided that the superseding EPSDT legislation makes organ transplants mandatory for EPSDT recipients. The Congress, at section 4123 of its report of the Committee on Energy and Commerce, dated August 1989, discusses EPSDT as this nation's largest preventive health program for children and indicates that all Medicaid coverable services shall be provided under EPSDT as medically necessary. Most of the components of organ transplant procedures are Medicaid coverable services. For this reason, we propose that organ transplants, which are generally considered safe and effective, and any related services must be furnished to individuals who are eligible for EPSDT services and who would benefit from these services, as long as the particular transplant procedure is considered safe and not experimental.

In order to obtain FFP for organ transplants, States must comply generally with section 1903(i)(1) of the Act concerning organ transplants, and, in particular, section 1903(i)(1)(A) of the Act that requires a State to treat similarly situated individuals alike. Also, States must amend their State plans accordingly. We believe that any EPSDT recipient whose need for a transplant is discovered during a screen would satisfy the "similarly situated individual" requirement.

It has been suggested that the need for an organ transplant most likely would not be discovered during a screen and, therefore, would not be required to be furnished to the EPSDT recipient. It is true that if a condition is not discovered during a screen, the State would not be required to pay costs associated with the treatment of the condition. However, we believe that if a condition is discovered during a periodic or interperiodic screen and culminates in the necessity for an organ transplant, the transplant would be furnished under the auspices of the EPSDT program since the original condition was discovered in a screen. As previously stated, we believe that any encounter with a health professional would be considered a screen. Therefore, if the condition requiring the organ transplant was originally discovered by any health

professional during an examination, a screen would have occurred and the necessary services would be required to be furnished.

Additionally, we have been asked to clarify our position in a situation in which a State approves a transplant for an EPSDT recipient, but the service is not furnished before the individual reaches age 21. Under these circumstances, it is possible that the individual, upon reaching age 21, would no longer be eligible for Medicaid, or that the State may not cover the particular type of organ transplant, or any organ transplants, in its State plan for individuals age 21 or older.

In this instance, it would be a violation of section 1903(a)(1) of the Act, which lists the conditions for payment to States, to furnish services to an ineligible person since the transplant is no longer available under the EPSDT program because the individual is age 21 or older. If the State plan does not cover this or any type of organ transplant, FFP would not be available to the State for this procedure even if the individual remained eligible. The State is bound by the comparability rule of section 1902(a)(10)(B) of the Act for Medicaid-eligible individuals that are not EPSDT recipients.

IV. Collection of Information Requirements

Regulations at § 441.59 contain information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The information collection requirements concern the maintenance and availability of agency records and manuals and the reporting of specific EPSDT program data. The respondents who would provide the information would be State Medicaid agencies. Public reporting burden for this collection of information is estimated to be 14 hours per response. These information collection requirements have been approved by OMB under control number 0938–0354. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the **ADDRESSES** section of this preamble.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

VI. Regulatory Impact Analysis

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 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.

In addition, we generally prepare an initial 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 rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all providers and suppliers of health care and services for children to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural hospital impact statement because we have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

This proposed rule would incorporate, and in some cases interpret, in regulations statutory changes that are already in effect. In cases where it was necessary to provide interpretations, we have relied on the legislative history of the statutory provisions when available for the best reading of the provision. The statutory provisions are effective on the statutorily established date, regardless of whether or not we have issued final regulations. Public Law 101–239 expands coverage of services and increases Medicaid program expenditures. These costs have been included in the Medicaid budget estimates.

It is difficult to predict what the fiscal impact would be since we do not know the exact number of services actually furnished by the individual States under EPSDT. Another unknown factor is the additional number of children who will be offered services that previously were not covered by the State and the type and cost of these specific services. We know that Medicaid costs for States will rise as they begin to furnish the additional services, including organ transplants, that would now be required if medically necessary. However, there may also be a positive impact on some State and local entities and providers who are paying for care that was not previously covered under Medicaid, but which would be within the scope of this proposed rule. The following data reflect our estimate of Medicaid costs attributable to expansion of services under section 6403 of Public Law 101–239. Estimates are based on data from States with adjustments made for extreme values and unavailable data:

ADDITIONAL COSTS

[Dollar in Millions] [1]

	FY 93	FY 94	FY 95	FY 96	FY 97
Federal	$300	$340	$390	$440	$495
State	225	255	295	330	375

ADDITIONAL COSTS—Continued
[Dollar in Millions] [1]

	FY 93	FY 94	FY 95	FY 96	FY 97
Total	525	595	685	770	870

[1] Rounded to the nearest $5 million.

Regulations establishing terms or conditions of Federal grants, contracts, or financial assistance call for a different form of regulatory analysis than do other types of regulation. In some instances, a full-blown benefit-cost analysis may be appropriate to inform the Congress and the President more fully about the desirability of the program, but this would not ordinarily be required in an RIA. The primary function of an RIA for this type of regulation should be to verify that the terms and conditions are the minimum necessary to achieve the purposes for which the funds were appropriated. Beyond controls to prevent abuse and to ensure that funds appropriated to achieve a specific purpose are channeled efficiently toward that end, maximum discretion should be allowed in the use of Federal funds, particularly when the recipient is a State or local government.

In the process of developing these proposed regulations, we considered the following alternatives:

With respect to the provision of medically necessary organ transplants, we considered whether or not these should be included as mandatory services under the EPSDT program. The statute indicates that all medically necessary services "as described in section 1905(a)" must be provided to EPSDT recipients, whether or not such services are included in the State plan. Organ transplant services are not listed in section 1905(a). However, most of the individual services which are needed for an organ transplant (physician services, laboratory services, etc.) are included in section 1905(a), except for the harvesting of the organ.

After reviewing the legislative history, it seemed clear that congressional intent was to provide all medically necessary Medicaid services to diagnose or treat Medicaid-eligible children under age 21. It would not be reasonable to detect a condition in a child and not provide the appropriate treatment. Therefore, we made the determination that all medically necessary organ transplants services should be provided to EPSDT recipients. To do otherwise would be contrary to the intent of the legislation.

Another option we considered was whether or not children with pre-existing conditions were entitled to the full range of EPSDT services under this legislation. After considering alternatives, we determined that based on the legislative history, it would also be contrary to congressional intent if we allowed States to deny treatment to children with conditions that were discovered before the children were eligible for the expanded EPSDT services. The statute indicated that all conditions "discovered by screening services" must be diagnosed and treated. We considered the argument that a condition that exists before a child is initially screened cannot be discovered during the screen. However, we have defined a screen as "an encounter with a health professional practicing within the scope of his or her practice." The term screen is not a Medicaid specific term. Therefore, any contact or treatment that an individual had with a health professional, either before the individual became eligible for Medicaid or before the expanded services became available, would be considered a screen and treatment must be provided for that condition.

For these reasons, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities, and we have, therefore, not prepared a regulatory analysis.

List of Subjects

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Part 441

Abortions, Aged, Early Periodic Screening, Diagnosis, and Treatment (EPSDT), Family planning, Grant-in-Aid program—health, Health facilities, Infants and children, Institutions for mental diseases (IMD), Kidney diseases, Maternal and child health, Medicaid, Mental health centers, Ophthalmic goods and services, Penalties, Psychiatric facilities, Sterilizations.

42 CFR chapter IV would be amended as set forth below:

A. Part 440 is amended as follows:

PART 440—SERVICES: GENERAL PROVISIONS

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 440.40, the heading is revised, the introductory text in paragraph (b) is republished, and paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 440.40 Skilled nursing facility services for individuals age 21 or older (other than services in an institution for mental diseases), EPSDT, and family planning services and supplies.

* * * * *

(b) *EPSDT.* "Early and periodic screening and diagnosis and treatment" means—

(1) General screening services and vision, dental, and hearing services to determine physical or mental defects in recipients under age 21; and

(2) Health care, diagnostic services, treatment, and other measures to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services. (See subpart B of part 441 of this subchapter for the requirements and limits that apply to these services.)

* * * * *

B. Part 441 is amended as follows:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

1. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.50 is revised to read as follows:

§ 441.50 Basis and purpose.

This subpart implements sections 1902(a)(43), 1905(a)(4)(B), and 1905(r) of the Act, by prescribing State plan requirements for furnishing early and periodic screening and diagnosis of eligible Medicaid recipients under age 21 to ascertain physical and mental defects, illnesses, and conditions, and furnishing treatment to correct or ameliorate those defects, illnesses, and conditions.

3. Sections 441.56 through 441.59 are revised to read as follows:

§ 441.56 Notification requirements.

The agency must meet the following requirements:

(a) Provide for a combination of written and oral methods designed to effectively inform the following individuals, including those eligible individuals who are blind or deaf or cannot read or understand the English language, about the availability of EPSDT services for children under age 21 (including children eligible as newborns):

(1) All EPSDT-eligible individuals and, as appropriate, parents or guardians of these individuals.

(2) All Medicaid-eligible pregnant women and parents or guardians of Medicaid-eligible infants.

(b) Use clear and nontechnical language to provide information about the following:

(1) The benefits of preventive health care.

(2) The services available under the EPSDT program and where and how to obtain those services.

(3) That services furnished under the EPSDT program are without cost to eligible individuals under age 21, except for any enrollment fee, premium, or similar charge that may be imposed on medically needy recipients or categorically needy individuals whose family income exceeds 150 percent of Federal poverty level applicable to a family of the size involved.

(4) That necessary transportation and scheduling assistance described in § 441.62 of this subpart is available to the EPSDT-eligible individual upon request.

(c) Provide assurance to HCFA that processes are in place to inform individuals, as required under this section, generally within 60 days of the individual's initial Medicaid eligibility determination and, in the case of families that have not used EPSDT services, annually thereafter.

§ 441.57 Service requirements.

(a) *Screening requirements.* EPSDT screening services include the following services:

(1) General health screening services; that is, regularly scheduled examinations and evaluations of the general physical and mental health, growth, development, and nutritional status of infants, children, and youth. General health screenings must include, but are not limited to, the following services:

(i) A comprehensive health and developmental history (including assessment of both physical and mental health development).

(ii) A comprehensive unclothed physical examination.

(iii) Appropriate immunizations according to age and health history.

(iv) Laboratory tests (including blood lead level assessments appropriate for age and risk factors).

(v) Health education (including anticipatory guidance).

(2) Vision screening services.

(3) Dental screening services, including the initial direct referral to a dentist, or a professional dental hygienist under the supervision of a dentist.

(4) Hearing screening services.

(b) *Conditions for provision of services.* The agency must furnish EPSDT services and treatment on a timely basis as follows:

(1) EPSDT periodic screening services must be furnished according to a distinct periodicity schedule as described in § 441.58.

(2) EPSDT interperiodic screening services must be furnished at intervals as indicated by medical necessity, to determine the existence of a suspected illness or condition, or a change or a complication in a pre-existing condition.

(3) The agency must employ processes to ensure initiation of treatment within a medically appropriate time period, not to exceed 6 months.

(4) Except when there is reason to suspect the existence of an illness or condition that did not exist at the time of the regular periodic screen, the agency need not furnish requested screening services to an EPSDT eligible child if written verification exists that the most recent age-appropriate screening services, due under the agency's periodicity schedule, have already been furnished to the eligible child within a reasonable time period.

(c) *Additional required services.* In addition to any diagnostic and treatment services included in the State plan, the agency must furnish to eligible EPSDT recipients the following services:

(1) Vision services that, at a minimum, must include diagnosis and treatment for defects in vision, including eyeglasses.

(2) Dental services that, at a minimum, must include relief of pain and infections, restoration of teeth, and maintenance of dental health.

(3) Hearing services that, at a minimum, must include diagnosis and treatment for defects in hearing, including hearing aids.

(4) Other necessary health care, diagnostic services, treatment, and other measures described in section 1905(a) of the Act to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not these services are covered under the State plan.

(d) *Comparability of services to the medically needy.* If an agency elects to furnish EPSDT services to any medically needy group, the agency must furnish the entire package of EPSDT services as described in paragraphs (a) through (c) of this section.

(e) *Limitations on services.* Except for screening services, the agency may place appropriate limits on EPSDT services using the criteria listed in § 440.230(d) of this subchapter. Service limits must not be used to deny medically necessary care to any individual.

(f) *Exclusion of services.* Except for screening services, the agency may exclude any item or service that it determines is not medically necessary, that is unsafe or experimental, or that is not generally recognized as an accepted modality of medical practice or treatment. The agency may exclude any supplies, items, or equipment that it determines are not medical in nature.

(g) *Cost-effectiveness procedures.* The agency may establish procedures to assure that services are furnished in a cost-effective manner. A State may, where alternative medically accepted modes of treatment exist, choose which services are made available based on cost-effectiveness considerations.

(h) *Access to services.* If the agency can demonstrate sufficient access to the services described in section 1905(a) of the Act, the agency is not required to furnish the services through every setting or provider type.

§ 441.58 Periodicity schedules.

The agency must implement a distinct periodicity schedule for general health screening services, and vision, dental, and hearing services that—

(a) Meets reasonable standards of medical and dental practice determined by the agency after consultation with recognized medical and dental organizations involved in child health care; and

(b) Specifies screening services applicable at each stage of the recipient's life, beginning with a neonatal examination, up to the age at which an individual is no longer eligible for EPSDT services.

§ 441.59 Recordkeeping and reporting requirements.

(a) *Recordkeeping requirements.* The agency must maintain the following information as required by §§ 431.17 and 431.18 of this subchapter

concerning maintenance and availability of agency records and manuals:

(1) Records and program manuals.

(2) A description of its EPSDT screening service package as described in § 441.57(a).

(3) Copies of rules and policies describing the methods used to assure that the notification requirements in § 441.56 are met.

(4) Verifications of consultations with recognized medical and dental health organizations involved in child health care to assure that the requirements for periodicity schedules in § 441.58 are met.

(b) *Reporting requirements.* The agency must report to HCFA information relating to EPSDT services furnished under the plan during each fiscal year and identify EPSDT recipients by age group and Medicaid eligibility coverage group. The report must be received by HCFA no later than April 1 of the year following the reporting year and contain the following information:

(1) The number of children who received health screening services.

(2) The number of children referred for corrective treatment as a result of EPSDT health screening services.

(3) The number of children receiving hearing, vision, and dental services.

(4) The agency's results in attaining the participation goals set by HCFA.

4. In § 441.60, the introductory text to paragraph (a), paragraphs (a)(1) and (a)(4), the first sentence of paragraph (d), and paragraph (e) are revised to read as follows:

§ 441.60 Continuing care.

(a) *Continuing care provider.* For purposes of this subpart, a continuing care provider means a provider who has an agreement with the Medicaid agency to provide reports as required under paragraph (b) of this section and to furnish at least the following services to eligible EPSDT recipients formally enrolled with the provider:

(1) With the exception of dental services required under § 441.57, screening, diagnosis, treatment, and referral for followup services as required under this subpart.

* * * * *

(4) At the provider's option, furnishing of dental services required under § 441.57 or direct referral to a dentist or a professional dental hygienist under the supervision of a dentist to furnish dental services required under § 441.57(a)(3) and (c)(2). The provider must specify in the agreement whether dental services are furnished or a referral for dental services is made. If the provider does not choose to furnish either service, the provider must refer recipients to the agency to obtain those dental services required under § 441.57.

* * * * *

(d) *Effect of agreement with continuing care providers.* Subject to the requirements of paragraphs (a) through (c) of this section, an agency must provide assurances to HCFA that it meets the requirements of this subpart with respect to all EPSDT-eligible recipients formally enrolled with the continuing care provider. * * *

(e) *Transportation and scheduling assistance.* If the agreement specified in paragraph (a) of this section does not provide for all or part of the transportation and scheduling assistance required under § 441.62, or for dental services under § 441.57, the agency must provide for those services to the extent they are not provided for in the agreement.

5. In § 441.61, paragraphs (d) and (e) are added to read as follows:

§ 441.61 Utilization of providers and coordination with related programs.

* * * * *

(d) The agency may limit providers of EPSDT general health screening services to those providers who can furnish the entire package of screening services described in § 441.57(a)(1) of this part.

(e) The agency must not limit providers of EPSDT diagnostic and treatment services to those who are qualified to furnish all services nor may an agency prevent a provider who can furnish only one or more (but not all) of the services from being qualified to furnish the services as EPSDT services.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: March 2, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: June 4, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–24177 Filed 9–30–93; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[NV–960–4370–02–241A]
RIN: 1004–AB84

Protection, Management, and Control of Wild Free-Roaming Horses and Burros

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the definition of wild horses and burros to exclude foals born to wild horses and burros after approval of a Private Maintenance and Care Agreement. This clarification is necessary to avoid the extreme administrative difficulties that would be associated with locating, identifying, and caring for widely dispersed animals in the possession of private individuals.

DATES: Comments should be submitted by November 30, 1993. Comments received or postmarked after this date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC. 20240. Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bruce Dawson, (702) 785–6583.

SUPPLEMENTARY INFORMATION: The regulations on the protection, management, and control of wild free-roaming horses and burros are presently silent regarding the ownership of foals born to mares and jennies under the maintenance and care of an adopter but for which no title has been issued. Although the Bureau of Land Management (BLM) has treated these foals as the private property of the adopter of the parent female, there has been no clear statement in regulation of this policy. Therefore, an amendment to 43 CFR 4700.0–5(l) is proposed to clarify the ownership of these foals by explicitly excluding them from the definition of wild horses and burros.

Foals born to adopted wild horses and burros must be treated as private property to avoid the tremendous administrative difficulties and expense that would otherwise result. Titling of wild horses and burros is not mandatory

and for various reasons many adopters do not apply for title. The BLM presently maintains records on about 11,000 untitled female wild horses and burros that are of reproductive age. If foals born to these animals were treated as wild, the BLM would need to locate, freeze mark, and catalog each animal, as well as enter into new Private Maintenance and Care Agreements, and collect adoption fees for each foal. In addition, if the offspring of the adopted mares and jennies were to be considered wild, subsequent generations would also have wild status until titles were issued.

The BLM has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) is required. The BLM prepared an environmental assessment and a finding of no significant impact for the proposed action.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that no Regulatory Impact Analysis is required. A major rule is any regulation that is 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.

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the rule would not have a significant economic impact on a substantial number of small entities. The proposed rule does not impose direct or indirect costs on small business, organizations, or small governmental jurisdictions. No direct or indirect benefits are quantifiable for small entities.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule will not cause a taking of private property.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* However, the collections of information contained in Group 4700 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0042.

List of Subjects in 43 CFR Part 4700

Advisory committees, Aircraft, Intergovernmental relations, Penalties, Public lands, Range management, Wild horses and burros, Wildlife.

For the reasons set out in the preamble and under the authorities cited below, BLM proposes to amend part 4700, subchapter D, chapter II, title 43 of the Code of Federal Regulations as follows:

PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

1. The authority citation for 43 CFR part 4700 is revised to read as follows:

Authority: 16 U.S.C. 1331–1340; 18 U.S.C. 47; 43 U.S.C. 315; 1740.

2. Section 4700.0–5 is amended by revising paragraph (l) to read as follows:

§ 4700.0–5 Definitions.

* * * * *

(l) *Wild horses and burros* means all unbranded and unclaimed horses and burros that use public lands as all or part of their habitat, or that have been removed from these lands by the authorized officer but have not lost their status under section 3 of the Act. Foals born to a wild horse or burro after approval of a Private Maintenance and Care Agreement are not wild horses or burros. Such foals are the property of the adopter of the parent mare or jenny. Where it appears in this part the term wild horses and burros is deemed to include the term free-roaming.

Dated: September 14, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–24197 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 93–063]

Vessel Rebuild Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Coast Guard is considering whether to undertake rulemaking to develop standards for vessel rebuild determinations. In order to determine whether rulemaking is needed and the scope of the issues involved, the Coast Guard is holding a meeting to discuss problems encountered under existing procedures and possible solutions. The meeting will also explore whether use of a negotiated rulemaking would be appropriate. This notice announces the date, time, and place of the meeting.

DATES: The meeting will be held on November 16, 1993, beginning at 9 a.m. and concluding at 3 p.m. or earlier if discussion is concluded.

ADDRESSES: The meeting will be held in room 4234, DOT Headquarters (Nassif Building), 400 Seventh Street, NW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Burley, Vessel Documentation and Tonnage Survey Branch at (202) 267–1492.

SUPPLEMENTARY INFORMATION: Under Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. app. Section 883), a vessel entitled to engage in the coastwise trade by virtue of having been built in the United States which is later rebuilt outside the United States, loses its eligibility to engage in the coastwise trade. Under 46 U.S.C. 12106, a vessel not eligible for the coastwise trade cannot receive a Great Lakes endorsement on its Certificate of Documentation. In addition, under 46 U.S.C. 12108, a fishing vessel which has been rebuilt outside the United States and which does not qualify for the rebuild savings provision of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, is not eligible for a fishery endorsement on its Certificate of Documentation.

The Coast Guard's current regulatory standard for rebuild determinations is found in 46 CFR 67.27–3(a). The notice of proposed rulemaking which would revise and reorganize 46 CFR part 67 (March 20, 1992; 57 FR 10544) would place these provisions in § 67.177 without substantive change. In accordance with that standard, a vessel

is rebuilt when "any considerable part of its hull or superstructure is built upon or is substantially altered." A determination that a vessel has been rebuilt, if the rebuilding was done outside the U.S., results in a permanent loss of the eligibility of the vessel to engage in the restricted trades, with a commensurate loss in value. At the present time none of the problematic terms contained in the regulatory standard are defined. As a result, the Coast Guard frequently receives requests for advisory opinions that certain work to be performed on a vessel does not constitute a rebuilding. In support of the request, the submitter will generally enclose extensive documentation addressing the character and scope of the work to be performed including plans, drawings, contracts, work orders, and materials, lists. Then the submitter will attempt to show that the work will not build upon or "substantially" alter "any considerable part" of the vessel's hull or superstructure. Often, the submitter will make comparisons between the before and after area of the hull and superstructure; the weight and area of steel plate to be replaced or added; or the comparative cost of the planned work to the value of the vessel. Unfortunately, the vessel representative sometimes does not submit any documentation until after the work is performed only to have the Coast Guard determine that the vessel has been rebuilt, with the disastrous consequence of loss of trading entitlements. In other cases, the work actually done on the vessel differs from or exceeds the planned work, with possible adverse effects on the final determination.

The Coast Guard is considering initiating rulemaking to develop standards for determining when work on a vessel constitutes a rebuilding and to define the terms involved in rebuild determinations. However, the Coast Guard has decided to conduct a public meeting before proceeding with the rulemaking process. The purpose of the meeting is to determine the scope of the issues involved in the project and to receive suggested definitions and standards for consideration. The Coast Guard is also interested in discussing whether it would be beneficial to use negotiated rulemaking procedures to complete the project. This determination would depend on the scope of the issues involved, whether appropriate interested groups and entities and acceptable representatives can be identified, and whether these groups and entities may be willing to commit themselves to participation in a negotiated rulemaking.

The meeting is open to the public and will begin at 9 a.m. on November 16, 1993, at: DOT Headquarters (Nassif Building), room 4234, 400 Seventh Street, SW., Washington, DC 20590.

Dated: September 23, 1993.

R.C. North,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93-24205 Filed 9-30-93; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 90

[ET Docket No. 93-235; FCC 93-422]

Cordless Telephones

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking (NPRM) proposes to provide additional frequencies for operation of cordless telephones, which could relieve channel congestion and reduce interference to cordless telephones operating in the 46 MHz and 49 MHz frequency bands. This proposal responds to a petition for rule making filed by the Telecommunications Industry Association.

DATES: Comments must be submitted on or before November 8, 1993, and reply comments on or before November 23, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: George Harenberg, Office of Engineering and Technology, (202) 653-7314.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in ET Docket No. 93-235, FCC 93-422, adopted August 20, 1993, and released September 17, 1993. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Service, Inc., at (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rulemaking

1. On August 20, 1992, the Personal Communications Section of the Telecommunications Industry Association (TIA) filed a petition seeking additional frequencies for cordless telephones. TIA states that the continued popularity of cordless telephones and the resulting increase in market penetration threatens to cause channel-crowding problems, especially in high-density locations such as urban areas and high-rise condominiums. Further, TIA notes that five of the existing ten channels are available for other 47 CFR part 15 low power transmitters. The 47 CFR part 15 devices that give rise to the greatest concern are baby monitors, which, because they tend to be active for long periods of time, render these five channels unusable for nearby cordless telephones.

2. TIA proposes that the Commission make available an additional 15 channel pairs using 30 frequencies near 44 MHz and 49 MHz for cordless telephones. The proposed frequencies are currently allocated to the Private Land Mobile Radio Service (PLMRS). TIA asserts that use of the proposed frequencies will facilitate design of cordless telephones that use both the existing and the new frequencies. TIA believes that the 47 CFR part 15 rules for these new frequencies should be identical to the current rules governing 46/49 MHz channels, with the following exceptions: (1) To reduce the likelihood of interference between cordless telephones and the PLMRS, cordless telephones using the new frequencies should include a mechanism for automatically monitoring, and preventing transmitter activation on, frequencies on which co-channel; PLMRS signals are present; (2) there is no need to designate specific frequency pairs for each channel and (3) "offset frequency" operation should not be permitted.

3. In response to the TIA petition, the Commission put the petition out for comment on October 1, 1992 and seven parties submitted comments in response to the petition. All the comments support the petition and urge the Commission to move forward as soon as possible. In light of the above, we tentatively find it in the public interest to make additional frequencies available for cordless telephones in the 44 MHz and 49 MHz region of the spectrum. Specifically, we are proposing to make the 30 frequencies suggested by TIA available for cordless telephone use under 47 CFR part 15. This action will relieve channel crowding and interference to cordless telephones. Because of the close proximity to the current 46/49 MHz frequencies, manufacturers could employ current

designs and will only need to add the automatic channel selection feature. We expect there would be little or no increase in the cost of the equipment. We will apply the same technical and administrative requirements that apply to the current 46/49 MHz cordless telephones. We invite comments on the proposed frequencies and whether alternative frequencies would be more suitable.

4. We recognize that the proposed 44 MHz frequencies are located within the intermediate frequencies (IF) pass-band of television receivers. In addition, in the frequency region of TV IF where the proposed frequencies are to be located, television receivers are somewhat more susceptible to interference than the spectrum location of the current 46 MHz cordless telephone operations. Comments are invited as to whether and to what extent the proposed 44 MHz frequencies pose a significantly grater interference risk to the reception of TV broadcasting than the 46 MHz frequencies already used by cordless telephone.

5. TIA proposed that cordless telephones be designed to include a mechanism for automatically monitoring, and preventing activation on, frequencies on which co-channel signals are present. Several parties expressed concern regarding the cost of designing cordless telephones that satisfy this requirement. In its reply comments, TIA proposed the following wording for our Rules: Cordless telephones using these frequencies must incorporate an automatic channel selection mechanism which will prevent establishment of a link on an occupied frequency.

6. We believe that cordless telephones using the proposed frequencies must employ a mechanism to avoid causing interference to the PLMRS. We agree with TIA that manufacturers should be afforded flexibility in the type of interference-avoidance mechanisms that are used. Accordingly, we are proposing the revised requirement suggested by TIA. At the same time, we invite comment as to whether there is a need for more specific requirements to protect against interference to the PLMRS. We solicit information as to the cost of implementing this requirement. We also invite comment as to whether we should require any specific information to be filed with applications for equipment authorization to demonstrate compliance with this requirement.

7. The current 47 CFR part 15 rules assign specific pairs of 46 MHz frequencies for base units and handsets for each of the ten cordless telephone channels. TIA suggests that there should be no pairing of the new frequencies. We agree that pairing of frequencies is inappropriate in this case. We are, however, proposing to designate the lower frequencies at 44 MHz for base units in order to minimize potential interference to TV broadcasting. This is consistent with the designation of the 46 MHz frequencies for base units under the current rules.

8. The original rules for cordless telephones required each channel to be centered in a 20 kHz bandwidth. The Commission subsequently proposed and ultimately amended the rules to permit manufacturers to place two (or more) signals inside the 20 kHz bandwidth by narrowing signals to 10 kHz and offsetting them from the center of the channel. We believe that the matter of channel offsets should be considered concurrently for both the existing and proposed cordless telephone channels so that our rules will be consistent. Accordingly, we invite comment as to other ways we can provide for future low-cost spectrum-efficient cordless telephone that may seek to use the existing and proposed frequencies. In particular, we invite comment as to whether 20 kHz is the appropriate bandwidth for the new frequencies.

9. The Initial Regulatory Flexibility Analysis is contained in the test of the Notice.

10. *Comment Dates.* Pursuant to applicable procedures set forth in 47 CFR 1.415 and 1.419, interested parties may file comments on or before November 8, 1993, and reply comments on or before November 23, 1993. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during normal business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

11. *Ex Parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

12. For further information on this proceeding contact George Harenberg, Technical Standards Branch, Office of Engineering and Technology, 202–653–7314.

List of Subjects

47 CFR Part 15

Radio, Communications Equipment, Telephone.

47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

A. Title 47 of the Code of Federal Regulations, parts 15 and 90, are proposed to be amended as follows:

PART 15—RADIO FREQUENCY DEVICES

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

Authority: Sections 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. Section 15.233 is amended by revising the section heading and paragraph (b) to read as follows:

§ 15.233 Operation within the bands 43.71–44.49 mHz, 46.60–46.98 MHz, 48.75–49.51 MHz and 49.66–50.0 MHz.

* * * * *

(b) An intentional radiator used as part of a cordless telephone system shall operate centered on one or more of the following frequency pairs, subject to the following conditions:

(1) Frequencies shall be paired as shown below, except that channel pairing for channels one through fifteen may be accomplished by pairing any of the fifteen base transmitter frequencies with any of the fifteen handset transmitter frequencies.

(2) Cordless telephones operating on channels one through fifteen must incorporated an automatic channel selection mechanism that will prevent establishment of a link on an occupied frequency .

Channel	Base transmitter (MHz)	Handset transmitter (MHz)
1	43.720	48.760
2	43.740	48.840
3	43.820	48.860
4	43.840	48.920
5	43.920	49.012
6	43.960	49.080
7	44.120	49.100
8	44.160	49.160

Channel	Base transmitter (MHz)	Handset transmitter (MHz)
9	44.180	49.200
10	44.200	49.240
11	44.320	49.280
12	44.360	49.360
13	44.400	49.400
14	44.460	49.460
15	44.480	49.500
16	46.610	49.670
17	46.630	49.845
18	46.670	49.860
19	46.710	49.770
20	46.730	49.875
21	46.770	49.830
22	46.830	49.890
23	46.870	49.930
24	46.930	49.990
25	46.970	49.970

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. Sections 154, 303, and 332, unless otherwise noted.

2. In § 90.65, the table in paragraph (b) is amended by revising the fifteen frequencies set forth below, and a new paragraph (c)(44) is added, to read as follows:

§ 90.65 Petroleum Radio Service.

* * * * *

(b) *Frequencies available.* * * *

PETROLEUM RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
48.76	do	10, 44
* * * * *		
48.84	do	10, 44
48.86	do	10, 44
* * * * *		
48.92	do	10, 44
* * * * *		
49.02	do	10, 44
* * * * *		
49.08	do	10, 44
49.10	do	10, 44
* * * * *		
49.16	do	10, 44
* * * * *		
49.20	do	10, 44

PETROLEUM RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
* * * * *		
49.24	do	10, 44
* * * * *		
49.28	do	10, 44
* * * * *		
49.36	do	10, 44
* * * * *		
49.40	do	10, 44
* * * * *		
49.46	do	10, 44
* * * * *		
49.50	do	10, 44
* * * * *		

(c) * * *

(44) This frequency is also used on a secondary basis for cordless telephones under part 15 of this chapter.

* * * * *

3. In § 90.67, the table in paragraph (b) is amended by revising the fifteen frequencies set forth below, and a new paragraph (c)(38) is added, to read as follows:

§ 90.67 Forest Products Radio Service.

* * * * *

(b) *Frequencies available.* * * *

FOREST PRODUCTS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
Megahertz:		
* * * * *		
48.76	do	2, 38
* * * * *		
48.84	do	2, 38
48.86	do	2, 38
* * * * *		
48.92	do	2, 38
* * * * *		
49.02	do	2, 38
* * * * *		
49.08	do	2, 38
49.10	do	2, 38
* * * * *		
49.16	do	2, 38
* * * * *		
49.20	do	2, 38

FOREST PRODUCTS RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
* * * * *		
49.24	do	2, 38
* * * * *		
49.28	do	2, 38
* * * * *		
49.36	do	2, 38
* * * * *		
49.40	do	2, 38
* * * * *		
49.46	do	2, 38
* * * * *		
49.50	do	2, 38
* * * * *		

(c) * * *

(38) This frequency is also used on a secondary basis for cordless telephones under part 15 of this chapter.

* * * * *

4. In § 90.89, the table in paragraph (b) is amended by revising the fifteen frequencies set forth below, and a new paragraph (c)(23) is added, to read as follows:

§ 90.89 Motor Carrier Radio Service.

* * * * *

(b) *Frequencies available.* * * *

MOTOR CARRIER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Megahertz:		
* * * * *		
43.72	do	4, 23
43.74	do	4, 23
* * * * *		
43.82	do	4, 23
43.84	do	4, 23
* * * * *		
43.92	do	5, 6, 23
* * * * *		
43.96	do	5, 23
* * * * *		
44.12	do	5, 23
* * * * *		
44.16	do	5, 23
44.18	do	5, 23
44.20	do	5, 20, 23
* * * * *		
44.32	do	5, 23

MOTOR CARRIER RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
*	*	*
44.36	do	5, 6, 23
*	*	*
44.40	do	5, 6, 23
*	*	*
44.46	do	1, 23
44.48	do	1, 23
*	*	*

(c) * * *

(23) This frequency is also used on a secondary basis for cordless telephones under part 15 of this chapter.

* * * * *

[FR Doc. 93–24090 Filed 9–30–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC01

Endangered and Threatened Wildlife and Plants; Proposed Rule for Six Southern Maritime Chaparral Plant Taxa From Coastal Southern California and Northwestern Baja California, Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for four plants (*Arctostaphylos glandulosa* ssp. *crassifolia* (Del Mar manzanita), *Baccharis vanessae* (Encinitas baccharis), *Chorizanthe orcuttiana* (Orcutt's spineflower), and *Dudleya blochmaniae* ssp. *brevifolia* (short-leaved dudleya)) and threatened status for two plants (*Corethrogyne filaginifolia* var. *linifolia* (Del Mar sand aster) and *Verbesina dissita* (big-leaved crown-beard)). The six taxa occur mostly on private lands in coastal Orange and San Diego Counties, California; two taxa extend south into northwestern Baja California, Mexico. These six taxa are threatened by one or more of the following: Trampling by farm workers or recreational activities; fuel modification; competition from alien plant species; and habitat destruction due to residential, agricultural, commercial, and recreational development. Several of these plant taxa are also threatened with stochastic extinction by virtue of their small population size and limited distribution. This proposed rule, if made final, would extend the Act's protection to these plants. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by December 30, 1993. Public hearing requests must be received by November 15, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Zembal, Deputy Field Supervisor, at the above address (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

Three of the six plant taxa (*Chorizanthe orcuttiana, Corethrogyne filaginifolia* var. *linifolia*, and *Dudleya blochmaniae* ssp. *brevifolia*) are primarily restricted to weathered sandstone bluffs in association with or in microhabitats within southern maritime chaparral. These three species are endemic to south-central and southern coastal San Diego County, California. A fourth taxon (*Arctostaphylos glandulosa* ssp. *crassifolia*) is also primarily associated with southern maritime chaparral in San Diego County, California; it also occurs in disjunct populations in northwestern Baja California, Mexico, at least as far south as Mesa el Descanseo, 50 kilometers (km) (31 miles) north of Ensenada.

Southern maritime chaparral (Holland 1986) is a low, fairly open chaparral typically dominated by *Arctostaphylos glandulosa* ssp. *crassifolia, Ceanothus verrucosus* (wart-stemmed ceanothus), *Xylococcus bicolor* (mission manzanita), *Quercus dumosa* (Nuttall's scrub oak), *Cneoridium dumosum* (bush rue), *Rhamnus crocea* (red berry), *Dendromecon rigida* (bush poppy), and *Yucca schidigera* (Mojave yucca). Southern maritime chaparral is a plant association that occurs only in coastal southern California along the immediate coast of San Diego and Orange Counties and northwestern Baja California, Mexico. The distribution of southern maritime chaparral in Orange County is disjunct and the species composition is slightly different from that found in San Diego County and Mexico (Gray and Bramlet 1992).

Two of the subject taxa are frequently associated with southern maritime chaparral but extend into other plant communities. *Verbesina dissita* is restricted to rugged coastal canyons in association with San Onofre breccia-derived soils in the southern maritime chaparral of southern Orange County, California. This taxon also occurs in limited numbers in Venturan-Diegan transitional coastal sage scrub (Gray and Bramlet 1992) and southern mixed chaparral (Holland 1986). *Verbesina dissita* occurs disjunctly in similar vegetation associations from Punta Descanso south to San Telmo in northwestern Baja California, Mexico. *Baccharis vanessae* occurs in southern maritime chaparral in the vicinity of Encinitas, central San Diego County, California, and extends inland to Mount Woodson and Poway where it is associated with dense southern mixed chaparral. One population of this plant occurs in the Santa Margarita Mountains of northern San Diego County. Five of the six taxa are found below 250 meters (m) (820 feet (ft)) in elevation in the United States. *Arctostaphylos glandulosa* ssp. *crassifolia* reaches 730 m (2,395 ft) elevation in Baja California, Mexico. *Baccharis vanessae* is known to occur at 880 m (2,887 ft) in elevation on Mount Woodson.

It has been estimated that approximately 900 acres of southern maritime chaparral occurred historically in Orange County (Roberts 1992b), while about 21,000 acres of southern maritime chaparral occurred historically in San Diego County (Oberbauer and Vanderwier 1991). Currently, there are an estimated 600 acres of southern maritime chaparral in Orange County (Roberts 1992b) and 2,530 acres in San Diego County (Oberbauer and Vanderwier 1991). This represents an 85 percent decline in southern California that is largely due to agricultural conversion and urbanization. Much of the remaining 15 percent of the United States portion of southern maritime chaparral is located on Carmel Mountain in San Diego County. The distribution of southern maritime chaparral and related associations have also declined significantly in Baja California, Mexico, for many of the same reasons.

The natural plant communities of coastal Orange and San Diego Counties have undergone significant changes resulting from both human-caused activities and natural occurrences. The

rapid urbanization of southern Orange County and south-central San Diego County have already eliminated a significant portion of the southern maritime chaparral and some of the populations of the proposed plant taxa. Remaining southern maritime chaparral and populations of the proposed taxa have been subjected to a considerable degree of fragmentation.

Although five of the proposed plant taxa are largely restricted to the United States, 85 percent of the known populations of *Verbesina dissita* are known from northwestern Baja California, Mexico. Although the status of this species and its habitat in Mexico is not as well documented, over 20 percent of the known populations have been eliminated and at least another 20 percent of the populations are under immediate threat. Agricultural conversion, resort and residential development, and wide fuel breaks and slash and burn practices have already affected and continue to contribute to the decline of *V. dissita* in Mexico (California Department of Fish and Game (CDFG) 1990).

Fire also plays an important role in determining southern California plant community distribution and composition. With the advent of widespread urbanization, the disruption in natural fire cycles potentially threatens the six plant taxa proposed here for listing.

Discussion of the Six Species Proposed for Listing

Arctostaphylos glandulosa (Eastwood manzanita) is a relatively open, smooth, dark red-barked shrub characterized by a basal burl and scarcely foliaceous bracts that are shorter than the hairy pedicels (flower-stalks). *Arctostaphylos glandulosa* ssp. *crassifolia* (Del Mar manzanita), a member of the heath family (Ericaceae), was first described by Willis Jepson in 1922 (Jepson 1922) based on a specimen collected by Jepson in Del Mar. *Arctostaphylos glandulosa* ssp. *crassifolia* is an erect shrub, generally 1 to 1.2 m (3.3 to 4 ft) tall, but occasionally higher. *Arctostaphylos glandulosa* ssp. *crassifolia* is distinguished from other varieties of *A. glandulosa* by having dark gray-green leaves that are glabrate above and tomentulose beneath. The branchlets are non-glandular, tomentulose, and sometimes with scattered long hairs.

In 1925, Jepson placed Del Mar manzanita under the name *Arctostaphylos tomentosa* var. *crassifolia* (Jepson 1925). This name was used by McMinn (1939), who stated that Del Mar manzanita "seems very closely related to *A. glandulosa* var. *cushingiana* but the more truncate leaf-bases, the usually more tomentulose lower leaf-surfaces, and distribution seem sufficient to maintain it as a variety of *A. tomentosa*." J.E. Adams in his 1940 treatment of the genus *Arctostaphylos* returned var. *crassifolia* to *Arctostaphylos glandulosa* as in Jepson's original treatment (Knight 1985).

In 1968, Philip V. Wells declared that "[o]ther morphological variants of the *A. glandulosa* complex have largely allopatric geographic distributions and are recognized as subspecies" (Wells 1968). Accordingly, Wells applied the name *Arctostaphylos glandulosa* ssp. *crassifolia* to the Del Mar manzanita. Subsequent taxonomic review (Munz 1959, Munz 1974, Beauchamp 1986) have preferred this treatment. In 1985, Walter Knight summarized the taxonomic history of the Del Mar manzanita (Knight 1985) and came to the conclusion that the subspecies should not be recognized. Knight (1985) stated that the Del Mar manzanita was a product of hybridization between *Arctostaphylos glandulosa* and other *Arctostaphylos* species in the area. Knight's treatment was countered 2 years later by Philip Wells (Wells 1987) who continued to recognize Del Mar manzanita as a subspecies, and refuted portions of Knight's arguments for not recognizing the subtaxon. Wells is considered the leading authority on the genus *Arctostaphylos* and his treatment of this taxon has been widely accepted by others; therefore, the Service accepts Wells' subspecific treatment of this taxon.

Arctostaphylos glandulosa ssp. *crassifolia* is restricted to sandstone terraces and bluffs from Carlsbad south to Torrey Pines State Park extending inland to Rancho Santa Fe and Carmel Mountain in San Diego County, California. An additional population has been reported just south of the San Dieguito River southwest of Lake Hodges. This species has also been reported from five localities in northwestern Baja California, Mexico, from just east of Tijuana along the United States border, to Cerro el Coronel and Mesa Descanseo 50 km (31 miles) north of Ensenada. The most recent collection in the San Diego Natural History Museum was taken by Reid Moran in 1982.

Thomas Huffman (Roberts 1992a) reported on the locations of nearly 14,000 individuals of *Arctostaphylos glandulosa* ssp. *crassifolia* in 1980 distributed over 20 population centers. Several other populations have been identified since 1980, but these add fewer than 1,000 individuals to the total known number in San Diego County. A significant number of these populations have been severely impacted over the last 12 years. For example, in 1987, one population of nearly 500 individuals and its southern maritime chaparral habitat was cleared and converted to agriculture. The cultivation was active for one season and has not been continued (Thomas Oberbauer, Planner, County of San Diego, pers. comm., 1992). Currently, fewer than 8,000 individuals, scattered roughly throughout the historic distribution of the species in San Diego County, are known to be extant. The number of individuals in Baja California, Mexico, is not known but is likely to be smaller than in the United States based on the limited availability of habitat.

Four populations totaling some 3,000 individuals in the vicinity of Miramar Reservoir have been attributed to *Arctostaphylos glandulosa* ssp. *crassifolia*, but Wells (pers. comm., 1992) maintains that these plants are not representative of the subspecies. If these populations should prove to be representative of the subspecies, nearly 50 percent of the individuals known in 1980 were eliminated by the Scripps Ranch project between 1989 and 1992.

Baccharis vanessae (Encinitas baccharis) was discovered by Mitchel Beauchamp in October 1976 in southern maritime chaparral on Eocene sandstones along the north side of Encinitas Boulevard in Encinitas. The species was described in 1980 by Beauchamp (Beauchamp 1980).

Baccharis vanessae, a member of the aster family (Asteraceae), is a dioecious broom-like shrub, 0.5 to 1.3 m (1.6 to 4.3 ft) tall. This taxon is distinguished from other members of the genus *Baccharis* by its filiform leaves and delicate phyllaries, which are reflexed at maturity.

As currently understood, the historical distribution of this species included 18 natural populations scattered from Devils Canyon, San Mateo Wilderness of northern San Diego County, south to Encinitas east through the Del Dios highlands and Lake Hodges area to Mount Woodson and south to Poway and Los Penasquitos Canyon in San Diego County, California. Twelve of these populations are still extant and contain approximately 2,000 individuals (CDFG 1992). Four of these populations contain fewer than six individuals. A single transplanted population of 34 individuals was established in San Dieguito Park; however, this population has not persisted (Hall 1986).

Chorizanthe orcuttiana (Orcutt's spine-flower) was first described by

Charles Parry in 1884 (Parry 1884) based on a specimen collected by Charles R. Orcutt in the same year at Point Loma, San Diego County. *Chorizanthe orcuttiana*, a low, yellow-flowered annual of the buckwheat family (Polygonaceae), is restricted to sandy soils. It is distinguished from other members of the genus *Chorizanthe* by its prostrate form, campanulate 3-toothed involucre, and uncinate (hooked near tip) involucral awns (Reveal 1989).

Historically, *Chorizanthe orcuttiana* is known from 10 separate occurrences in San Diego County from Point Loma near San Diego, Del Mar, Kearney Mesa, and Encinitas (CDFG 1992). Only two populations have been seen in recent years. L. Allen reported 50 to 100 individuals at Torrey Pines State Park in 1987 (CDFG 1992). However, this population has not been relocated in the last several years possibly due to a changing composition of plant species and density as a result of a 1984 burn. The only population currently known to support this species is at Oak Crest Park in Encinitas. This population numbers nearly 1,500 individuals over a relatively small area (about 4 square meters). The number of individuals varies widely from year to year because success of germination is highly dependent on such factors as rainfall, which can be significantly different one year to the next in southern California.

Corethrogyne filaginifolia var. *linifolia* (Del Mar sand aster) was first described by Harvey M. Hall in 1907 based on a specimen collected by Kathrine Brandegee in 1906 (Hall 1907). *Corethrogyne filaginifolia* var. *linifolia*, a member of the aster family (Asteraceae), is an erect, divaricately branched perennial, 4.5 to 5 decimeters (dm) (18 to 20 inches) tall with violet ray flowers and yellow disk flowers. Hall (1907) differentiated this subtaxon from other subtaxa by the narrow form of the leaf and the persistent tomentum about the involucre, branches, and leaves. *Corethrogyne filaginifolia* var. *linifolia* also lacks a conspicuously glandular involucre.

Roxanna Ferris elevated the Del Mar sand aster to the rank of species and applied the name *Corethrogyne linifolia* (Ferris 1958). This treatment was recognized by Abrams and Ferris (1960) and Munz (1968), but later publications (Munz 1974, Beauchamp 1986) returned to Hall's original treatment.

Corethrogyne filaginifolia var. *linifolia* is known from a relatively limited area in San Diego County from Batiquitos Lagoon in Carlsbad south to Del Mar Mesa, Carmel Mountain, and Torrey Pines State Park. The majority of the populations are within 4.8 km (3 miles) of the coast, but populations extend up to 8.0 km (5 miles) inland near Del Mar. Historically, this species was known from at least 17 populations. Thirteen of these populations are extant. Six of these populations are relatively large, while the others are smaller and considerably fragmented (Hogan 1990). One of these populations just north of the University of California at San Diego was largely eliminated in November 1992 by grading in conjunction with the widening of John Hopkins Road. It has been estimated that at least 20,000 individuals exist (Jim Dice, California Department of Transportation (CALTRANS), pers. comm., 1992). *Corethrogyne filaginifolia* var. *linifolia* has a preference for sandy locations.

The type specimen for short-leaved dudleya was collected by Reid Moran at Torrey Pines in 1949. The taxon was found growing amongst reddish-brown iron concretions along the reddish sandstones capping the Linda Vista Terrace. In 1950, Moran applied the name *Hasseanthus blochmaniae* ssp. *brevifolius* (Moran 1950) to this taxon. The first collection of short-leaved dudleya was actually made by Frank W. Peirson at Torrey Pines in 1922. However, this specimen was annotated by Willis Jepson as a new species of *Sedum*. Reid Moran was unaware of the Peirson specimen as late as 1945 when he published a treatment on *Hasseanthus blochmaniae* (Moran 1950). In an unpublished thesis at the University of California at Berkeley, Moran proposed the new combination *Dudleya blochmaniae* ssp. *brevifolia* (Moran 1951). This treatment was supported by comparisons made in chromosome structure and in a general discussion of the relationships between *Hasseanthus*, *Stylophyllum*, and *Dudleya* in a publication 2 years later when Moran suggested that *Hasseanthus* represented a specialized form of dudleya and not a distinct genus (Uhl and Moran 1953). In 1975, Moran altered his concept and elevated the rank of short-leaved dudleya to a full species (Moran 1975), applying the name *Dudleya brevifolia*. Recent authors (Munz 1974, Bartel 1993) have retained the subspecific treatment *Dudleya blochmaniae* ssp. *brevifolia*.

Dudleya blochmaniae ssp. *brevifolia*, a member of the stonecrop family (Crassulaceae), is a low growing, white-flowered, ephemeral succulent. A longer and more slender corm, shorter rosette leaves, subglobular as compared to oblong blades, and shorter, relatively broader cauline leaves serve to separate *D. blochmaniae* ssp. *brevifolia* from other similar taxa. *Dudleya blochmaniae* ssp. *brevifolia* is unique in the California flora. In its young stages, it is a cryptic mimic that is difficult to distinguish from the surrounding iron concretions. The species is restricted to nearly barren Torrey sandstone bluffs.

Dudleya blochmaniae ssp. *brevifolia* is currently restricted to six populations in the vicinity of La Jolla and Del Mar in San Diego County, California. Two populations are located on Torrey Pines State Park. Others are in Del Mar, La Jolla, and on Carmel Mountain. Two additional populations from Del Mar and the Soledad Canyon area have been eliminated due to commercial and residential development. Most of these populations have been reported as containing fewer than 100 individuals.

Verbesina dissita (big-leaved crown-beard) was first described by A. Gray in 1885 (Gray 1885) based on a collection made by Charles Orcutt at Ensenada, Baja California, Mexico, in September 1884. The taxon apparently was first collected in the United States at Arch Beach in South Laguna, Orange County, in 1903 by Mrs. M. F. Bradshaw (Hall 1907).

Verbesina dissita, a member of the aster family (Asteraceae), is a low growing, semi-woody perennial shrub with bright yellow flowers. This taxon grows from 0.5 to 1.0 m (1.6 to 3.3 ft) tall and has distinctive scabrid leaves. *Verbesina dissita* is distinguished from other members of the genus *Verbesina* in California and Baja California, Mexico, by the naked achenes and broad involucre.

Verbesina dissita is found on rugged hillsides in dense maritime chaparral from Laguna Beach in Orange County south to the San Telmo area east of Cabo Colnett in Baja California, Mexico. In California, it is known from two population centers less than 3.2 km (2 miles) apart. Because of the habit and preference for an understory location displayed by this taxon, population size is difficult to estimate. The U.S. populations have been estimated to be several thousand plants (Marsh 1992, CDFG 1992). Historically, this taxon has been recorded from 23 separate locations in Mexico. Of the Mexican localities, over 20 percent, all north of Punta Santo Tomas, have been eliminated.

Previous Federal Action

Action by the Federal government on three of the six plants began as a result of section 12 of the Endangered Species Act of 1973. Section 12 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be threatened or extinct. This report was designated as House

Document No. 94–51. The report was presented to Congress on January 9, 1975, and included *Arctostaphylos glandulosa* ssp. *crassifolia* and *Chorizanthe orcuttiana* as endangered and *Dudleya blochmaniae* ssp. *brevifolia* as threatened. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposal in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plants to be endangered species pursuant to section 4 of the Act. *Chorizanthe orcuttiana, Dudleya blochmaniae* ssp. *brevifolia,* and *Arctostaphylos glandulosa* ssp. *crassifolia* were included in the June 16, 1976, **Federal Register** notice.

General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals already over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated notice of review of plants on December 15, 1980 (45 FR 82480). This notice included *Dudleya blochmaniae* ssp. *brevifolia, Baccharis vanessae,* and *Chorizanthe orcuttiana* as Category 1 taxa. Category 1 taxa are those taxa for which substantial information on biological vulnerability and threats is available to support preparation of listing proposals. *Corethrogyne filaginifolia* var. *linifolia* was included as a Category 2 taxon. Category 2 candidates are taxa for which data in the Service's possession indicate listing is possibly appropriate but for which substantial information on biological vulnerability and threats is not currently known or on file to support proposed rules. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53840), in which *Baccharis vanessae* and *Chorizanthe orcuttiana* were reclassified from Category 1 to Category 2. *Arctostaphylos glandulosa* ssp. *crassifolia* was not included in either the 1980 or the 1983 notice.

The plant notice was again revised on September 27, 1985 (50 FR 39526), and *Arctostaphylos glandulosa* ssp. *crassifolia* was included in Category 3B. Category 3B taxa are those which on the basis of current taxonomic understanding, do not represent distinct taxa meeting the Act's definition of "species." This change apparently reflected the concept as presented by Walter Knight (Knight 1985). The taxonomy of *A. glandulosa* ssp. *crassifolia* was subsequently reevaluated, and the plant was included in Category 2 in the February 21, 1990, Plant Notice of Review (55 FR 6184), based on the work of Phillip Wells (Wells 1987). Based on additional information on threats and vulnerability, the Service has elevated this plant to Category 1. In the February 21, 1990, notice, *Baccharis vanessae* and *Chorizanthe orcuttiana* were reevaluated and included as Category 1 taxa, based on information contained in status reports prepared in conjunction with State listing. The 1990 notice included *Chorizanthe orcuttiana* as a Category 1* candidate, indicating this species was possibly extinct.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Arctostaphylos glandulosa* ssp. *crassifolia, Dudleya blochmaniae* ssp. *brevifolia,* and *Chorizanthe orcuttiana* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted but precluded by other pending listing actions of higher priority pursuant to section 4(b)(3)(B)(iii) of the Act. Notification of this finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, and 1992. Publication of this proposal constitutes the warranted finding for these species.

On December 14, 1990, the Service received a petition dated December 5, 1990, from Mr. David Hogan of the San Diego Biodiversity Project, to list *Dudleya blochmaniae* ssp. *brevifolia* and *Baccharis vanessae* as endangered species. On January 7, 1991, the Service received another petition from Mr. Hogan, dated December 30, 1990, which requested the Service to list *Corethrogyne filaginifolia* var. *linifolia* as an endangered species. Both petitions also requested the designation of critical habitat.

One of these species (*Dudleya blochmaniae* ssp. *brevifolia*) was included in the Smithsonian Institution's Report of 1975 that had been accepted as a petition. The Service therefore regarded Mr. Hogan's petition to list *Dudleya blochmaniae* ssp. *brevifolia* as a second petition. The Service evaluated the petitioner's requested action for the remaining two plant species and published a 90-day finding on August 30, 1991 (56 FR 42968) that substantial information existed indicating that the requested actions concerning *Baccharis vanessae* and *Corethrogyne filaginifolia* var. *linifolia* may be warranted. Information regarding the distribution and threats to these species have been further reviewed, resulting in the elevation of *Corethrogyne filaginifolia* var. *linifolia* to Category 1. Publication of this proposal constitutes the warranted finding for these two species.

Verbesina dissita has never appeared in any notice of review, and, therefore, no previous Federal action has taken place regarding this species. However, the Service received recommendations from a number of parties, based on information contained in the petition to State-list the species (Connie Rutherford, U.S. Fish and Wildlife Service, pers. comm., 1992), which has resulted in its designation as a Category 1 species. The Service finds that the threats to this species in both the United States and Mexico warrants listing as threatened at this time.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The threats facing these six taxa are summarized in Table 1. These factors and their application to *Arctostaphylos glandulosa* Eastw. ssp. *crassifolia* (Jeps.) Wells (Del Mar manzanita), *Baccharis vanessae* Beauchamp (Encinitas baccharis), *Chorizanthe orcuttiana* Parry (Orcutt's spineflower), *Corethrogyne filaginifolia* (H. & A.) Nutt. var. *linifolia* Hall (Del Mar sand aster), *Dudleya blochmaniae* ssp. *brevifolia* Moran (short-leaved

dudleya), and *Verbesina dissita* Gray (big-leaved crown-beard) are as follows:

TABLE 1.—SUMMARY OF THREATS

	Trampling	Alien plants	ORV activity	Fire control	Develop. activity	Limited numbers
Arctostaphylos glandulosa ssp. *crassifolia*	.....	.....	.....	X	X	.....
Baccharis vanessae	X	.....	.....	.....	X	X
Chorizanthe orcuttiana	X	X	.....	.....	X	X
Corethrogyne filaginifolia var. *linifolia*	X	X	X	.....	X	.....
Dudleya blochmaniae ssp. *brevifolia*	X	.....	X	.....	X	X
Verbesina dissita	.....	.....	.....	X	X	.....

A. The present or threatened destruction, modification, or curtailment of its habitat or range.

Three of the six taxa proposed herein (*Chorizanthe orcuttiana, Corethrogyne filaginifolia* var. *linifolia*, and *Dudleya blochmaniae* ssp. *brevifolia*) are restricted to the south-central coast of San Diego County, California. One taxon (*Baccharis vanessae*) extends inland 32 km (20 miles), and north to the Santa Margarita Mountains of northern San Diego County. One taxon (*Arctostaphylos glandulosa* ssp. *crassifolia*) extends from the south-central coast of San Diego County south into northwestern Baja California, Mexico, and one taxon (*Verbesina dissita*) occurs in two disjunct populations, one in coastal southern Orange County and one along the coast in northwestern Baja California, Mexico. The imminent threat facing all six taxa and their associated habitats is the ongoing and future destruction and adverse modification of habitat by one or more of the following: urban development, agricultural development, recreational activities, trampling, and fuel modification activities.

Arctostaphylos glandulosa ssp. *crassifolia* (Del Mar manzanita) is restricted to sandstone-derived soils along the south-central coast of San Diego County, extending south to Mesa el Descanseo 50 km (31 miles) north of Ensenada, Baja California, Mexico. This taxon is restricted almost exclusively to southern maritime chaparral and is considered an indicator taxon for the community. Published estimates indicate that 87 percent of southern maritime chaparral vegetation in San Diego County has been lost as a result of urban and agricultural development (Oberbauer and Vanderwier 1991). Between 1980 and 1990, the population of San Diego County increased by more than 600,000 people. Most of this increase occurred on or near the coast at sites historically occupied, in part, by southern maritime chaparral. Approximately 600 acres of southern maritime chaparral is currently approved or proposed for development in San Diego County (Roberts 1992a). This represents approximately 25 percent of the remaining habitat. Less than 30 percent of the remaining southern maritime chaparral is preserved in parks with long-term management for conservation, such as Torrey Pines State Park. Although the exact acreage of potential loss of southern maritime chaparral due to approved or proposed development is not known to the Service, four approved or proposed projects in Carlsbad, Encinitas, and on Carmel Mountain alone could eliminate 25 percent of the remaining southern maritime chaparral in San Diego County (Carrie Phillips, U.S. Fish and Wildlife Service, pers. comm., 1992).

Tom Huffman estimated in 1980 that *Arctostaphylos glandulosa* ssp. *crassifolia* occurred in over 290 subpopulations within 20 major population centers containing over 14,000 individuals (Roberts 1992a). By 1992, over 120 of the 290 subpopulations, 1 major population center, and nearly 8,000 individuals identified by Huffman had been eliminated by development. Over 40 percent of the remaining subpopulations and nearly 40 percent of the remaining individuals, including recently discovered populations, will be eliminated by proposed and approved projects in Carlsbad, Encinitas, Carmel Valley, and the Carmel Highlands (Roberts 1992a).

Populations of *Arctostaphylos glandulosa* ssp. *crassifolia* are also at risk from unauthorized land clearings or agricultural conversions. An unpublished study by the Service, dated June 1992, identified nearly 1,300 acres of unauthorized or possible land clearing activities in San Diego County between August 1991 and May 1992. These clearings, in part, included southern maritime chaparral.

The status of *Arctostaphylos glandulosa* ssp. *crassifolia* and its habitat in extreme northwestern Baja California, Mexico, are not well documented. However, this species only extends some 40 km (25 miles) south of the U.S. border. This region represents one of the most severely impacted areas in Baja California, and many of the same factors (urban and agricultural development) that have affected the status of this taxon in the United States are also clearly having an impact south of the border.

Chorizanthe orcuttiana (Orcutt's spineflower) is restricted to exposed sandy soils at two sites in coastal south-central San Diego County. One site, located at Torrey Pines State Park, is protected. However, this population has not been seen since 1987 despite repeated searches (Hogan, San Diego Biodiversity Project, pers. comm., 1992). The only currently known population is within Oakcrest Park in Encinitas, and this population is threatened by proposed construction of recreational facilities (see Factor D). This reduction of habitat will likely have significant impacts on the long-term viability of the existing *C. orcuttiana* population and the remaining southern maritime chaparral in the park.

Dudleya blochmaniae ssp. *brevifolia* (short-leaved dudleya) is also known from an extremely limited number of populations. The five remaining populations are restricted to sandy pockets on outcrops of Lindavista sandstone. One population is newly discovered, and threats have not yet been analyzed for it. The largest population, at Carmel Mountain, consists of several subpopulations that are threatened by residential development, fire breaks, off-road vehicle activity, and foot traffic (Hogan 1991). *Dudleya blochmaniae* ssp. *brevifolia* occurs in openings of southern maritime chaparral. Published estimates indicate that 87 percent of southern maritime chaparral vegetation in San Diego County has been lost as a

result of urban and agricultural development (Oberbauer and Vanderwier 1991).

Baccharis vanessae (Encinitas baccharis) is associated with dense mixed chaparral and southern maritime chaparral. Fourteen populations currently exist. Seven of the remaining 14 populations are threatened by development projects. Five populations are in the Del Dios Highlands within the Rancho Cielo project area. Three of these are threatened by urban development and a golf course. Grubbing and clearing in 1991 and 1992, in combination with a serious fire in September 1990, may already have eliminated some of these plants. The Rancho Cielo project was approved in 1981, 6 years before the species was declared endangered by the State of California. Even though this project has not yet been constructed, the county of San Diego has not required additional surveys or modifications to existing plans based on the listing status of Encinitas baccharis. Two other populations of this taxon near Lake Hodges have been identified as threatened by development proposals (CDFG 1992). Although a population near Black Mountain was left in open space after the construction of a residential development, no species-specific management plan exists.

Corethrogyne filaginifolia ssp. *linifolia* (Del Mar sand aster) is restricted to the south-central coast of San Diego County between Batiquitos Lagoon in Carlsbad south to Del Mar Mesa, Torrey Pines State Park, and Carmel Mountain. The species is closely associated with southern maritime chaparral, preferring openings and sandy terraces over dense brush. This taxon is able to withstand some disturbance and has reestablished populations along road cuts and railroad right-of-ways. However, the long-term viability of these colonizers has not been demonstrated, and many of these populations are subject to periodic roadside maintenance and clearing activities.

A considerable portion of the historic range of *Corethrogyne filaginifolia* ssp. *linifolia* has been eliminated by urban development within the cities of Carlsbad, Encinitas, and Del Mar, and elsewhere within northern San Diego County. Remaining populations have been subject to fragmentation and isolation in these areas. Historic populations in Encinitas have been greatly reduced. Relics of larger historical populations occur along Via Cantebria Road and in Oakcrest Park. The Via Cantebria Road stand occurs in a small fragment of southern maritime chaparral along the roadside curb. Potential habitat in the Green Valley area just southeast of Batiquitos Lagoon is threatened by two proposed developments (Arroyo La Costa and Home Depot). Large populations of *C. filaginifolia* ssp. *linifolia* are found on Carmel Mountain along with the largest stand of southern maritime chaparral (Hogan 1991). The southern maritime chaparral and at least seven subpopulations of *C. filaginifolia* ssp. *linifolia* on Carmel Mountain are threatened by proposed development (Hogan 1991).

In the United States, *Verbesina dissita* (big-leaved crown- beard) is restricted to rugged coastal hillsides and canyons in southern maritime chaparral and, to a lesser extent, coastal sage scrub and mixed chaparral, along a 3.2-km stretch (2-mile stretch) of coastline in Laguna Beach, Orange County. Although portions of its distribution extend into Aliso-Woods Regional Park, the majority of the populations are on private land. These populations are threatened by residential development and fuel modification activities (CDFG 1992).

Small-scale housing projects continue to incrementally impact the main Laguna Beach population. At least four new residences were built directly on *Verbesina dissita* after State listing as a threatened species in 1989. Although the individual houses eliminated a relatively small number of individuals, local ordinances require the creation of a fuel modification zone up to 46 m (150 ft) from the residence. Over 20 percent of *V. dissita* occurrences are within 46 m (150 ft) of residential development. If these ordinances are fully implemented, a significant portion of this species in the United States would be eliminated. In 1984, a fuel break was cut through one population on Temple Hill. The species normally persists in relatively dense brush, although it is known to respond favorably to some clearing and fires. The plants in the fuel break began to decline after 4 years. The City of Laguna Beach used goats to clear fuel breaks in 1991 over objections by citizens concerned that the goats could potentially consume rare plant species (Dr. Peter Bowler, University of California, Irvine, pers. comm., 1992). The City of Laguna Beach has indicated that many neglected areas containing dense brush adjacent to residential development will be cleared (Laguna Beach Fire Department, pers. comm., 1991). These areas are, in part, occupied by *V. dissita*. One development completed in 1989 has placed irrigation and hydromulching over one population. *V. dissita* is not expected to persist with overwatering and competition from *Atriplex semibaccata* (Australian saltbush).

Approximately 900 acres of southern maritime chaparral occurred historically in Orange County (Roberts 1992b). One third of that has been eliminated through urban development. The remaining habitat is relatively contiguous; however, several proposed developments would reduce and further fragment this rare vegetation association. Only 20 percent of the habitat is preserved (i.e., in Aliso-Woods Canyon Regional Park).

The majority of *Verbesina dissita* populations occur south of the United States-Mexico border in coastal, northwestern Baja California, Mexico, where it occurs in similar vegetation associations as found in Laguna Beach, California. The status of *V. dissita* and its habitat in Mexico are not well documented. According to one prominent researcher, the distribution of this species in Mexico is spotty (Reid Moran, California Academy of Sciences, pers. comm., 1992). Over 20 populations are known between Punta Descanseo and San Telmo near Cabo Colonet (Roberts 1988). A survey of historic localities in 1988 between Punta el Descanseo and Punta Santo Tomas determined that over 25 percent of these localities had been urbanized or converted to agriculture. Four separate localities are known from Punta Bunda just south of Ensenada. Changes in land use from relatively pristine conditions in 1987 to extensive grubbing and clearing in addition to rural condominium development in 1990 are threatening three of the four known populations on Punta Banda (Roberts, memo to files, June 23, 1992). Clearly, many of the same factors threatening the species in the United States (urban and agricultural development) are threatening this species south of the border.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

Some taxa have become vulnerable to collecting by curiosity seekers as a result of increased publicity following publication of a listing proposal. The limited population size of and relatively easy access for two of the species (*Chorizanthe orcuttiana* and *Dudleya blochmaniae* ssp. *brevifolia*) could render them vulnerable to collecting following publication of the listing proposal.

C. Disease or Predation.

Disease is not known to be a factor for any of the taxa. Insect predation of the six taxa is not well understood;

however, swollen galls on the stems of *Baccharis vanessae* indicate parasitism by a lepidopteran (Beauchamp 1980).

D. The Inadequacy of Existing Regulatory Mechanisms.

Existing regulatory mechanisms are not sufficient to protect southern maritime chaparral or reduce the losses of *Arctostaphylos glandulosa* ssp. *crassifolia, Baccharis vanessae, Chorizanthe orcuttiana, Corethrogyne filaginifolia* var. *linifolia, Dudleya blochmaniae* ssp. *brevifolia, and Verbesina dissita.*

Under the Native Plant Protection Act (Chapter 1.5, section 1900 *et seq.* of the Fish and Game Code) and California Endangered Species Act (Chapter 1.5, section 2050 *et seq.*), the California Fish and Game Commission listed *Dudleya blochmaniae* ssp. *brevifolia* (as *Dudleya brevifolia*) as endangered in 1982, *Baccharis vanessae* as endangered in 1987, and *Chorizanthe orcuttiana* as endangered in 1979. *Verbesina dissita* was listed by the State as threatened in 1989. Although both statutes prohibit the "take" of State-listed plants (Chapter 1.5 sections 1908 and 2080), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the CDFG notifies a landowner that a State-listed plant grows on his or her property, State law evidently requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (Chapter 1.5, section 1913). Even this requirement is seldom adhered to or enforced. For example, in 1992, *Verbesina dissita* plants in Laguna Beach were removed without the State's knowledge (Ken Berg, CDFG Endangered Plants Program, pers. comm., 1992).

The majority of the known populations of the six taxa occur on privately owned land. Local and county zoning designations are subject to change and do not incorporate the principles of conservation biology in the establishment of open space areas. What few resource protection ordinances exist are subject to interpretation and in cases where findings of overriding social and economic considerations are made, compliance is not required. In many cases, land-use planning decisions are made on the basis of environmental review documents, prepared as required by the California Environmental Quality Act (CEQA) or the National Environmental Policy Act, that do not adequately address potential impacts to the six taxa or southern maritime chaparral, or offer insufficient compensation for losses that continue to contribute to the overall net loss of habitat. Transplantation is frequently used to compensate for the loss of rare plant species. However, it has never been demonstrated to provide for long-term viability of any of the six taxa. Several attempts at transplanting *Baccharis vanessae* and *Arctostaphylos glandulosa* ssp. *crassifolia* have been reported by Hall (1986). Attempts to transplant *B. vanessae* at Quail Botanical Garden and at San Dieguito County Park failed shortly after the monitoring period ended. Six years after individuals of *A. glandulosa* ssp. *crassifolia* were transplanted at Quail Botanical Garden, 75 percent had died.

Dudleya blochmaniae ssp. *brevifolia* occurs at two sites on State lands set aside for conservation at Torrey Pines State Park. A third site receives limited protection at Crest Canyon Preserve in Del Mar; however, recreational activity (see Factor E) threatens the species at this site. A small population of *Corethrogyne filaginifolia* ssp. *linifolia* occurs within San Elijo Lagoon State Preserve. Other larger populations are located in both the northern and southern parcels of Torrey Pines State Park (Jim Dice, pers. comm., 1992). These populations are protected and expected to be viable for the long-term. A population within the City of Del Mar's Crest Canyon Park is also within preserved southern maritime chaparral but is subject to trampling (Hogan 1991). One population of *Baccharis vanessae* occurs in the San Mateo Wilderness of the Cleveland National Forest, where it is protected.

Existing land use regulations have failed to protect these plants as exemplified by the case of Oakcrest Park in Encinitas. Although a portion of the park was originally set aside for conservation purposes by the County of San Diego (Oberbauer, pers. comm., 1992; Hogan 1991), the City of Encinitas has been eliminating southern maritime chaparral and causing direct losses to *Arctostaphylos glandulosa* ssp. *crassifolia, Baccharis vanessae, Chorizanthe orcuttiana,* and *Corethrogyne filaginifolia* var. *linifolia* through incremental impacts of recreational development for several years. One area developed relatively recently included a natural preserve area set aside under an agreement with the California Coastal Commission. Current recreational development plans for Oakcrest Park, including the construction of a community center, swimming pool, lawn installations, and numerous walking paths, will impact three of these taxa (*A. glandulosa ssp. crassifolia, B. vanessae,* and *C. filaginifolia* var. *linifolia*). The proposed development will reduce the *Baccharis vanessae* population and the extent of southern maritime chaparral within the park by approximately one-third (David Wigginton, Director, Parks and Recreation, City of Encinitas, pers. comm., 1992).

Another example demonstrating how existing regulatory mechanisms are inadequate is provided by the case of one project in the City of Carlsbad that was originally approved circa 1980. The project area contains the northernmost known population of *Arctostaphylos glandulosa* ssp. *crassifolia* and a significant stand of southern maritime chaparral. When a City official was approached by the proponent in 1992, the City informed the proponent that the existing CEQA documentation was inadequate and that additional biological surveys would be required. Despite this finding, the proponent was able to obtain grading permits to clear the land without additional documentation in July or August 1992 (Terri Stewart, California Department of Fish and Game, pers. comm., 1992).

The southern range of *Arctostaphylos glandulosa* ssp. *crassifolia* and *Verbesina dissita* continues south along the coast into northwestern Baja California, Mexico. The country of Mexico has laws that presumably provide protection to rare plants; however, enforcement of laws is lacking (U.S. Fish and Wildlife Service 1992).

In summary, although many of these taxa are receiving at least partial protection through existing regulatory mechanisms, threats continue to adversely affect the species, as indicated by their declining status.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

At least three of the taxa (*Baccharis vanessae, Chorizanthe orcuttiana,* and *Verbesina dissita*) are threatened with extinction by stochastic events because of their restricted distribution and small population size. Genetic viability is reduced in small populations, making them vulnerable to extinction by a single human-caused or natural event. The potential for extirpation owing to small populations size can be exacerbated by natural causes, such as the recent drought or fire. For instance, the impact of fire on *B. vanessae* is not fully understood, yet a major fire in the Del Dios highlands burned four of the known populations in September 1990. Many populations are now in close proximity to residential development, and are threatened by fuel modification activities, fire suppression, and increased human activities associated with the nearby development.

Additionally, unidentified pollinators or wildlife species functioning as seed-dispersal agents may also be impacted by this development.

Habitat fragmentation and isolation, in addition to fuel modification, threaten the taxa where they grow adjacent to or mixed within residential areas. For example, in addition to the 40 percent of the remaining *Arctostaphylos glandulosa* ssp. *crassifolia* that are threatened by development, an additional 10 percent are threatened by fuel modification and habitat fragmentation (Roberts 1992a). Conflicts between fire management and preservation arise when insufficient buffers exist between sensitive biological resources and residential dwellings. A recent example includes the grubbing (clearing of vegetation) of approximately 2 acres of southern maritime chaparral bordering a new residential development in Carlsbad on June 22, 1992.

Baccharis vanessae is comprised of only 13 extant populations. Four of these have fewer than six individuals. While the combination of the remaining populations may contain over 1,500 individuals, no population is known to have over 300 individuals. The recent drought or the cold snap southern California suffered in December 1990 may have reduced these numbers further.

Chorizanthe orcuttiana is the most vulnerable of the six taxa. This plant is threatened by trampling by workers and recreationists because of the plant's small size and its preference for open areas, which tend to attract foot traffic through otherwise dense chaparral vegetation. The only known site could be eliminated in a single event if a particularly large number of workers or park users walk through and trample the population. Exotic grass and weed species could overwhelm the population if recreational activities and trampling impacts that favor aggressive introduced species are not curtailed.

The population of *Corethrogyne filaginifolia* ssp. *linifolia* at Oakcrest Park is threatened by trampling. This species is also threatened in at least two localities (Via Cantebria Road and at Vulcan Road in Encinitas) with being overwhelmed by aggressive non-native plant species such as *Carpobrotus edulis* (Hottentot-fig) and *Limonium sinuatum* (statice).

The northernmost population of *Dudleya blochmaniae* ssp. *brevifolia* continues to be threatened by trampling via recreational activities. The population at Crest Canyon Preserve in Del Mar is also threatened by recreational activity as evidenced by the many trails that cross the site (Hogan 1991).

All six taxa are potentially threatened by the interruption of the natural fire cycle. Fragmentation has rendered individual populations more susceptible to fire events that may either occur too frequently or be suppressed too long to maintain a healthy southern maritime chaparral habitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these six taxa in determining to propose this rule. Based on this evaluation, the Service finds that *Arctostaphylos glandulosa* ssp. *crassifolia*, *Baccharis vanessae*, *Chorizanthe orcuttiana*, and *Dudleya blochmaniae* ssp. *brevifolia* are in danger of extinction throughout all or a significant portion of their ranges due to habitat alteration and destruction resulting from urban, recreational, and agricultural development; fuel modification activities; trampling and recreational activities; inadequacy of existing regulatory mechanisms; stochastic extinction; and competition from exotic plant species. Therefore the preferred action is to list those taxa as endangered. For the reasons discussed below, the Service finds that *Corethrogyne filaginifolia* var. *linifolia* and *Verbesina dissita* are likely to become endangered species within the foreseeable future throughout all or a significant portion of their ranges. Therefore, the preferred action is to list these taxa as threatened. The Service finds that threatened status is appropriate for *Corethrogyne filaginifolia* var. *linifolia* because the largest populations exist within the State Park system and the species can tolerate more disturbance than most native species. *Verbesina dissita* is extremely threatened in the United States portion of its range by development and fuel modification activities. The status of this species in Baja California, Mexico, is considerably better, due to a larger number of extant populations; however, those populations are vulnerable to similar activities that threaten the plant in the United States. Critical habitat is not being proposed for these taxa for the reasons discussed in the "Critical Habitat" section of this proposal.

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 a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these taxa. Such a determination would result in no known benefit to these species. The publication of critical habitat descriptions and maps required for critical habitat would increase the degree of threat to these plants from possible take or vandalism, and could contribute to their decline. The listing of species as either endangered or threatened publicizes the rarity of the plants and can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All appropriate Federal agencies and local planning agencies have been notified of the location and importance of protecting these species' habitat. Protection of these species' habitat will be addressed through the recovery process and potentially through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time; such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

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 activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against 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)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the

continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Although none of the six species are directly involved in section 404 (Clean Water Act) permitted activities, actions that include direct and indirect effects or that are interrelated or interdependent with the proposal under consideration may require action through section 404 of the Clean Water Act. Additionally, three of the taxa (*Arctostaphylos glandulosa* ssp. *crassifolia, Corethrogyne filaginifolia* var. *linifolia,* and *Baccharis vanessae*) are known to occur in areas where highway alignments, which may involve Federal funding and the Federal Highway Administration, have been proposed. At least one species (*B. vanessae*) is known from within the Cleveland National Forest and occurs within 1 km (0.6 miles) of Camp Pendleton Marine Base. New populations of the six taxa could be discovered at Miramar Naval Air Station, Point Loma Naval Reserve, and Camp Pendleton.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants, and at 50 CFR 17.71 and 17.72 for threatened plants, set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to the four plant taxa proposed to be listed as endangered, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale this species in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such endangered plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law.

Corethrogyne filaginifolia var. *linifolia* and *Verbesina dissita,* proposed to be listed as threatened, would be subject to similar prohibitions (16 U.S.C. 1538(a)(2)(E); 50 CFR 17.61, 17.71). Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because none of the six species is common in cultivation or 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, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2093).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these taxa;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor of the Carlsbad Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Carlsbad Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Fred M. Roberts, Jr., Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008 (telephone 619/431–9440).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) for plants is amended by adding the following, in alphabetical order under the plant families indicated, 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					
* * *	*	*	*	*		*
Asteraceae—Aster family:						
* * *	*	*	*	*		*
Baccharis vanessae	Encinitas baccharis	U.S.A. (CA)	E		NA	NA
* * *	*	*	*	*		*
Corethrogyne filaginifolia var. *linifolia.*	Del Mar sand aster	U.S.A. (CA)	T		NA	NA
* * *	*	*	*	*		*
Verbesina dissita	Big-leaved crown-beard	U.S.A. (CA), Mexico	T		NA	NA
* * *	*	*	*	*		*
Crassulaceae—Stonecrop family:						
Dudleya blochmaniae ssp. *brevifolia.*	Short-leaved dudleya	U.S.A. (CA)	E		NA	NA
* * *	*	*	*	*		*
Ericaceae—Heath family:						
Arctostaphylos glandulosa ssp. *crassifolia.*	Del Mar manzanita	U.S.A. (CA), Mexico	E		NA	NA
* * *	*	*	*	*		*
Polygonaceae—Buckwheat family:						
* * *	*	*	*	*		*
Chorizanthe orcuttiana	Orcutt's spineflower	U.S.A. (CA)	E		NA	NA
* * *	*	*	*	*		*

Dated: September 16, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–24193 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 58, No. 189
Friday, October 1, 1993

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.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Fees and Costs

AGENCY: Administrative Office of the United States Courts.

ACTION: Notice of amendments to miscellaneous fee schedules.

SUMMARY: The Miscellaneous Fee Schedules promulgated under 28 U.S.C. 1914 and 1930 are amended to eliminate the exemption for federal agencies from fees for usage of electronic access to court data. In addition, these schedules are amended to eliminate the exemption for federal agencies for the fee for reproducing any court record or paper and the fee for performing a search of court records, where electronic access is available.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Gloria Malkin, Attorney Advisor, Court Administration Division, Administrative Office of the United States Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Washington, DC 20544, (202) 273–1539.

SUPPLEMENTARY INFORMATION: Under its authority at 28 U.S.C. 1914(b) and 1930 to establish miscellaneous fees to be charged and collected by the clerks of court, the Judicial Conference of the United States in March 1993 authorized the Director of the Administrative Office to eliminate the exemption for federal agencies from certain fees prescribed under the Miscellaneous Fee Schedules.

Effective October 1, 1993, the Miscellaneous Fee Schedules promulgated under 28 U.S.C. 1914 and 1930 are amended as follows. Federal agencies are no longer exempt from paying the fee for usage of electronic access to court data. In addition, the exemption from fees for federal agencies is eliminated for the fee for reproducing any record or paper, if the record or paper requested is available through electronic access. The exemption is also eliminated for the fee for search of the records of court, if the information requested is available through electronic access.

The Judiciary Appropriations Act of 1991 provided that the Judicial Conference of the United States shall prescribe and collect reasonable court fees for public access to federal court information available in electronic form. The law further requires that such fees be deposited as offsetting collections to the Judiciary Automation Fund, pursuant to 28 U.S.C. 612(c)(1)(A), as reimbursement for expenses incurred in providing these services.

The Judicial Conference, in establishing fees for electronic access to court records for non-judiciary, governmental agencies, was acting upon the suggestion of Congress. H.R. Report No. 102–709 stated that fees for access "by non-Judiciary, governmental agencies * * * are desirable." Preliminary reports indicate that federal agency users represent approximately 40% of all users of court electronic access services. The judiciary's investments in automation have resulted in enhanced service to the public and to other federal agencies in making court records relating to litigation available by electronic media. The electronic access services are an efficient and valuable means of providing accurate court information. The judiciary's goal is that the imposition of the fee will not result in a reduction in usage but, rather, that users will find it more cost-effective to use the public access system as opposed to traveling to the clerk's office for service at the counter.

These actions apply to all federal agencies except those which receive funding from judiciary appropriations.

L. Ralph Mecham,
Director.

[FR Doc. 93–24087 Filed 9–30–93; 8:45 am]
BILLING CODE 2210–01–M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Intent to Establish a Rural Rental Housing Diversity Demonstration Program (RRHDDP)

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces its intent to establish the Rural Rental Housing Diversity Demonstration Program (RRHDDP) for Fiscal Year (FY) 1994, subject to Appropriations. This action is taken to make the public aware of the demonstration program and the States selected to participate. The intended outcome is to improve the delivery of section 515 assistance by encouraging applicants of limited gross income which have had little or no previous participation in the program, providing housing to unserved communities and encouraging the development through the use of labor, goods and services from the local community.

DATES: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese-Foxworth, Loan Specialist, Rural Rental Housing Branch, Multi-Family Housing Processing Division, FmHA, USDA, room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1608 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: In accordance with section 506(b) of the Housing Act of 1949, as amended, the Secretary is authorized and directed to conduct research, technical studies, and demonstrations relating to the mission and programs of Farmers Home Administration and the national housing goals defined in section 2 of this Act. In connection with such activities, the Secretary shall seek to promote the construction of adequate farm and other rural housing. The Secretary shall conduct such activities for the purposes of stimulating construction and improving the architectural design and utility of dwellings and buildings. In furtherance of this goal, the following demonstration program is being proposed for FY 94.

Programs Description

(a) Purpose. The purposes of this demonstration program are to stimulate construction by encouraging applicants of limited gross income which have had little or no participation in the program, providing housing to un-served communities and encouraging development of housing through the use of labor, goods and services from the local community. The demonstration

program is to obtain information as to whether new developers can be attracted to the program, what impact requiring that at least 51 percent of the development cost remain in the local market will have on the price of construction and the local Community and how un-served and underserved rural areas can be better reached.

(b) Seven States have been selected to participate in the demonstration program based on the following criteria:

(1) Highest percentage of poverty in rural areas,

(2) Highest percentage of substandard housing in rural areas,

(3) Highest percentage of unemployment.

(4) Lowest rural median income, and

(5) Rural places with populations of 2,500 or less.

The seven States were taken from a list of the 10 highest States in each of the five categories. To narrow the list, each State selected had to meet 3 of the 5 above-mentioned criteria in order to be considered for this program. Hawaii, Western Pacific Areas, and the Virgin Islands were not considered based on historical non-use of their allocations. The seven States selected are as follows:

- Arkansas;
- Kentucky;
- Louisiana;
- Mississippi;
- New Mexico;
- Puerto Rico; and
- West Virginia.

(c) Available Funding. For fiscal year 1994, the Agency intends to set-aside $7 million for this demonstration program. A comparable amount of rental assistance (RA) will also be set-aside. Seven million dollars will produce approximately 190 units. Therefore, 190 units of RA is necessary. Both loan funds and RA will be held in the National Office. Funding for this program is subject to Appropriations.

(d) Eligibility. Proposals will be invited from any applicant meeting the following criteria:

(1) The applicant and/or any members of the applicant entity (including limited partners) have not received nor had an interest in more than one section 515 loan over the past three fiscal years and;

(2) The applicant and/or members of the applicant entity (including limited partners) have had no member of their immediate family nor any close relatives who received or had an interest in more than one section 515 loan over the past three fiscal years and;

(3) The applicant and/or any members of the applicant entity have not had a gross aggregate income from personal and/or business operations in excess of $500,000 and;

(4) The applicant and builder, agree to employ personnel and obtain goods and services in local market area so that at least 51 percent of the total development cost will be used to obtain labor, goods and services from the local community. For applicants who agree to this provision, but fail to provide adequate documentation to reflect at least 51 percent of the funds were so used, the total profit paid to the builder will be reduced by 50 percent.

(5) The proposed housing must be located in a market area which does not have similar type subsidized housing.

(6) The proposed number of units be developed to serve the local market area but consist of no more than 50 percent of the average size section 515 complex currently being developed in the State.

(7) The applicant meet all other eligibility requirements of 7 CFR part 1944, subpart E.

Further guidance will be published in the **Federal Register** at a later date to provide instructions on how to implement the program and establish application processing procedures.

Dated: September 23, 1993.

Bob Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93-24111 Filed 9-30-93; 8:45 am]

BILLING CODE 3410-07-M

Forest Service

Addition of Lands to the Ouachita Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of addition of lands to Ouachita Purchase Unit.

SUMMARY: On September 15, 1993, the Assistant Secretary, Natural Resources and Environment added lands to the Ouachita Purchase Unit. These additional lands comprise 774.02 acres, more or less, within Scott County, Arkansas. A copy of the Secretary's establishment document which includes the legal description of the lands within the addition appears at the end of this notice.

EFFECTIVE DATE: The effective date of this addition was September 15, 1993.

ADDRESSES: A copy of the map showing the addition is on file and available for public inspection in the Office of the Chief of the Forest Service, Auditor's Building, 201 14th Street, SW., Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 (202) 205-1248.

Dated: September 22, 1993.

H.M. Montrey,

Associate Deputy Chief.

Proposed Addition to Ouachita Purchase Unit, Scott County, Arkansas

Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94-588 (90 Stat. 2949), the following lands are being added to the Ouachita Purchase Unit:

Lands lying in Townships 2 and 3 North, Range 29 and 30 West, Scott County, Fifth Principal Meridian, Arkansas, and more particularly described as:

T2N R29W

Section 18: fr. S½SW¼ containing 78.77 acres; SW¼SE¼ containing 40.00 acres;

T2N R30W

Section 4: SW¼SW¼ containing 40.00 acres;

Section 13: W½SW¼ containing 80.00 acres;

Section 14: S½, SW¼NW¼, S½NE¼ containing 440.00 acres

T3N R30W

Section 17: West 15.25 acres of SW¼NW¼;

Section 18: S½NE¼ containing 80.00 acres;

Containing 774.02 acres, more or less, and being adjacent to the present Ouachita National Forest boundary.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: September 15, 1993.

James R. Lyons,

Assistant Secretary for Natural Resources and Environment.

[FR Doc. 93-24133 Filed 9-30-93; 8:45 am]

BILLING CODE 3410-11-M

Intent To Prepare an Environmental Impact Statement for the Reissuance of a Special Use Permit To Occupy National Forest System Lands; Roosevelt National Forest, Boulder County, Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare environmental impact statement.

SUMMARY: The Arapaho and Roosevelt National Forests and Pawnee National Grassland is proposing to reissue a 20-year Special Use Permit to Public Service Company of Colorado for 5.03 miles of pipeline across National Forest System lands. The permit would allow for maintaining and operating the Boulder hydro gravity line. The facility is a water transmission conduit 36 inches in diameter used to transport water from Barker Dam to the

permittee's privately owned lands outside the National Forest boundary.

DATES: Comments concerning the scope of the analysis (issues, preliminary alternatives, etc.) should be received in writing by October 15, 1993.

ADDRESSES: Submit written comments, suggestions and question to M. M. Underwood, Jr., Forest Supervisor, Arapaho and Roosevelt National Forest, 240 West Prospect Road, Fort Collins, Colorado, 80526.

FOR FURTHER INFORMATION CONTACT: Jean Thomas, Project Coordinator, (303) 498–1267.

SUPPLEMENTARY INFORMATION: The Boulder Hydroelectric Generation Station and gravity line first went into operation in 1910. A Special Use Permit for this facility was first issued in 1980. This permit expired December 31, 1991 and was granted an extension until January 31, 1994.

For this Federal action, the Forest Service proposes to reauthorize special use occupancy which allows Public Service Company to operate their facility as they have historically while trying to accommodate Forest resource goals to the extent possible. The permittee's long term historic use of the facility has not included instream flow conditions. It is anticipated that instream flows are needed to reduce environmental impacts. The permittee is concerned that instream flow requirements may not allow use of the volume of water decreed under State water rights.

Forest Service concerns about aquatic habitat and instream flows are evident in new direction and policy addressing terms and conditions for permit renewal which was mandated after this permit was first issued. That direction includes Final Rules for implementing the Federal Land Policy and Management Act of 1976 (FLPMA) which states that special use authorization shall contain terms and conditions which minimize damage to scenic and esthetic values and fish and wildlife habitat.

The proposed action does not meet direction in the Land and Resource Management Plan for the Arapaho and Roosevelt National Forests and Pawnee National Grassland approved May, 1984. The proposed action does not meet general direction statements to authorize permits with conditions to maintain instream flows necessary to fulfill National Forest use and purposes, and to maintain instream flows and protect public property and resources.

The corresponding standard that will not be met is "Habitat for each species on the forest will be maintained at least at 40 percent or more of potential." The guideline not being met for coldwater streams is "[maintain] * * * a base flow greater than 25 percent of average annual daily flow * * *"

Major environmental issues: Issuing a permit that does not require a minimum level of stream flow downstream of the facility may have detrimental effects on aquatic habitat, fish populations and aquatic ecology. Impacts may also occur to associated riparian vegetation and wildlife species that inhabit riparian habitats.

Several threatened, endangered, and sensitive species may be impacted by the permit action. These include three bird species, the Least Tern, Piping Plover, and Whooping Crane; two fish species, the Pallid Sturgeon and Greenback cutthroat trout; and two plant species, the Western Prairie White Fringed Orchid and the Ute Ladies' Tresses Orchid.

Additional issues, concerns and comments were gathered during a public comment period ending September 3, 1993.

Alternatives include reissuing a permit with terms and conditions consistent with those of the previous permit; reissuing the permit to accommodate Forest Plan resource goals to the extent possible; reissuing the permit with terms and conditions that meet or exceed Forest Plan direction; and not reissuing a new permit.

The Deciding Official will be the Forest Supervisor, Arapaho and Roosevelt National Forests and Pawnee National Grassland, 240 West Prospect Road, Fort Collins, CO 80526–2098.

It is anticipated that the Draft Environmental Impact Statement will be published in October, 1993. The Final Environmental Impact Statement will be completed in January, 1994.

The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC* 435 US 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334 (E.D. Wis 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council and Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: September 21, 1993.

Austin Condon,

Acting Forest Supervisor.

[FR Doc. 93–24183 Filed 9–30–93; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

CA–187:Cash and Carry Livestock Sale, Apple Valley, California
MN–191:Bagley Livestock Exchange, Inc., Bagley, Minnesota
NM–121:North Plains Calf Auction, Clovis, New Mexico
NC–164:Vale Horse Auction, Vale, North Carolina
SC–151:Southeastern Auction & Livestock Center, Campobello, South Carolina
UT–118:Ogden Livestock Auction, Inc., Farr West, Utah

WI–142:Bounds Showtime Arena & Sales, Deerfield, Wisconsin

Pursuant to the authority under section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, room 3408–South Building, U.S. Department of Agriculture, Washington, DC 20250 by October 9, 1993. All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC this 24th day of September 1993.

Harold W. Davis,

Director Livestock Marketing Division.

[FR Doc. 93–24110 Filed 9–30–93; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Incidential Take of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: On July 19, 1993, NMFS issued a Letter of Authorization to ARCO Alaska, Inc., that allows a take of marine mammals (by harassment) incidental to exploration activities in the Beaufort Sea during the 1993 open-water season.

ADDRESSES: A copy of the authorization is available from the Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, or the Western Alaska Field Office, NMFS, 701 C Street, Anchorage, AK 99513.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz, Office of Protected Resources, NMFS, (301) 713–2322 or Ron Morris, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Regulations governing the taking of marine mammals incidental to oil and gas exploration activities in Alaska were published July 18, 1990 (55 FR 29214). The regulations are based on section 101(a)(5) of the Marine Mammal Protection Act and NMFS' determination that the taking of six species of marine mammals (bowhead, gray and beluga whales and bearded, ringed and spotted sales) incidental to exploratory activity in the Beaufort and Chukchi Seas will have a negligible impact on the species or stocks and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. The regulations include permissible methods of taking and require exploration companies to monitor the effects of their activities on marine mammals and to cooperate with the Alaska native communities to ensure that marine mammals are available for subsistence.

A Letter of Authorization must be requested annually by each group or individual conducting an exploratory activity where there is the likelihood of taking any of the six species of marine mammals identified in the regulations. NMFS grants the Letters based on a determination that the total level of taking by all applicants in any one year is consistent with the estimated level of activity used to make a finding of negligible impact and a finding of no unmitigable adverse impacts on the availability of the species for subsistence hunting. However, permits to conduct the actual exploration activities are issued by the Minerals Management Service, Department of the Interior.

Requests for Letters of Authorization must include a plan of cooperation that identifies what measures will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. It must include a description of the activity including the methods to be used, the dates and duration of the activity, and the specific location. Also, it must include a site-specific plan to monitor the effects on marine mammals that are present during exploratory activities.

ARCO's LOA Request

On February 10, 1993, NMFS received a request from ARCO Alaska, Inc., for a Letter of Authorization that would allow non-lethal takes of marine mammals incidental to oil and gas exploration activities at its Kuvlum Project in Camden Bay in the Beaufort Sea. On May 12, 1993, NMFS published receipt of the request with a 30-day comment period (58 FR 27998). No other requests were received for the 1993 open-water season.

The project is located about 45 miles (72 km) northwest of Barter Island, the Kaktovik whaling grounds, and 75 miles 121 km) east of the Cross Island whaling camps of the Nuiqsut whalers. The activities include drilling from a floating drilling unit, activities associated with drilling such as ice management vessels, and two separate geophysical activities (high resolution site clearance and acquiring data over closely spaced lines at the prospect area).

When NMFS issued the 1990 regulations, it anticipated that during the five years the regulations would be in effect, as many as five drilling rigs (three floating and two bottom-founded units) would be operating each year in the Chukchi and Beaufort Seas, and seismic operations would cover about 17,000 trackline miles over the 5-year period. The 1993 request from ARCO to take marine mammals incidental to exploratory operations includes activities associated with one floating drill ship and conducting about 3,600 trackline miles of seismic activity which is less than the level of activity NMFS anticipated when making its 1990 findings. Since the regulations were issued in 1990 (including 1993), NMFS has issued LOAs for a take of marine mammals incidental to 8,525 trackline miles of seismic activity and activities associated with the operation of six floating drillships and two bottom-founded drilling units.

ARCO's proposed monitoring plan was discussed at a February workshop sponsored by NMFS to review the results of ARCO's 1992 monitoring programs. ARCO revised the proposed 1993 monitoring plan based on recommendations from scientists associated with NMFS, the AEWC and NSB, and other organizations. This extensive monitoring plan includes aerial surveys and acoustical components to measure sound source levels and ambient noise levels.

The monitoring plan and the Plan of Cooperation were also discussed at a June 4 and 5 meeting sponsored by the AEWC and the NSB in Barrow, Alaska. NMFS was represented at the meeting, and comments made at the meeting have been included in the official record on issuance of the LOA. The whalers expressed concern about the effects of exploratory activities on the availability of bowhead whales for subsistence. Although native Alaskan whalers have taken their quota of whales most years since exploration began occurring offshore in the Beaufort Sea, they believe that in some years, especially when seismic activities occurred near whaling camps, they have had to travel further offshore to find whales. This

may result in spoiled meat when whales have to be towed greater than normal distances and increases the physical danger to whalers who may have had to travel far from whaler camps to find whales. Although it is recognized that ice and weather often affect the distances whalers must travel or the success of the hunt, ARCO agreed in its Plan of Cooperation to cease its seismic operations on Sept. 15 if Barrow, Kaktovik and Nuiqsut whalers have not reached their bowhead whale quotas. ARCO will not resume operations until Kaktovik and Nuiqsut have taken their quotas.

NMFS concluded that ARCO's request is consistent with the findings made in the specific regulations covering these activities, the level of activity is not more than anticipated when the 1990 determinations were made, and the activities will not have more than a negligible impact on the marine mammals requested to be incidentally harassed, and the activities will not have an unmitigable adverse impact on the availability of these species for subsistence hunting. Therefore, NMFS issued a Letter of Authorization to ARCO, Inc., on July 19, 1993, which allows ARCO a take or marine mammals incidental to its exploration activities in Camden Bay in the Beaufort Sea, Alaska.

Dated: September 21, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93-24064 Filed 9-30-93; 8:45 am]

BILLING CODE 3510-22-M

United States Travel and Tourism Administration

[Docket No. 930935-3235]

Selection of Market(s) Appropriate for International Tourism Trade Development

AGENCY: United States Travel and Tourism Administration, Commerce.

ACTION: Notice of solicitation of comments.

SUMMARY: The United States Travel and Tourism Administration (USTTA) is soliciting comments from persons interested in tourism trade, concerning market(s) that would be an appropriate focus of tourism trade development efforts to be carried out in the 12 month period that begins one year from the date of this notice. Interested parties are also invited to identify acts, policies, or practices of any foreign country that constitute a significant barrier to, or distortion of, United States international tourism trade development.

The comments received will assist the Acting Under Secretary of Commerce for Travel and Tourism in selecting the international market(s) that will be the focus of the International Tourism Trade Development Financial Assistance Program (ITTDFAP) for the 12 month period beginning one year after the date of this notice.

Financial assistance to cooperative tourism marketing programs from the ITTDFAP will support increased and more effective investment in international tourism trade development and promotion by states, local governments, and for-profit and non-profit organizations. Projects funded under the ITTDFAP will increase international visitation from the market(s) selected and contribute to the economic well-being of the various regions of the United States.

DATES: Comments on market selection will be considered by the Acting Under Secretary if received in writing on or before November 15, 1993.

ADDRESSES: Comments recommending markets for selection and the number of markets that should be selected, and identifying acts, policies, or practices of any foreign country that constitute a significant barrier to, or distortion of, United States travel and tourism exports should be submitted in triplicate to: Mrs. Karen M. Cardran, Director, Marketing Programs, Office of Tourism Trade Development, United States Travel and Tourism Administration, U.S. Department of Commerce, Room 1860, Washington, DC 20230.

All written comments and materials received will be available for inspection throughout 1993-1994 between 8:30 a.m. and 5 p.m. Monday through Friday, in room 1860, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Individuals wishing to inspect these materials should call (202) 482-1904 to schedule an appointment.

Copies of the *Analysis: The Potential of International Pleasure Travel Markets to the U.S.A.* are available upon request (phone 202-482-1904 or fax 202-482-2887).

FOR FURTHER INFORMATION CONTACT: Mrs. Karen M. Cardran, Director, Marketing Programs, Office of Tourism Trade Development, United States Travel and Tourism Administration, U.S. Department of Commerce, room 1860, Washington, DC 20230. (202) 482-1904.

SUPPLEMENTARY INFORMATION: Section 202 of the International Travel Act of 1961 (22 U.S.C. 2123), as amended by the Tourism Policy and Export Promotion Act of 1992 (Pub. L. 102-372) calls for annual selection of market(s) that would be an appropriate focus of tourism trade development efforts to be carried out in the 12 month period beginning one year from the date of the notice announcing the start of the selection process. Not later than three months after such notice is published, the Secretary of Commerce is required to select the market(s) and announce the selections in the **Federal Register**. The Secretary's authority and responsibilities under the Tourism Policy and Export Promotion Act of 1992 have been delegated to the Under Secretary for Travel and Tourism.

The market(s) selected will become the target(s) for programs conducted under the ITTDFAP established by section 203 of the International Travel Act of 1961 (22 U.S.C. 2123a), as amended by Section 8 of the Tourism Policy and Export Promotion Act of 1992 (Pub. L. 102-372).

To assist the Acting Under Secretary in selecting markets, the USTTA has conducted a study of 15 of the top tourist-producing countries of the world to determine the potential of these markets for increased pleasure travel to the United States as a whole. The potential of markets with respect to increasing pleasure travel to particular regions of the United States is not analyzed. Interested parties may obtain a copy of that study by contacting USTTA (see address section). The study analyzes nine important travel market characteristics weighted relative to their individual importance. While the study rates the countries according to each variable, the aggregate final ranking finds that Japan has the highest potential, followed closely by Germany and Canada. Other markets that ranked high are Mexico, France, Australia, the United Kingdom, and Italy. USTTA currently has offices based in these top eight markets which would be available to support programs of recipients under the ITTDFAP. Other countries studied include Brazil, Hong Kong, South Korea, Singapore, Switzerland, Venezuela, and The Netherlands.

Interested parties are invited to submit comments recommending markets for selection and the number of markets that should be selected.

Section 206(a) of the International Travel Act (22 U.S.C. 2123d) requires that beginning October 1, 1994, and annually thereafter, the USTTA report to the Congress specific quantifiable measures of its performance. Included in these reports will be a section on: the acts, policies, and practices of foreign countries that constitute significant barriers to, or distortions of, United

States travel and tourism exports; recommended actions to eliminate such acts, policies and practices; and the effectiveness of any previously recommended actions that were taken to eliminate such acts, policies and practices. Interested parties are invited to submit comments identifying any significant barriers to, or distortions of, trade that may affect United States international tourism trade development, including that in the market(s) recommended for selection.

Leslie Doggett,

Acting Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 93–24317 Filed 9–30–93; 8:45 am]

BILLING CODE 3510–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List woodland camouflage sun hats to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 1, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 9, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (58 F.R. 18377) of the proposed addition of these hats to the Procurement List. Comments were received from the current contractor for the woodland camouflage hat. The contractor objected to the addition of the hat to the Procurement List because of the impact on the company and because it questioned the capability of the nonprofit agency designated to produce the hat under the Committee's program.

The contractor addressed three factors in discussing the impact of the Committee's action on it: the direct impact of losing the ability to sell this hat to the Government, the continuing impact of a 1989 addition to the Procurement List of 50% of the Government requirement for a camouflage utility cap, and the shrinking Government market for similar items. The contractor also claimed that Government sales of this hat had made the difference between a modest profit and operating at a loss, so that addition of the hat to the Procurement List might remove the company's entire margin of profit.

As the contractor stated in its comments, the percentage of its sales represented by the hat does not reach the level which the Committee normally considers to constitute severe adverse impact. The Committee does not agree with the contractor's contention that the 1989 addition still constitutes a continuing adverse impact on the company. The sales figures which the contractor provided the Committee indicate that the company's sales have not declined since 1989. Even after excluding sales associated with Operation Desert Shield/Storm, the contractor's annual sales for 1990–1992 have increased from those it had in 1985–1989. In light of this sales performance, it appears that the only continuing impact of the Committee's 1989 action is to deprive the contractor of an opportunity to bid on part of the Government requirement for the cap. The Committee does not normally consider such a loss of opportunity to constitute severe adverse impact.

The contractor indicated that the Government projections on future military purchases of clothing items, which had formerly proven accurate, have become undependable with the end of the Cold War and the resulting decline in Government procurements. If the decline proves to be as serious as the contractor has predicted, there will be little Government business for any hat producers, including nonprofit agencies participating in the Committee's program. In these circumstances, the addition of this hat to the Procurement List would make little difference in the contractor's overall economic situation.

The contractor referred to the sales data it provided to support its claim that sales of this hat are responsible for its profit margin. However, this data shows that the company has experienced losses, as well as profits, during the years it has had the Government contract for the hat. Consequently, the Committee is not persuaded that this hat is the difference between profit and loss for the contractor, even when the contractor's record as a long-time contractor for the hat is taken into account.

In questioning the nonprofit agency's capability to produce the hat, the contractor noted that production involves many complex sewing operations and the use of specialized machinery which takes time to obtain. The contractor also noted that the Government contracting activity which buys the hat has not done a capability study of the nonprofit agency, and that documents obtained from the Committee indicated that the nonprofit agency was incapable of tracking direct labor hours, as required by the Committee.

The nonprofit agency is currently producing at least one sewn item, a full body coverall, which is at least as complex to produce as the camouflage hat. The agency performs the various sewing operations required on the hat on other items it is currently producing, and will have the technical assistance of individuals who have produced the hat.

The Government contracting activity waived the Committee's request that a capability study be performed. The contractor claimed, on the basis of comments in an internal memorandum from the procuring activity, that the waiver did not reflect a determination by the contracting activity that the nonprofit agency was capable of producing the hat. The Committee's request that the contracting activity conduct a capability survey of the nonprofit agency stated that the activity should waive the survey if they believed the nonprofit agency is capable of producing the hat. Upon receipt of information from the contractor suggesting that the waiver did not reflect such a belief, the Committee asked the contracting activity to clarify its position. The resulting response stated unequivocally that the contracting activity believes the nonprofit agency is capable of producing the hat.

It should be noted that the nonprofit agency has a record of successfully manufacturing other sewn items for the same Government contracting activity. The central nonprofit agency concerned in this action informed the Committee that it had evaluated the nonprofit agency and its production plan and found it capable of producing the hat. The Committee's industrial engineer analyzed the capability issues the contractor raised and concluded that the nonprofit agency's production plans satisfactorily addressed them.

The nonprofit agency has commitments to purchase the blocking machines needed to produce the hats and a tool maker capable of making the dies and sizing gauges required. The nonprofit agency's failure to indicate on a document submitted to the Committee the need for dies to produce the hat was caused by a misinterpretation of the question, which it thought applied only to metal stamping dies. The Committee

is satisfied that the nonprofit agency will have the machinery installed and operating in time to meet Government production requirements for the hat.

The contention that the nonprofit agency is unable to track direct labor hours is based on the most recent Committee review of the agency which did indicate that the agency had a problem in cumulating the agency's overall direct labor ratio as required by the Committee. The Committee has determined that the agency now does possess an adequate system for meeting the direct labor ratio tracking requirement.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to produce the commodities, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Hat, Sun, Woodland Camouflage

8415–01–196–8374 thru –8386

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–24199 Filed 9–30–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a commodity previously furnished by such agencies.

EFFECTIVE DATE: November 1, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 4, July 9, 23, 30, August 6 and 13, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 31694, 36944, 39527, 40800, 42055 and 43096) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to Procurement List:

Commodities

Insulation Tape, Electrical
5970–00–816–6056
Cradle, Military Fuel Can
7240–01–318–5222
Pad and Cover, Ironing Board
7290–00–633–9124
7920–00–946–7905
Tape, Red
7510–00–NIB–0068 1"
7510–00–NIB–0069 2"
7510–00–NIB–0070 3"
(Requirements for the Fleet and Industrial Supply Center, Bremerton, Washington)
Easel, White Board, Dry Erase
7520–01–127–4192

Services

Food Service
McClellan Air Force Base, California
Food Service Attendant
Oregon Air National Guard, Camp Rilea National Guard Training Site, Building 7028, Warrenton, Oregon
Grounds Maintenance
Social Security Administration, Metro West Complex, 300 North Greene Street, Baltimore, Maryland
Grounds Maintenance
Naval and Marine Corps Reserve Center, 1600 West Lafayette Avenue, Moundsville, West Virginia
Janitorial/Custodial
U.S. Geological Survey, Menlo Park, California
Janitorial/Custodial
Naval and Marine Corps Reserve Center, 1600 West Lafayette Avenue, Moundsville, West Virginia
Janitorial/Custodial
DLA, Defense National Stockpile Zone, Point Pleasant Depot, Point Pleasant, West Virginia
Mailroom Operation
U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California
Management of Bachelor Housing
Naval Station, Pascagoula, Mississippi

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodity is hereby deleted from the Procurement List:

Cake Mix

8920–01–250–6360

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–24200 Filed 9–30–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 1, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on the current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List for production by the nonprofit agencies listed:

Commodities

Sponge, Chamber Swabbing

1025–01–232–6822

Nonprofit Agency: New Horizons of Oakland County, Inc., Bloomfield Hills, Michigan

Planner, Executive Day

7530P902477F

Nonprofit Agency: Easter Seal Society of Allegheny County, Pittsburgh, Pennsylvania

Filler, Executive Day Planner

7530P902476F

Nonprofit Agency: Easter Seal Society of Allegheny County, Pittsburgh, Pennsylvania

Ruff, Parka

8415–01–315–9765
8415–01–315–9766
8415–01–315–9767
8415–01–315–9768
8415–01–315–9769

Nonprofit Agency: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina

Services

Janitorial/Custodial

Everett McKinley Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois

Nonprofit Agency: Ada S. McKinley Community Services, Inc., Chicago, Illinois

Janitorial/Custodial

Utah Test and Training Range (OASIS), Lakeside, Utah

Nonprofit Agency: Pioneer Adult Rehabilitation Center, Davis County School District, Clearfield, Utah

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–24201 Filed 9–30–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 1, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity and services to the Procurement List for production by the nonprofit agency listed:

Commodity

Stake, Vehicle Body, Rack Assembly
2510–01–180–1099

Nonprofit Agency: Northwest Alabama Easter Seal Children's Clinic—Rehabilitation Center, Muscle Shoals, Alabama

Services

Janitorial/Custodial

For the following locations in Burlington, Vermont:

Federal Building, 11 Elmwood Avenue
Social Security Administration, 58 Pearl Street
Nonprofit Agency: Champlain Vocational Services, Inc., Colchester, Vermont

Janitorial/Custodial

Winston Prouty Federal Building, 11 Lincoln Street, Essex Juncton, Vermont
Nonprofit Agency: Champlain Vocational Services, Inc., Colchester, Vermont

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–24202 Filed 9–30–93; 8:45 am]

BILLING CODE 6353–33–P

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Proposed Amendments Relating to the Delivery Procedures, Quality Standards and Delivery Point Specifications for the Live Cattle Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Mercantile Exchange (CME) has submitted proposed amendments to its live cattle futures contract. The primary proposed amendments will: (1) Allow the delivery of cattle at the buyer's option to an approved slaughter plant, in addition to allowing delivery at a CME-approved livestock yard; (2) adopt certain changes to the contract's quality standards for deliverable cattle, including provisions which will require cattle delivered at packing plants to be graded on a carcass basis; (3) delete Greeley, Colorado as a delivery point; (4) add six new delivery points for the futures contract; and (5) modify the futures contract's certificate delivery system.

In accordance with section 5a(a)(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation § 140.96, the Acting Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATES: Comments must be received on or before November 1, 1993.

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. Reference should be made to the proposed changes in quality standards and delivery point specifications for the CME live cattle futures contract.

FOR FURTHER INFORMATION CONTACT: Frederick V. Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: The live cattle futures contract currently provides for the delivery at par of 40,000 pounds of United States Department of Agriculture (USDA) estimated yield grade 1, 2, 3 or 4, Choice quality grade, live steers in CME-approved livestock yards in Omaha, Nebraska; Sioux City, Iowa; Dodge City, Kansas; Amarillo, Texas; and Greeley, Colorado. The contract's existing terms also specify that a delivery unit may contain no more than four yield grade 4 Choice steers. The average weight of the live steers in a delivery unit must fall between 1,050 and 1,250 pounds with no individual steer weighing more than 100 pounds above or below the average weight of the delivery unit. The estimated hot yield of a par delivery unit currently must be 62% for delivery units having an average weight between 1,050 and 1,125.5 pounds per steer, and 63.5% for delivery units with an average weight between 1,125.6 and 1,250 pounds per steer.

The futures contract's existing terms also provide for the delivery at specified price differentials for delivery units of live cattle that deviate from the above-specified par delivery standards. In particular, up to eight select-grade live steers may be delivered at a discount of three cents per pound. In addition, live steers that weigh 100 to 200 pounds above or below the delivery unit's average weight are deliverable at a discount of three cents per pound. Individual steers that weigh more than 200 pounds over or under the delivery unit's average weight, or that weigh less than 950 pounds or greater than 1,300 pounds are not deliverable on the futures contract. Further, delivery units with an estimated hot yield that is less than the above-noted par specifications are deliverable at a discount of one half cent per pound for each one-half percent or less by which the estimated yield is under par. Delivery units with an estimated hot yield of less than 60% are not deliverable.

Under the futures contract's current terms, the delivery process is initiated by short traders who tender certificates of delivery (certificates) to the CME's Clearing House which call for delivery of live cattle at a specified delivery point on the third business day after the date the certificate was tendered. The futures contract's existing terms also provide that the long trader to whom the Clearing House subsequently assigns a tendered certificate may retender that certificate to the Clearing House under certain specified conditions for a fee of $1.50 per hundredweight.[1] A long trader who elects to keep a retendered certificate and take delivery of the underlying live cattle is entitled to receive the retender fees collected by the Clearing House for that certificate.

The futures contract's existing terms also provide that, with the exception of cattle delivered at Greeley, Colorado, Amarillo, Texas and Dodge City, Kansas, the delivery cattle must be confined in a secure pen at an approved livestock yard prior to 12 p.m. (noon) on the day of delivery. Weighing of the delivery cattle must be done within one hour after the cattle have been graded and the cattle must not receive feed and water during the time interval between grading and weighing. For cattle delivered at Greeley, Colorado, delivery cattle must be at the livestock yards by 12 a.m. on the day of delivery and must stand overnight without receiving feed and water prior to weighing. For cattle delivered at Amarillo, Texas and Dodge City, Kansas, the delivery cattle must be in the livestock yards prior to 9 a.m. on the day of delivery and must stand without feed and water prior to weighing.

The CME is making three major proposed amendments to the live cattle futures contract. First, the proposal will allow the delivery of cattle at the buyer's option at a CME-approved slaughter plant, in addition to the contract's current terms which provide for delivery at a CME-approved livestock yard. The proposed slaughter-plant delivery provisions would provide that the final settlement of the futures delivery will be based on assessments of the quality of delivery cattle's carcasses by USDA meat graders, rather than the current delivery procedures which rely on assessments of the quality of the live cattle by USDA personnel.[2] The

[1] In addition to paying the above-noted fee of $1.50 per hundredweight, other conditions which must be met to retender an assigned certificate are that the trader must not have issued a demand notice for the certificate and must establish a long position in the futures contract prior to retendering the certificate. A certificate may be retendered a maximum of two times after the certificate's initial assignment to a long trader's position.

[2] Under the proposals, grading of carcasses would be based on the Official United States Standards for Grades of Carcass Beef as amended April 14, 1975, effective February 23, 1976.

proposed rules relating to delivery at slaughter plants are stated below:

* * * * *

B. Carcass Graded Deliveries

1. Conditions. A buyer assigned a Certificate of Delivery may call for delivery of the cattle to an approved slaughter plant corresponding to the stockyards designated in the Certificate, or to any other approved slaughter plant within 150 miles of the feedlot from which the cattle originate. Final grading will reflect actual carcass results. The Clearing House must be notified by 10:00 a.m. on the second business day prior to the day of slaughter of the buyer's election of carcass grading and the slaughter plant. Upon arrival at the slaughter plant, cattle must be allowed access to water.

2. Delivery Days. A buyer assigned a Certificate prior to the termination of trading may demand delivery on any business day between the third and sixth business day, inclusive, following tender of the Certificate. A buyer assigned a Certificate after termination of trading may demand delivery on the third or fourth business day following tender of the Certificate.

3. Seller's Duties. On the second business day prior to the day of slaughter, the Clearing House will notify the seller of the buyer's election of carcass grading and which approved slaughter plant was selected by the buyer. The seller be responsible for contacting representatives of the slaughter plant to coordinate arrival time and time of slaughter. The seller shall arrange transportation to the slaughter plant.

4. Payment. Upon the seller's fulfillment of delivery to the slaughter plant selected by the buyer, the Clearing House shall release 90% of the funds to the seller. Remaining funds will be released to the seller upon the completion of final carcass grade and yield results. Title to each delivered unit shall pass to the buyer when the delivered unit is weighed and placed in a holding pen for slaughter at the approved slaughter plant selected by the buyer.

5. Par Delivery and Substitutions.

a. Par Delivery Unit. A par delivery unit, shipped to an approved slaughter plant designated by the buyer, shall be 40,000 pounds of live steers which produce 65% choice, 35% select grade steer carcass beef, with no individual carcass weighing less than 600 pounds or more than 900 pounds. Not more than one (1) yield grade 4 carcass shall be permitted in a par delivery unit.

Par delivery units shall have an actual average hot yield of 63.5%.

All cattle contained in a delivery unit shall be healthy. Cattle which are unmerchantable, such as crippled, sick, obviously damaged or bruised, or which for any reason do not appear to be in satisfactory condition to enter normal fresh meat marketing channels shall be excluded. No cattle showing a predominance of dairy breeding or showing a prominent hump on the forepart of the body shall be deliverable. Such determination shall be made by USDA personnel and shall be binding on all parties. All resulting carcasses must be merchantable. Carcasses which are not suitable to enter normal fresh meat marketing channels will be excluded from the delivery unit.

b. Weight Deviations. Resulting carcasses weighing less than 600 pounds or more than 900 pounds shall be deliverable at a discount of 20% of the settlement price. For purposes of computing such discount, the live weight of the animals which resulted in the over or under weight carcass(es) shall be considered the same as the average weight per head of the delivered unit.

c. Yield Deviations. Delivery units with an actual average hot yield over or under 63.5% shall be deliverable at a price computed by dividing the actual hot yield by 63.5% (the par hot yield) and multiplying the result by the settlement price.

d. Yield Grade Deviations. Up to one (1) yield grade 4 carcass is deliverable at par. Each additional yield grade 4 carcass in the delivery unit shall be deliverable at a discount $20.00/cwt. on a live weight basis. For purposes of computing such discount, the live weight of the animals which resulted in the yield grade 4 carcass(es) shall be considered the same as the average live weight per head of the delivered unit.

Any carcass(es) with a yield grade of 5 shall be deliverable at a discount of $30.00/cwt. on a live weight basis. For purposes of computing such discount, the live weight of the animals which resulted in the yield grade 5 carcass(es) shall be considered the same as the average live weight per head of the delivered unit.

Notwithstanding the above, if the cattle are slaughtered in a plant where normal use of "hot fat trimming" makes yield grade determination impossible, all carcasses will be considered to be par with respect to yield grade.

e. Quality Grade Deviations. Delivery units resulting in 65% USDA Choice grade carcasses and 35% USDA Select grade carcasses are deliverable at par. Each Choice grade carcass above the minimum number necessary to achieve 65% shall be deliverable at a differential computed by subtracting the "Select 1–3 Boxed Beef Cut-Out Value" from the "Choice 1–3 Boxed Beef Cut-Out Value" and multiplying the result by 63.5%. Similarly, each Select grade carcass above the maximum number allowable not to exceed 35% shall be deliverable at a differential computed by subtracting the "Choice 1–3 Boxed Beef Cut-Out Value" from the "Select 1–3 Boxed Beef Cut-Out Value" and multiplying the result by 63.5%. The Boxed Beef Cut-Out Value for the carcass weight corresponding to the average weight of the delivery unit will be used. The Boxed Beef Cut-Out Values are computed and published daily by USDA Market News on the National Carlot Meat Report. Values published on the day of slaughter will be used in computing the differential. Any carcass(es) grading below USDA Select shall be deliverable at a discount of 25% of the settlement price. For the purpose of computing such differentials, the live weight of the steers which resulted in the carcasses being adjusted shall be considered the same as the average weight per head of the delivered unit.

F. Quantity Deviations. Variations in quantity of a delivery unit not in excess of 5% of 40,000 pounds of live weight at the slaughter plant shall be permitted at the time of delivery with appropriate adjustment of reflect delivered weight but with no further penalty.

g. Other Deviations. If one or more of the carcasses is condemned or is unacceptable for entry into normal fresh marketing channels (for reasons such as measles), than each such carcass shall not be considered as part of the delivery unit. If a carcass is removed from the delivery unit for reasons stated above, the total carcass weight will reflect only those carcasses acceptable for delivery, and the total delivered live-weight shall be reduced by the average live weight times the number of carcasses removed. In the event that the total live weight falls below the 5% tolerance as specified in Rule 1504.B.5.f. as a result of the condemnation, the seller is responsible for replacing the removed carcass(es), by: (1) delivering another steer(s) for slaughter; (2) purchasing a steer(s) from the slaughter plant; or (3) purchasing a steer carcass(es) from the slaughter plant. The actual weight of such replacement steer(s), or the live-weight equivalent of such replacement carcass(es), calculated on the basis of the weight of the replacement carcass(es) divided by 63.5%, shall be added to the delivered live weight.

Excess trimming required due to injection site abscesses or other carcass defects will reduce the total delivered carcass weight, and the resulting hot yield.

Liver condemnations in excess of 20% are the liability of the seller. For each liver in excess of 20% condemned, an adjustment will be made according to the USDA "National Carlot Meat Report" published on the day of slaughter. The discount will reflect the contribution toward the "By-Product Drop Value" per cwt. (live-weight basis) of the liver.

h. Delivery Points and Allowances. Buyers electing carcass grading must specify an approved slaughter plant enumerated by the Exchange. Eligible slaughter plants include those enumerated for the stockyards to which the cattle were tendered, and any other approved slaughter plant that is within 150 miles of the originating feedlot.

i. Payment for Deviations. For the purpose of computing adjustments resulting from deviations from the par delivery unit the settlement price at the time the Certificate is assigned to the exercising long will be used.

6. Procedures and Standards for Grading, Determining Yield and Weighing.

a. Time for Inspection. Upon notification from the Clearing House that the buyer has elected carcass grading, and the slaughter plant to which the cattle are to be delivered, the seller must coordinate the arrival and slaughter time with representatives of the slaughter plant. The Clearing House must be promptly notified when the arrangements are made, and USDA Meat Grading Service personnel will be notified to supervise weighing and to conduct a visual inspection upon arrival. Upon arrival at the slaughter plant, USDA Meat Grading Service Personnel will visually inspect the load for general conformance with the contract. If the load generally conforms with the contract specifications, the load will be promptly weighed, and placed in a holding pen as a unit prior to slaughter. Identity of the delivery unit shall be maintained in a

manner satisfactory to the USDA Meat Grader.

b. Grading and Determining Yield. Carcasses must receive final grade within three business days of slaughter. Approved slaughter plants normally grading after 24 hours must hold carcasses falling in the top third of the Select grade for re-grading 48 hours after slaughter. Approved plants normally grading after 48 hours may hold carcasses falling in the top third of the Select grade for re-grading 72 hours after slaughter. Approved slaughter plants "hot fat trimming" carcasses and not normally holding carcasses for grading beyond 24 hours are not required to hold carcasses for regrading. Final grade and yield results must be completed within 72 hours of slaughter.

c. Weighing. The weight at the slaughter plant will be used as the live delivery weight and for purposes of calculating the resulting hot yield. If, in the judgement of the USDA Meat Grader, one or more of the steer(s) in the load do not generally conform with the contract specifications, the objectionable steer(s) will be removed from the delivery unit. If the delivered live weight falls below the 5% tolerance as specified in Rule 1504.B.5.f, the seller is responsible for replacing removed steer(s) until the minimum live weight is achieved.

Weighing shall be done promptly upon arrival at the slaughter plant. USDA Meat Grading Service Personnel will supervise weighing by slaughter plant employees, and shall record total net weight and number of head of cattle, lot number and/or pen number and the date weighed. After weighing, the cattle shall be sealed in a holding pen prior to slaughter.

7. Delivery Invoice. Final grading results must be completed within three business days after the day of slaughter. The USDA Meat Grader shall notify the Exchange of the results, from which the Exchange shall promptly prepare its Delivery Invoice incorporating the lot number, number of head, net live weight, quality grade, actual average hot yield, yield grade, date of delivery to the slaughter plant, and date of final USDA inspection. The Delivery Invoice shall be promptly delivered to the buyer and seller. Upon receipt, the USDA Carcass Grading Results Certificate shall be forwarded to the clearing member representing the buyer.

8. Cost of Inspection, Weighing, Storage, and Transportation. Death loss, feed and yardage, and all other costs are the responsibility of the seller until the cattle are delivered to the slaughter plant selected by the buyer. The buyer will be assessed a standard freight rate per mile for each additional mile the cattle are hauled over and above the distance between the feedlot and the stockyards to which the seller originally tendered the cattle, and this freight assessment will be paid to the seller. The standard freight rate per mile will be established annually by the Exchange. The cost of the carcass grading inspection will be borne by the buyer.

9. Penalties. If the seller fails to present deliverable cattle to the slaughter plant on the date specified by the buyer, the penalties shall be $.005 per pound each business day that a load of cattle is presented but fails to pass visual inspection until proper delivery is made. However, for each business day that the seller fails to present a load of cattle the USDA Meat Grader can visually inspect (according to the provisions of Rule [1506.B]1504.B.6.a) the penalty shall be $.015 per pound.

10. Exchange Certificate. The rules of the Exchange in regard to the Exchange Inspection Certificate are not applicable to delivery under this chapter.

* * * * *

Second, the proposal will change the contract's deliverable quality standards applicable to the delivery of live steers to reflect the deliverable quality standards described above for steer carcasses. In particular, the proposed amendments will specify that a par delivery unit must consist of a minimum of 65 percent USDA Choice grade and a maximum of 35 percent USDA Select grade live steers, rather than 100 percent USDA choice live steers as presently provided for in the futures contract.

Under the proposed amendments, each additional choice grade steer above the proposed 65 percent minimum level for choice grade steers in a delivery unit and each additional Select grade steer in excess of the proposed 35 percent maximum level for Select grade steers in a delivery unit will be deliverable at price differentials reflecting current cash market differences between those grade. Those differentials will be calculated as the difference between the "Choice 1–3 Boxed Beef Cut-Out Value," and the "Select 1–3 Boxed Beef Cut-Out Value" that are published by the USDA Market News Service on the delivery day, multiplied by 63.5 percent. The proposed amendments would specify that, in calculating the above-noted price differentials, the Boxed Beef Cut-Out Values used would be those for the carcass weight corresponding to the average live weight of the delivery unit and that the weight of each Choice or Select grade steer subject to such price differentials would be deemed equal to the average live weight per head of the delivery unit.

The proposed amendments would also modify the contract's existing standards for the estimated hot yield of a delivery unit to provide for the delivery at par of a live cattle delivery unit which has an estimated hot yield of 63.5 percent. Delivery units with an estimated hot yield over or under 63.5 percent will be deliverable at a price which would be equal to the estimated hot yield of a delivery unit divided by 63.5 percent multiplied by the contract's settlement price.

In addition, the proposed amendments would reduce to one from four the number of estimated yield grade 4 steers permitted in a par delivery unit and increase to 1,000 pounds from 950 pounds the minimum allowable weight of an individual steer in a delivery unit.

Third, the proposals also will modify the existing list of delivery points to remove Greeley, Colorado, and add the following six new points: Norfolk, North Platte, and Ogallala, Nebraska; Pratt, Kansas; Guymon, Oklahoma; and Clovis, New Mexico. The contract's existing delivery points at Omaha, Nebraska; Sioux City, Iowa; Dodge City, Kansas; and Amarillo, Texas will continue to serve as live cattle delivery points under the proposals. Under the amended contract, delivery at all delivery points will be at par. The CME also proposes to revise the contract's delivery procedures to specify that live cattle intended for delivery must be in a secured pen in the approved livestock yards by 9:00 a.m. at each of the above-noted delivery points. Further, under the CME's proposal for delivery at slaughter plants, each stockyard delivery point will have an associated list of CME-approved slaughter plants at which a buyer may exercise the option of taking delivery. The slaughter plants that will be eligible for CME approval for each stockyard are shown below:

* * * * *

The following slaughter plants are eligible for delivery of cattle tendered to each of the stockyards:

Stockyards and Slaughter Plants

Sioux City, IA
- *IBP: Luverne, MN*
- *IBP: West Point, NE*
- *IBP: Dakota City, NE*
- *IBP: Denison, IA*
- *BeefAmerica: Norfolk, NE*
- *BeefAmerica: Omaha, NE (#1)*
- *BeefAmerica: Omaha, NE (#2)*
- *Greater Omaha: Omaha, NE*
- *Beef Specialists, Windom, MN*
- *Excel, Schuyler, NE*

Norfolk, NE
- *IBP: Dakota City, NE*
- *IBP: West Point, NE*
- *IBP: Denison, IA*
- *IBP: Lexington, NE*
- *IBP: Luverne, MN*
- *BeefAmerica: Norfolk, NE*
- *BeefAmerica: Omaha, NE (#1)*
- *BeefAmerica: Omaha, NE (#2)*
- *Excel: Schuyler, NE*
- *Greater Omaha: Omaha, NE*
- *Monfort: Grand Island, NE*

Dodge City, KS
- *IBP: Holcomb, KS*
- *Monfort: Garden City, KS*
- *Excel: Dodge City, KS*
- *National/Hyplains: Dodge City, KS*
- *National/Hyplains: Liberal, KS*

Guymon, OK
- *IBP: Holcomb, KS*
- *IBP: Amarillo, TX*

Monfort: Garden City, KS
Monfort: Dumas, TX
Excel: Dodge City, KS
National/Hyplains: Dodge City, KS
National/Hyplains: Liberal, KS
Amarillo, TX
National/Hyplains: Liberal, KS
IBP: Amarillo, TX
Monfort: Dumas, TX
Excel: Friona, TX
Excel: Plainview, TX
Omaha, NE
IBP: West Point, NE
IBP: Dakota City, NE
IBP: Denison, IA
BeefAmerica: Norfolk, NE
BeefAmerica: Omaha, NE (#1)
BeefAmerica: Omaha, NE (#2)
Greater Omaha: Omaha, NE
Excel: Schuyler, NE
Monfort: Grand Island, NE
Monfort: Des Moines, IA
North Platte, NE
Monfort: Grand Island, NE
Monfort: Greeley, CO
IBP: Lexington, NE
Excel: Fort Morgan, CO
Pratt, KS
IBP: Holcomb, KS
IBP: Emporia, KS
Monfort: Garden City, KS
Excel: Dodge City, KS
National/Hyplains: Dodge City, KS
National/Hyplains: Liberal, KS
Ogallala, NE
IBP: Lexington, NE
Monfort: Greeley, CO
Excel: Fort Morgan, CO
Clovis, NM
IBP: Amarillo, TX
Monfort: Dumas, TX
Excel: Friona, TX
Excel: Plainview, TX

* * * * *

Other amendments being proposed by the CME would revise the terms of the contract's Certificate of Delivery. Specifically, the proposed amendments would require that, for certificates tendered before the termination of trading in an expiring contract month, delivery must occur on the sixth business day that is also a delivery day after the certificate is tendered if the buyer elects to have the cattle graded alive. If the buyer opts for carcass grading of the delivery cattle, delivery may occur at the buyer's option on any day between the third and sixth business day, inclusive, following the day the certificate was tendered. For certificates tendered on or after the last trading day of an expiring contract month, the proposed amendments would specify that delivery must occur on the fourth business day that is also a delivery day after the day the certificate was tendered, if the buyer elects to have the cattle graded alive. If the buyer opts for carcass grading, delivery must occur at the option of the buyer on either the third or fourth business day following the day the certificate is tendered.

In addition, the proposed amendments would specify that certificates may not be tendered after the fourth business day prior to the last business day that is also a delivery day of the expiring contract month. The proposals also would provide that, for cattle graded alive, delivery may not be made prior to the seventh business day following the first Friday of the expiring contract month. The proposed amendment would further provide that trading shall terminate in an expiring contract month on the business day preceding the last seven business days of that month, rather than on the business day preceding the last five business days of the contract month as currently specified in the contract.[3]

The proposed amendments also would require that the deliverer must specify on the certificate following information: (1) The name, location, business address, and telephone number of the feedlot from which the cattle will originate; (2) the distance between the feedlot and the CME-approved livestock yards specified as the delivery location in the certificate; (3) the distance between the feedlot and the slaughter plants approved by the CME for the selected livestock yards; and (4) any other CME-approved slaughter plants within 150 miles of the feedlot and the distances of such plants from the feedlot. Finally, the proposed amendments would reduce to one cent per pound from one and one-half cent per pound the fee assessed traders who retender certificates of delivery.

The CME intends to apply the proposed amendments to all newly listed futures contract months following receipt of Commission approval.

In support of the proposed amendments, the Exchange indicates that the proposals to provide long traders with the alternative of requiring that delivery take place at packing plants are intended to bring the futures contract's delivery system into conformity with prevailing cash market conditions. In particular, the CME notes that current cash market practices differ substantially from practices employed when the futures contract began trading in 1964. The CME indicates that, unlike cash market practices of nearly 30 years ago where cattle typically were fed in small-feeder operations and marketed through terminal markets before being shipped to packing plants for slaughter, most cattle currently are fed in large commercial feedlots and are shipped directly to packing plants. The CME also notes that nearly 40 percent of fed cattle trade on the basis of carcass weight and grade and that the proportion of fed cattle traded on this basis has more than doubled between 1970 and 1990.

In addition, the CME indicates that it believes the accuracy of live cattle grading has declined over the last several years and that live grading standards overestimate carcass grading results because such standards have not kept pace with cash market changes. These changes, the CME notes, include improved cattle genetics; reduced feeding period, which results in more borderline Choice/Select grade cattle; and the use of certain feed additives, which tend to reduce the grade of cattle without affecting the appearance of the live animals. The CME believes that the above-cited live-grading difficulties puts receiving long traders at a disadvantage, because packers bidding on CME-delivered cattle typically base their bids on the carcass results, not the physical appearance of the live animals.

The CME also believes that the above-noted problems with live grading of cattle are more evident in futures deliveries than in day-to-day cash market transactions. The CME believes that this is due to the fact that, while packer buyers at feedlots have access to feeder cattle placement weights, feed ration information, rate of gain, and the number of days the cattle were on feed, USDA Market News Service employees who currently grade futures delivery cattle do not have such information and thereby face more difficulties in evaluating the quality of the live cattle. The CME also believes that the current futures delivery process creates stress on the delivery cattle which can have an adverse impact on the carcass results that is not evident in an evaluation of the live cattle.

The CME indicates that the above-noted trends in the cattle industry have made long traders more reluctant to take delivery against the live cattle future contract. The CME believes that the reluctance to take futures delivery has adversely affected recent trading activity in the futures contract. The CME notes that, if the level of trading activity in recent months continues for the remainder of 1993, the volume of trading in the futures contract for the calendar year 1993 will fall below 1977 levels and 1993 would represent the fifth consecutive year with a decline in

[3] The proposals would also provide that if there are five or fewer delivery days after the last trading day of an expiring contract month, trading shall terminate on the business day preceding the final six business days of the expiring contract month. Currently, the futures contract specifies that, if there are three or fewer delivery days in the contract month, trading shall terminate on the business day preceding the final four business days of the contract month.

the total annual volume of trading in the futures contract.

Regarding the proposed changes to the delivery points, the CME believes that each stockyard delivery point should have at least three approved slaughter plants, owned by different firms, generally within a 150-mile radius. In the case of Greeley, Colorado, the CME notes that this delivery point does not have three slaughter plants within a 150-mile radius, and therefore, the CME is seeking to delete it as a delivery point. Each of the proposed delivery points will meet the criterion of three slaughter plants within 150 miles.

With respect to the proposed quality changes, the CME indicates that the proposed changes are necessary to make the futures contract's terms reflect current industry production of live cattle. Specifically, the CME notes that one of the most significant changes in the cash market is the continued movement toward a leaner end-product in order to meet what is now perceived as the produce demanded by consumers.

The Commission is requesting comments specifically with respect to: (1) The extent to which the proposed amendments reflect prevailing cash market practices; (2) the extent to which the proposed price differentials for the delivery of differing qualities of live steers or steer carcasses reflect commonly observed commercial price differences; (3) the extent to which the proposal to permit delivery of live cattle at par at the proposed new delivery points for live steers reflect commonly observed commercial price differences and the affect of this proposal on the ability of long traders to economically take delivery of cattle at CME-approved packing plants; and (4) the impact of the proposed amendments on the overall level of economically deliverable supplies at the contract's delivery points during the delivery months traded under the futures contract.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, at the above address. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the same address or by telephone at (202) 254–6314.

The materials submitted by the CME in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with §§ 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, at the above address by the specified date.

Issued in Washington, DC on September 27, 1993.

Blake Imel,

Acting Director, Division of Economic Analysis.

[FR Doc. 93–24157 Filed 9–30–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

The US Strategic Command Strategic Advisory Group; Closed Meeting

AGENCY: USSTRATCOM, Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: The CINCSTRATCOM has scheduled a closed meeting of the Strategic Advisory Group.

DATES: The meeting will be held from 28 to 29 October 1993.

ADDRESSES: The meeting will be held at Offutt AFB, Nebraska.

FOR FURTHER INFORMATION CONTACT: USSTRATCOM Strategic Advisory Group, Offutt AFB, Nebraska 68113.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss strategic issues that relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12356, 2 April 1982. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense. Accordingly, the meeting will be closed in accordance with 5 U.S.C. App II Para 10(d) (1976), as amended.

Dated: September 27, 1993.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–24094 Filed 9–30–93; 8:45 am]

BILLING CODE 5000–04–M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, November 2, 1993; Tuesday, November 9, 1993; Tuesday, November 16, 1993; Tuesday, November 23, 1993; and Tuesday, November 30, 1993, at 2 p.m. in room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Personnel and Readiness) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20310.

Dated: September 27, 1993.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–24095 Filed 9–30–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Armed Forces Epidemiological Board, DOD

AGENCY: Armed Forces Epidemiological Board.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 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: 21–22 October 1993.

Time: 0830–1700.

Place: Fort Bragg, North Carolina.

Proposed Agenda: 21–22 October 1993—Service preventive medicine reports and current infectious disease concerns. This meeting will be open to the public but limited by space accommodations. Any interested persons 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.

FOR FURTHER INFORMATION CONTACT: Colonel Michael R. Peterson, USAF, BSC, Executive Secretary, Armed Forces Epidemiological Board, (703) 756–8012.

Dated: September 27, 1993.

Gregory D. Showalter,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 93–24136 Filed 9–30–93; 8:45 am]

BILLING CODE 3910–01–M

Corps of Engineers

Recreational User Fees

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, section 210 of the Flood Control Act of 1968 (16 U.S.C. 406d–3) (as amended), and 36 CFR 327.23 governing public use of U.S. Army Corps of Engineers Water Resource Development Projects Administered by the Chief of Engineers, this notice hereby establishes a change in the collection of recreational user fees for Federal Government recreation areas administered by the Chief of Engineers.

The specific application of the fees to be collected will be reflected in notices posted at each U.S. Army Corps of Engineers water resource development project where a use fee is to be charged.

EFFECTIVE DATE: The effective implementing date of this change is 1 March 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell E. Lewis, U.S. Army Corps of Engineers, Natural Resources Management Branch, Washington, DC 20314–1000, (202) 272–0247.

SUPPLEMENTARY INFORMATION:

House Bill

Authorizes the Secretary of the Army to establish and collect fees for the use of developed recreation sites and facilities. New fees established under the authorization are limited to $3 per private, noncommerical vehicle. It also deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Senate Amendment

Authorizes the Secretary of the Army to charge fees for the use of developed recreation sites and facilities, and deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Conference Agreement

Adopts a combination of the two provisions authorizing the Secretary of the Army to establish and collect fees for the use of developed recreation sites and facilities. The new fees are limited to $3 per private, noncommercial vehicle transporting not more than 8 persons. It also deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Wording of the Approved Bill

Sec. 210. Recreational User Fees, paragraph (b), Fees for use of developed recreation sites and facilities requires that—

1. Notwithstanding section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(b)), the Secretary of the Army is authorized, subject to paragraphs (2) and (3), to establish and collect fees for the use of developed recreation sites and facilities, including campsites, swimming beaches, and boat launching ramps but excluding a site or facility which includes only a boat launch ramp and a courtesy dock.

2. The Secretary shall not establish or collect fees under this subsection for the use or provision of drinking water, wayside exhibits, roads, scenic drives, overlook sites, picnic tables, toilet facilities, surface water areas, undeveloped or lightly developed shoreline, or general visitor information.

3. The fee under this subsection for use of a site or facility (other than an overnight camping site or facility or any other site or facility at which a fee is charged for use of the site or facility as the date of the enactment of this paragraph (10 August 1993)) for persons entering the site of facility by private, noncommerical vehicle transporting not more than 8 persons (including the driver) shall not exceed $3 per day per vehicle. Such maximum amount may be adjusted annually by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

4. All fees collected under this subsection shall be deposited into the Treasury account for the Corps of Engineers established by section 4(i) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(i)).

Dated: September 23, 1993.

Gregory D. Showalter,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 93–24065 Filed 9–30–93; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

Restricted Eligibility Support of Advanced Coal Research at U.S. Colleges and Universities

AGENCY: Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Notice of restricted eligibility.

SUMMARY: The Department of Energy (DOE), announces that pursuant to 10 CFR 600.7(b), it intends to conduct a competitive Program Solicitation No. DE–PS22–94PC94200, and to award, on a restricted eligibility basis, financial assistance (grants) to U.S colleges, universities, and university-affiliated research institutions in support of advanced coal research. These grants will be awarded to a limited number of proposals selected on the basis of scientific merit, subject to the availability of funds.

FOR FURTHER INFORMATION CONTACT: Ms. Donna J. Lebetz, U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940 (MS 921–118), Pittsburgh, PA 15236–0940, AC (412)

892–6206. Requests for solicitation copies must be made in writing.

SUPPLEMENTARY INFORMATION: Since the inception of the University Coal Research Program in FY80 (by congressional direction) it has been DOE's intent to maintain and upgrade educational, training and research capabilities at U.S. universities and colleges in the fields of science and technology related to coal. Moreover, the involvement of professors and students to generate fresh research ideas and to ensure a future supply of coal scientists and engineers is a key purpose of this program. Therefore, U.S. colleges, universities, and university-affiliated research institutions may submit, in response to this solicitation, applications only if the Principal Investigator or a Co-Principal Investigator listed on the application is a teaching professor at the university and at least one student registered at the university is to receive compensation for work performed in the conduct of research proposed in the application, and proposals from the university-affiliated research institutions must be submitted through the college or university with which they are affiliated. The university (not the university-affiliated research institution) will be the recipient of any resultant DOE grant award. So long as all of these conditions are met, other participants, or Co-Principal Investigators or research staff who do not hold teaching or student positions may be included as part of the research team.

Eligibility for participation in this program in FY94 is restricted to U.S. colleges and universities and university-affiliated research institutions as defined above.

All applications must be related to coal research in one of the following eight technical categories:

(1) *Coal Science* Fundamental research on the structure, characteristics, and reactivity of coal and coal-derived materials including non-fuel coal applications; nature of the oxygen-, nitrogen-, and sulfur-bonding in coal and coal-derived materials; geochemical and geophysical properties of coal; techniques and instrumentation applicable to the analysis of coal, coal mineral matter, trace elements in coal, and coal-derived materials, changes in the physical state of coal as a function of temperature, media and atmosphere.

(2) *Coal Surface Science* Research on surface properties of coal and mineral matter pertinent to weathering, preparation (i.e. surface-based beneficiation, dewatering, and pelletizing), conversion, utilization, and the rheology of coal-liquid mixtures.

(3) *Reaction Chemistry* Fundamental research directed toward an understanding of the organic, inorganic, and biochemistry of coal with respect to catalyzed and uncatalyzed conversion and utilization; chemical and microbiological coal cleaning, gasification, liquefaction, synthesis gas conversion, denitrogenation, and desulfurization; novel reactions for depolymerizing coal; chemical reactions in supercritical fluids; fuel cell chemistry, and microbial systems to capture CO_2.

(4) *Advanced Process Concepts* Research on concepts to improve the efficiency or environmental acceptance of coal utilization and conversion processes, including coal preparation, through novel chemistry, engineering, combined process steps, reactors, or components.

(5) *Engineering Fundamentals and Thermodynamics* Research on the effect of temperature and/or pressure on transport phenomena with or without chemical reactions; measurement and correlation of thermodynamic and transport properties pertinent to coal conversion and utilization; supercritical phase behavior; slurry bubble column reactor technology and high performance materials for use in coal conversion and utilization, including interaction of ash, slag or corrosive vapor with those materials.

(6) *Environmental Science* Research on the formation, control, and elimination of gaseous, liquid, and solid pollutants arising from coal conversion and utilization reactions, including the emission of toxic substances such as trace metals, and techniques for the capture of CO_2.

(7) *High Temperature Phenomena* Investigation of the physical and chemical phenomena observed at high temperature and/or high pressure, which are associated with the combustion and gasification of coal, and the electromagnetic generation of power; vaporization of alkalis and ash fusion in coal conversion and utilization processes; high temperature separation techniques, characterization of high temperature ash material from various coal combustion and coal gasification processes, such as entrained flow, fluid bed and fixed bed gasification.

In addition to the above described University Coal Research Core Program, the DOE intends to select two proposals under a Joint University/Industry Coal Research Program. It is a goal of this Joint University/Industry Coal Research Program to encourage a collaborative effort between academia and industry, and to enrich the educational experience for students by expanding their research exposure, with the expectation that good fundamental research will result which has the potential for application to U.S. Industry problems.

Under this Program, two or more universities/colleges with at least one industrial participant (minimum joint involvement of at least three (3) parties), may submit a proposal which falls under any of the seven (7) technical topics listed above. The proposing organization must be a U.S. University or College and will be the bargaining agent for the team. Proposals must offer cost sharing (cash and/or in-kind contributions) from a non-federal source at a minimum required level of at least twenty-five (25) percent of the proposed project value. Proposals must also include industrial participation. The minimum level of industrial participation is twenty-five (25) percent of the total proposed work to be performed. (As with the UCR Core Program, subcontracting to industrial participants is limited to twenty-five (25) percent of the DOE's support of the work to be performed.) Proposals under this Program must be for a three-year period. At least one (1) of the researchers from each participating university/college must be a teaching professor at the participating university/college and at least (1) student from each participating university/college must be compensated for work performed in conjunction with the project.

(8) *Environmental Impacts of Ocean Disposal of CO_2* DOE desires research of both an experimental and theoretical nature which would specifically focus on evaluating and describing the environmental impacts, on a local and global basis, associated with the disposal and sequestration in the deep ocean of CO_2 which was captured from fossil fuel-fired power plants. The effects of elevated CO_2 levels on aquatic organisms and food chains are of primary concern. Key issues include the influence of the entire ocean disposal infrastructure and process on marine ecosystems viz: the effects of pipes, platforms, and nozzles in the oceans, the effects of dispersions of CO_2 gas bubbles and liquid drops, the effects associated with the formation of hydrate deposits in the deep ocean, and the effect of changes in deep ocean carbonate chemistry. Other important factors to consider in this effort are the total quantities of CO_2 to be disposed of, disposal site characteristics and habitats, relevant environmental laws and treaties, criteria for conducting environmental impact assessment, environmental sampling and monitoring

techniques, biological characteristics of oceanic ecosystems and the long-term release of CO_2 back to the surface. A thorough and comprehensive review of the current state of knowledge of this subject, together with recommendations for future research priorities on this subject would also be of substantial value for this project.

Technical Topic 8 is a special topic under the University Coal Research Program. It is anticipated that a single project will be selected under this research area which has been developed and will be funded by the Environmental Control Division at PETC's Office of Project Management. Separate funding (federal share maximum of $500,000) and evaluation procedures have been developed for this topic.

U.S. colleges, universities, and university-affiliated research institutions may submit, in response to Technical Topic 8 of this solicitation, applications only if the Principal Investigator or a Co-Principal Investigator listed on the application is a teaching professor at the university and at least one student registered at the university is to receive compensation for work performed in the conduct of research proposed in the application, and proposals from the university-affiliated research institutions must be submitted through the college or university with which they are affiliated. The university (not the university-affiliated research institution) will be the recipient of any resultant DOE grant award.

Proposals submitted in reponse to Topic Area 8 shall be for project periods of up to thirty-six (36) months; however, for the award under Technical Topic 8, DOE funds will be made available annually for a twelve (12) month budget period. Funding for any additional budget period within the project period is contingent on the DOE approval of a continuation application which shall be submitted by the grantee within two (2) months prior to the end of the budget period. DOE shall review this continuation application for the adequacy of the grantee's progress and planned conduct of the project in the subsequent budget period; moreover, written approval from the DOE Contracting Officer must be provided prior to the continuation of the research effort and further obligation of DOE funds. The amount and award of continuation funding is subject to the availability of appropriations.

DOE anticipates awarding financial assistance (grants) for each project. Approximately $5.49 million is available for the program solicitation, $4.19 million is for the UCR Core Program; $0.8 million is set-aside for the Joint University/Industry Program and $0.5 million is set aside for Technical Topic 8. The UCR Core Program should provide support for about twenty-one (21) proposals, the Joint University/Industry Program is to support two (2) proposals and Technical Topic 8 is to support one (1) proposal. Any funds not used in the Joint University/Industry Program (due to no responses received, no selections made, or the DOE share of a selection is less than $400,000) will be returned to the Core Program for award. Any funds not used in Technical Topic 8 (due to no responses received, no selections made, or the DOE share of the selection is less than $500,000) will be returned to the Environmental Control Division Program Funds.

The Program Solicitation is expected to be ready for mailing by October 15, 1993. Applications must be prepared and submitted in accordance with the instructions and forms in the Program Solicitation. To be eligible, applications must be received by the Department of Energy by December 1, 1993.

Dated: September 23, 1993.

Richard D. Rogus,

Contracting Officer, Acquisiton and Assistance Division.

[FR Doc. 93–24195 Filed 9–30–93; 8:45 am]

BILLING CODE 6450–01–P

University Research Instrumentation Program 1994

AGENCY: Office of University and Science Education Programs, Department of Energy.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce the availability of the University Research Instrumentation (URI) Program solicitation, and to inform potential applicants of the closing date and location for transmittal of applications for awards under this program. This program provides grants to selected universities and colleges so that they can purchase advanced equipment which will enhance their capability to conduct energy research. The catalog number is 81.077 (Catalog of Federal Domestic Assistance), University Research Instrumentation Program.

DATES: Applications may be delivered by hand, U.S. First Class Mail, or express mail and must be received by the U.S. Department of Energy, DOE Idaho Operations Office, no later than 4:30 PM, local prevailing time, Monday, December 6, 1993.

ADDRESSES: To be eligible, the application must be forwarded to the following address: 1994 URI Program, U.S. Department of Energy, DOE Idaho Operations Office, 785 DOE Place, M/S 1220, Idaho Falls, ID 83401–1562.

FOR FURTHER INFORMATION CONTACT: Copies of the Program Solicitation may be obtained from the URI Program Manager, Office of University and Science Education Programs, ET–31, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8949.

SUPPLEMENTARY INFORMATION: The purpose of the University Research Instrumentation Program is to assist university and college scientists in strengthening their capabilities to conduct long-range research in specific energy research and development areas of direct interest to DOE through the acquisition of specialized research instrumentation. This program is consistent with, and part of, a government-wide effort to increase the availability of advanced research instrumentation in universities and colleges. Although congressional action has not been completed on the FY 1994 Energy and Water Development Appropriations Bill, DOE expects to have available for this program in FY 1994 approximately $5.2 million. In anticipation of enactment of this bill, DOE invites all qualified colleges and universities to write for a copy of its University Research Instrumentation Program solicitation, DOE/ER–0593, Notice of Program Announcement Number DE–PS05–94ER79241. Selection for award under this solicitation is subject to the availability of funds. Applications must be prepared and submitted in accordance with the instructions and forms included in the program solicitation.

In FY 1994 applications will only be accepted in the designated principal research areas. The URI program's funds will be concerned primarily with capital equipment costing $100,000 or more needed for on-campus research in one of six specific energy research areas (listed below in alphabetical order). The following research areas are divided into subjects, and in some instances, the subjects are further divided into segments. The applicant should only submit an application that fits within the current research area, subject(s), and if applicable, segment(s) stated in the 1994 URI Guide. A research area and/or subject extracted from previous guides (1984–1993) does not meet the criteria for submission and will not be accepted. Within each research area no preference

is given to any of the subjects, or if applicable, any of the segments.

A. Biological and Environmental Sciences

1. *Health Effects and Life Sciences.* Research on the cellular and molecular effects of radiation and energy related chemicals to provide data needed to predict long-term health effects and research that provides fundamental information on the macromolecular structure and function of living systems.

a. Improved and innovative methods for detecting and quantitating DNA damage and repair.

b. Improved quantitation of the health and environmental effects of radon exposure.

c. More efficient and cost effective approaches to mapping and sequencing the human genome.

d. High resolution analysis of the structure and function of biological macromolecules.

2. *Medical Applications: Molecular Nuclear Medicine.* Research exploiting current molecular biology and nuclear medicine techniques to develop nuclear biotechnologies that provide fundamental information about the *in vivo* chemistry underlying normal and pathological states of cell function, and that identify and control functional behavior at the cellular and molecular level.

a. Molecular design of radiolabeled probes for improved target selectivity and binding affinity.

b. Efficient/automated synthesis of genetically engineered radiolabeled molecular probes.

c. High resolution imaging of radiolabeled probe and macromolecular interactions to study functional behavior *in vivo.*

3. *Environmental Processes and Effects.* Equipment in support of research for:

a. Subsurface microbiology and factors affecting mobilization and immobilization of chemicals in soils and ground water systems, including new technologies to characterize microbes and the groundwater systems within which they grow.

b. Determination of the movement and fate of carbon, nutrients, and contaminants introduced along the ocean margins.

c. Development of fundamental integrated ecological studies in terrestrial systems that will contribute to understanding response functions of global and regional research activities.

4. *Global Change Research.* Development of advanced instrumentation, both ground-based and/or airborne, for:

a. High accuracy/precision radiometric observations, both broad-band and spectrally-resolved.

b. Measuring the spatial distribution of all three phases of water, with particular emphasis on profiling water vapor in the atmosphere and lower stratosphere.

c. Identifying and quantifying specific atmospheric constituents, including aerosols.

B. Chemical Sciences

Equipment needs to augment research in specific areas of the Chemical Sciences include fundamental studies related to chemical reactivity, transformations, and conversion. Studies of the chemistry of fossil resources, particularly the characterization and transformation of coal, are critical to new or existing concepts of energy production and storage.

1. *Chemical Kinetics.* Dynamics and kinetics of high-temperature chemical reactions, reaction mechanisms of complex hydrocarbons, and formation of hazardous byproducts.

2. *Surface Chemistry.* Studies including the chemistry of adsorbates, surface compositions, and studies of molecules at the solid-gas interface.

3. *Separation Processes.* Organic and organometallic molecules used in separation processes, including solvent extraction.

4. *Correlation Effects.* Correlation effects which accompany multielectron transfer and excitation in laser-assisted atomic ion collisions, atomic processes in intense magnetic and electric fields.

C. Energy Efficiency and Renewable Energy

1. *Battery and Fuel Cell Engineering and Supporting Exploratory Electrochemical Research.* Instrumentation to support exploratory research and engineering development in batteries, fuel cells, and electrochemical capacitors, including:

a. Complete battery, fuel cell, and capacitor characterization as a system.

b. Measurement of electrochemical and physical properties of electrode and electrolyte materials and structures.

c. Detailed characterizations of electrochemical interfaces, including electrical, mechanical, and optical properties.

2. *Advanced Propulsion Systems and Supporting Research.* Instrumentation to support exploratory research and engineering development in advanced heat engines and supporting research in materials, tribology, combustion, and engine emissions.

3. *Chemical Sciences.* Biomass characterization: equipment for the development of analytical methods to measure and characterize the energy content and composition of biomass feedstocks.

4. *Building Sciences.* Instrumentation for use as diagnostic tools and full-scale testing of control strategies for building automation systems using applications of artificial intelligence, such as fuzzy logic, neural networks, and other methods to increase energy efficiency and reliability of integrated building systems, such as HVAC and lighting. The automation systems must be capable of handling multiple data input streams and control points, real-time monitoring and control of system functions, and data collection/report generation.

Instrumentation for automated testing of physical and thermodynamic properties of non-CFC refrigerant fluids, including mixtures.

5. *Materials Sciences.* Equipment and instrumentation for the economical processing and testing of thin films on glass substrates, for use in controlling optical and thermal properties. Although films with static properties are of interest, current priorities are on those with properties that can be dynamically controlled, such as electrochromic and photochromic films.

6. *Engineering Sciences.* Instrumentation for the testing and evaluation of electric motor and adjustable speed drive systems performance for energy efficiency applications. This includes digital oscilloscopes, meters, voltage and current transducers, in-line torque meters, dynamometers and mechanical measuring equipment such as stress/strain gauges. In addition to fixed instrumentation, portable instrumentation and data acquisition equipment are needed since a sizable fraction of this research work involves the evaluation of off-site operations in residential, commercial, industrial locations.

D. Engineering

Instrumentation for use as diagnostic tools in basic or applied research on:

1. Multiphase flows, such as flows in porous media, gas-liquid flows, slurries, fluidized beds, flows including biologically active substances, e.g., bacteria and enzymes.

2. Fracture mechanics, metal fatigue, and mitigation of the effects of aging in energy-related structures.

3. Process control in advanced materials processing, such as determination of nonequilibrium states in thermal plasmas and evolution of particulates in plasma streams, tracking

and identification of radicals, and the like.

E. Materials Science

Equipment, apparatus, instrumentation, and facilities for controlled synthesis and processing of advanced materials including structural ceramics; structural ceramic matrix composites; polymers; photovoltaic semiconductors; structural intermetallic compounds; ceramic, polymeric, and intermetallic superconductors; magnetic materials; surfaces of controlled microstructure and microchemistry; and adhesive bonds or welds between either similar or dissimilar kinds of materials.

1. *Ceramic Fiber Synthesis.* Synthesis of controlled ceramic fiber, whisker, or powder of micron or submicron dimensions with reduced and controlled levels of impurity and foreign particulate contamination and in compliance with relevant health, environment, and safety concerns.

2. *Composition Control.* Reaction processes for the production of research laboratory quantities of controlled composition and purity materials with appropriate concern for the control of reaction temperatures, pressure, and chemical environment.

3. *Material Synthesis.* Hydrothermal and other forms of pressure-assisted reaction synthesis, biomimetic reactions, atomic vapor resonant ionization processes (to achieve very high purity), electrochemical synthesis, polymer synthesis, colloidal synthesis, ceramic precursor synthesis, cluster, and nanophase synthesis.

4. *Vapor Deposition.* Various "assisted" vapor reaction and deposition processes such as MBE, MOCBD, sputtering, etc., and including laser, plasma, microwave, particle beam, photon or other methods that may promote synthesis or process reactions that would not otherwise occur, or permit reactions to occur at lower temperatures.

5. *Bulk Processing.* Processing issues including processing material in bulk form with the objective of achieving a microstructure that gives desired properties in the bulk form. Subjects that are included are high pressure (-GPa regime) reaction, self-propagating and self-organizing synthesis of consolidated products, hot isostatic pressing, and various "assisted" forms of consolidation including, but not necessarily limited to, RF, microwave, plasma, and various static and/or dynamic applied fields that are capable of achieving the densification of composite or multiphasic ensembles, or lowering the reacting temperature and time required to achieve full densification, and of providing preferred orientation of non-isotropic bulk materials.

6. *Fabrication and Joining.* Includes sheet metal fabrication and forming under multiaxial deforming forces, cross-linking and surface modification fabrication routes in polymers, welding and joining of both similar as well as dissimilar materials, e.g., joining a metal to ceramic, and near-net-shape forming and shaping processes.

F. Mechanistic Plant and Microbial Research

1. *Basic Plant Sciences:* Research devoted to understanding the fundamental cellular and molecular mechanisms of plant conversion of solar energy into chemical energy. This would include studies on growth and development, as well as other physiological and biochemical processes that determine plant productivity as renewable resources (biomass).

2. *Fermentation Microbiology:* (a) Examination of the various basic biochemical processes involved in the broad spectrum of metabolic, both anaerobic and aerobic, transformations carried out by non-medical microorganisms; (b) research on the physiology, biochemistry and molecular biology of both monocultures and complex consortia; (c) organisms occupying unique, exotic niches with the potential to be exploited in future energy-related biotechnologies.

While the equipment requested may be equally suitable and may be used for research on other energy-related topics, the need for the instrument(s) must be justified (and the application will be reviewed) in terms of its value and ability to enhance the institution's capabilities in the principal designated energy-related research area specified on the cover sheet. The instrument's utility in advancing other areas of scientific or technical research is of peripheral interest during the application's review procedure.

Participation in the URI Program is limited to U.S. universities and colleges that currently have active, ongoing DOE-funded research support (including subcontracts) totalling at least $150,000 in value in the specific research area for which the equipment is requested during the past two fiscal years (October 1, 1991 to September 30, 1993).

DOE is establishing this limitation to ensure that the instrumentation acquired with these grants will significantly expand the research capability of institutions which have already demonstrated the capability to perform long-range energy research. The Office of University and Science Education Programs believes that restricting eligibility to institutions which have performed $150,000 of DOE supported research over a two-year period will limit eligibility in this grant program to those institutions which, because of their existing commitment to energy research, are best able to incorporate advanced instrumentation into their research programs. Special consideration will be given to Historically Black Colleges and Universities (HBCUs) and other traditional minority institutions which meet the institutional eligibility criteria, and have significant research capabilities in the selected research area. DOE will consider only requests for larger instruments, costing about $100,000 or more, which are required to advance research in the designated research area. Smaller research instruments (less than $100,000 each) will not be eligible for consideration in this program. General purpose computing equipment is also not eligible under this program. However, laboratory computers and associated peripherals dedicated for use directly with the instrument requested (or for use with existing research instruments in the selected area) may be considered. Computer equipment for theoretical research will be eligible under this program, but will be given secondary consideration relative to instrumentation for experimental research.

For more detailed background information about the URI solicitation, please refer to the following related documents: (1) DOE request for public comment on the URI program, June 7, 1983 (48 FR 26328), (2) October 18, 1983, DOE changes to the program (48 FR 48277); and (3) December 15, 1983, DOE program solicitation announcement (48 FR 55774). The authority for the University Research Instrumentation Program is contained in section 31 (a) and (b) of the Atomic Energy Act of 1954 (42 U.S.C. 2051) and section 209 of the Department of Energy Organization Act (42 U.S.C. 7139).

Issued in Washington, DC on September 23, 1993.

Steven W. Morrell,

Contracting Officer, Procurement & Contracts Division, Oak Ridge Operations Office.

[FR Doc. 93–24196 Filed 9–30–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RM93–18–001]

Order on Rehearing of Notice Providing Accounting Guidance

Issued September 24, 1993.

In the Matter of Accounting and Ratemaking Treatment of Special Assessments Levied Under the Atomic Energy Act of 1954, as Amended by Title XI of the Energy Policy Act of 1992.

On June 23, 1993, the Commission issued a Notice Providing Accounting Guidance in Docket No. RM93–18–000 that specified the accounting treatment that public utilities should use pursuant to the Commission's Uniform Systems of Accounts (USofA) [1] to account for the costs of special assessments levied under the Atomic Energy Act of 1954 (Atomic Energy Act),[2] as amended by title XI of the Energy Policy Act of 1992 (Energy Policy Act).[3] Also on June 23, 1993, the Commission issued a Notice of Proposed Rulemaking in which the Commission proposed to amend its regulations to specify a ratemaking treatment to permit public utilities to recover through jurisdictional rates the costs of special assessments.[4] Twenty-eight entities submitted comments concerning the accounting treatment specified in the notice and the ratemaking treatment in the proposed regulations.[5]

Since the Notice Providing Accounting guidance was a final order and not a proposed rulemaking, the Commission will treat comments concerning the notice as requests for rehearing.

Background

Title XI of the Energy Policy Act, among other things, amended the Atomic Energy Act to establish a Uranium Enrichment Decontamination and Decommissioning Fund (Fund). The fund is to be used to pay for decontamination, decommissioning, reclamation and other remedial activities at the Department of Energy's (DOE) gaseous diffusion uranium enrichment facilities.

The Fund is financed in part through appropriations, and in part through the collection of special assessments on domestic utilities. The special assessments are to be levied by the DOE based on the "separative work units" purchased by domestic utilities for the purpose of commercial electricity generation before October 24, 1992. A separative work unit is a measurement of energy and is the unit by which uranium enrichment services are sold.

The DOE plans to collect special assessments for fiscal year 1993 by no later than September 30, 1993. On August 2, 1993, the DOE published an interim final rule and notice of proposed rulemaking concerning the procedures and methods to be used to calculate and collect special assessments.[6]

The Atomic Energy Act, as amended, provides that special assessments shall be deemed a necessary and reasonable current cost of fuel and shall be fully recoverable in rates in all jurisdictions in the same manner as a utility's other fuel cost. Utilities will have no discretion concerning the payment of special assessments.

In the Notice Providing Accounting Guidance issued on June 23, 1993, the Commission determined that the enactment of the Energy Policy Act and the imposition of special assessments has effectively caused a liability to exist for all affected utilities. The Commission further determined that sound accounting practice requires that the liability be reflected in financial statements currently.

In order to obtain uniform accounting treatment of special assessments, the Commission generally advised that all affected public utilities shall record the non-current portion of the entire liability in Account 224, Other Long-Term Debt, and the current portion of the liability in Account 242, Miscellaneous Current and Accrued Liabilities.

If it is probable that the costs associated with the liability will be recovered through rates, the Commission advised that a regulatory asset shall be recorded in Account 182.3, Other Regulatory Assets, for such probable future revenues. The Commission further advised that the recorded liability and regulatory asset should be adjusted in future years to the extent that adjustments, if any, for inflation or other reasons become known and measurable.

Finally, the Commission advised that the amount recorded in Account 182.3 shall be charged to Account 518, Nuclear Fuel Expense, concurrently with the recovery of the amounts through rates. The Commission stated that disallowance of rate recovery of any part of the amount recorded in Account 182.3 shall be accounted for in accordance with the requirements set forth in Order No. 552.

This order on rehearing reiterates the Commission's view that the entire liability for special assessments must be reflected currently in financial statements. However, as discussed below, we will grant rehearing to change the account in which the long-term portion of the liability will be recorded.

Discussion

A. Necessity of Accounting Guidance

1. Comments

Delmarva, Gulf States, Iowa-Illinois, Ohio Edison, Penn Power, and Southern state that the Commission already has rules and guidelines concerning the accounting treatment of fuel costs. The commenters state that the section 1802(g) of the amended Atomic Energy Act provides that the costs of special assessments shall be fully recoverable in rates in all jurisdictions in the same manner as the utility's other fuel cost. Therefore, the commenters argue that additional accounting guidance is unnecessary, since the Commission already has regulations concerning the accounting treatment of fuel costs.

Alternatively, Iowa-Illinois states that the Commission should permit utilities to follow the same accounting treatment for wholesale transactions as they are required to follow in their primary rate jurisdiction.

---

[1] 18 CFR part 101 (1993).

[2] 42 U.S.C. 2011 *et seq.* (1988).

[3] See Pub. L. 102–486, Title XI, 106 Stat. 2776, 2954 (1992).

[4] Accounting and Ratemaking Treatment of Special Assessments Levied Under the Atomic Energy Act of 1954, as Amended by Title XI of the Energy Policy Act of 1992, Notice Providing Accounting Guidance, 58 FR 36193 (July 6, 1993), FERC Stats. & Regs. ¶32, 495 (1993).

[5] The commenters are American Electric Power System (AEP), Arizona Public Service Company (Arizona), Baltimore Gas & Electric Company (Baltimore Gas), Carolina Power & Light Company (CP&L), Consolidated Edison Company of New York, Inc. (Con Ed), Consumers Power Company, Delmarva Power & Light Company (Delmarva), Deloitte & Touche (Deloitte), Detroit Edison Company (Detroit Edison), Duke Power Company (Duke), Edison Electric Institute (EEI), Florida Power Corporation (Florida Power), Florida Power & Light Company (Florida P&L), General Public Utilities Corporation and its operating companies, Gulf States Utilities Company (Gulf States), Iowa-Illinois Gas and Electric Company (Iowa-Illinois), KPMG Peat Marwick (KPMG Peat), Maine Yankee Atomic Power Company (Maine Yankee), National Rural Electric Cooperative Association (NRECA), New England Power Company (NEPCO), Niagara Mohawk Power Corporation (NiMo), Ohio Edison Company (Ohio Edison), Pennsylvania Power & Light Company (Penn Power), Southern California Edison Company, Southern Company Services, Inc. (Southern), Virginia Electric and Power Company (Virginia Power), Wisconsin Wholesale Customer Group (which consists of Wisconsin Public Power Incorporated SYSTEM, Badger Power Marketing Authority, 41 municipal electric systems, and four cooperatives), and Yankee Atomic Electric Company (Yankee Atomic).

[6] See Uranium Enrichment Decontamination and Decommissioning Fund; Procedures for Special Assessment of Domestic utilities, 58 FR 41160, 41,164 (Aug. 2, 1993).

2. Commission Ruling

The Commission disagrees with the contention that accounting guidance concerning special assessments is unnecessary. Although the Atomic Energy Act provides that the costs of special assessments are to be fully recoverable in rates in the same manner as other fuel cost, the act does not provide accounting guidance concerning when a liability related to the incurrence of the costs is to be recognized or when and in what amounts the "fuel cost" should be recognized in either rates or the utility's books of accounts. As demonstrated by the various comments, there are differing views on how the accounting measurement and recognition issues should be resolved. The Commission believes that uniform accounting by utilities for similar transactions is an integral aspect of regulation under the Federal Power Act. This result could not be achieved without the accounting guidance the Commission has provided.

The Commission believes there is no need to have the accounting follow the primary rate jurisdiction. To do so could cause a mismatch between the recognition of revenues and the recognition of accounting costs. The requirement that there be uniform accounting, however, does not necessarily mean uniform ratemaking treatment. There may be state commissions that wish to prescribe a ratemaking treatment for retail rates that is different from the ratemaking treatment for wholesale rates required by this Commission. The accounting guidance that the Commission issued provides for appropriate recognition of the economic effects of any differing ratemaking treatments without impinging upon the ratemaking authority of state commissions.

B. Account 224, Other Long-Term Debt

1. Comments

AEP, Arizona, Baltimore Gas, CP&L, Con Ed, Delmarva, Deloittle, Detroit Edison, EEI, Florida Power, Florida P&L, Gulf States, Iowa-Illinois, KPMG Peat, Maine Yankee, NiMo, NRECA, NEPCO, Ohio Edison, Penn Power and Virginia Power state that the non-current portion of a public utility's liability for the costs of special assessments should not be recorded in Account 224, Other Long-Term Debt, as provided in the accounting guidance. The commenters state that Account 224 generally is used to record a utility's long-term debt or other interest-bearing debt. The commenters argue that a utility's liability for special assessments is not similar to debt.

Several of the commenters argue that recording a non-interest-bearing liability in Account 224 will not accurately reflect a public utility's capital structure. The commenters state that Account 224 is frequently used to compute the cost of capital in determining the allowed rate of return on rate base and in determining the allowance for funds used during construction. They state that recording a non-interest-bearing item in Account 224 will understate the overall cost of capital.

Duke states that applying the proposed accounting treatment to formula rates fails to synchronize a utility's rate base with its capital structure. Duke argues that this problem could be resolved by either:

(1) Recording the asset related to special assessments in Account 120.4, Spent Nuclear Fuel, which would properly reflect the costs of special assessments as a component of the value of the asset that has provided service;

(2) Specifying that cost-of-service tariffs are unaffected by the accounting treatment for special assessments (although this would not resolve the synchronization problem for retail rates); or

(3) Recording the costs of special assessments in an account that does not affect capital or rate base, such as Account 253, Other Deferred Credits.

Iowa-Illinois argues that since many state commissions have adopted the USofA, the inclusion of a non-interest-bearing item in Account 224 will necessitate state commission proceedings to permit the exclusion of the liability for special assessments from a utility's capital structure in order to properly reflect the cost of capital for ratemaking purposes.

Many of the commenters suggest that the liability should be recorded in Account 253, Other Deferred Credits. Baltimore Gas states that the liability represents a "long-term trade payable" related to the past operations of nuclear power plants. Baltimore GAS and AEP state that the liability could be properly recorded in Account 228.4, Accumulated Miscellaneous Operating Provisions. Con Ed, Delmarva, Detroit Edison, KPMG Peat and NRECA suggest that the Commission create a new account specifically for the liability.

2. Commission Ruling

The comments generally support the Commission's conclusion that the entire liability for special assessments should be reflected in financial statements currently. The comments disagree concerning which account should be used to record the long-term portion of the liability, primarily because the commenters believe that inappropriate ratemaking effects may result if the Commission requires the use of Account 224 to record the liability. Two alternative accounts were suggested, Accounts 253, and 228.4. Theoretical arguments were also raised that a utility's liability for special assessments is not similar to interest-bearing debt and that, therefore, both should not be recorded in Account 224.

Although the Commission does not concur that the liability for special assessments is not "debt," the Commission sees merit in the suggestion that a different account be used to record the long-term portion of the liability in order to avoid unintended ratemaking results. Therefore, the Commission will grant rehearing on this issue and require that the long-term portion of the liability be recorded in Account 228.4, Accumulated Miscellaneous Operating Provisions. The use of Account 253 would not be appropriate because it does not fall within the general classification of non-current liabilities under the USofA.

C. Applicability to Utilities That Have Ceased Plant Operation

1. Comments

In the Notice Providing Account Guidance, the Commission stated that:

> The total obligation is not contingent upon future operations and payments must continue even if the domestic utility no longer operates nuclear units during the time period when special assessments are levied.[7]

Yankee Atomic requests that the Commission clarify this statement. It states that special assessments may not be levied on utilities, such as itself, that ceased to operate generating plants and sell electricity at wholesale or retail before the Energy Policy Act was enacted (October 24, 1992). Yankee Atomic argues that title XI of the Energy Policy Act appears to assume that special assessments will apply to operating utilities with current amortized fuel costs that are being recovered in rates. Since Yankee Atomic does not meet these criteria, Yankee Atomic argues that it is not required to pay special assessments.

2. Commission Ruling

The statement cited by Yankee Atomic was not intended to draw a legal conclusion as to any entity's obligation to pay special assessments. That is a matter for DOE to decide. The statement was intended to indicate that, for affected utilities, future payments are probable and that therefore, a liability is incurred by those utilities for the entire

amount. In the absence of additional information, no liability is required to be recorded if, in the opinion of Yankee Atomic, it has no liability for special assessments.

D. Current Recognition Of Liability

1. Comments

In the Notice, the Commission found that the imposition of special assessments has effectively caused a liability to exist and that the entire liability should be reflected in financial statements currently. The Commission stated:

> Liabilities are probable future sacrifices of economic benefits arising from present obligations of a particular entity to transfer assets or provide services to other entities in the future as a result of past transactions of events.[8]

In support of this statement, the Commission cited the Financial Accounting Standards Board's Statement of Concepts No. 6, Elements of Financial Statements, issued December 1985; Volume 2 FASB Original Pronouncements, June 1, 1992.

Con Ed disagrees with the Commission's statement that the entire liability for special assessments should be reflected in financial statements currently. It argues that the liability for special assessments does not meet the criteria for current recognition because of the uncertainty involved in estimating the costs of decommissioning and the volatility of inflation. Con Ed argues that the liability for special assessments should be disclosed in footnotes to a utility's financial statements.

Con Ed also states that the special assessments were not part of the original purchase price of nuclear fuel and that therefore, notification and billing by DOE would be the "obligating event"—the event that requires recognition for accounting purposes. Con Ed states that special assessments could be viewed as a retroactive adjustment to the original purchase price of nuclear fuel. Therefore, Con Ed argues that the Commission should apply "transition" accounting to special assessments in order to minimize the implementation costs and to minimize disruption while ensuring that financial statements provide useful information. Accordingly, Con Ed argues that the Commission should permit utilities to defer recognition of the liability over the statutory fifteen-year period over which special assessments may be collected.

Con Ed argues that special assessments should be accounted for as expenses as they are billed by DOE and that this treatment is consistent with utilities' provisions for decommissioning their own nuclear plants.

2. Commission Ruling

The Commission believes, as do most commenters that the standards contained in the Atomic Energy Act, as amended, permit a reasonable estimate of the total amount of special assessments that each utility will be required to pay. Section 1802 of the Atomic Energy Act, as amended, provides that the Fund shall consist of annual deposits of $480 million per fiscal year to be annually adjusted for inflation using the Department of Labor's Consumer Price Index for all urban consumers (CPI–U). Deposits to the Fund are required to include a special assessment on domestic utilities (not to exceed $150 million per fiscal year, adjusted for inflation using the CPI–U). The amount to be collected from each domestic utility for the Special Assessment shall be in the same ratio to the total amount to be deposited in the Fund, for each year, as the total amount of separative work units the utility has purchased from DOE for the purpose of commercial electricity generation, prior to the date of enactment of the Energy Policy Act (October 24, 1992), bears to the total amount of the separative work units purchased from DOE for all purposes prior to October 24, 1992.

While it is true that the exact amount of the future payments is not known with absolute certainty today, a liability nevertheless should be recognized for that obligation currently on an estimated basis. Even if the estimates of the total amount of the special assessment were to fall within a wide range, which does not appear to be the case here, it would be appropriate to record a liability for the amount at the lower end of that range. It would not be appropriate, however, to delay recognition of all of the obligation simply because future adjustments for inflation will affect the exact amounts that will be required to be paid in the future. Estimates are inherent in the accounting process, and all estimates involve some degree of uncertainty. Furthermore, the level of uncertainty is not as great as Con Ed suggests. The liability to be recognized relates to a utility's obligation to pay the special assessments under the Act. It does not represent a liability for decommissioning DOE's enrichment facilities. Therefore, contrary to Con Ed's assertions, uncertainties in estimating the cost of decommissioning do not affect measurement of the estimated liability for the special assessment.

The Commission also believes that "transition" accounting for the special assessments is neither appropriate nor necessary. In suggesting the adoption of transition accounting, Con Ed points to the delayed recognition permitted for transition obligations in Statement of Financial Accounting Standards Nos. 87 and 106 of the Financial Accounting Standards Board. Those statements changed the accounting for pensions and post-employment benefits other than pensions from an expense when paid (cash) basis to an expense when earned (accrual) basis. Under the statements, entities are allowed to defer recognition of the liability related to the pensions and benefits earned by employees in periods to implementation of the new accounting standards. However, the Commission is not adopting new accounting standards here. It is applying existing standards to a new event. If the Commission were to apply "transition" accounting for every new circumstance affecting utilities, financial statements would soon lose their usefulness, because they would not properly reflect the causes of changes in assets, liabilities, and equity. Thus, the Commission affirms its determination that a liability should be recognized for the entire amount of the special assessments that will be paid under the legislation.

E. FERC Form 1 Disclosure

1. Comments

The Notice Providing Accounting Guidance stated:

> Public utilities should separately identify in the notes provided at page 122 of Form 1 and pages 12–13 of Form 1–F the following: (1) Any expense associated with special assessments as recorded in Account 518 during the reporting year; (2) any payment associated with special assessments that is made during the reporting year; and (3) any refund of a special assessment that is received during the reporting year from the federal government because a public utility has contested a special assessment or overpaid a special assessment.[9]

EEI states that this requirement is unnecessary because the annual cost of special assessments is small compared to a utility's total annual fuel costs.

2. Commission Ruling

The information required to be included in the notes will assist the Commission in monitoring and verifying that special assessments are properly accounted for and that amounts recovered in rates are appropriate.

[8] 58 FR at 36193–94 n. 4.

[9] 58 FR at 36194 n.7.

F. Applicability To Other Special Assessments

1. Comments

Penn Power states that the Commission should clarify that the Notice Providing Accounting Guidance does not apply to other "special assessments" that are not levied pursuant to the amended Atomic Energy Act.

2. Commission Ruling

The Commission agrees that the Notice Providing Accounting Guidance is not intended to apply to special assessments other than those levied pursuant to the amended Atomic Energy Act. The Commission orders:

(A) Rehearing is hereby granted in part, and denied in part, as discussed in the body of this order.

(B) The Secretary shall cause this order to be published in the Federal Register.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24108 Filed 9–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2535–003, et al.]

Hydroelectric Applications [South Carolina Electric & Gas Co., et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* New License.

b. *Project No.:* 2535–003.

c. *Date Filed:* December 30, 1991.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Stevens Creek.

f. *Location:* On the Savannah River in Edgefield and McCormick Counties, South Carolina and Columbia County, Georgia. The project and its flowage easements predate creation of Sumter National Forest, 90 acres of which are within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Randolph R. Mahan (106), Assistant General Counsel, South Carolina Electric & Gas Company, Columbia, SC 29218, (803) 748–3538.

i. *FERC Contact:* James Hunter at (202) 219–2839.

j. *Deadline for Interventions and Protests:* November 19, 1993.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Description of Project:* The existing Stevens Creek Hydroelectric Project consists of: (1) A 2,700-foot-long dam consisting of a 390-foot-long powerhouse section, a 90-foot-wide lock section, a 2,000-foot-long spillway section with flashboards bringing the maximum height of the dam to 33 feet, and two non-overflow abutments; (2) a reservoir with a surface area of 2,400 acres and containing 9,300 acre-feet of water at full pool elevation 187.54 feet NGVD; (3) a powerhouse containing 8 generating units with a total rated capacity of 18.8 megawatts; (4) two 46 kV ties to a 46/115 kV substation connected directly to the applicant's distribution system; and (5) appurtenant facilities.

m. *Purpose of Project:* The average annual generation of the Stevens Creek project is 94.3 GWh. Power generated at the project is delivered to customers within the applicant's service area.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at South Carolina Electric & Gas Company's offices at 1426 Main Street, Columbia, South Carolina.

2 a. *Type of Application:* Major License.

b. *Project No.:* 10854–002.

c. *Date Filed:* September 1, 1993.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Cataract Hydro Project.

f. *Location:* On the Middle Branch Escanaba River in Marquette County, near Gwinn, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Clarence R. Fisher, Upper Peninsula Power Company, P.O. Box 130, 600 Lakeshore Drive, Houghton, MI 49931–0130, (906) 487–5000.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* 60 days from the filing date in paragraph C.

k. *Description of Project:* The existing project consists of: (1) a dam and intake structure; (2) two tunnels and an above-ground pipeline; (3) a powerhouse containing a single 2,000-kW generator; (4) a substation; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 4,040 MWh.

l. With this notice, we are initiating consultation with the Michigan State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

3 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11427–000.

c. *Date Filed:* August 2, 1993.

d. *Applicant:* The Continental group.

e. *Name of Project:* Boca Dam Hydroelectric Project.

f. *Location:* On lands owned by the U.S. Bureau of Reclamation (Reclamation) and U.S. Forest Service—at Reclamation's Boca Dam on the Little Truckee River in Nevada County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Alex Gulab, The Continental Group, 1417 Deerfield Cir., Roseville, CA 95747.

i. *FERC Contact:* Mr. Surender M. Yepuri, P.E. (202) 219–2847.

j. *Comment Date:* November 19, 1993.

k. *Description of Project:* The proposed project would utilize the Boca Dam and Reservoir and would consist of: (1) A powerhouse at the downstream toe of the dam containing one or more generating units with a total rated capacity of 2.5 MW, and an estimated average annual generation of 12.5 GWH; and (2) a 1500-foot-long transmission line interconnecting with a Sierra Pacific Power Company line. The applicant estimates the approximate cost of the work to be performed under the permit to be $100,000. No new access roads will be needed to conduct the studies.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

4 a. *Type of Application:* Amendment to License.

b. *Project No:* 10198–017.

c. *Date Filed:* September 3, 1993.

d. *Applicant:* Pelican Utility Company.

e. *Name of Project:* Pelican Hydroelectric project.

f. *Location:* On Pelican Creek, Chichagof Island, Borough of Sitka, Alaska.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Mr. Eric Norman, Pelican Utility Company, Box 110, Pelican, AK 99832, (907) 735–2204.

i. *FERC Contact:* Steve Hocking, (202) 219–2656.

j. *Comment Date::* November 12, 1993.

k. *Description of Amendment:* Pelican Utility Company (Pelican) submitted an application to amend its license for the Pelican Hydroelectric Project. Pelican wishes to change how the existing project will be reconstructed. These changes would modify: (1) The draft tube; (2) flume construction; (3) earthquake protection; (4) buttress support for the dam; (5) the intake structure; (6) the dam's wingwalls; and (7) installation of a powerline from the powerhouse to the dam. In addition, the licensee wishes to delete articles 101 through 106 placed in the license by the U.S. Forest Service. The Forest Service transferred the property on which the dam is located to the State of Alaska. Article 404 (stream gauging) is also proposed for deletion.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

5 a. *Type of Application:* New License.

b. *Project No:* 2188–030.

c. *Date Filed:* November 25, 1992.

d. *Applicant:* The Montana Power Company.

e. *Name of Project:* Missouri-Madison.

f. *Location:* On the Madison River in Gallatin and Madison Counties, and on the Missouri River in Lewis, Clark, and Cascade Counties, Montana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael P. Manion, The Montana Power company, 40 East Broadway, Butte, MT 59701, (406) 723–5421.

i. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.

j. *Deadline for Interventions and Protests:* November 29, 1993.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E. The Commission's Staff will prepare an Environmental Impact Statement.

l. *Description of Project:* The existing project consists of: (A) The Hebgen Lake Development; (B) the Madison Development; (C) the Hauser Development; (D) the Holter Development; (E) the Black Eagle Development; (F) the Rainbow Development; (G) the Cochrane Development; (H) the Ryan Development; and (I) the Morony Development.

A. The Hebgen Lake is located on the Madison River at river mile 103 and consists of: (1) An earth-filled with concrete core dam 721 feet long and 85 feet high, with a crest elevation of 6,546 feet, with outlet works through the dam and a side-channel spillway; (2) an impoundment with a surface area of 13,000 acres and a storage capacity of 386,845 acre-feet at normal maximum water surface elevation of 6,534.87 feet; and (30 other appurtenances.

The Hebgen Development occupies 10,589.57 acres of U.S. Forest Services's lands. This development is used to store and regulate water. There are no generating facilities at this development and none are proposed.

B. The Madison Development is located on the Madison River at river mile 40 and consists of: (1) A 257-foot-long, 38.5-foot-high rock-filled and concrete dam with a spillway crest elevation of 4,833 feet with 9-foot-high slide panels on top; (2) an impoundment, known as Ennis Lake, with a surface area of 3,900 acres and a storage capacity of 41,917 acre-feet at normal maximum water surface elevation of 4,841 feet; (3) a control building; (4) an intake structure; (5) a 7,500-foot, 13-foot-diameter flow line; (6) a surge chamber; (7) four 9-foot-diameter, about 222-foot-long riveted steel penstocks; (8) a powerhouse with 4 turbine-generator units with a total installed capacity of 9 MW; (9) an interconnection with the Applicant's integrated transmission system at the powerhouse side; (10) a tailrace; and (11) other appurtenances.

The Applicant proposes to replace the existing electrical and mechanical equipment in the powerhouse (including the turbine-generator units), the timber crib and the concrete training wall in the tailrace, and improve the tailrace channel. The 4 new units would have a combined installed capacity of 12.38 MW.

The Madison Development occupies 357.1 acres of land administered by the Bureau of Land Management.

C. The Hauser Development is located on the Missouri River at river mile 2,237 and consists of: (1) A 700-foot-long, 80-foot-high concrete gravity dam with a spillway crest elevation 3,621 feet with 5 bays of slide gates and 19 bays of 14.5-foot-high removable flashboards on top; (2) an impoundment composed of two connected bodies of water: the Hauser Lake and the Helena Lake with a combined surface area of 5,970 acres and a storage capacity of 111,060 acre-feet at the normal maximum water surface elevation of 3,635.4 feet; (3) an intake and forebay structure; (4) five 12-foot-diameter short buried riveted steel penstocks and a 14-foot-diameter short riveted steel penstock (a section of which is tunneled through rock); (5) a powerhouse with 6 turbine generator units with a total installed capacity of 17 MW; (6) an interconnection to the Applicant's integrated transmission system at the powerhouse; (7) a tailrace; and (8) other appurtenances.

The Applicant proposes overhauling or replacing existing electrical and mechanical equipment in the powerhouse (including turbines and generators) to have a total capacity of 21 MW.

The Hauser Development occupies 74.78 acres of U.S. Forest Service's lands and 574.07 acres of Bureau of Land Management's lands.

D. The Holter Development is located on the Missouri River at river mile 2,211 and consists of: (1) A 1,364-foot-long, 124-foot-high concrete gravity dam with a spillway crest elevation of 3,548 feet with 10 bays of slide gates and 21 bays of 16-foot-high flashboards on top; (2) an impoundment, known as the Holter Lake, with a surface area of 4,550 acres and a storage capacity of 240,000 acre-feet at the normal maximum water surface elevation of 3,564 feet; (3) an intake/powerhouse structure with four turbine-generator units with a total installed capacity of 28.4 MW; (4) an interconnection to the Applicant's transmission system at the powerhouse; (5) a tailrace; and (6) other appurtenances.

The Holter Development occupies 566.85 acres of Bureau of Reclamation's lands and 166.09 acres of U.S. Forest Service's lands.

E. The Black Eagle Development is located on the Missouri River at river mile 2,118 and consists of: (1) A 782-foot-long, 34.5-foot-high curved concrete gravity dam with a spillway crest elevation of 3,279 feet with 25 bays of 11-foot-high flashboards on top; (2) a reservoir with a surface area of 402 acres and a storage capacity of 1,820 acre-feet at normal maximum water surface elevation of 3,290 feet; (3) a 421-foot-long, 96-foot-wide forebay; (4) an intake/powerhouse structure containing 3 turbine generator units with a total installed capacity of 16.8 MW; (5) an interconnection to the Applicant's integrated system; (6) a tailrace; and (7) other appurtenances.

F. The Rainbow Development is located on the Missouri River at river mile 2,115 and consists of: (1) A 1,146-foot-long, 43.5-foot-high rock-filled timber crib and concrete dam with a 2-portion spillway with a crest elevation

of 3,212 and 3,214 feet, respectively (the left portion is topped with 10-foot-high flashboards and the right portion with rubber dams providing a total top elevation of 3,224 feet); (2) the Rainbow Reservoir with a surface area of 126 acres and a storage capacity of 1,237 acre-feet at a normal water surface elevation of 3,224 feet; (3) two adjacent intake structures, one for units 1 through 6 and the second for units 7 and 8; (4) two parallel 15.5-foot-diameter, 2,350-foot-long riveted steel flow lines for units 1 through 6 leading to; (5) a surge chamber; (6) twelve 8-foot-diameter, 343-foot-long riveted steel penstocks from the surge chamber to the powerhouse feeding units 1 through 6; (7) a 2,401-foot-long, 14-foot-diameter steel flow line from the second intake structure at the dam, with a surge tank at 1,689 feet from the intake; (8) four 8-foot-diameter, 172-foot-long riveted steel penstocks from a manifold at the end of the flowline to the powerhouse, feeding units 7 and 8; (9) a powerhouse with 8 turbine-generator units with a total installed capacity of 35.6 MW; (10) an interconnection to the Applicant's integrated system at the powerhouse; (11) a tailrace; and (12) other appurtenances.

The applicant would: (1) Modify the existing intakes; (2) extend the 14-foot-diameter flow line serving units 7 and 8 by 700 feet leading to a new powerhouse about 200 feet downstream of the existing powerhouse; (3) a new 20.5-foot-diameter, 550-foot-long flow line from the existing surge chamber to the new powerhouse; and (4) a new powerhouse with 2 turbine-generator units with a total installed capacity of 60 MW.

G. The Cochrane Development is located on the Missouri River at river mile 2,111 and consists of: (1) 856-foot-long, 100-foot-high concrete gravity dam with a spillway crest elevation of 3,034.75 feet with radial gates on top with a top elevation of 3.120 feet; (2) the Cochrane Reservoir with a surface area of 249 acres and a storage capacity of 8,464 acre-feet at a water surface elevation of 3,115 feet; (3) a powerhouse at the dam with 2 turbine-generator units with a total installed capacity of 48 MW; (4) a 2.9-mile-long, 100-kV transmission line; (5) a tailrace; and (6) other appurtenances.

H. The Ryan Development is located on the Missouri River at river mile 2,110 (upstream from the crest of the Great Falls) and consists of; (1) A 1,465-foot-long, 82-foot-high curved concrete gravity dam with a spillway crest elevation of 3,023 feet topped with 16.25-foot-high flashboards; (2) the Ryan Reservoir with a surface area of 168 acres and a normal maximum storage capacity of 3,653 acre-feet at a water surface elevation of 3,037 feet; (3) an intake structure; (4) six 12-foot 8-inch-diameter and 327-foot-long riveted steel penstocks; (5) a powerhouse with 6 turbine-generator units with a total installed capacity of 48 MW; (6) a 4.6-mile-long, 100-kV tranission line; (7) a tailrace; and (8) other appurtenances.

The Applicant would construct: (1) An intake structure; (2) a 650-foot-long, 20-foot-diameter welded steel penstock; (3) a powerhouse about 125 feet downstream from the existing powerhouse, containing a 40-MW turbine-generator unit; and (4) a tailrace.

I. Morony Development is located on the Missouri River at river mile 2,105 and consists of: (1) 842-foot-long, 96-foot-high concrete gravity dam with a spillway crest elevation of 2,864 feet topped with 9 bays of radial gates and 1 bay of slide gates with a top elevation of 2,887 feet; (2) the Morony Reservoir with a surface area of 304 acres and a storage capacity of 13,889 acre-feet at water surface elevation of 2,887 feet; (3) an intake/powerhouse structure containing 2 turbine-generator units with a total installed capacity of 45 MW; (4) an 8.5-mile-long, 100 kV transmission line; (5) a tailrace; and (6) other appurtenances.

In summary, the project has a total installed capacity of 257.8 MW and, if licensed as proposed, it would have a total installed capacity of 365.18 MW.

m. *This notice also consists of the following standard paragraphs:* B1 and E.

n. *Avaliable Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

6 a. *Type of Application:* New Major License.

b. *Project No.:* 2456–009.

c. *Date Filed:* December 26, 1991.

d. *Applicant:* Public Service Company of New Hampshire.

e. *Name of Project:* Ayers Island Hydro Project.

f. *Location:* On the Pemigewasset River in Belknap and Grafton Counties, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James J. Kearns, Public Service Company of New Hampshire, 1000 Elm Street, P.O. Box 330, Manchester, NH 03105, (603) 634–2799.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Deadline Date:* See paragraph D9. (November 22, 1993).

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The project as licensed consisting of the following: (1) A reinforced concrete Ambursen dam, totaling about 699 feet long, consists of: (a) a 267-foot-long spillway section, with a maximum height of 72 feet at a crest elevation of 437.33 feet (USGS), topped with 8-foot-high steel flashboards for 87 feet long, 16-foot-high steel flashboards for 88 feet long, and 16-foot-high wooden flashboards for 88 feet long; (b) an Ambursen gate structure, located on the west end of the spillway section, having one steel Broome-type gate, 16 feet high by 28 feet wide, with a sill elevation of 437.33 feet (USGS), and (c) a sluiceway structure, located on the east end of the spillway section, having three 5-foot by 5-foot sluice gates, with a spill elevation of 379.8 feet (USGS); (2) an integral powerhouse, located on the east end of the spillway section, measuring about 96 feet long by 31 feet wide by 37 feet high, equipped with three 2,800 kilowatt (kW) generating units producing a (a) total capacity of 8,400 kW, (b) a range of hydraulic capacity of 140 to 1,539 cubic per second (cfs), and (c) an operating head of 80 feet; (3) an impoundment having (a) a surface area of 600 acres (AC); (b) a gross storage capacity of 10,000 acre-feet (AF); (c) a useable storage capacity of 1,200 AF; and (d) a normal headwater elevation of 453.53 feet (USGS); (4) a 262-foot-long, 2.4 kilovolt (kV), 3-phase overhead primary line; and (5) appurtenant facilities. No changes are being proposed for this new license. The applicant estimates the average annual generation for this project would be 44.228 GWH. The dam and existing project facilities are owned by the applicant.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and

reproduction at Public Service Company of New Hampshire, 1000 Elm Street, Manchester, NH 03105 or by calling (603) 634–2799.

7 a. *Type of Application:* Transfer of License.

b. *Project No.:* 2594–006.

c. *Date filed:* September 13, 1993.

d. *Applicant:* Champion International Corporation and Stimson Lumber Company.

e. *Name of Project:* Lake Creek.

f. *Location:* On Lake Creek in Lincoln County, Montana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:*

Steven J. Miller, Associate General Counsel, Champion International Corporation, One Champion Plaza, Stanford, CT 06921, (203) 385–2779.

Dan M. Dutton, President, Stimson Lumber Company, 520 SW Yamhill Street, suite 308, Portland, OR 97232, (503) 222–1676.

Max M. Miller, Jr., Tonkon, Torp, Galen, Marmaduke & Booth, 1600 Pioneer Tower, 888 SW 5th Avenue, Portland, OR 97204, (503) 221–1440.

Thomas H. Nelson, Stoel, Rives, Boley, Jones & Grey, 900 SW Fifth Avenue, suite 2300, Portland, OR 97204–1268, (503) 224–3380.

i. *FERC Contact:* Etta Foster, (202) 219–2679.

j. *Comment Date:* October 27, 1993.

k. *Description of Proposed Action:* Champion International Corporation proposes to transfer its license for the Lake Creek Project to Stimson Lumber Company and requested expedited consideration of the transfer request due to a change in Champion International Corporation's ownership. Champion International Corporation became licensee pursuant to a license transfer issued August 15, 1989.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

8 a. *Type of Application:* Original License for Major Project (Tendered Notice).

b. *Project No.:* 10865–001.

c. *Date filed:* September 7, 1993.

d. *Applicant:* Warm Creek Hydro, Inc.

e. *Name of Project:* Warm Creek Hydroelectric.

f. *Location:* On Warm Creek, near the town of Deming, in Whatcom County, Washington. T38N, R6E, in Sections 24 and 25.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Lon Covin, Vice President, Warm Creek Hydro, Inc., 1422–130th Avenue, NE., Bellevue, WA 98005, (206) 455–0234.

i. *FERC Contact:* Mr. Surender M. Yepuri, P.E. (202) 219–2847.

j. *Brief Description of Project:* The proposed project would consist of a diversion structure, a small reservoir, an intake structure, a penstock, a 3.7 Megawatt powerhouse, a buried transmission line, and appurtenant structures.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

l. In accordance with § 4.32(b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, no later than November 6, 1993, and must serve a copy of the request on the applicant.

9 a. *Type of Application:* Minor License.

b. *Project No.:* 11433–000.

c. *Date filed:* September 8, 1993.

d. *Applicant:* Town of Madison, Department of Electric Works.

e. *Name of Project:* Sandy River Hydroelectric Project.

f. *Location:* on the Sandy River in the Town of Starks and Norridgewock, Somerset County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* George Stoutamyer, Superintendent, P.O. Box 190, Madison, ME 04950, (207) 696–4401.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Comment Date:* 60 days from the filing date in paragraph C. (November 8, 1993).

k. *Description of Project:* The proposed project consists of the following features: (1) an existing dam 331.4 feet long and 14.9 feet high; (2) an existing reservoir with a surface area of 150 acres, a drainage area of 578 square miles, and a gross storage capacity of 1,050 acre-feet; (3) an existing intake canal; (4) an existing powerhouse containing two existing turbine-generator units with a total installed capacity of 547 kilowatts; (5) an existing 7.2–kilovolt transmission line; and (6) appurtenant facilities. The average annual generation for the project is 3,000,000 kilowatthours. The owner of the project facilities is the Town of Madison, Department of Electric Works. This is an unlicensed project.

l. With this notice, we are initiating consultation with the Maine State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

10 a. *Type of Application:* Surrender of License.

b. *Project No:* 7660–034.

c. *Date Filed:* August 24, 1993.

d. *Applicant:* Noah Corporation & Borough of Point Marion, Pennsylvania.

e. *Name of Project:* Point Marion Lock and Dam Project.

f. *Location:* On the Monongahela River in Fayette County, Pennsylvania.

g. *Filed-Pursuant to:* Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:*

Louis Rudolph, Mayor, Borough of Point Marion, 15 Main Street, Point Marion, PA 15474, (412) 725–5256.

James B. Price, President, Noah Corporation, 120 Calumet Court, Aiken, SC 29801, (803) 642–2749.

i. *FERC Contact:* Patricia A. Massie, (202) 219–2681.

j. *Comment Date:* November 12, 1993.

k. *Description of Project:* The licensees state that the project is infeasible to construct at this time.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

11 a. *Type of Application:* Subsequent License.

b. *Project No:* 2523–007.

c. *Date Filed:* August 12, 1993.

d. *Applicant:* N.E.W. Hydro, Inc.

e. *Name of Project:* Oconto Falls Hydro Project.

f. *Location:* On the Oconto River in Oconto County, near Oconto Falls, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Charles A. Alsberg, N.E.W. Hydro, Inc., P.O. Box 167, 116 State Street, Neshkoro, WI 54960, (414) 293–4628.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* 60 days from the issuance date of this notice. (November 26, 1993).

k. *Description of Project:* The existing run-of river project consists of: (1) A dam and reservoir; (2) a powerhouse containing three generatoring units for a total installed capacity of 1,320 kW; (3) a substation; and (4) appurtenant facilities. The applicant estimates that the total average annual generation would be 7,495 MWh.

l. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR 800 .4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

12 a. *Type of Application:* Subsequent License.

b. *Project No.:* 2550–002.

c. *Date filed:* August 16, 1993.

d. *Applicant:* N.E.W. Hydro, Incorporated.

e. *Name of Project:* Weyauwega Hydroelectric Project.

f. *Location:* On the Waupaca River, in Waupaca County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Loyal Gake, North American Hydro, Inc., P.O. Box 167, Neshkoro, Wisconsin 54960, (414) 293–4628.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Comment Date:* 60 days from the date of issuance of notice (November 26, 1993).

k. *Description of Project:* The constructed project consists of the following features: (1) An existing dam 240 feet long and 20 feet high; (2) an existing reservoir with a surface area of 250 acres and a gross storage capacity of 1,259 acre-feet; (3) an existing powerhouse containing one turbine-generator unit having a total generating capacity of 400 kilowatts; (4) appurtenant facilities. The applicant estimates that the total average annual generation would be 853,000 kilowatthours. The dam is owned by the Wisconsin Electric Power Company.

l. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

13 a. *Type of Application:* New Major License.

b. *Project No.:* 2551–004.

c. *Date Filed:* December 11, 1991.

d. *Applicant:* Indiana Michigan Power Company.

e. *Name of Project:* Buchanan Hydro Project.

f. *Location:* On the St. Joseph River in Berrien County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. B.H. Bennett, Assistant Vice President, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, (614) 223–2930.

i. *FERC Contact:* Ed Lee, (202) 219–2809.

j. *Deadline Date:* See paragraph D9 (November 26, 1993).

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The project as licensed consists of the following: (1) A segmented concrete spillway containing (a) three hydraulically operated steel crest gates, 4.1 feet high, with flow openings of 137.85 feet, 127.90 feet and 92.44 feet, progressing from south to north when facing upstream, and spillway heights of 5.4 feet, 9.1 feet and 5.4 feet respectively, (b) two sluice gates, one 8 feet and one 6 feet in width, located at the northern end of the spillway when facing upstream; (2) a reinforced concrete access bridge over the headrace channel, formerly serving as a headgate structure, located north of the sluice gates when facing upstream; (3) a reservoir with a surface area of 423 acres and a total volume of 3,895 acre-feet at the normal maximum surface elevation of 637.70 feet NGVD; (4) a concrete fish ladder, located within the island formed by the spillway, powerhouse and headrace channel, approximately 225 feet long and 6 feet wide with vertical baffle slots spaced at 10-foot intervals; (5) a headrace channel, located upstream from the powerhouse, approximately 650 feet in length consisting of an excavated embankment on the north side, a flat earthen bottom approximately 135 feet wide and a vertical concrete wall on the south side; (6) a powerhouse containing 10 generating units for a total installed capacity of 4,104 MW and consisting of (a) a brick structure, the upper portion, approximately 270 feet long, 30 feet wide and 34 feet high, (b) ten concrete turbine pits with dimensions of 40 feet long, 17 feet wide and 25 feet high for units 1–9 and 40 feet long, 20 feet wide and 25 feet high for unit 10, (c) ten concrete draft tube tunnels with dimensions of 26 feet long, 17 feet wide and 10 feet high for units 1–9 and 26 feet long, 20 feet wide and 10 feet high for unit 10, (d) ten vertical shaft, single runner, Francis turbines with a combined maximum hydraulic capacity of 3,800 cfs, all manufactured by James Leffel and Company, units 1–6 rated at 475 hp with 14.5 feet of head and units 7–10 rated at 585 hp with 14 feet of head, and (e) six Electric Machinery Company, 3-phase, 60-cycle, vertical shaft generators, each rated at 384 kW, and four General Electric, 3-phase, 60-cycle, vertical shaft generators, each rated at 450 kW, providing a total plant rating of 4,104 kW; and (7) existing appurtenant facilities. No changes are being proposed for this new license. The applicant estimates the average annual generation for this project would be 22,000 MWH. The dam and existing project facilities are owned by the applicant.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Indiana Michigan Power Company, Hydro Generation, 13840 E. Jefferson Road, Mishawaka, IN, (219) 255–8946.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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 comments date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceedings. Any protests or motions to intervene must be received on or before the specified deadline 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 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.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (November 22, 1993 for Project No. 2456–009 and November 26, 1993 for Project No. 2551–004). All reply comments must be filed with the Commission within 105 days from the date of this notice. (January 5, 1994 for Project No. 2456–009 and January 10, 1994 for Project No. 2551–004).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and

the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required 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 Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required 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 Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required 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 Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: September 28, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24167 Filed 9–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–661–024]

Algonquin Gas Transmission Co.; Petition To Amend

September 27, 1993.

Take notice that on September 21, 1993, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP89–661–024 a petition to amend earlier certificates of public convenience and necessity under section 7 of the Natural Gas Act and subpart A of part 157 of the Commission's Regulations with regard to the commencement of service and the rates to be charged to a shipper, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Algonquin seeks to phase-in service to New England Power Company (NEP) under Rate Schedule X–38. The total service quantities, 95,455 MMBtu per day, had been scheduled to commence on November 1, 1993. Now, pursuant to a July 3, 1992 firm transportation service agreement between Algonquin and NEP, Algonquin is scheduled to: (1) Receive 60,000 MMBtu per day at its interconnection with Tennessee at Mendon, Massachusetts for delivery to NEP at its Manchester Street electric generating station in Providence, Rhode Island, commencing November 1, 1993, and (2) receive the remaining 35,455 MMBtu per day at its interconnection Columbia Gas Transmission Company at Hanover, New Jersey for delivery to NEP at its Manchester Street electric generating station in Providence, Rhode Island, commencing November 1, 1994.

Further, Algonquin now desires to collect rates for service under its Rate Schedules X–38 and AFT–2, which were originally approved in Phase II of the Iroquois Project, based on a revised estimate of costs. Cost increases were incurred due to difficulties encountered in the construction of the Providence Harbor crossing and a one-year delay in constructing the remaining lateral facilities. Also, the cost of the Chaplin, Connecticut compressor station and the Cromwell pipeline loop increased from their original estimates. Algonquin asserts that certain costs decreased from previously estimated. Overall, the revised estimate in facility costs is $93.6 million, a net increase of $8.3 million from the previously approved $85.3 million. The resulting one-part monthly demand charge under Rate Schedule X–38 that results from this recalculation is $9.7702 per MMBtu for service commencing November 1, 1993, and $12.9067 per MMBtu for service

commencing November 1, 1994. Under Rate Schedule AFT–2 the resulting one-part monthly demand charge is $8.5105 per MMBtu for service commencing November 1, 1993 and $8.4308 per MMBtu for service commencing November 1, 1994. Algonquin indicates that these rates reflect different cost of service components from those previously approved. Algonquin states that in this petition to amend it is calculating the rates using a 41.8%/58.2% debt/equity split, a return on equity of 15 percent, and operation and maintenance (O&M) cost components as reflected in its current section 4 rate proceeding in Docket No. RP93–14. Algonquin states that it will make the initial rates herein subject to the outcome of the cost factors and allocation of O&M costs in Docket No. RP93–14.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 4, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24098 Filed 9–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–730–000]

ANR Pipeline Co. and Texas Gas Transmission Corp. Application

September 27, 1993.

Take notice that on September 17, 1993, ANR Pipeline Company (ANR) 500 Renaissance Center Detroit, Michigan 48243, and Texas Gas Transmission Corporation (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP93–730–000, a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service provided pursuant to ANR's Rate Schedule X–3 and Texas Gas's Rate Schedule X–26, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that by order issued August 11, 1960, in Docket No. CP60–44, ANR (formerly America Louisiana and Michigan Wisconsin Pipe Line Company) and Texas Gas were authorized to exchange natural gas pursuant to an agreement dated February 15, 1960. The agreement, it is said, provided for the exchange of certain quantities of natural gas at specified points of interconnection between the parties at times when such deliveries could assist the companies in their system operations. The authorized points of delivery, it is said, are located in the states of Kentucky, Indiana and Louisiana (both onshore and offshore).

ANR and Texas Gas state that by letter dated July 30, 1993, ANR notified Texas Gas of the termination of the Agreement, to be effective September 1, 1993. Accordingly, the parties request permission to abandon the exchange service. No facilities are proposed to be abandoned.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before October 18, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR and Texas Gas to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24100 Filed 9–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF92–54–003]

Polk Power Partners, L.P.; Correction to Notice of Amendment to Filing

September 27, 1993.

The notice issued on September 15, 1993 (58 FR 49041, September 21, 1993), in this Docket incorrectly stated that the applicant seeks waiver of the Commission's operating and efficiency standards.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24101 Filed 9–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL92–42–001]

UNITIL Power Corp. v. Public Service Co. of New Hampshire and Northeast Utilities; Filing

September 24, 1993.

Take notice that on September 20, 1993, Public Service Company of New Hampshire (PSNH) made a compliance filing in response to the Commission's August 4, 1993 letter order in the above captioned docket.

PSNH states that a copy of its compliance filing has been mailed to UNITIL Power Corporation and the New Hampshire Public Utilities Commission.

PSNH requests that the Commission waive its filing regulations to the extent necessary to enable compliance with the Commission's order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 8, 1993. 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. 93–24107 Filed 9–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP90–2230–005]

Transcontinental Gas Pipe Line Corp.; Application to Amend

September 27, 1993.

Take notice that on September 16, 1993, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90–2230–005, an application to amend the Commission order issued on April 18, 1991, in Docket No. CP90–2230–000, as amended in the Commission order issued in Docket No. CP90–2230–002 on June 19, 1991, authorizing the expansion and operation of the Eminence Salt Dome Storage Field, all as more fully set forth in the application to amend which is on file with the Commission and open to public inspection.

Transco states that the purpose of the amendment to its application is to seek Commission authorization to extend the time frame to complete construction beyond the 42 month period authorized in the Commission order issued on April 18, 1991. Transco also proposes to construct the authorized natural gas storage facilities in three phases rather than two phases in order to complete the leaching of the expansion caverns. Finally, Transco proposes to file three limited section 4 rate cases, rather than two as authorized in the Commission order issued on June 19, 1991, to correspond to the revised phasing requested.

Any person desiring to be heard or to make any protest with reference to said application to amend should on or before October 18, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24099 Filed 9–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–167–000]

Trunkline Gas Co; Technical Conference

September 27, 1993.

In the Commission's order issued on September 9, 1993, in the above-captioned proceeding, the Commission ordered that a technical conference be convened to address issues raised by the filing. The conference has been scheduled for Wednesday, October 13, 1993, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties may call Chris Young at 202–208–0088, or Keith Pierce at 202–208–2196.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24097 Filed 9–30–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4782–1]

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.

DATES: Comments must be submitted on or before November 1, 1993.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Application for New and Amended Registration. (EPA ICR No: 0277.08; OMB No: 2070–0060). This is a request for an extension of the expiration date of a currently approved collection. The current approval expires on February 28, 1994.

Abstract: Section 3 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), requires that persons (or entities) who market pesticides be registered with the Federal Government.

Respondents submit to EPA an application package that includes an application for pesticide registration or amendment, a confidential statement of formula, and a data reference sheet. In completing these forms, respondents must provide such information as the type(s) of chemical(s) involved, the type of packaging and the location of label directions. Some respondents must also submit supporting data on the pH of aqueous formulation, results of flame extension tests for pressurized products, and certified limits on a product's active ingredients.

Registrants of a product containing a new chemical never before registered are required to submit to the Agency test data related to the product's physical chemistry, acute and chronic toxicology, environmental fate, ecological effects, worker exposure, residue chemistry and environmental chemistry; they must also submit data on the product's performance prior to approval. Respondents who elect to participate in the "Voluntary Reduced-risk Pesticide Initiative" must submit to the EPA data on human health effects and environmental fate and effects of their product(s). They must also submit information on any other hazards and known risks as well as information on pest resistance and management of their product(s).

Applicants for registration of a "me-to" product (involving only previously registered chemicals and use patterns), are required to submit only a "Certification with Respect to Citation of Data" (EPA Form 8570–29). If the "me-to" product is a 100% repackaging of another EPA-registered product and is labeled for the same uses, respondents are required to submit only the "Formulator's Exemption Statement" (EPA Form 8570–27).

Respondents must keep records of all the information they submit to the Agency.

The EPA uses these data to determine whether the application and supporting information comply with Federal pesticide laws.

Burden Statement: The burden for this collection of information is estimated to average 8.32 hours per response for reporting and 14.9 hours per recordkeeper annually. This estimate includes the time needed to review instructions, complete the forms, prepare and submit required data, and review the collection of information.

Respondents: Pesticide registrants.

Estimated No. of Respondents: 2,246.

Estimated No. of Responses per Respondent: 11.

Estimated Total Annual Burden on Respondents: 237,640 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW.,Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC 20503.

Dated: September 24, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–24186 Filed 9–30–93; 8:45 am]

BILLING CODE 6560–50–F

[ER–FRL–4704–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 13, 1993 through September 17, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–FHW–B40076–NH Rating EO2, NH–16 and US 302 Transportation Improvements, Funding, COE Section 10 and 404 Permits, Villages of Conway and North Conway, Carroll County, NH.

Summary: EPA expressed objections to the proposed NH–16 Bypass around Conway and North Conway, New Hampshire because there are other less environmentally damaging alternatives that should be evaluated in the EIS for the project. Based on its concerns about wetland impacts, EPA recommends denial of the Clean Water Act 404 permit for the proposed project. EPA also expressed concerns about air quality, water quality and cumulative impacts.

Final EISs

ERP No. F–FHW–D40255–PA

Park Road Corridor Project, West Shore Bypass/US 422/222 and Warren Street Bypass Connection to the Outer Bypass/PA–3055, Funding and Section 404 Permit, Berks County, PA.

Summary: EPA had no objections to the selection of Alternative A as identified in the Final EIS.

ERP No. F–FHW–F40315–MI

Grand Rapids South Beltline Construction, I–196 in Ottawa County to I–96 in Kent County, Funding, and COE Section 404 Permit, Ottawa and Kent Counties, MI.

Summary: EPA expressed environmental concerns pending submission of wetlands compensation plan.

ERP No. F–FHW–K40190–CA

CA–168 Freeway Transportation Project, Construction, CA–168 between CA–180 and Temperance Avenue, Funding and Section 404 Permit, City of Fresno, Fresno County, CA.

Summary: EPA expressed environmental concerns with potential air quality and cumulative environmental impacts and the project's ability to achieve the stated purpose of reducing travel times between downtown Fresno and the Fresno-Clovis Metropolitan Area. Also additional information on the regional air emissions analysis is necessary to evaluate whether the project conforms with the conformity requirements of the Clean Air Act.

ERP No. F–FHW–K40199–AZ

Price Freeway (Loop 101) Corridor Construction, Price Road between the Superstition Freeway to Pecos Road, Funding and Right-of-Way Acquisition, Maricopa County, AZ.

Summary: EPA expressed environmental concerns with the project's potential air quality impacts. EPA recommended further analysis of the project's air quality impacts and revisions to the area's transportation improvement program before FHWA makes a Clean Air Act conformity determination or signs the Record of Decision.

ERP No. F–GSA–K40195–CA

Calexico East Border Station Construction and Road Construction, CA–7 between the New Port of Entry and CA–98 that borders the United States and Mexico, Funding and Right-of-Way Permit, City of Calexico, Imperial County, CA.

Summary: EPA expressed objections due to potential direct and indirect impacts to border sewage and sanitation infrastructure, water quality, hazardous materials response and air quality. EPA requested that GSA delay issuing its Record of Decision until the US Congress appropriate Fiscal Year 1994 funds for Calexico-Mexicali water quality protection and the US and Mexican Governments complete arrangements for protecting water quality in this area.

ERP No. F–USA–K11016–CA

Fort Ord Disposal and Reuse Installation, Implementation, Establishment of Presido of Monterey (POM) Annex, Cities of Marina and Seaside, Monterey County, CA.

Summary: EPA expressed environmental concerns with the evaluation and disclosure of past hazardous waste management practices, and the protection of sensitive natural resources on lands that will be transferred to non-federal agencies and private parties. EPA requested additional information in the Record of Decision.

Dated: September 27, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–24170 Filed 9–30–93; 8:45 am]

BILLING CODE 6560–50–U

[ER-FRL–4704–1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Weekly receipt of Environmental Impact Statements filed September 20, 1993 through September 24, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930328, FINAL EIS, SCS, Kagman Watershed Plan, Flood Prevention and Watershed Protection, Funding and COE Section 404 Permit, Saipan, Commonwealth of the Northern Mariana Islands, Due: November 1, 1993, Contact: Joan B. Perry (671) 472–7490.

EIS No. 930329, FINAL EIS, FHW, MN, US 14 Construction, Owatonna to Kasson, Funding and Section 404

Permit, Dodge and Steele Counties, MN, Due: November 1, 1993, Contact: James P. McCarthy (612) 290–3241.

EIS No. 930330, DRAFT EIS, FHW, OR, Ferry Street Bridge Corridor Transportation Improvements, Oakway Road to East Broadway Coburg Road, Funding, Right-of-Way Grant NPDES Permit, Section 101 and 404 Permits, Willamette River, Lane County, OR, Due: November 18, 1993, Contact: Alan R. Steger (503) 399–5749.

EIS No. 930331, FINAL EIS, BLM, CA, Broadwell Basin Residuals Repository and Treatment Facility for Specified Hazardous Waste, Construction and Operation, Right-of-Way Grants, Mineral Material Sales Permits and COE Section 404 Permit, San Bernardino County, CA, Due: November 1, 1993, Contact: Edy Seehafer (619) 256–3592.

EIS No. 930332, DRAFT SUPPLEMENT, IBR, WA, Columbia Basin Continued Multipurpose Project, Implementation, Grant, Adams, Lincoln, Franklin and Douglas Counties, WA, Due: December 20, 1993, Contact: Darrell Cauley (303) 236–9336.

EIS No. 930333, FINAL EIS, AFS, WY, CO, Continental Divide National Scenic Trail Comprehensive Plan, Designation, Construction and Reconstruction, Implementation, Medicine Bow National Forest, Hayden Ranger District, WY to Rio Grande National Forest, Conejos Peak Ranger District, CO, Due: November 1, 1993, Contact: Gary D. Snell (719) 852–5941.

EIS No. 930334, DRAFT EIS, AFS, ID, West Fork Papoose Timber Sale, Implementation, Clearwater National Forest, Powell Ranger District, Idaho County, ID, Due: December 1, 1993, Contact: Stewart Hoyt (208) 942–3113.

EIS No. 930335, FINAL EIS, FHW, WA, First Avenue South Bridge Improvement, from WA–509 at South Cloverdale Street to WA–99/East Marginal Way South crossing the Duwamish River, Funding, Section 10 and 404 Permits, King County, WA, Due: November 1, 1993, Contact: Barry F. Morehead (206) 753–2120.

EIS No. 930336, DRAFT EIS, COE, OR, Coos Bay Channel Deepening Project, Navigation Improvements and Designation Ocean Disposal Sites, OR, Due: November 15, 1993, Contact: Steven J. Stevens (503) 326–6094.

EIS No. 930337, FINAL SUPPLEMENT, NOA, Atlantic Sea Scallop, Placopecten Magellanicus, (Gmelin), Fishery Management Plan, (FMP), Additional Information, Amendment No. 4, Due: November 1, 1993, Contact: Nancy Foster (301) 713–2239.

Dated: September 27, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–24171 Filed 9–30–93; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4782–9]

Colorado; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region VIII).

ACTION: Notice of final determination of full program adequacy for Colorado's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill Criteria will apply to all permitted and unpermitted MSWLFs.

Colorado applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Colorado's application and proposed a determination that Colorado's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received, EPA is today issuing a final determination that Colorado's program is adequate.

EFFECTIVE DATE: The determination of adequacy for Colorado shall be effective on October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Judith Wong, Mail Code 8HWM-WM, Waste Management Branch, U.S. EPA Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone (303) 293–1667.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/

Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

On July 28, 1993, EPA proposed to modify the effective date of the Federal Criteria for certain classifications of landfills (50 FR 40568). Thus, for certain small landfills, the Federal landfill Criteria may not be effective until April 9, 1994, instead of October 9, 1993. EPA intends to publish the final ruling on the effective date extension prior to October 9, 1993. The exact classification of landfills and final extent of the effective date extension will depend on comments received in response to the proposal.

B. State of Colorado

On May 24, 1993, Colorado submitted an application for adequacy determination for the State's municipal solid waste landfill permit program. On July 26, 1993, EPA published a tentative determination of adequacy for all portions of Colorado's program. Further background on the tentative determination of adequacy appears at 58 FR 39809, (July 26, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA also tentatively scheduled a public hearing for September 13, 1993, to be held if a sufficient number of people expressed interest in participating. After no one expressed interest, the Agency cancelled the public hearing.

EPA has reviewed Colorado's application and has determined that all portions of the State's MSWLF permit program will ensure compliance with the revised Federal Criteria. In its application, Colorado demonstrated that the State's permit program adequately meets the location restrictions, operating criteria, design criteria, ground-water monitoring and corrective action requirements, closure and post-closure care requirements, and financial assurance criteria in the revised Federal Criteria. In addition, the State of Colorado also demonstrated that its MSWLF permit program contains specific provisions for public participation, compliance monitoring, and enforcement.

C. Public Comment

The EPA received the following public comments on the tentative determination of adequacy for Colorado's MSWLF permit program.

One commenter maintained that use of the draft STIR as guidance is a violation of the Administrative Procedure Act (APA) requirements that a rule must go through notice and opportunity for comment. EPA does not believe that it is violating requirements of the APA. The Agency is not utilizing the draft STIR as a regulation which binds either the Agency or the States/Tribes. Instead, EPA is using the draft STIR as guidance for evaluating State/Tribal permit programs and maintains its discretion to approve State/Tribal permit programs utilizing the draft STIR and/or other criteria which assure compliance with 40 CFR part 258.

In addition, members of the public have an opportunity to comment on the criteria by which EPA assures the adequacy of State/Tribal MSWLF permit programs because the Agency discusses the criteria for approval of a permit program when it publishes each tentative determination notice in the **Federal Register**. In the tentative determination notice for the State of Colorado's permit program, the Agency set forth for public comment the requirements for an adequate permit program (58 FR 39809–39811, July 26, 1993).

Three commenters from the same county expressed concern that long travel distances to the local landfill and increased tipping fees are causing a hardship on citizens of the county. They also requested all exemptions under Subtitle D. EPA considered the economic constraints of small communities in promulgating the revised Criteria in 40 CFR part 258. The Agency granted relief to certain small MSWLFs where compliance with the revised Criteria is beyond the practicable capability of their communities and circumstances make regional waste management impracticable. See 56 FR 50989–50991 (October 9, 1991) and 40 CFR 258.1(f). The State of Colorado has adopted the small landfill exemption into its regulations.

D. Decision

After reviewing the public comments, I conclude that Colorado's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Colorado is granted a determination of adequacy for all portions of its municipal solid waste landfill permit program.

The State of Colorado has not asserted jurisdiction over "Indian Country," as defined in 18 U.S.C. 1151, in its application for adequacy determination. Today's decision to approve Colorado's application does not extend to the following Indian reservations in the State of Colorado:

1. Southern Ute.
2. Ute Mountain Ute.

Until EPA approves a State or Tribal MSWLF permit program in Colorado for any part of "Indian Country" in Colorado, the requirements of 40 CFR part 258 will, after the effective date of the Federal Criteria, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

This action takes effect on October 1, 1993. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: September 22, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93–24188 Filed 9–30–93; 8:45 am]

BILLING CODE 6560–60–F

[FRL–4782–8]

Chesapeake Bay Program 1987 Chesapeake Bay Agreement; Proposals for Review

The draft Exotic Species Policy, prepared pursuant to the 1987 Chesapeake Bay Agreement is now available for public review. This product is the draft work in progress of the Exotic Species Workgroup of the Living Resources Subcommittee of the Chesapeake Bay Program. It has not been reviewed or endorsed by the Implementation Committee or the Principals' Staff Committee. Public comments will be accepted through November 5, 1993. Comments on this policy should be sent to Frances Cresswell, Maryland Department of Natural Resources, 904 S. Morris Street, Oxford, Maryland 21654.

To obtain copies of the draft plans, call Jennifer Gavin, Chesapeake Bay Program Office, 800/523–2281.

William Matuszeski,

Director, Chesapeake Bay Program Office.

[FR Doc. 93–24187 Filed 9–30–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–66182; FRL 4644–4]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by December 30, 1993, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 20 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000004–00303	Zinc Phosphide Bait	Zinc phosphide
000100–00521	Atrazine MG-80 for Manufacturing Use Only	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
000100–00581	Aatrex RP-4L	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
000352–00460	Dupont Technical Rabon Insecticide	2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate
000352 AL–90–0001	Velpar Weed Killer	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione
000352 AL–90–0002	Dupont Velpar L Herbicide	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine -2,4(1*H*,3*H*)-dione
000352 AZ–79–0004	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 LA–89–0009	Velpar Weed Killer	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione
000352 LA–89–0010	Dupont Velpar L Herbicide	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione
000352 MS–89–0002	Velpar Weed Killer	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione
000352 MS–89–0003	Velpar Weed Killer	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione
000352 OH–78–0005	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
001124–00067	Super Strength Old Dutch Cleanser	Potassium dichloro-*s*-triazinetrione
001769–00228	Rockford No. 1430 Acid Sanit	Isopropanol
		Phosphoric acid
		Dodecylbenzenesulfonic acid
003125 FL–82–0089	Furadan 10 G Insecticide/Nematicide	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
004816 AL–82–0025	Permanone Tick Repellent	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl
007969–00068	Copac E	Copper sulfate
010182–00088	Fusilade 2000 1E Herbicide	Butyl 2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)propanoate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
041547–00011	Aquapill 8 Algaecide	2-Chloro-4,6-bis(ethylamino)-*s*-triazine
060180 FL–89–0027	Kocide 101	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000004	Bonide Products Inc., 2 Wurz Ave., Yorkville, NY 13495.
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
001124	Purex Industrial Division, Textile & Cleaning Chemicals Co (USA), Highway 95 W., Marion, OH 43302.
001769	NCH Corp., 2727 Chemsearch Blvd., Irving, TX 75062.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd, Box 4913, Kansas City, MO 64120.
004816	Roussel UCLAF Corp., 95 Chestnut Ridge Rd., Montvale, NJ 97645.
007969	BASF Corp., Agricultural Products, Box 13528, Research Triangle Park, NC 27709.
010182	Zeneca Inc., Zeneca Ag Products, New Murphy Rd., & Concord Pike, Box 751, Wilmington, DE 19897.
041547	Etani International, Inc., 26 Clinton Drive, #112, Hollis, NH 03049.
060180	B & W Quality Growers, Inc., 393 Whooping Loop, # 1403, Altamonte Springs, FL 32701.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before December 30, 1993. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, product registrations.

Dated: September 23, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–24189 Filed 9–30–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4783–2]

Proposed Administrative Settlement Pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; In re South Macomb Disposal Authority Sites 9 and 9a

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act (CERCLA), notice is hereby given of a proposed administrative cost recovery settlement concerning the South Macomb Disposal Authority Sites 9 and 9a site in Macomb County, Michigan. The Agreement was proposed by U.S. EPA Region V on July 28, 1993. The settlement resolves an EPA claim under

Section 107 of CERCLA against the following Michigan municipalities: Center Line, St. Clair Shores, and Warren. The settlement requires the settling parties to pay $884,705.00 to the Hazardous Substance Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the U.S. EPA Office of Regional Counsel, 8th Floor, 111 W. Jackson Boulevard, Chicago, Illinois 60604; and at the Macomb County Library, 16480 Hall Road, Mt. Clemens, Michigan.

DATES: Comments must be submitted on or before November 1, 1993.

ADDRESSES: A copy of the proposed settlement may be obtained by written request to the following: Michael J. McClary (CS–3T), Assistant Regional Counsel, Office of Regional Counsel, Region V, U.S. Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604–3590. The proposed settlement and additional background information relating to the settlement are available for public inspection at the Office of Regional Counsel, 8th floor, 111 W. Jackson Boulevard, Chicago, Illinois; and at the Macomb County Library, 16480 Hall Road, Mt. Clemens, Michigan. Comments should reference the South Macomb Disposal Authority Sites 9 and 9a, Macomb County, Michigan and EPA Docket No. V–W–93–C–204, and should be addressed to Michael J. McClary at the address given above.

FOR FURTHER INFORMATION CONTACT: Michael J. McClary at (312) 886–7163.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 93–24190 Filed 9–30–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Gen Docket No. 90–119; DA 93–1134]

Private Land Mobile Radio Services; Florida Public Safety Plan Amendment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division released this Order amending the Public Safety Radio Plan for Florida (Region 9). As a result of accepting the amendment for the Plan for Region 9, the interests of the eligible entities within the region will be furthered.

EFFECTIVE DATE: September 23, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 17, 1993; *Released:* September 23, 1993.

By the Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division:

1. The Private Radio Bureau and the Office of Engineering and Technology, acting under delegated authority, accepted the Florida (Region 9) Public Safety Plan (Plan) on May 10, 1990, 5 FCC Rcd 3067 (1990).

2. By letter dated June 25, 1993, the Region proposed to amend its Plan. The proposed amendment would revise the current channel allotments. The Commission placed the letter on Public Notice for comments due on August 27, 1993, 58 FR 40818 (July 30, 1993), and received no comments.

3. We have reviewed the proposed amendment to the Region 9 Plan and, having received no comments to the contrary, conclude it furthers the interests of the eligible entities within the Region.

1. Accordingly, it is ordered, That the Public Safety Radio Plan for Florida (Region 9) is amended, as set forth in the Region's letter of June 25, 1993. This Amendment is effective immediately.

Federal Communications Commission.

Richard J. Shiben,

Chief, Land Mobile & Microwave Division.

[FR Doc. 93–24092 Filed 9–30–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1971]

Petitions for Reconsideration and Petition for Stay of Actions in Rulemaking Proceedings

September 28, 1993.

Petitions for reconsideration and stay have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full test of these documents are available for viewing and copying in room 239, 1919 M Street, NW. Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed October 18, 1993. See 1.4(b) (1) of the Commission's rules (47 CFR 1.4 (b) (1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Petitions for Reconsideration, Telecommunications Relay Services, and the Americans with Disabilities Act of 1990 (CC Docket No. 90–571).

Number of Petitions Filed: 7

Subject: Petition for Stay of Contribution Obligation

Number of Petitions Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–24089 Filed 9–30–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Global Container Lines/Bosco Atlantic Lines

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011429.

Title: Global Container Lines/Bosco Atlantic Lines Agreement.

Parties: Global Container Lines, Ltd., Bosco Atlantic Lines, Inc.

Synopsis: The proposed Agreement would authorize the parties to charter space to or from each other, rationalize sailings, and discuss rates, charges, service items and other matters pertaining to the transportation of cargo in the trade between ports and points in the United States and ports and points on the Red Sea, Persian Gulf, Central and South America, Africa, India, Pakistan, Bangladesh, Sri Lanka, Singapore, Indonesia and Thailand. Adherence to any such agreement is voluntary.

Dated: September 27, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–24085 Filed 9–30–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R-0804]

Consolidation of Purchases and Sales Service at Federal Reserve Bank of Chicago

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of final action.

SUMMARY: The Board has approved the proposal by the Federal Reserve Banks to consolidate the priced secondary market purchases and sales of securities service, which is currently provided by eight Reserve Banks, at the Federal Reserve Bank of Chicago. The consolidation will improve efficiency and contain the costs of providing this service to depository institutions nationwide. The service will be included as a part of the Federal Reserve's priced book-entry securities service, beginning January 1, 1994.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Charles W. Bennett, Assistant Director (202/452-3442), Gerald D. Manypenny, Manager (202/452-3954), or Michael L. Bermudez, Financial Services Analyst (202/452-2216), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The purchases and sales service consists of the purchase or sale of Federal Reserve book-entry-eligible securities on the secondary market. Purchases and sales are conducted for institutions' own securities as well as for those of customers. Prior to the passage of the Monetary Control Act of 1980, eleven Reserve Banks offered the service to member banks. Generally, smaller depository institutions with no direct relationship with a securities broker or dealer have relied upon Reserve Banks. With the increased acceptance of book entry and the declining availability of Federal agency securities in definitive form, the requests for purchases and sales evolved from the purchase and sale of definitive securities to primarily book-entry securities. Demand for purchases and sales has declined steadily over the past few years, from 74,000 transactions in 1980 to 18,400 transactions in 1992. The service is currently offered by eight Reserve Banks. These are Boston, Philadelphia, Cleveland, Richmond, Chicago, Minneapolis, Kansas City, and Dallas with the Chicago Reserve Bank handling more than half of the System's annual volume.

The Board has approved consolidation of the purchases and sales at the Federal Reserve Bank of Chicago. Consolidation of the purchases and sales provides an opportunity to reduce cost with little, if any, impact on the level of service offered to depository institutions. All seven Reserve Banks now offering the service are expected to consolidate by early 1994.

The Chicago Reserve Bank is prepared to support a consolidated purchase and sale operation at Chicago. A toll-free telephone number will be available nationwide for depository institutions to initiate transactions with the Chicago Reserve Bank. A depository institution's representative, with proper authorization on file with the Chicago Reserve Bank, would initiate orders to purchase or sell securities by telephoning the Chicago Reserve Bank on the recorded toll-free line. After determining that an order to *sell* securities is authentic, the Chicago Reserve Bank would confirm that the securities are held in book-entry form at the Bank,[1] a minimum of two dealers would be contacted if the transaction is an odd lot, and a minimum of five dealers would be contacted for round-lot transactions. The dealer submitting the best price (bid) would be given the order.[2] Orders for the *purchase* of securities for depository institutions are also received via recorded telephone line and verified for authenticity.[3] Like-securities issues (by CUSIP number) would be combined by Chicago, whenever possible, to obtain the best price. For purchases, the dealer submitting the best price (offer) would be given the order.

Summary of Comments

In June 1993, the Board requested public comment on the proposal by the Federal Reserve Banks to consolidate the purchases and sales service at the Federal Reserve Bank of Chicago (58 FR 36412, July 7, 1993). To ensure that appropriate consideration is given to any public policy issues arising from a proposal to consolidate a priced service across District lines, the Board adopted factors to be considered when evaluating such a proposal. Commenters were asked to respond to each of the factors adopted by the Board.[4]

The Board received four comment letters in response to the proposed consolidation.[5] Both non-Federal Reserve Bank commenters supported the Board's proposal to consolidate purchases and sales. One commenter wrote: "It is refreshing to see proposals to decrease costs to the banking system being addressed versus proposals to add more costs to an already overburdened system." The other commenter, although supportive of the proposal to consolidate at a Federal Reserve Bank, objected to the consolidation at the Chicago Reserve Bank for reasons not related to this proposal. The Chicago Reserve Bank was selected as the proposed consolidation site because it already processes much of the System volume and because its existing level of automation for this service would enable it to absorb all of the System's purchases and sales volume without increasing staff. Existing Chicago Reserve Bank staff and facilities would be sufficient to process the consolidated volume; its processing procedures remain efficient and would remain essentially unchanged. Based upon the analysis contained in the June 1993

[1] When depository institutions located outside of the Chicago Head Office region wish to sell securities, Chicago would telephone the Reserve Bank holding the book-entry account for the requesting depository institution and request the free transfer of the securities to Chicago, thus reducing the book-entry holdings at the sending Reserve Bank and increasing the book-entry holdings at Chicago. The offsetting payment is settled through the inter-District Settlement Fund on settlement day.

[2] Settlement of transactions in United States Treasury or Agency securities of $100,000 or more normally occurs on the business day following the date of execution of the order. Upon request, if an order is received before 11:00 a.m. (Central Standard Time), the Chicago Reserve Bank endeavors to execute the orders for settlement on the same day as the orders are placed.

[3] Purchases for $500,000 or more are authenticated by telephoning another authorized person of the requesting depository institution other than the original caller.

[4] The Board's factors to be considered when evaluating a proposal to consolidate a priced service across district lines are:

(1) Maintenance or improvement of cost recovery in a service,

(2) Improvement of the efficiency of Federal Reserve Bank operations,

(3) Maintenance or improvement of the level or quality of service,

(4) Responsiveness to changes in the financial-services industry,

(5) Effect on private-sector providers of the service, and

(6) Effect on users of the service.

[5] Two of the four comments received were from Reserve Banks and were not considered for the purpose of this summary.

request for comment, the Board believes that the Chicago Reserve Bank would provide a comparable or higher level of service to depository institutions nationwide at the same or lower fee. Consolidation would also have little effect on private-sector providers of the service.

Competitive Impact Analysis

Given the trivial volume processed by all the Federal Reserve Banks, consolidation will not have a material or adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing purchase and sale services.

By order of the Board of Governors of the Federal Reserve System, September 27, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–24141 Filed 9–30–93; 8:45 am]

BILLING CODE 6210–01–9

InterBank, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 25, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. InterBank, Inc., Sayre, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Sayre, Sayre, Oklahoma.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Caldwell Bancshares, Inc., Caldwell, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Caldwell Bancshares of Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire Caldwell National Bank, Caldwell, Texas.

2. Caldwell Bancshares of Delaware, Inc., Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Caldwell National Bank, Caldwell, Texas.

Board of Governors of the Federal Reserve System, September 27, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24142 Filed 9-30-93; 8:45 am]

BILLING CODE 6210-01-F

J.P. Morgan & Co. Incorporated, New York, New York; Application to Engage in Nonbanking Activities

J.P. Morgan & Co. Incorporated, New York, New York (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through a wholly owned subsidiary, J.P. Morgan Futures, Inc., New York, New York (JPMFI), a futures commission merchant (FCM) registered under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), in executing and clearing, clearing without executing, brokering, and providing investment advisory services with regard to various energy-related contracts on the New York Mercantile Exchange (NYMEX) and the Singapore International Monetary Exchange Limited (SIMEX). Notice of the application has been published. See 58 FR 34054 (June 23, 1993).

Since the original notice of application was published, Applicant has amended its application to reflect a proposal: (1) To transfer most of the existing brokerage activities of JPMFI (except for Company's clearing activities on the Chicago Mercantile Exchange and the SIMEX) to Applicant's section 20 subsidiary, J.P. Morgan Securities Inc., New York, New York (JPMSI); and (2) for JPMSI rather than JPMFI to engage in the proposed FCM activities on the NYMEX. In addition, since notice of the application was published, Applicant has submitted a request for confirmation that foreign subsidiaries of JPMSI's bank affiliates are not subject to the section 20 firewalls relating to cross-marketing activities and personnel interlocks. *See J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192, 215 (1989) (firewalls 13 and 16). Applicant argues that the scope of these firewalls should be limited to U.S. affiliates of section 20 companies, that there is no legal basis for extending these firewalls to foreign affiliates of a section 20 company, and that to do so would impose serious competitive disadvantages on Applicant. The Board has not previously considered this issue. Applicant otherwise would continue to comply with the section 20 firewalls set forth in *J.P. Morgan*, as modified subsequently by the Board.

Because the Board deems the foregoing as material amendments to the application, the Board is extending the comment period for this application. Materials relating to this application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than October 18, 1993. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Board of Governors of the Federal Reserve System, September 27, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24143 Filed 9-30-93; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation, et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has 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 § 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.

The 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 18, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire St. Cloud Metropolitan Agency, Inc., St. Cloud, Minnesota, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 27, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24144 Filed 9-30-93; 8:45 am]

BILLING CODE 6210-01-F

Thomas R. Rogers and Melinda S. Rogers; 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 § 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 October 21, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Thomas R. Rogers and Melinda S. Rogers, to acquire an additional 4.0 percent of the voting shares of First Minnetonka Bancorporation, Inc., Minnetonka, Minnesota, as the result of a stock redemption, for a total of 26.7 percent and thereby indirectly acquire First Minnetonka City Bank, Minnetonka, Minnesota.

Board of Governors of the Federal Reserve System, September 27, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24145 Filed 9-30-93; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

Small Purchase Order Clauses on Electronic Media; Notice of Intent

ACTION: Notice of intent.

SUMMARY: Based on the Federal Supply Service's (FSS) intent to discontinue the issuance of paper purchase orders for small purchases made under Federal Acquisition Regulation (FAR) Part 13, the clauses cited for these purchases will only be available through electronic media. These clauses can be obtained through a computer connection to an electronic bulletin board (EBB) or through a call to an automated facsimile transmission service. Currently, these clauses can be found on the back of the GSA form 3186A entitled Order for Supplies or Services (Small Purchase).

DATES: Proposed implementation is October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Questions concerning the FSS plan of offering FAR clauses for small purchases on an EBB for through a fax system may be directed to Stuart Goulden at (703) 305–7741. Any written comments should be received on or before October 1, 1993.

ADDRESSES: Interested persons are invited to submit written comments to: General Services Administration, Federal Supply Service (FCSP), Attn.: Stuart Goulden, Washington, DC 20406.

SUPPLEMENTARY INFORMATION: Both the EBB and the automated fax system will be physically located in Kansas City, KS. The only cost associated with either the EBB or faxback is the cost of the call.

The EBB will be accessible by means of a computer with a modem. Using the EBB a supplier can download the file containing the small purchase clauses. The faxback system only requires a touch tone phone. After dialing, the user will be prompted to enter the phone number for their fax machine and the document number for the small purchase clauses. The system will then place a call to the fax machine telephone number and transmit the small purchase order clauses document. The only charge for the fax system is the initial telephone call; the cost of transmitting the fax message is covered by FSS. By placing these clauses in an electronic format, the FSS vendor will have immediate access to the clauses and is assured that the clause information is always up-to-date. If a change occurs in a small purchase clause, a note will appear on all purchase orders alerting the supplier to this fact. The supplier can then access the updated clause by either the fax or bulletin board systems. The GSA small purchase clauses are not changed very often, but this system will allow every vendor to have the most current information as soon as it is available.

When a small purchase incorporates special clauses, drawings or other non standard information the contracting officer will be responsible for making these provisions available to the supplier.

Dated: September 13, 1993.

John R. Roehmer,

Director, Systems, Inventory & Operations Management Center.

[FR Doc. 93–24066 Filed 9–30–93; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the

Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Hill-Burton Community Service Assurance Report—Extension With No Change—0990–0096—The Community Service Assurance Report provides information on community services provided by Hill-Burton recipients. The Public Health Service Act (Titles VI and XVI) requires that this information be obtained periodically to enable assessment of the compliance of recipient Hill-Burton health facilities with their community services assurances. Respondents: State or local governments, non-profit institutions; Total Number of Respondents: 6,300; Frequency of Response: once every three years; Average Burden per Response: 52.5 hours; Estimated Annual Burden: 110,250 hours.

2. Recordkeeping Requirements for Government Owned/Contractor Held Property and Report of Accounting Personal Property (HHS–565)—0990–0015 & 0990–0081—The recordkeeping requirements are needed to assure accountability and control for government owned/contractor held property for HHS contracts. Form 565 is used to report all accountable personal property purchased or fabricated by contractors and billed to HHS. Respondents: state or local governments, business or other for-profit, non-profit institutions, small business; Burden Information for Form HHS–565:

Annual Number of Respondents: 3,600.

Annual Frequency of Response: one time.

Average Burden per Response: 30 minutes.

Total Annual Burden: 1,800 hours.

Burden Information for Recordkeeping Requirements: Annual.

Number of Responses: 4,500.

Average Burden per Response: 30 minutes.

Total Annual Burden: 2250 hours.

Total Burden: 4050 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619–0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: September 22, 1993.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 93–23833 Filed 9–30–93; 8:45 am]

BILLING CODE 4150–04–M

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for the continued use of a currently approved information collection entitled: "Runaway and Homeless Youth Management Information System (RHYMIS)". This information collected funded by the Family and Youth Services Bureau (FYSB) of the Administration for Children and Families (ACF) will be used to monitor program activities of the Runaway and Homeless Youth programs and this information will also be summarized and used in the Annual Report to Congress.

This information collection was previously approved under OMB Control Number 0980–0123 for use through October 1993.

ADDRESSES: Copies of the extension request and related RHYMIS documents may be obtained from Steve R. Smith of the Office of Information Systems Management, ACF, by calling (202) 401–6964. Written comments and questions regarding approval of the request for extension should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Runaway and Homeless Youth Management Information System.

OMB No.: 0970–0123.

Description: The Runaway and Homeless Youth Act as reauthorized under the Juvenile Justice and Delinquency Prevention Act Amendments of 1992 (Pub. L. 102–586) requires grantees to report regularly on the profile of the youth and families they serve, and to provide an overview of the services provided under their grant programs. The Runaway and Homeless Youth Management Information System (RHYMIS) was developed to assist in carrying out these reporting responsibilities.

The RHYMIS consists of six forms which grantees used to record information about the youth and families being served, the grantee agencies and the RHY programs each operates, their staffing patterns, coordination of service-delivery agencies, community education activities, and educational materials the agencies develop. Distribution and implementation of the RHYMIS at the majority of grant sites is expected by the end of 1993. Funded grantees required to meet the mandatory reporting requirements are: The Runaway and Homeless Youth Basic Center Program (BCP), the Drug Abuse Prevention Program for Runaway and Homeless Youth (DAPP) and the Transitional Living Program (TLP).

This information collection is computer driven on site by grantee staff and downloaded quarterly into diskette. This information is then sent to the Family and Youth Services Bureau of the Administration for Children and Families. This information will be used to report program activities and client statistics to Congress, respond to Congressional and public inquiries, calculate budget estimates, and to evaluate areas where technical assistance may be required.

Annual Number of Respondents: 400.

Annual Frequency: 695.

Average Burden Hours Per Response: .22.

Total Burden Hours: 61,300.

Dated: September 17, 1993.

[FR Doc. 93–24067 Filed 9–30–93; 8:45 am]

BILLING CODE 4184–01–M

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for the continued use of information collection requirements previously approved under OMB Control Number 0970–0057. This information collection entitled: "OCSE–156 Child Support Enforcement Program Quarterly Data Report and OCSE–158 Child Support Enforcement Program Annual Data Summary Report is sponsored by the Office of Child Support Enforcement (OCSE) of the Administration for Children and Families (ACF).

ADDRESSES: Copies of the Information Collection request may be obtained from Steve R. Smith of the Office of Information Systems Management, ACF, by calling (202) 401–6964.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: OCSE–156 Child Support Enforcement Program, Quarterly Data Report and OCSE–158 Child Support Enforcement Program, Annual Data Summary Report.

OMB No.: 0970–0057.

Description: This collection of information is authorized by title IV–D of the Social Security Act. The Office of Management and Budget (OMB) also directs the Office of Child Support Enforcement, ACF, to collect this information. OMB previously approved this data collection under OMB approval number 0970–0057 for use through December 31, 1993.

Data provided by the 54 States and jurisdictions will be used to report State child support enforcement activities to Congress, respond to congressional and public inquiries, calculate budget estimates, provide impact statements of proposed legislation, evaluate areas where technical assistance may be required by a State, provide Federal auditors with an indication of where their efforts should be concentrated during compliance audits, and compute performance indicators used as part of the assessment of State program performance for audit penalty purposes.

In addition, these forms will be used to collect current statistical caseload information on specific services, such as: (1) Paternity determination; (2) location of an absent parent to establish a child support obligation; (3) establishment of a child support obligation; and (4) location of an absent parent for enforcing or modifying a child support obligation—specified for families receiving ADFC and for those not receiving ADFC.

	OCSE–156	OCSE–158
Annual Number of Respondents	54	54
Annual Frequency	4	1
Average Burden Hours Per Response	3.7	1.2
Burden Hours	799.2	64.8
Total Burden Hours		864.0

Dated: September 17, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–24068 Filed 9–30–93; 8:45 am]

BILLING CODE 4184–01–M

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Administration for Children and Families (ACF) has submitted to the Office of Management and Budget (OMB) a request for the continued use of an information collection titled: "Comprehensive Child Development Program Management Information System". This information collection was previously approved under OMB Control Number 0980–0226 for use through October 1993.

ADDRESSES: Copies of this request for approval may be obtained from Steve R. Smith of the Office of Information Systems Management, ACF, by calling (202) 401–6964.

Written comments and questions regarding this requested approval should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Comprehensive Child Development Program Management Information System (CCDP MIS).

OMB No.: 0980–0226.

Description: The CCDP MIS is a demonstration program to provide intensive, comprehensive, integrated and continuous support services to children from low-income families from birth to entrance into elementary school that will enhance their intellectual, social, emotional and physical development. The CCDP also will provide needed support services to parents, siblings, and other family members which will enhance their personal development and economic and social self-sufficiency. The MIS will collect data on family demographics, characteristics and birth records. The MIS data are collected to monitor whether projects are providing the services they are statutorily required to provide. For example, analyses of family service contact records and child educational program attendance records will determine if young children are receiving early childhood educational services as mandated.

Annual Number of Respondents: 20,320.

Annual Frequency: 19.59.

Average Burden Hours Per Response: 0.111.

Total Burden Hours: 44,146.

Dated: September 17, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–24069 Filed 9–30–93; 8:45 am]

BILLING CODE 4184–01–M

Agency For Toxic Substances and Disease Registry

[ATSDR–72]

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of 19 updated final toxicological profiles of priority hazardous substances in the fifth set and two final toxicological profiles, Endosulfan and Fluorides, from the fourth set prepared by ATSDR.

FOR FURTHER INFORMATION CONTACT: Ms. Susie Tucker, Agency for Toxic Substances and Disease Registry, Division of Toxicology, 1600 Clifton Road, NE., Mail Stop E–29, Atlanta, Georgia 30333, telephone (404) 639–6300.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 et seq.) by establishing certain requirements for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified the 275 hazardous substances which both agencies determined pose the most significant potential threat to human health. The first list was published in the **Federal Register** on April 17, 1987, (52 FR 12866); the second list on October 20, 1988, (53 FR 41280); the third list on October 26,

1989, (54 FR 43615); and the fourth list on October 17, 1990, (55 FR 42067).

Notice of the availability of drafts of the fifth set (19) of toxicological profiles for public review and comment was published in the **Federal Register** on October 17, 1991 (56 FR 52036), with notice that a 90-day public comment period would be provided for each profile, starting from the actual release date. The identical procedure was followed for the two profiles from the fourth set. Notice of the availability of drafts for public review and comment was published in the **Federal Register** on October 16, 1990 (55 FR 41881), for Endosulfan and on September 12, 1991 (56 FR 46436), for Fluorides. Following the close of each comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments, the classification of and response to those comments, and other data submitted in response to the **Federal Register** notice bear the docket control number ATSDR–43 for the drafts in the fifth set; and for drafts in the fourth set, ATSDR–29 for Endosulfan and ATSDR–39 for Fluorides. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 4, suite 2400, Executive Park Drive, Atlanta, Georgia, between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of 19 updated final toxicological profiles in the fifth set and two final toxicological from the fourth set. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for these profiles as determined by NTIS.

Toxicological profile	NTIS Order No.	CAS No.
Fifth Set:		
1. Aldrin	PB/93/182368	309–00–2
Dieldrin	.....	60–57–1
2. Arsenic	PB/93/182376	7440–38–2
3. Benzene	PB/93/182384	71–43–2
4. Beryllium	PB/93/182392	7440–41–7
5. Di(2-ethylhexyl)phthalate	PB/93/182400	117–81–7
6. Cadmium	PB/93/182418	7440–43–9
7. Chloroform	PB/93/182426	67–66–3
8. Chromium	PB/93/182434	7440–47–3
9. Cyanide	PB/93/182442	57–12–5
10. 1,4–Dichlorobenzene	PB/93/182459	106–46–7
11. Heptachlor	PB/93/182467	76–44–8
Heptachlor Epoxide	.....	1024–57–3
12. Lead	PB/93/182475	7439–92–1
13. Methylene Chloride	PB/93/182483	75–09–2
14. Nickel	PB/93/182491	7440–02–0
15. N-Nitrosodiphenylamine	PB/93/182509	86–30–6
16. Polychlorinated Biphenyls	PB/93/182517	1336–36–3
Aroclor 1260	.....	11096–82–5
Aroclor 1254	.....	11097–69–1
Aroclor 1248	.....	12672–29–6
Aroclor 1242	.....	53469–21–9
Aroclor 1232	.....	11141–16–5
Aroclor 1221	.....	11104–28–2
Aroclor 1016	.....	12674–11–2
17. Tetrachloroethylene	PB/93/182525	127–18–4
18. Trichloroethylene	PB/93/182533	79–01–6
19. Vinyl Chloride	PB/93/182541	75–01–4
Fourth Set:		
20. Endosulfan	PB/93/182558	115–29–7
21. Fluorides	PB/93/182566	16984–48–8
Hydrogen Fluoride	.....	7664–39–3
Fluorine (F)	.....	7782–41–4

Dated: September 27, 1993.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–24137 Filed 9–30–93; 8:45 am]

BILLING CODE 4160–70–P

Centers for Disease Control and Prevention

Technical Advisory Committee for Diabetes Translation and Community Control Programs; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Technical Advisory Committee for Diabetes Translation and Community Control Programs.

Time and Date: 8:30 a.m.–4 p.m., Monday, October 18, 1993.

Place: CDC, 1600 Clifton Road, NE., Lobby Conference Room, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with advising the Director, CDC, regarding priorities and feasible goals for translation activities and community control programs designed to reduce morbidity and mortality from diabetes and its complications. The committee advises regarding policies,

strategies, goals and objectives, and priorities; identifies research advances and technologies ready for translation into widespread community practice; recommends public health strategies to be implemented through community interventions; advises on operational research and outcome evaluation methodologies; identifies research issues for further clinical investigation; and advises regarding the coordination of programs with Federal, voluntary, and private resources involved in the provision of services to people with diabetes.

Matters to be Discussed: The committee will discuss results and translation implications of the Diabetes Control and Complications Trial (DCCT), and will review the relationship of the DCCT results to the goals and objectives for CDC's Division of Diabetes Translation. The committee will review and provide input on content areas for state-based diabetes control programs, the Diabetes Intervention Reaching and Educating Communities Together Project. In addition, the committee will further discuss how the Division of Diabetes Translation can further coordinate diabetes translation activities and the role of the committee within this coordination process. Division of Diabetes Translation staff will provide updates on diabetes control programs currently operational within the Division.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Fredrick G. Murphy, Program Analyst, Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., (K–10), Atlanta, Georgia 30341–3724, telephone 404/488–5005.

Dated: September 27, 1993.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–24135 Filed 9–30–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 93N-0342]

The Role of the Division of Biometrics in the Center for Drug Evaluation and Research; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming public meeting to discuss the role of the Division of Biometrics (DOB) in the Center for Drug Evaluation and Research (CDER). This meeting is the third phase of a program review conducted at the request of the Director, CDER. The purpose of the meeting is to obtain the views of a panel of experts in biostatistics and other attendees on how the CDER program might be enhanced. This information will be used in conjuction with other assesssments for future planning.

DATES: The meeting will be held on Tuesday, October 12, 1993, 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the National Institutes of Health, Bldg. 31, Conference rm. 6, 9000 Rockville Pike, Bethesda, MD 20205. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Submit written requests for copies of the Phase I and II reports to the Center for Drug Evaluation and Research Executive Secretariat Staff (HFD–8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jane A. Axelrad, Center for Drug Evaluation and Research (HFD–1), Food and Drug Administration, 5600 Fishers Ln., Rockville, MD 20857, 301–443–2894.

SUPPLEMENTARY INFORMATION:

I. Background

In late June 1992, the Director of CDER requested that the Office of Management and Systems (OMS) conduct programmatic reviews of the two divisions under the Office of Epidemiology and Biostatistics (OEB). It was decided that the review of the Division of Epidemiology and Surveillance (DES) would be undertaken first, followed by a review of DOB.

The program review of DOB began in May 1993. A Phase I report was developed by DOB, with the assistance of the Associate Director for Policy, CDER. The report documented the current mission, activities and responsibilities of DOB. Phase II consisted of a series of internal FDA meetings held with the Office Directors and Review Division Directors who use DOB's services, and with the DOB staff, to obtain their views on how the program could be enhanced to better meet CDER's needs in the future. That Phase will be completed in September 1993.

In Phase III, during the public meeting on October 12, 1993, the findings from Phases I and II will be discussed by six outside experts in biometrics. At the meeting, DOB and other FDA staff will present their views on how the DOB programs could be enhanced and will engage the outside experts in a discussion of the following issues:

1. Given DOB's current role in the review of preclinical and clinical studies in new drug applications (NDA), what changes should be made in DOB's role to address the expected evolution of responsibilities in the drug development and evaluation process (e.g., evolution of the managed review process under user fees, pro-active interactions during the IND process, electronic submissions of NDA's)?

2. What role should DOB play in other subject matter areas such as bioavailability/bioequivalence studies in NDA's and abbreviated NDA's?

3. Are existing resources in DOB adequate to enable DOB perform the functions assigned to it and that it will be expected to perform in the future? Does DOB have the appropriate skill mix to address methodological, data analytic, and scientific computational issues in the 1990's and beyond?

4. Is DOB adequately equipped with the appropriate tools (e.g., software and hardware) to address biostatistical issues, data analytic strategies, and scientific computational issues in the 1990's and beyond?

5. How can DOB better communicate with the academic and scientific communities to obtain feedback regarding DOB's leadership role in the development and transfer of biostatistical methodology and regulatory research?

6. What role should DOB play in the international development and harmonization of statistical policies and methodologies?

II. Attendance and Participation

The meeting is open to the public. Interested persons attending the meeting will be given an opportunity to make oral presentations during the meeting on the issues described above as time permits and at the discretion of the session chairperson. Written comments on these issues submitted prior to the meeting will be considered by the panel.

Interested persons may submit to the Dockets Management Branch (address above) written comments on these issues. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Copies of the Phase I and II reports may be obtained by writing to the CDER, Executive Secretariat Staff (address above). Send a self-addressed adhesive label to assist that office in processing your request. Requests should be identified with the docket number

found in brackets in the heading of this document.

Dated: September 28, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–24162 Filed 9–28–93; 11:20 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPD–762–PN]

RIN 0938–AG04

Medicare Program; Payment for Extracorporeal Shock Wave Lithotripsy Services Furnished by Ambulatory Surgical Centers (ASCs)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed Notice with comment period.

SUMMARY: This proposed notice complies with the March 12, 1992 court order of the United States District Court for the District of Columbia in *American Lithotripsy Society* v. *Louis W. Sullivan, M.D., et al.*, No. 92–0278 (D.D.C. March 12, 1992). The court order stays implementation of the December 31, 1991 notice (56 FR 67666), which added extracorporeal shock wave lithotripsy (ESWL) (CPT–4 code 50590) to the list of covered services furnished in Medicare participating ambulatory surgical centers (ASCs) and set the ESWL ASC payment rate, until the Secretary publishes certain information relevant to the setting of the ESWL rate, receives comments, and publishes a subsequent final notice. This proposed notice also responds to public comments on the lithotripsy payment rate that were received in response to the December 31, 1991 notice and to late comments received in response to a December 30, 1990 (55 FR 50590) notice that addressed, in part, ESWL services.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, by 5 p.m. on [60 days after the date of publication in the Federal Register.]

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–762–PN, PO Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201,

or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–762–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this 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) 690–7890).

FOR FURTHER INFORMATION CONTACT: Vivian Braxton, (410) 966–4571.

SUPPLEMENTARY INFORMATION:

I. Background

A. Ambulatory Surgical Center Payment Rates

Section 1833(i)(2)(A) of the Social Security Act (the Act), authorizes the Secretary to pay ambulatory surgical centers (ASCs) prospectively determined rates for facility services associated with covered surgical procedures. Payments for ASC facility services are subject to the usual Medicare Part B deductible and coinsurance requirements. Therefore, participating ASCs are paid 80 percent of the prospectively determined rates. An ASC rate represents the Secretary's estimate of a fair fee that takes into account the costs incurred by ASCs, generally, in providing the services that are furnished in connection with performing a covered procedure.

The rate we have established is a standard overhead amount that does not include physician fees and other medical items and services (for example, durable medical equipment) for which separate payment may be authorized under other provisions of the Medicare program.

The Report of the Senate Committee on Finance, (S. Rep. No. 471, 96th Cong., 1st Sess., 35 (1979), enacted as section 934 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499), the ASC Medicare authorizing legislation), states: "This overhead factor is expected to be calculated on a prospective basis * * * utilizing sample survey and similar techniques to establish reasonable estimated overhead allowances for each of the listed procedures which take account of volume (within reasonable limits)."

Section 1833(i)(2)(A)(ii) of the Act requires that the ASC facility payment rate result in substantially lower Medicare payment than would have been made if the same procedure had been performed on an inpatient basis in a hospital. The ASC covered procedures are classified according to a group payment classification system. The ASC facility payment for all procedures in each group is established at a single rate and adjusted for geographic variation. The rate is a standard overhead amount that covers the cost of supplies, equipment, and use of the facility, as well as services such as nursing.

Under section 1833(i)(3)(A) of the Act, the aggregate payment to hospital outpatient departments for covered ASC procedures is equal to the lesser of:

- The amount paid for the same services that would be paid to the hospital under section 1833(a)(2)(B) of the Act (that is, the lower of the hospital's reasonable costs or customary charges); or
- The amount determined under section 1833(i)(3)(B)(i) of the Act, which is based on a blend of the lower of the hospital's reasonable costs or customary charges and the amount that would be paid to a freestanding ASC in the same area for the same procedure.

Under section 1833(i)(3)(B)(i) of the Act, the blend amount for a cost reporting period is the sum of the cost proportion and the ASC proportion. For cost reporting periods beginning on or after January 1, 1991, the cost proportion is 42 percent and the ASC proportion is 58 percent as defined by section 1833(i)(3)(B)(ii) of the Act.

On February 8, 1990, we published a final notice in the Federal Register (55 FR 4526) that set forth a revised methodology for determining the payment rates for ASC services furnished to beneficiaries under Part B of Medicare. The provisions of that final notice, in part: (1) Established revised rates based on survey data collected in 1986; (2) expanded the number of payment groups from four to eight; (3) computed each group rate based on a weighted median, rather than an unweighted mean, as previously used; and (4) weighted the rates by Medicare utilization. This revised ASC payment rate methodology was effective for services furnished on or after March 12, 1990.

We have since regularly updated those rates to reflect increases in the Consumer Price Index-All Urban Consumers (CPI–U).

B. Published Payment Rate For ESWL

On December 7, 1990, we published a notice in the **Federal Register** (55 FR 50590) which proposed additions to and deletions from our list of covered surgical procedures for ASCs. In that notice, we invited comments on a proposal to make ESWL an approved ASC procedure and to set its payment rate at $812 (that is, the rate in effect prior to December 31, 1991 for Group 7 procedures).

We further advised in the December 1990 notice that preliminary information was insufficient to allow us to evaluate the appropriateness of the proposed payment rate. Lithotripsy facility charges were not included in our data base used to establish the ASC facility rates. As previously mentioned, our current data base is constructed from facility charges collected in 1986 that are associated with procedures covered and performed largely in 1984 and 1985. While we are in the process of collecting new charge information on all ASC covered procedures and procedure-specific cost information on a select number of them, these new data will not be available for rate-setting purposes before 1994.

Therefore, we could not yet calculate a standard overhead amount for lithotripsy under the rate-setting methodology applied to other covered ASC procedures. Generally, when new procedures are added to our Medicare list of ASC approved procedures and charge data are not available to assign them to an appropriate payment group, we classify them based on the clinical judgement of our physician staff.

When using this approach, our medical experts usually evaluate new procedures to determine if they are clinically similar to other procedures currently on our approved ASC list. In assessing clinical similarity, they take into account factors such as the time required to perform each procedure, surgical techniques, and the types of resources necessary to perform each procedure. If clinical similarity is substantiated, a new procedure is assigned to the same payment group as that of the similar procedure.

In cases where payment rates cannot be established on the basis of clinical similarity, such as lithotripsy, our staff physicians may rely on their familiarity with procedures generally or consult other experts. Additionally, they may use other HCFA data sources to gather information on Medicare facility costs, charges, and payments associated with performing these procedures in the hospital inpatient or outpatient settings. These data are not used to set rates. Rather, they are used solely as benchmarks to aid the experts in making a rational judgement about appropriate payment group classification.

When initially assigning lithotripsy to payment Group 7, our staff physicians relied on their familiarity with ESWL technology since sufficient charge data were not available. Based on their knowledge of it, they determined that it would have been inappropriate to propose an ESWL facility rate below that set for Group 7 procedures. Assignment of this procedure to Group 8 would have been inappropriate also because that payment group is exclusively for certain cataract surgery procedures. However, to help evaluate the appropriateness of our proposed Group 7 assignment, we solicited, in the **Federal Register** (55 FR 50590), detailed information on facility charges and costs associated with providing lithotripsy services (for example, costs and types of lithotripters currently in use, supply costs, machine maintenance expenses, and personnel costs).

We received 177 timely comments in response to our proposal. Comments were received from urologists, hospitals, lithotripsy centers, industry associations, and medical schools. Thirty-seven commenters submitted duplicate form letters. Also, 21 commenters submitted lithotripsy cost information in response to our request for information. An additional 22 items of correspondence were received after the comment period closed and were not evaluated.

The timely commenters did not support the ESWL proposed rate. Many claimed that the procedure is capital intensive and that lithotripter capital costs warrant a substantially higher rate than the proposed Group 7 rate of $812.

As discussed in our December 31, 1991 notice, we reviewed the lithotripsy per procedure costs reported by the 21 commenters. The costs reported varied widely, ranging from $1,469 to $4,185. Annual procedure volume ranged from 100 to about 1,100 treatments.

Our ability to compare costs across facility settings was limited due to reporting inconsistencies. For example, a number of the commenters submitted incomplete cost information. Some commenters reported costs on a per procedure basis or provided utilization information to permit the calculation of per procedure costs while others did not. Some simply stated total facility costs as a calculated value while others itemized components of their costs. Among those itemizing costs, some appeared to have commingled electrode costs with medical supplies while others reported these disposables separately.

We considered the public comments and published our response in a final notice with a comment period in the **Federal Register** (56 FR 67666) on December 31, 1991. Because the wide variations in ESWL costs reported by commenters were neither explained nor substantiated, we did not use the submitted costs to determine the ESWL rate. The provisions of the notice were effective for services furnished beginning January 30, 1992.

That notice set the ESWL payment rate, based on a procedure cost matrix model. The final payment rate, $1,150, was higher than the proposed rate of $812 and the procedure was assigned to Group 9 (rather than Group 7, as proposed) as the only procedure in that group. We explained that our model used direct (for example, capital, labor, medical supplies) and indirect (for example, billing, utilities, telephone) procedure costs and annual utilization estimates, based on operating a single lithotripter 5 days a week, 8 hours a day for 50 weeks.

Because only a few of the 21 commenters that submitted lithotripsy cost information actually itemized specific resources used in performing ESWL, we identified resource use through several other sources. From 1989 data prepared by the New York State Department of Health for its Medicaid prospective payment system for outpatient surgery, we obtained a composite listing of all facility resources used in performing lithotripsy. That listing itemized disposables, pharmaceuticals, equipment, and labor necessary in performing lithotripsy using the Dornier water bath system. For each identified resource, it detailed the quantity, unit cost, and total cost of each input required to perform one lithotripsy procedure. However, because those costs were limited to New York based facilities, they were not used in setting our lithotripsy rate. We used that data source only to identify the specific resources used in performing lithotripsy.

Also, we used the lithotripsy resource information obtained from two lithotripter manufacturers, Dornier Medical Systems, Inc. and Siemens Medical Systems, Inc. In 1991, Dornier provided detailed annualized lithotripsy expenses for three of its models whose purchase prices then ranged from $750,000 to $1,250,000. Siemens submitted 1991 data, based on the actual operation of its "Lithostar" at both fixed and mobile locations. We spoke with representatives from both firms about the resource information

submitted. Since the Dornier lithotripters represent more than 50 percent of the units currently in use, we used Dornier machine specific resources in developing our model.

Additionally, a May 1985 Blue Cross/Blue Shield Association (BCBS) paper titled, "Extracorporeal Shock Wave Lithotripsy: Clinical Assessment, Utilization and Cost Projections," provided extensive information on lithotripsy resource use. It was developed to assist the BCBS plans in managing the proliferation of ESWL technology, analyzing ESWL costs, and estimating ESWL utilization.

Further, we informally discussed resource use with two lithotripsy facilities and one ASC to clarify, for example, information gathered on procedure time, types of anesthetics used, electrode usage, and ancillary services. Discussions were held also with a representative of the Maryland State Health Department about the types of lithotripters in use, their costs, and utilization patterns; with a representative of the New Jersey State Department of Health about that State's lithotripsy facility rate; and with a representative of Blue Cross/Blue Shield of the District of Columbia regarding its facility payments for lithotripsy. We did not use any cost information gathered through these discussions in setting our lithotripsy rate.

The direct and indirect procedure costs used in our procedure cost matrix model were derived from the latest and most reliable sources then available. Annual utilization estimates used in constructing our cost model ranged from a facility performing 175 procedures a year to a facility performing 1,500 procedures annually (or an average of less than one procedure a day to a maximum of six procedures a day). Utilization estimates were derived, based on operation of a single lithotripter 8 hours a day, 5 days a week for 50 weeks a year. We believe that our approach allowed us to properly identify resources and develop reasonable estimates of those costs incurred by facilities generally in performing lithotripsy. Further, we believe that the resulting $1,150 facility rate represented an estimated fair fee as required by the statute.

Also, we explained in the notice that we believe the cost matrix approach is appropriate because reporting inconsistencies among the 21 commenters that submitted lithotripsy cost information limited cost comparability across facilities. Moreover, as previously stated, limitations inherent in our current ASC data base prohibit calculating a lithotripsy rate in accordance with our established rate-setting methodology.

C. District Court Action

On January 30, 1992 the American Lithotripsy Society, a national organization whose members include suppliers of lithotripsy services, filed a complaint and motion to preliminarily enjoin enforcement and implementation of the December 31, 1991 notice, insofar as it concerned ESWL. In *American Lithotripsy Society* v. *Louis W. Sullivan, M.D., et al.* (U.S. District Court for the District of Columbia, Civil Action No. 92–0278), the plaintiff challenged HCFA's determination that ESWL is a surgical procedure under the ASC benefit and the amount payable for the services in the ASC setting. The plaintiff alleged that the $1,150 rate was not based on an estimate of "a fair fee" which took into account costs incurred by ASCs performing such services as required by section 1833(i)(2)(a) of the Act and that the rate was not supported by the administrative record.

On March 12, 1992, the United States District Court for the District of Columbia held that HCFA's decision to classify ESWL as a surgical procedure was rationally justified. However, it remanded the rate-setting issue in the December 31, 1991 notice to the Secretary for further consideration and stayed the regulation, insofar as it related to lithotripsy, pending remand. On remand, the Secretary is required to publish all material information that is relevant to the setting of the ESWL rate, receive comments, and publish a final notice in accordance with the applicable statutes and regulations.

To comply with the court order, on March 19, 1992 we asked our regional offices to advise our carriers and intermediaries that they should neither pay for ESWL services furnished in Medicare participating ASCs nor use the ASC allowance in calculating payment when such services are furnished in a hospital outpatient setting. Additionally, regional offices were advised to instruct our intermediaries to resume payment for ESWL furnished as a hospital outpatient service on the reasonable cost basis.

II. Provisions of the Proposed Notice

The Court ruled that the Secretary is required to publish all material information that is relevant to the setting of the ESWL rate, receive comments, and publish a final notice in accordance with applicable statutes and regulations. This notice complies with that order by publishing a proposed rate, based on further consideration, explaining the data and the methodology used to determine that rate, and soliciting public comment. Additionally, we respond to comments concerning ESWL submitted in response to the December 31, 1991 **Federal Register** notice and to those received after the comment period closed on our December 30, 1990 **Federal Register** notice.

A. Proposed Rate and ASC Payment Group

Generally, there are two elements in the total charge for an ESWL procedure. One element is a charge for the physician's professional services for performing the procedure and the other element is the facility's charge for the technical components of the service, such as the use of an operating room. We propose an ASC ESWL facility payment rate of $1,000. As we previously proposed, ESWL would be assigned to Group 9 and would be the only procedure in that group.

B. Proposed Rate Determination Methodology

As previously stated, section 1833(i)(2)(A) of the Act authorizes the Secretary to establish the ASC payment rate based on an estimate of a fair fee that takes into account the costs incurred, generally, in providing facility services in connection with a covered procedure.

1. Methodology for ESWL Rate

To calculate the proposed $1,000 ESWL rate, we performed the following steps: a. We classified each identified resource, based on whether it represented capital costs (that is, the lithotripter and site renovation) or operating costs (for example, personnel, medical supplies, and service contract).

b. Operating costs were further distinguished, based on whether they varied with procedure volume (for example, medical supplies and electrodes) or represented fixed costs (for example, service contract, billing, and space).

c. Based on the best information available, we determined the input amount of each identified resource required to output one lithotripsy procedure.

d. We determined the cost year for all resource inputs using these data. Capital, labor, service contract, and electrode costs represented costs from 1991. Indirect operating costs and those for medical supplies were 1985 costs. We established 1991 as the base year for all costs and adjusted the 1985 costs to 1991 to account for cost changes occurring during the intervening years. We used the CPI–U as forecast by Data

Resources, Inc. to adjust those costs to 1991.

e. We held capital costs and fixed costs, other than salary and fringe benefits, constant across all treatment levels. At 1,500 ESWL treatments, salary and fringe benefit costs were increased from that calculated for 1.5 full-time equivalent (FTE) registered nurses and 1.0 FTE radiologic technician to that for 2.0 FTE registered nurses and 1.5 FTE radiologic technicians. Based on our proposed cost model, performing 1,500 procedures annually represents maximum lithotripsy utilization. Therefore, we believe that an incremental increase is warranted in the number of FTEs to more appropriately reflect the labor mix that we estimate would be required to reasonably furnish nursing and radiologic technician services to a full lithotripsy caseload.

f. We multiplied variable operating costs systematically by each treatment level represented in the matrix.

g. We summed the fixed and variable operating costs and the site renovation costs. We then applied a CPI–U inflation adjustment to those costs to reflect price increases occurring between 1991, the base year for all costs, and the midpoint (March 31, 1994) of the 12-month rate period (October 1, 1993–September 30, 1994), to which the lithotripsy rate would apply. That is, we adjusted those costs by 4.1 percent. However, the lithotripter depreciation and interest costs included in our model were not adjusted for inflation because available information indicates that the average lithotripter purchase price is declining rather than increasing. Therefore, we do not believe that an inflationary adjustment is warranted for such costs. Additionally, if the proposed lithotripsy allowance is not implemented by October 1, 1993, we may need to readjust the appropriate cost items for inflation.

h. We summed the results obtained from items e. and g. separately for treatment levels and divided by the number of treatments to derive a per treatment cost. We rounded the results to the nearest $10.

i. We set the payment rate based on a facility performing 1,000 procedures annually or a mean average of 4 ESWL treatments per day. This daily level is consistent with that espoused by Dr. George W. Drach of the American Urological Association, Inc. in 1985. However, we have assumed a higher annual utilization level than Dr. Drach (800) in light of the later generation of lithotripters currently in use that, we believe, may be more efficient than those used in the mid-1980's.

By law, we are required to develop a rate for ASC facility services based on an estimate of a fair fee that takes into account the costs incurred by ASCs, generally, in providing such services. Our approach establishes an ASC rate for ESWL based on an estimate of the costs incurred and mix of resources used in performing ESWL.

As previously stated, the Report of the Senate Committee on Finance accompanying the ASC authorizing legislation recounts the Congress' intent that we use sample survey and similar techniques to establish reasonable estimated overhead allowances for each ASC covered procedure. In the absence of ASC specific cost data on ESWL procedures, our approach utilizes techniques similar to surveying to simulate estimated ASC overhead costs for ESWL services and to propose an overhead allowance which we believe is reasonable. It incorporates reasonable utilization assumptions, in performing ESWL services, that are based on the most reliable data available. The aforementioned report reflects the Congress' intent to encourage the Secretary to consider reasonable procedure utilization in calculating a standard overhead amount for a Medicare approved ASC procedure.

Under our current rate-setting methodology, Medicare procedure volume is used to calculate a weighted rate for each approved procedure. Weighting by the number of times the procedure was performed on Medicare patients recognizes the relative importance of each facility's charge, which is adjusted to cost, in furnishing Medicare covered procedures. We believe that the adoption of reasonable utilization assumptions in establishing an ESWL rate is in keeping with our current ASC rate-setting methodology that weights the payment rate by Medicare procedure volume. Moreover, lithotripsy is a capital intensive procedure. Because the fixed cost of providing ESWL is high, relative to variable cost, we would expect that increased patient volume would result in lower unit costs.

While we recognize that demographic characteristics and legal requirements in an area may affect the demand for services (for example, geographic size and population density in rural areas, and certificate of need requirements, respectively), the demand for the service should be one of the considerations of the entities that make the decision to obligate themselves to the cost of obtaining and installing the equipment. We note that some lithotripsy service providers have instituted a mobile service delivery strategy to assure availability of a sufficient number of candidates for the procedure.

Setting the ESWL rate based on a facility performing 1,000 procedures annually, or, on average, 4 ESWL procedures per day, is not inconsistent with our current rate-setting methodology that weights the rate for each payment group by the group's procedure volume. Currently, procedure costs associated with procedure volume, bordering the 50th percentile or median, determine the rate. Using 6 as the maximum number of procedures that could be performed in one day (or 1,500 annually) and setting the ESWL rate based on an ASC performing, on average, 4 ESWL procedures per day, reflects a rate that is based on a lithotripter operating at least 66 percent of the time. In setting this initial rate, we believe that this utilization level is reasonable. However, we acknowledge that we are relying on data from the mid-1980s that may not be reflective of current practices, utilization trends, the patient mix (for example, the ratio of Medicare to non-Medicare patients receiving ESWL treatment), and the actual utilization time lost by facilities due to servicing and/or repairing lithotripters. Therefore, we solicit information to confirm the extent to which our proposed utilization level is reasonable and information on specific factors that may affect it. Specifications for submitting information are published elsewhere in this notice under the section titled "Solicitation for New ESWL Cost and Utilization Data".

Finally, we propose to use the cost information obtained from the sources indicated below to identify specific resources consumed in performing ESWL and to determine the value of each.

EXTRACORPOREAL SHOCK WAVE LITHOTRIPSY PER TREATMENT COST MODEL

Cost category	Source	Number of annual treatments					
		175	250	500	750	1,000	1,500
Capital costs:							
Lithotripter (interest included)	DORNIER	$333,667	$333,667	$333,667	$333,667	$333,667	$333,667
Site Preparation (interest included)	DORNIER	106,774	106,774	106,774	106,774	106,774	106,774
Subtotal		440,441	440,441	440,441	440,441	440,441	440,441
Operating costs—fixed:							
Registered Nurse (1.5 full-time equivalent) [1].	BLS	51,199	51,199	51,199	51,199	51,199	68,266
X-ray Tech (1 full-time equivalent) [2]	BLS	26,520	26,520	26,520	26,520	26,520	39,780
Fringe Benefits (20%)	HCFA	15,544	15,544	15,544	15,544	15,544	21,609
Service Contract (lithotripter)	DORNIER	136,000	136,000	136,000	136,000	136,000	136,000
Insurance	DORNIER	50,000	50,000	50,000	50,000	50,000	50,000
Indirect (admin. and general, space, util. & maint.).	BCBS	40,000	40,000	40,000	40,000	40,000	40,000
Subtotal		319,263	319,263	319,263	319,263	319,263	355,655
Operating costs—variable:							
Electrodes (@ $170/treatment)	DORNIER	29,750	42,500	85,000	127,500	170,000	255,000
Medical Supplies (@ $40/treatment) (for example, syringes, drugs, disposables).	BCBS	7,000	10,000	20,000	30,000	40,000	60,000
Subtotal		36,750	52,500	105,000	157,500	210,000	315,000
Inflation adjusted (4.1 percent) site preparation and operating costs.		481,761	498,157	552,810	607,462	662,115	809,304
Total		815,428	831,824	886,477	941,129	995,782	1,142,971
COST PER TREATMENT		4,660	3,327	1,773	1,255	996	762
Rounded Cost Per Treatment		4,660	3,330	1,770	1,260	1,000	760

[1] Registered Nurse FTE increased from 1.5 to 2.0 for 1,500 treatments.
[2] X-ray Tech FTE increased from 1.0 to 1.5 for 1,500 treatments.

NOTE: Model excludes cost of performing companion cystoscope procedure 52332. This is a covered Group 2 ($395) procedure that would be paid 50% of the rate ($198, which reflects an update, effective 10/1/92) if performed in the same operative session with lithotripsy.

C. Cost and Data Utilization Sources

To estimate a fair fee for lithotripsy that takes into account the costs, generally, of furnishing ASC facility services in connection with this procedure, we have proposed using the above cost matrix model. In using this approach, we make a number of assumptions about providing lithotripsy facility services which are discussed below.

1. Utilization

Because utilization affects lithotripsy facility costs, we modeled resource use costs that are based on reasonable annual treatment assumptions. We assumed that the maximum number of lithotripsy treatments that reasonably can be performed in an 8 hour day, using a single lithotripter, is 6. This assumption takes into account: (1) The time required to prepare the patient for treatment, (2) treatment time, (3) the time needed to prepare the procedure room between treatments and (4) recovery care time. While a facility may experience some machine downtime and while treatment time may vary in relation to stone size, location, and the number of shock waves required to pulverize the stone, based on our maximum per day utilization, we estimate that a facility operating a single lithotripter 50 weeks per year could perform a maximum of 1,500 treatments annually.

Current information on the amount of time required to perform ESWL and appropriate volume for an installed unit is sparse. However, in 1985 BCBS reported that 30–60 minutes were required to "administer and disintegrate the stone." [1] During this same period, another expert indicated that ESWL treatment time varies from 45 minutes to one hour.[2]

At that time, an appropriate facility caseload for a single lithotripter was estimated to be as low as 350 procedures [3] per year and as high as 2,000 procedures.[4] Also, in 1985 Dr. George W. Drach, Urologist of the American Urological Association, Inc. and coordinator for the United States ESWL studies, indicated that efficient and optimal lithotripter usage approaches treatment of four patients per day or about 800 per year.[5] BCBS further determined in 1985 that each of the six inpatient hospitals participating in the Dornier lithotripsy clinical trials was performing more than 800 procedures a year. It believed that 1,500 treatments annually was "a more reasonable caseload projection." [6]

Those caseload estimates were based on ESWL being suitable for between

[1] Blue Cross/Blue Shield Association, "Extracorporeal Shock Wave Lithotripsy: Clinical Assessment, Utilization and Cost Projections," May 1985.

[2] Darrell J. Neuhausel, "Lithotripsy, A Survey," *Journal of Clinical Engineering*, July/August 1987.

[3] American Urological Association, Inc., "Report of American Urological Association Ad Hoc Committee to Study the Safety and Clinical Efficacy of Current Technology of Percutaneous Lithotripsy and Non-Invasive Lithotripsy," May 16, 1985.

[4] Office of Technology Assessment, "Health Technology Case Study 36, Effects of Federal Policies on Extracorporeal Shock Wave Lithotripsy," May 1986.

[5] American Urological Association, Inc., *Op. Cit.*.

[6] Blue Cross/Blue Shield Association, *Op. Cit.*.

26,000 patients and 140,000 patients a year.

While we believe this information indicates that our maximum caseload assumption is reasonable, we recognize that the population size of treatable ESWL patients and lithotripter market saturation will affect a facility's ability to achieve our reasonable maximum caseload assumption. According to the Biomedical Business International (BBI), a west coast firm that performs market research for foreign investment, about 150,000 patients received ESWL treatment in 1990. And, ESWL treatment is estimated for 165,000 patients in 1992. According to the American Hospital Association's (AHA) statistics, 327 hospitals provided ESWL services in 1990.[7] For that year, the BBI reported that there were 360 lithotripters in the United States.[8] Excluding those that were used for gallstone treatment clinical trials and intracorporeal units, we estimate that about 332 were ESWL units. Simply dividing the projected ESWL patient population for 1992 by a conservative estimate of 300 lithotripters, would yield a caseload of 550 patients per machine or an average of 2 patients per day.

This current potential patient volume is indicative of market saturation. In 1985, then Secretary of HHS Margaret Heckler estimated that only 100 lithotripters would be required to treat 80,000 ESWL patients annually.[9] Experts in 1985 and 1986 estimated that the United States would need between 17 and 175 lithotripters to treat 26,000 to 140,000 ESWL patients, respectively.[10] Based on the above information, in 1990 the number of lithotripters placed in the United States (332) was nearly double our highest estimated need.

While we recognize that discussion of lithotripsy market saturation should consider the distribution of lithotripters regionally relative to the incidence of kidney stones or the prevalence of ESWL treatment regionally, sufficient data are not presently available to appropriately address this issue. For example, according to AHA statistics for 1990, the 327 hospitals providing lithotripsy services were located in the following regions:

NUMBER OF HOSPITALS

Census region	Providing ESWL services
New England	23
Middle Atlantic	31
South Atlantic	71
East North Central	44
East South Central	20
West North Central	30
West South Central	43
Mountain	15
Pacific	50

A State by State profile of these regions revealed that hospitals furnished ESWL services in 1990 in all States except Maine, Rhode Island, Vermont, New Jersey, Delaware, Montana, Alaska, and Wyoming. However, based on HCFA hospital outpatient Medicare utilization data for 1991, we note that Wyoming is the only State in which hospitals are not yet furnishing ESWL services. Unfortunately, we do not have a comparative breakdown by State on the distribution of freestanding lithotripsy centers to determine the actual number of facilities providing lithotripsy services in each area. While we believe that some of the areas may be over saturated, we are unable to assess the extent of such saturation without more current and extensive information about the geographic distribution of lithotripsy freestanding centers and the incidence of kidney stones in the Medicare patient population.

Despite the probable impact of market saturation on utilization, since our model simulates resource use costs based on volume, we believe it is appropriate to establish both lower and upper utilization limits in order to take into account the costs that could be incurred by facilities, generally, in performing ESWL. Therefore, we propose to adopt 1,500 annual treatments as our upper limit and will reconsider its appropriateness when more current utilization data are available.

2. Depreciation and Interest

To calculate the appropriate amount of lithotripter depreciation and interest costs for inclusion in our procedure cost model, we asked several lithotripter manufacturers to send us information about lithotripter purchase prices. Two companies responded to our request. One company, Dornier Medical Systems, Inc., submitted cost information on three different models whose costs ranged from $750,000 to $1,250,000 in 1991. Generally, the lithotripter prices differed based on the type of system (fluoroscopy versus ultrasound) used for stone localization. The two lower priced machines used ultrasound, rather than an X-ray system.

Information provided by Dornier indicates that its lithotripter at the top of the price range is equipped with fluoroscopy (X-ray) which allows the treatment of most stones located in the upper urinary tract. Stones located in this area cannot be imaged for treatment as successfully with Dornier's ultrasonic systems.

Another company, Siemens Medical Systems, Inc., reported a 1991 price of $1,595,000 for its lithotripter model. A major difference between the systems of Dornier and Siemens is the required use of disposable electrodes by Dornier to generate the shock wave.

We also contacted BBI, which indicated that the average lithotripter price dropped from $1.7 million in 1986 to $1,220,000 in 1990 and to $1.2 million in 1991. The purchase price for lithotripter systems ranged from $650,000 to $1.7 million in 1990. Of the estimated 360 lithotripters in the United States in 1990, Dornier's models dominated a 10-competitor market with 55 percent of the lithotripter placements.

Since Dornier's lithotripters are the dominant systems on the market, we propose to base the lithotripter depreciation and interest costs on those that are associated with their $1,250,000 fluoroscopy model. Therefore, we assumed the annual lithotripter depreciation expense and interest costs of $333,667 reported by Dornier. These capital-related costs are expensed over five years which is in accordance with the AHA's useful life recommendation for similar lithotripters. (See "Estimated Useful Lives Depreciable Hospital Assets," 1988 Edition).

3. Site Renovation

We also assumed Dornier's reported annual depreciation and interest costs of $106,774 to renovate a site to house its lithotripter.

4. Operating Costs

a. Fixed.

(1) Salary and Fringe Benefits.

Our cost model assumed 1.5 full-time equivalent (FTE) registered nurses and 1.0 FTE radiologic technician with up to 5 treatments per each 8 hour day. At 6 treatments per day, we increased the number of FTE registered nurses to 2.0 and the number of FTE radiologic technicians to 1.5.

Salary information submitted by Dornier included managerial and administrative staff, rather than procedure-specific staff. However,

[7] American Hospital Association, "American Hospital Association Hospital Statistics, 1991–92 Edition."

[8] The BBI Newsletter, June 14, 1990.

[9] Office of Technology Assessment, *Op. Cit.*.

[10] Ibid.

Siemens reported a procedure-specific staffing pattern of 1.0 FTE nurse and 1.0 FTE technician whose salaries averaged $30,000 annually.

To determine the salary costs for each FTE, we used the national mean hourly earnings from a 1991 survey of occupational wages in private hospitals, conducted by the Bureau of Labor Statistics (BLS), an agency of the U.S. Department of Labor. These survey results are published in the Occupational Wage Survey: Hospitals, January 1991, Bulletin 2392. Private hospitals included in this survey are investor-owned or for profit and voluntary or non-profit hospitals. Those selected for study were expected to employ 50 workers or more.

For FTE salary costs, we used a mean hourly earning of $16.41 for registered nurses and $12.75 for radiologic technicians. For registered nurses, this hourly rate was calculated based on earnings reported for 409,681 registered nurses. The radiologic technicians' hourly rate was calculated based on earnings reported for 33,456 radiologic technicians.

We believe that this BLS survey represents the most current and reliable salary data available by specific labor categories.

Since this BLS survey did not include fringe benefits, we assumed a rate of twenty percent, which is the level generally experienced in certain other Medicare settings such as end-stage renal disease facilities.

(2) Service Contract.

Based on the information submitted, Dornier's annual service cost for its lithotripter is $136,000. The service cost for Siemen's lithotripter, after the first year of installation, is $100,000 annually. The service contract costs reported by both companies were for 1991 costs. Because our model uses the Dornier lithotripter, we used Dornier's reported annual service contract costs of $136,000.

(3) Insurance.

We assumed Dornier's quoted annual rate for 1991 of $50,000 for malpractice insurance. Siemens did not report its insurance cost.

(4) Indirect.

These costs represent those associated with resources that are not directly consumed in performing lithotripsy, but are necessary expenses. These expenses include, for example, the cost for utilities, maintenance, telephone, postage, office supplies, and administrative support.

We propose to allow $40,000 for these indirect costs. This amount is based on information contained in a study titled, "Extracorporeal Shock Wave Lithotripsy: Clinical Assessment, Utilization and Cost Projections", prepared by BCBS in May 1985. This indirect cost has been adjusted from the $30,000, reported in that study, to $40,000 by using the annual rates of increase in the CPI-U to account for price changes occurring between 1985 and 1991, the base year for other costs included in our cost model. The estimated aggregate rate of increase was 28.09 percent.

The indirect costs reported by Dornier were associated with establishing a new facility that only provides lithotripsy services, rather than an established ASC performing other procedures. The indirect costs reported by Siemens were commingled, for example, with physician professional fees and costs for laboratory services, and medications.

Since Dornier's indirect costs may be overstated and the indirect costs reported by Siemens cannot be disaggregated, we believe that the BCBS study represents the most reliable data available for calculating lithotripsy indirect costs. We also propose to revisit this indirect cost issue when new data become available.

b. Variable.

(1) Electrodes.

According to Dornier, the average cost in 1991 for electrodes, per ESWL treatment, was $170. We have assumed this value.

(2) Medical Supplies.

We allowed $40 per treatment for such medical supplies as disposables, drugs, and IV solutions used during ESWL services. This amount is based on the AHA estimate of $30 per case that was published in the previously cited study by the BCBS. We adjusted this 1985 study estimate to 1991 costs by using the same CPI–U inflation factor of 28.09 that we applied to indirect costs.

Neither Dornier nor Siemens submitted explicit cost information on medical supplies.

D. Companion Procedure

Our cost model does not incorporate costs associated with performing a companion CPT–4 code, 52332 (Cystourethroscopy, with insertion of indwelling ureteral stent (for example, Gibbons or double-j type)) because reliable utilization data are not currently available to determine the frequency with which this procedure is performed in conjunction with ESWL. Rather, we propose that this covered ASC Group 2 procedure be treated as part of a multiple procedure, if performed in the same operative session with ESWL, and paid at the established multiple procedure rate or 50 percent of the Group 2 rate (or $198, which reflects an update, effective October 1, 1992).

E. Solicitation for New ESWL Cost and Utilization Data

At this time, we also are soliciting information on ESWL costs, charges, and utilization to further evaluate the appropriateness of the assumptions that we have used in developing our proposed ESWL payment rate. We request that these reported costs, charges, and utilization be based on ESWL performed on an outpatient basis. In order to assure that such information is comparable across facilities, we request this information be reported as follows:

1. ESWL Utilization

a. Specify the beginning and ending period that the reported utilization, costs, and charges cover; and

b. Specify the total number of ESWL procedures performed by each facility separately for Medicare and non-Medicare patients.

2. ESWL Labor Costs

a. Specify the average time, in minutes, required to prepare a patient for ESWL treatment;

b. Specify the average time, in minutes, required to actively administer the shock wave and disintegrate a stone;

c. Specify the average time, in minutes, the patient spends in the recovery unit immediately following ESWL treatment;

d. Specify whether the total treatment time for Medicare patients is different from that for non-Medicare patients. If different, specify the average time difference, in minutes, and explain the reasons for it; and

e. Specify all personnel (employees and contractual labor, for example, registered nurses and X-ray technicians), used by each facility in providing *direct* patient care services in connection with performing ESWL treatment. (Do not include, physicians, certified registered nurse anesthetists or personnel performing administrative, clerical, and plant management functions.) For each, report the following:

(1) Personnel type by category (for example, radiologic technician, lithotripsy technician, registered nurse);

(2) The number of full-time and the number of part-time workers represented in each personnel category;

(3) The average minutes spent in the ESWL treatment room by workers in each personnel category; and

(4) The average hourly salary, including fringe benefits, paid to workers in each personnel category

based on the facility's payroll register and/or general ledger.

3. ESWL Supply Costs

a. Itemize and describe the types of supplies (for example, electrodes, pharmaceuticals, including anesthetic agents, catheters, and prep trays) used in performing ESWL treatment.

b. For each itemized supply, specify the following:

(1) The number used;

(2) The number of units dispensed for pharmaceuticals (for example, 2cc or 2 lasix tablets); and

(3) The unit cost (that is, the invoice price for each supply item divided by the quantity purchased).

4. ESWL Contractual Services

If a facility did not own or lease the lithotripter and purchased ESWL services through a contractual arrangement, specify the amount paid for each service under that contract and explain what labor or equipment costs are included in this payment.

5. ESWL Equipment Costs

a. If a facility owns or leases a lithotripter, provide the following:

(1) Type of lithotripter, by manufacturer and model name;

(2) The year when your facility purchased/leased it;

(3) Its purchase price or lease cost; and

(4) The annual lithotripsy depreciation expense and the depreciation basis (for example, 5 years straight-line or accelerated).

b. Describe and itemize other major medical equipment (that which is subject to depreciation expenses) that each facility used in performing ESWL. For each piece of other equipment provide information similar to that requested in items 5.a.(1) through 5.a.(4).

6. Indirect ESWL Costs

Separately identify and describe annual *indirect* costs incurred by each facility in conjunction with ESWL treatment for the following:

a. Administrative and general personnel services (for example, services of facility director, medical director, and clerical staff);

b. Plant, property, and utilities;

c. Insurance premiums;

d. General services (for example, accounting, legal, housekeeping, and laundry); and

e. Other (specify).

III. Comments and Responses to December 31, 1991 Notice

We received comments from four commenters in response to our December 31, 1991 notice with comment period, concerning our lithotripsy rate-setting methodology and our newly established Group 9 payment rate of $1,150. One commenter operated a lithotripsy facility and serviced mobile sites, one of which is an ASC. Another represented a hospital corporation, the third a physician, and the fourth a hospital. Their comments are summarized below.

Comment: Commenters believed that the $1,150 lithotripsy allowance should be higher. They claimed that this payment level would discourage the performance of ESWL procedures thereby limiting the Medicare beneficiary's access to this procedure.

Response: As previously noted, section 1833(i)(2)(A)(ii) of the Act requires that the ASC facility payment rate result in substantially lower Medicare payment than would have been made if the same procedure had been performed on an inpatient basis in a hospital and that it be a "fair fee," based on an estimate of ASC costs. We have given a detailed explanation of our considerations, methodology, and the data used in meeting these requirements.

Comment: One commenter said that the regulations do not justify coverage for lithotripsy as an ASC procedure.

Response: We disagree for the reasons we explained in our December 31, 1991 **Federal Register** notice with comment period (56 FR 67666). Moreover, a Federal District Court considered this issue in the case of the American Lithotripsy Society and ruled that our decision to include the procedure on the ASC list of covered procedures was reasonable.

Comment: One commenter suggested that we either establish a distinct allowance for mobile lithotripsy services or establish a machine use allowance that could be added to a payment group designated for lithotripsy ancillary services. Another said that its charge to the ASC for mobile lithotripsy services exceeded $2,000 per treatment.

Response: We appreciate the comments on this issue and, as indicated earlier, invite more detailed cost information. We also invite information on mobile lithotripsy practice patterns in order to allow us to determine if a distinct payment is appropriate for these services.

Our difficulty, in part, in addressing this issue is that the method of furnishing mobile lithotripsy services is not uniform. In some cases, mobile units are dispatched to service sites and the nurses and technicians involved in performing the procedure are employed by each service site. In other cases, the nurses and technicians directly involved in performing lithotripsy are employed by the entity that owns the mobile unit, rather than the service site, and accompany the mobile unit to the service site. However, data currently available do not indicate whether the costs associated with these different methods of furnishing mobile lithotripsy services differ substantially. Also, we do not know which mobile unit service method is practiced more widely within the industry. Therefore, we solicit additional information on this issue. For example, we would like to know which mobile unit service method is used, the annual mileage for each mobile unit, the annual mobile unit maintenance cost, the mobile unit staffing pattern and salaries, the provisions made for malfunctioning mobile equipment, and unusual weather conditions such as snow storms, tornados, and floods. Also, we solicit information on the costs associated with these variables.

Comment: One commenter said that ESWL is not comparable in cost to any other ASC approved procedure because of the high capital cost of the lithotripter.

Response: Our cost model takes into account these costs by assigning ESWL to a new payment Group 9 as the only covered procedure in that group. We believe that we have removed any influence that less capital intensive ASC services may have on determining the payment rate.

Comment: One commenter said that we should have disclosed all information used in calculating the $1,150 rate.

Response: With this notice, we are disclosing all data and the methodology used in calculating payment for ESWL as an ASC service. Additionally, we have based our proposed rate on a higher utilization level than published in our December 31, 1991 notice with comment which results in lowering it from $1,150 to $1,000. This revised rate includes an inflationary adjustment of 4.1 percent, a reasonable allowance ($50,000) for malpractice insurance, and higher nursing labor costs associated with an increased number of nursing FTEs (from 1.0 to 1.5).

IV. Untimely Comments to the December 30, 1990 Notice

After the comment period for our December 30, 1990 proposed notice closed on February 4, 1991, we received letters from an additional 22 correspondents. They were received from urologists, lithotripsy centers, a medical school, and a lithotripsy

association. They included a report on a lithotripsy cost study and 10 duplicate form letters. Because they were not submitted timely, none were considered in developing our December 31, 1991 notice with comment period. However, we have since reviewed them and they are summarized below.

Comment: Commenters urged that we set our lithotripsy payment higher than the proposed rate of $812. Some claimed that they were being paid $3,600 per procedure by Medicare when performing ESWL in the hospital outpatient department and that the proposed rate of $812 would result in a substantially lower payment.

Response: With this notice, we are proposing an ESWL rate that is higher than $812. Therefore, while our proposed rate could potentially lower the average Medicare hospital outpatient ESWL payment, it would not be as low as estimated had our rate been set at $812.

Comment: Some commenters reported the results of a recent lithotripsy study commissioned for the purpose of influencing the Medicare allowance for this service. They recommended that we establish a separate payment group (Group 9) for lithotripsy "because of the capital-intensive nature of ESWL" and that we set the payment rate for that group at $2,860. Further, they suggested that we calculate the Group 9 rate by using one of two options. One option suggested adjusting the ASC group rate only to reflect wage variation by using a wage index value of 1.05 for all ASCs. The other option recommended adopting a 1.00 capital cost adjuster that would be applied to 26.2 percent of the suggested Group 9 rate that they stated represented capital costs. This latter adjustment would have been made in addition to and similar to the wage adjustment. Both options would have resulted in a facility specific ESWL rate of $2,909 which the commenters believed would provide a "break-even payment amount."

Response: We agree that a distinct payment group should be established for ESWL services and have done so. However, we have not accepted the other recommendations, largely because we question the validity of the study data on which they are based. Reportedly, the study analyzed information collected from six freestanding and outpatient ESWL sites during 1991. According to the commenter, such information is based on current ESWL utilization and costs incurred by facilities furnishing ESWL services.

In addition, a report of the study submitted by the commenters does not discuss how these study facilities were selected and it does not provide demographic information about them. The report discusses average lithotripsy costs by certain cost categories (for example, capital, salary, electrode, and other operating costs) and the variation among such costs, but it fails to describe the unit costs that are represented by each cost category and the accounting principles employed in calculating these costs. For example, under average salary costs, it does not detail the number or mix of FTEs reflected in such costs, the hourly salary rate on which such costs are based, or the amount of fringe benefits included in calculating those costs. Without the benefit of this level of detailed cost information, we are unable to evaluate the merits of the recommended $2,860 Group 9 rate and adoption of an adjustment for capital costs. Therefore, we have not accepted either of the payment options presented or the proposed ESWL base rate of $2,860.

Comment: One commenter expressed concern about "overuse or the potential for abuse" of ESWL technology and asked that HCFA define indications for ESWL treatment. The commenter believes that such indications are needed, in addition to the guidelines established by the National Institutes of Health and published in the *Journal of Urology* in 1989, for managing kidney stone patients.

The commenter suggested that:

- HCFA establish a national panel to define the indications for ESWL treatment;
- Payment not be made for ESWL if used to treat small, asymptomatic renal stones unless treatment is furnished to persons in high risk jobs such as airline pilots;
- To discourage repetitious ESWL treatments on patients with poor stone free results, HCFA should base payment on a given stone size;
- Payment not be made for ESWL treatment of ureteral stones less than 5 millimeters in size which the commenter believes usually pass spontaneously;
- Percutaneous lithotripsy, with or without adjuvant ESWL, should be used to treat kidney stones greater than 2.5 centimeters; and
- Payment not be made for bilateral ESWL treatment which the commenter alleges is generally performed solely for the "convenience" of the patient or the urologist.

Response: With regard to the commenter's first four points, we are concerned that facilities may perform ESWL unnecessarily on asymptomatic renal stones, that they may inappropriately repeat ESWL treatment on the same patient and that they may perform ESWL when not appropriately indicated for certain ureteral stones. Therefore, we agree that ESWL indicators are warranted. However, instead of establishing a national panel to develop them, as suggested by the commenter, we propose to solicit the assistance of the medical directors for the Medicare carriers and intermediaries in accomplishing this task. We believe that they have the medical expertise to develop the appropriate procedure protocols and monitor their implementation by our Medicare contractors.

With regard to establishing a payment for ESWL, based on the size of the stone treated, the CPT–4 coding system does not provide separate codes for ESWL treatment that is based on stone size. Because that coding system is used to identify ASC approved procedures and bill for ASC facility services, we are currently unable to develop a system that distinguishes ESWL payments based on stone size. Further, information available to us indicates that the American Medical Association, which has the responsibility for maintaining and updating the CPT–4 coding system, rejected a request in 1991 to adopt distinct codes for ESWL that are based on stone size.

On the issue of bilateral ESWL treatment, we are concerned that patients maintain proper renal functions at all times. Because bilateral ESWL treatment could potentially increase the risk of renal disfunctioning, we do not believe that it should be performed solely for the convenience of either the patient or the urologist. Therefore, we propose that the ASC facility payment be denied for bilateral ESWL renal treatment and that our Medicare contractors establish the appropriate indicators to screen claims for such treatments.

We are interested in additional public comments on these issues.

V. Regulatory Impact Statement

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. 12291 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.

In addition, 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 rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all ASCs, physicians, and hospitals are considered to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of title 5 of the United States Code. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We propose to use the same rate determination methodology in establishing a payment rate for ESWL that we proposed in the December 31, 1991 notice (56 FR 67681). As reported in that notice, adding ESWL to the list of covered ASC procedures would result in an insignificant Medicare savings for payment of the service in an outpatient hospital setting. This saving could be offset by a small Medicare payment increase for a larger number of ESWL procedures performed in an inpatient hospital setting if hospitals shift some patients who could be treated in either setting from the outpatient department to the inpatient setting in order to maximize payment. Therefore, we believe this proposed rule does not meet the $100 million criterion nor does it meet the other E.O. 12291 criteria. Since this proposed rule is not a major rule under E.O. 12291, an initial regulatory impact analysis is not required.

The median age of the Medicare beneficiary population is 73 and urolithiasis, or the formation of urinary stones, that could be treated with ESWL appears to be most common among persons ages 30 through 50.[11] It appears, therefore, that this is not primarily a condition that affects Medicare beneficiaries. According to our Medicare Part B Annual Data files, in 1990 only 24,382 ESWL procedures were performed on Medicare beneficiaries. Of that number, 56 percent were performed in the hospital outpatient department and those claims represented only one-tenth of one percent (0.1) of provider bills to Medicare.

For that same year, BBI estimated that as many as 150,000 patients received ESWL treatment. Based on that estimate, Medicare patients accounted for 16 percent of those undergoing ESWL treatment. That ratio of Medicare to non-Medicare ESWL patients is supported by an October 1987 ESWL report prepared by the Medical Technology and Practice Patterns Institute (MTPPI). It indicated that Medicare beneficiaries comprised about 16.2 percent of the total ESWL patients included in their study. The result was similar to a finding of an AHA survey conducted in 1986 that found that the Medicare share was 17.6 percent. However, a February 1991 study conducted by MTPPI, involving six facilities that provided lithotripsy services, alleges that the current Medicare share of the ESWL caseload is about six percentage points higher (21.7 percent) than their 1987 finding.

We have not accepted this recent finding largely because we had not had the opportunity to determine and question the validity of the study data on which it is based. One of the primary weaknesses of the MTPPI report about the study is that it neither discussed how the study facilities were selected nor provides demographic information about them. Without this type of information, we are unable to determine, for example, if the studied population is representative of the ESWL population and whether the study findings can be extrapolated to the general population.

We believe that the proposed new ASC facility Group 9 payment rate for ESWL, even if below the customary charge of some facilities, would not significantly affect the income of lithotripsy facilities that serve a normal ratio of non-Medicare to Medicare patients and that operate efficiently within optimal utilization levels. Thus, we have determined and the Secretary certifies that this proposed notice would not result in a significant economic impact on a substantial number of small entities and would not have a significant economic impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

VI. Paperwork Reduction Act

This notice does not impose any information collection requirements; consequently, it 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 through 3511).

Authority: Sec. 1833(i) of the Social Security Act (42 U.S.C. 13951(i)) and 42 CFR part 416.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 12, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: September 13, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–24178 Filed 9–30–93; 8:45 am]

BILLING CODE 4120–01–P

[11] Blue Cross/Blue Shield Association, *Op. Cit.*

National Institutes of Health

National Heart, Lung, and Blood Institute; Sickle Cell Disease Advisory Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, October 8, 1993. The meeting will be held at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 7, C–Wing, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to adjournment, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, room 508, Bethesda, Maryland 20892, (301) 496–6931, will furnish substantive program information.

This notice is being published later than the fifteen days prior to the meeting due to difficulty of coordinating schedules.

(Catalog of Federal Domestic Assistance Program No. 98.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: September 27, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-24215 Filed 9-30-93; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Meetings

Pursuant to Public Law 92-463, notice is hereby given of Subcommittees A and B meetings of the Biological and Clinical Aging Review Committee, and of Subcommittees A and B meetings of the Neuroscience, Behavior and Sociology of Aging Review Committee.

These meetings will be open to the public as indicated below to discuss administrative details and other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer, National Institute on Aging, Gateway Building, room 2C218, National Institutes of Health, Bethesda, Maryland, 20892 (301/496-9322), will provide summaries of the meetings and rosters of the committee members upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator listed for the meeting, in advance of the meeting.

Other information pertaining to the meetings can also be obtained from the Scientific Review Administrator indicated below:

Name of Subcommittee: Biological and Clinical Aging Review Subcommittee A.

Scientific Review Administrator: Dr. Arthur Schaerdel, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (303) 496-9666.

Date of Meeting: October 4, 1993.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: October 4—8 to 8:30 a.m.

Closed: October 4—8:30 a.m. to adjournment.

Name of Subcommittee: Biological and Clinical Aging Review Subcommittee B.

Scientific Review Administrator: Dr. James Harwood, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9666..

Dates of Meeting: October 26-27, 1993.

Place of Meeting: Marriott Residence Inn, 7335 Wisconsin Ave., Bethesda, Maryland 20814.

Open: October 26—7 to 8 p.m.

Closed: October 27—9 a.m. to adjournment.

Name of Subcommittee: Neuroscience, Behavior and Sociology of Aging Review Subcommittee A.

Scientific Review Administrators: Dr. Maria Mannarino, Dr. Louise Hsu, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9666.

Dates Meeting: November 29—December 1, 1993.

Place of Meeting: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

Open: November 29—7:30 to 8 p.m.

Closed: November 29—December 1—8 p.m. to adjournment on December 1.

Name of Subcommittee: Neuroscience, Behavior and Sociology of Aging Review Subcommittee B.

Scientific Review Administrator: Dr. Walter Spieth, Gateway Building, room 2C212, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9666.

Dates of Meeting: November 7-9, 1993.

Place of Meeting: Bethesda Marriott Inn, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: November 7—8 to 8:30 p.m.

Closed: November 8—8:30 a.m. to adjournment on March 9.

This notice is being published later than 15 days prior to the meeting due to the difficulty of coordinating schedules.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: September 27, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-24216 Filed 9-30-93; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on September 17, 1993.

(Copies of the information collection requests may be obtained by calling the PHS Reports Clearance Officer on (202) 690-7100)

1. The Follow-up of Tuberculosis Patients Exposed to Multiple Chest Fluoroscopies—0925-0255—Former tuberculosis patients who were irradiated during their treatment will be asked to respond to a telephone questionnaire which assesses information about cancer and its risk factors, in order to estimate radiation risks. Respondents: Individuals or households; Number of Respondents: 2,200; Number of Responses per Respondent: 1; Average Burden per Response: .167 hour; Estimated Annual Burden: 367 hours.

2. The Prevalence of Alcohol and Other Drug Abuse and Dependence in Short-Term General Hospitals and the Impact of Abuse and Dependence on Hospital Utilization, Charges, and Costs—New—The NIAAA Hospital Study is a national survey of hospital inpatient admissions that will estimate the prevalence of alcohol abuse or dependence and describe its association with hospital costs and utilization. The survey will screen 5,482 and interview 2,985 inpatients in 96 sample hospitals. Respondents: Individual or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; Number of Respondents: 4,593; Number of Responses per Respondent: 3.33; Average Burden per Response: .338 hours; Estimated Annual Burden: 5,184 hours.

3. User Fee cover Sheet—New—The Prescription Drug User Fee Act requires pharmaceutical companies to pay a fee for each drug application and supplement submitted for approval. The user fee cover sheet (Form FDA 3397) provides a mechanism to determine whether the fee submitted with the application is appropriate. Respondents: Businesses or other for-profit; Small businesses or organizations; Number of Respondents: 435; Number of Responses per Respondent: 1.383; Average Burden per Response: .5 hour; Estimated Annual Burden: 301 hours.

4. Native American Data Collection and Analysis for the Hanford Environmental Dose Reconstruction (HEDR) Project—New—The dietary and life-style data to be collected will be used to estimate radiation exposure and to determine whether Native American

exposure differed substantially from that of the general population. Exposure estimates will then be used to determine whether a full epidemiologic study of thyroid disease specifically in the Native American population is scientifically justifiable and feasible. Respondents: Individuals or households; Number of Respondents: 3000; Number of Responses per Respondent: 1; Average Burden per Response: 1.50 hours; Estimated Annual Burden: 4513 hours.

5. Pediatric Gastroenteritis Patient Outcomes Research Project—New—This study will obtain treatment and outcomes data, which are otherwise unavailable, from parents of patients and from pediatricians. Data will be used to describe variations in patterns of care, resources used, and outcomes of care in order to develop recommendations to guide future treatment decisions by medical personnel and parents. Respondents: Individuals or households, Small businesses or organizations, non-profit institutions.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hour)
Providers	142	14.7	.4
Parents	1,680	1.98	.42

Estimate Total Annual Burden—2217 hours.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: September 27, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93–24086 Filed 9–30–93; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–51]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Navy:* John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; (This is not a toll-free number).

Dated: September 24, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 10/1/93

Suitable/Available Properties

Buildings (by State)

California

199 Military Family Housing
Savannah Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240001
Status: Excess
Base closure Number of Units: 398
Comment: 1405 sq. ft., 2-family duplexes, 1-story woodframe stucco, 144 units scheduled to be vacated 1/31/93; 254 units, scheduled to be vacated 10/1/93.

Utility Bldg.
Savannah Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240002
Status: Excess
Base closure Number of Units: 1
Comment: 237 sq. ft., 1-story woodframe stucco, most recent use - gas meter bldg., scheduled to be vacated 10/93.

100 Military Family Housing
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240003
Status: Excess
Base closure Number of Units: 684
Comment: 2550 sq ft. to 3024 sq. ft., 16-duplexes, 72-four plexes, and 12-six plexes totaling 684 units, 3 to 4 bedrooms, 1 to 2 story, approved application for portion of said property

49 Detached Carports
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240004
Status: Excess
Base closure Number of Units: 49
Comment: size varies, 1-story concrete block wall, scheduled to be vacated 10/94.

Convenience Store
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240005
Status: Excess
Base closure Number of Units: 1
Comment: 4830 sq. ft., 1-story woodframe stucco, scheduled to be vacated 10/94.

Youth Center
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240006
Status: Excess
Base closure Number of Units: 1
Comment: 6576 sq. ft., 1-story woodframe stucco, scheduled to be vacated 10/94.

Utility Bldg.
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240007
Status: Excess
Base closure Number of Units: 1
Comment: 416 sq. ft., 1-story woodframe stucco, most recent use - gas meter building, scheduled to be vacated 10/94.

Child Care Center & Storage
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240008
Status: Excess
Base closure Number of Units: 2
Comment: 6641 sq. ft. child care center and 400 sq. ft. storage bldg. 1-story woodframe stucco, scheduled to be vacated 10/94.

Maintenance Bldg.
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240009
Status: Excess
Base closure Number of Units: 1
Comment: 900 sq. ft., 1-story steel panel bldg., scheduled to be vacated 10/94.

Laundromat
Cabrillo Project
Long Beach Naval Station
Long Beach Co: Los Angeles CA 90801-
Landholding Agency: Navy
Property Number: 779240010
Status: Excess
Base closure Number of Units: 1
Comment: 1320 sq. ft., 1-story woodframe stucco, scheduled to be vacated 10/94.

24 Bldgs.
San Pedro Complex, Taper Avenue
Long Beach Naval Station
Los Angeles Co: Los Angeles CA
Landholding Agency: Navy
Property Number: 779240021
Status: Excess
Base closure Number of Units: 48
Comment: 2550 sq. ft. each unit, 2-unit family residences, 1-2 story, totaling 48 units, scheduled to be vacated 9/30/94

23 Bldgs.
San Pedro Complex, Taper Avenue
Long Beach Naval Station
Los Angeles Co: Los Angeles CA
Landholding Agency: Navy
Property Number: 779240022
Status: Excess
Base closure Number of Units: 92
Comment: 5980 sq. ft. each unit, 4-unit family residences, 1-2 story, totaling 92 units, scheduled to be vacated 9/30/94

16 Detached Carports
San Pedro Complex, Taper Avenue
Long Beach Naval Station
Los Angeles Co: Los Angeles CA
Landholding Agency: Navy
Property Number: 779240023
Status: Excess
Base closure Number of Units: 16
Comment: Holds 4 to 16 vehicles, concrete block frame, 1-story, scheduled to be vacated 9/30/94

Bldg. 9001
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320001
Status: Excess
Base closure Number of Units: 1
Comment: 435,000 sq. ft., 4-story, concrete, most recent use - hospital/clinic, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 9002
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320002
Status: Excess
Base closure Number of Units: 1
Comment: 13500 sq. ft., 2-story, concrete, most recent use - barracks, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 9003
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320003
Status: Excess
Base closure Number of Units: 1
Comment: 4980 sq. ft., 1-story, concrete, most recent use - barracks, presence of asbestos, possible seismical upgraded needed, scheduled to be vacated 4/1/94.

Bldg. 9004
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320004
Status: Excess
Base closure Number of Units: 1
Comment: 1023 sq. ft., 1-story, metal, most recent use - carpentry shop, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 9005
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320005
Status: Excess
Base closure Number of Units: 1
Comment: 1120 sq. ft., 1-story, concrete, most recent use - weight room, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 9006
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199

Landholding Agency: Navy
Property Number: 779320006
Status: Excess
Base closure Number of Units: 1
Comment: 1200 sq. ft., 1-story, metal, most recent use - warehouse, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 9023
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320007
Status: Excess
Base closure Number of Units: 1
Comment: 1531 sq. ft., 1-story, metal, most recent use - metal shop, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 9024
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320008
Status: Excess
Base closure Number of Units: 1
Comment: 3630 sq. ft., 1-story, concrete, most recent use - minimart, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 9025
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320009
Status: Excess
Base closure Number of Units: 1
Comment: 8079 sq. ft., 1-story, metal, most recent use - warehouse, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 9026
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320010
Status: Excess
Base closure Number of Units: 1
Comment: 2240 sq. ft., 1-story, metal, most recent use - gas station, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 50, Annex Area
Naval Postgraduate School
Monterey Co: Monterey CA 93943-
Landholding Agency: Navy
Property Number: 779320022
Status: Underutilized
Comment: 252 sq. ft., 1 story wood frame, needs rehab, secured area w/alternate access, 5% in airport runway, most recent use- storage.

Bldg. 25, Annex Area
Naval Postgraduate School
Monterey Co: Monterey CA 93943-
Landholding Agency: Navy
Property Number: 779320023
Status: Unutilized
Comment: 1512 sq. ft., 1 story wood frame, most recent use - child care center, secured area w/alternate access

Hawaii

Bldg. S87, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240011
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use - storage, off-site use only

Bldg. 466, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779240012
Status: Unutilized
Comment: 100 sq. ft., 1-story, needs rehab, most recent use - gas station, off-site use only

Bldg. 5, Radio Trans. Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310001
Status: Unutilized
Comment: 12046 sq. ft., one story, needs rehab, access restrictions, most recent use - offices, off-site use only.

Bldg. 31, Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310002
Status: Unutilized
Comment: 640 sq. ft., 1 story, access restrictions, need repairs, most recent use - storage, off-site use only.

Bldg. T33 Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310003
Status: Unutilized
Comment: 1536 sq. ft., 1 story, access restrictions, needs rehab, most recent use - storage, off-site use only.

Bldg. 64, Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310004
Status: Unutilized
Comment: 3612 sq. ft., 1 story, access restrictions, needs rehab, most recent use - storage, off-site use only.

Bldg. 429 Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310006
Status: Unutilized
Comment: 13950 sq. ft., 3 story, access restrictions, needs rehab, most recent use - barracks, off-site use only.

Bldg. 430 Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 779310007
Status: Unutilized
Comment: 2680 sq. ft., 1 story, access restrictions, needs rehab, most recent use - dining facility, off-site use only.

Maine

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick Co: Cumberland ME 04053-
Landholding Agency: Navy
Property Number: 779010110
Status: Underutilized
Comment: 7,270 sq ft., 1 story bldg, most recent use-storage, structural deficiencies.

Bldg. 332, Naval Air Station
Topsham Annex
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779240013
Status: Excess
Comment: 1248 sq. ft., 1-story, most recent use - office building, off-site use only

Bldg. 333, Naval Air Station
Topsham Annex
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779240014
Status: Excess
Comment: 12672 sq. ft., 2-story, most recent use - office building, off-site use only

Rhode Island

Parcel 2 (51 bldgs.)
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310030
Status: Excess
Base closure Number of Units: 51
Comment: 1-4 story, presence of asbestos, on 90 acres, portion u/ superfund cleanup site, incs. theater, admin, barracks, storage, chapel, warehouses, scheduled to be vacated 9/94.

Parcel 5 (1 bldg.)
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310032
Status: Excess
Base closure Number of Units: 1
Comment: 1 story, telephone exchange bldg, fair condition, presence of asbestos, scheduled to be vacated 9/94.

Texas

208 Off-base Capehart Housing
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103-
Landholding Agency: Navy
Property Number: 779210001
Status: Excess
Base closure Number of Units: 208
Comment: 1320 sq. ft., 1 story brick/wood frame, 2 bedrooms/1 bath, needs routine maintenance, scheduled to be vacated 10/93.

54 Off-base Family Housing
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103-
Landholding Agency: Navy
Property Number: 779210002
Status: Excess
Base closure Number of Units: 54
Comment: 1,000 to 2,000 sq. ft., 1 and 2 bedroom units, 1 and 2 story, brick/wood frame, routine maintenance required, scheduled to be vacated 10/93.

19 On-base Capehart Housing
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103-
Landholding Agency: Navy
Property Number: 779210003
Status: Excess
Base closure Number of Units: 19

Comment: 1320 sq. ft., 1 story brick/wood frame, 1 and 2 bedrooms, needs routine maintenance, scheduled to be vacated 10/93.

3 Recreational Facilities
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103-
Landholding Agency: Navy
Property Number: 779210004
Status: Excess
Base closure Number of Units: 3
Comment: 2100 to 13900 sq. ft., 1 story, concrete masonry frame, needs routine maintenance, includes theatre, bowling, racquetball, scheduled to be vacated 10/93.

4 Dining Facilities
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103-
Landholding Agency: Navy
Property Number: 779210005
Status: Excess
Base closure Number of Units: 4
Comment: 6000 to 21900 sq. ft., 1 story, concrete masonry frame, needs routine maintenance, scheduled to be vacated 10/93.

5 Bachelor Quarters
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103-
Landholding Agency: Navy
Property Number: 779210006
Status: Excess
Base closure Number of Units: 5
Comment: 16800 to 62200 sq. ft., 3 story, metal/brick frame, needs routine maintenance, scheduled to be vacated 10/93.

9 Administration Buildings
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103-
Landholding Agency: Navy
Property Number: 779210007
Status: Excess
Base closure Number of Units: 9
Comment: 1300 to 29500 sq. ft., 1 and 2 story, concrete masonry frame, needs routine maintenance, scheduled to be vacated 10/93.

Hospital (clinic)
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103-
Landholding Agency: Navy
Property Number: 779210008
Status: Excess
Base closure Number of Units: 1
Comment: 31000 sq. ft., 1 story, brick/concrete masonry frame, needs routine maintenance, scheduled to be vacated 10/93.

4 Miscellaneous Facilities
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103-
Landholding Agency: Navy
Property Number: 779210009
Status: Excess
Base closure Number of Units: 4
Comment: 900 to 55600 sq. ft., 2 story, concrete masonry frame, needs routine maintenance, scheduled to be vacated 10/93.

4 Warehouses
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103-
Landholding Agency: Navy
Property Number: 779210010
Status: Excess
Base closure Number of Units: 4
Comment: 800 to 40300 sq. ft., 1 story, concrete masonry frame, needs routine maintenance, used for storage, scheduled to be vacated 10/93.

16 Industrial Facilities
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103-
Landholding Agency: Navy
Property Number: 779210011
Status: Excess
Base closure Number of Units: 16
Comment: 200 to 10900 sq. ft., 1 story, metal/concrete masonry frame, needs routine maintenance, scheduled to be vacated 10/93.

3 Fire/Security Facilities
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103-
Landholding Agency: Navy
Property Number: 779210012
Status: Excess
Base closure Number of Units: 3
Comment: 5533 sq. ft., 1 story, wood/concrete masonry frame, needs routine maintenance, scheduled to be vacated 10/93.

5 Air Traffic Control Facs.
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103-
Landholding Agency: Navy
Property Number: 779210013
Status: Excess
Base closure Number of Units: 5
Comment: 3200 sq. ft., 1 story, concrete masonry frame, needs routine maintenance, scheduled to be vacated 10/93.

3 Aircraft Related Facilities
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103-
Landholding Agency: Navy
Property Number: 779210014
Status: Excess
Base closure Number of Units: 3
Comment: 42000 to 89300 sq. ft., 2 story, concrete masonry/metal frame, needs routine maintenance, used for storage/aircraft maintenance, scheduled to be vacated 10/93.

Land (by State)

California

NAVAIR Manor
Naval Air Station, Off-site component
Moffett Field
Sunnyvale Co: Santa Clara CA 94035-
Landholding Agency: Navy
Property Number: 779240020
Status: Excess
Base closure Number of Units: 1
Comment: 7.19 acres, improved w/paved streets and sidewalks.

Georgia

Naval Submarine Base
Grid R-2 to R-3 to V-4 to V-1
Kings Bay Co: Camden GA 31547-
Landholding Agency: Navy
Property Number: 779010229
Status: Underutilized
Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Oklahoma

Parcel No. 18
Fort Gibson Lake
Section 12
Wagoner Co. Co: Wagoner OK
Landholding Agency: Navy
Property Number: 219013808
Status: Surplus
Comment: 8.77 acres; subject to grazing lease; most recent use - recreation.
GSA Number: 7-D-OK-0442E-0004

Texas

Peary Point #2
Naval Air Station
Corpus Christi Co: Nueces TX 78419-5000
Landholding Agency: Navy
Property Number: 779030001
Status: Excess
Comment: 43.48 acres; 60% of land under lease until 8/93.
GSA Number: 7-N-TX-402-V

Suitable/Unavailable Properties

Buildings (by State)

Maine

Bldg. 376, Naval Air Station
Topsham Annex
Topsham Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 779320011
Status: Unutilized
Comment: 4530 sq. ft., 2-story, most recent use - quarters, needs rehab

Ohio

Naval & Marine Corps Res. Cntr
315 East LaClede Avenue
Youngstown OH
Landholding Agency: Navy
Property Number: 779320012
Status: Unutilized
Comment: 3067 sq. ft. 2 story, possible asbestos.

Pennsylvania

Bldg. 1, Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145-5199
Landholding Agency: Navy
Property Number: 779310008
Status: Excess
Base closure Number of Units: 1
Comment: approx 300,000 sq. ft., 15 story, concrete/brick frame, pres of asbestos, needs rehab, 36.6 acres of improved land incs. tennis court, parking & roads, sched to be vacated 3/94.

3 Enlisted Quarters
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145-5199
Landholding Agency: Navy
Property Number: 779310009
Status: Excess
Base closure Number of Units: 3
Comment: 6464-8418 sq. ft., 2/3 story, concrete/brick frame, presence of asbestos, needs rehab, scheduled to be vacated 3/94, elig. for nomination to Natl Register of Historic Places.

5 Officer's Quarters
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145-5199
Landholding Agency: Navy

Property Number: 779310010
Status: Excess
Base closure Number of Units: 5
Comment: 1888-11582 sq. ft., 2 story, concrete/brick frame, presence of asbestos, needs rehab, scheduled to be vacated 3/94, elig. for nomination to Natl Register of Historic Places.

16 Administrative Bldgs.
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310011
Status: Excess
Base closure Number of Units: 16
Comment: 6000-25250 sq. ft., 1/2 story, concrete/brick frame, needs rehab, pres. of asbestos, sched to be vacated 3/94, incs. offices/chapel/classrooms, elig for Natl Reg of Hist Places.

9 Support Bldgs.
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310012
Status: Excess
Base closure Number of Units: 9
Comment: 150-6528 sq. ft., 1 story, concrete/brick frame, needs rehab, pres. of asbestos, sched to be vacated 3/94, incs. storage bldgs/garages/sheds, elig for Natl Reg of Hist Place

6 Sentry Shelters
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310013
Status: Excess
Base closure Number of Units: 6
Comment: 28-896 sq. ft., 1 story, concrete/brick frame, needs a roof, pres. of asbestos, sched to be vacated 3/94, incs. sentry house/shelters, elig for Natl Reg of Historic Places.

4 Support Bldgs.
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310014
Status: Excess
Base closure Number of Units: 4
Comment: 5162-14756 sq. ft., 1 story, concrete/brick frame, presence of asbestos, roof needs replacement, sched to be vacated 3/94, incs. maint. shop, bowling alley, phys. therapy bldg.

3 Secured Bldgs.
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310015
Status: Excess
Base closure Number of Units: 3
Comment: 8637-15566 sq. ft., 1 story, concrete/brick frame, presence of asbestos, needs major rehab, scheduled to be vacated 3/94, most recent use - storage.

6 Utility Structures
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310016
Status: Excess
Base closure Number of Units: 6
Comment: 196-6172 sq. ft., 1 story, concrete/brick frame, presence of asbestos, needs rehab, scheduled to be vacated 3/94, incs. sewage/water pump houses, elec substations, heat plant

Staff Lounge
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310017
Status: Excess
Base closure Number of Units: 1
Comment: 4164 sq. ft., 1 story, concrete/brick frame, presence of asbestos, scheduled to be vacated 3/94.

Bldg. 8, Warehouse
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310018
Status: Excess
Base closure Number of Units: 1
Comment: 10558 sq. ft., 3 story, concrete/brick frame, roof needs replacement, presence of asbestos, scheduled to be vacated 3/94.

Rhode Island

Parcel 1 (7 bldgs.)
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310029
Status: Excess
Base closure Number of Units: 7
Comment: 1 story, presence of asbestos, on 52 acres, portion u/super- fund cleanup site, includes gen. warehouses, gate house, admin bldg, scheduled to be vacated 9/94.

Parcel 4 (92 bldgs.)
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310031
Status: Excess
Base closure Number of Units: 92
Comment: 1 story, presence of asbestos, portion u/superfund cleanup site, on 216 acres, includes warehouses, admin, auto shops, heat plants, storage, scheduled to be vacated 9/94.

Parcel 6 (7 bldgs.)
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310033
Status: Excess
Base closure Number of Units: 7
Comment: 1 story, presence of asbestos, on 4.7 acres, includes gen. warehouses, heat plant, administration, storage, scheduled to be vacated 9/94.

Parcels 7, 9, 10 (26 bldgs.)
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310034
Status: Excess
Base closure Number of Units: 26
Comment: 1-2 story, presence of asbestos, on 360 acres, portion u/ superfund cleanup site, includes storage, auto shop, applied instruc. bldgs, rec. pavillion, scheduled to be vacated 9/94

Parcel 8 (23 bldgs.)
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310035
Status: Excess
Base closure Number of Units: 23
Comment: 1-2 story, includes 9 family residences, detached garages, warehouses, presence of asbestos, fair condition, on 87 acres, scheduled to be vacated 9/94.

Texas

67 Bldgs.
Laguna Housing Area
NAS Corpus Christi
Corpus Christi Co: Nueces TX 78419-
Landholding Agency: Navy
Property Number: 779010161–779010227
Status: Underutilized
Comment: 1576 to 3532 sq. ft.; 1 story residences.

Virginia

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508-
Landholding Agency: Navy
Property Number: 779010109
Status: Unutilized
Comment: 3665 sq ft., 1 story, possible asbestos, most recent use-laundry.

Washington

Naval Station Puget Sound
7500 Sand Point Way, NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779120002
Status: Excess
Base closure Number of Units: 1
Comment: 144 sq. ft. ammunition bunker, most recent use-storage, secured area with alternate access, scheduled to be vacated 9/95.

Bldgs. 330–332
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310050–779310052
Status: Excess
Base closure Number of Units: 3
Comment: 6233 sq. ft., 2 story, most recent use - single family residence, scheduled to be vacated 9/95.

Bldg. 333
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310053
Status: Excess
Base closure Number of Units: 1
Comment: 1990 sq. ft., 1 story, most recent use - single family residence, presence of asbestos in crawl space, scheduled to be vacated 9/95.

Bldg. 334
Naval Station Puget Sound

7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310054
Status: Excess
Base closure Number of Units: 1
Comment: 2113 sq. ft., 1 story, most recent use - single family residence, presence of asbestos in crawl space, scheduled to be vacated 9/95.

Bldg. 9
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310055
Status: Excess
Base closure Number of Units: 1
Comment: 223516 sq. ft., 2 story, most recent use - barracks, need repairs, presence of asbestos, scheduled to be vacated 9/95.

Bldg. 224
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310056
Status: Excess
Base closure Number of Units: 1
Comment: 38264 sq. ft., 2 story, most recent use - bachelor's quarters/administration, need repairs, possible asbestos, scheduled to be vacated 9/95.

Bldg. 11
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310057
Status: Excess
Base closure Number of Units: 1
Comment: 59206 sq. ft., 2 story, most recent use - administration/ shops/storage, need repairs, possible soil/ground water contamination, asbestos, scheduled to be vacated 9/95.

Bldg. 30
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310058
Status: Excess
Base closure Number of Units: 1
Comment: 80068 sq. ft., 3 story, most recent use - administration/ indoor play courts/ photo lab, need repairs, asbestos, scheduled to be vacated 9/95.

Bldg. 67
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310059
Status: Excess
Base closure Number of Units: 1
Comment: 33720 sq. ft., 3 story, most recent use - administration/ vehicle maintenance/ storage, need repairs, near above ground diesel storage tank, scheduled to be vacated 9/95.

Bldg. 192
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310060
Status: Excess
Base closure Number of Units: 1
Comment: 6078 sq. ft., 2 story, most recent use - administration, need repairs, presence of asbestos in attic, scheduled to be vacated 9/95.

Bldg. 222
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310061
Status: Excess
Base closure Number of Units: 1
Comment: 15000 sq. ft., 2 story, most recent use - administration, needs rehab, scheduled to be vacated 9/95.

Bldg. 223
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310062
Status: Excess
Base closure Number of Units: 1
Comment: 9080 sq. ft., 1 story, most recent use - administration, scheduled to be vacated 9/95.

Bldg. 25
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310063
Status: Excess
Base closure Number of Units: 1
Comment: 27892 sq. ft., 3 story, most recent use - administration/ communication center, need repairs, asbestos scheduled to be vacated 9/95.

Bldg. 195
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310064
Status: Excess
Base closure Number of Units: 1
Comment: 819 sq. ft., 1 story, most recent use - travel agency, scheduled to be vacated 9/95.

Bldg. 138
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310065
Status: Excess
Base closure Number of Units: 1
Comment: 12808 sq. ft., 2 story, most recent use - administration/ police station, need repairs, presence of asbestos, scheduled to be vacated 9/95.

Bldg. 41
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310066
Status: Excess
Base closure Number of Units: 1
Comment: 2030 sq. ft., 1 story, most recent use - police station, need repairs, presence of asbestos, scheduled to be vacated 9/95.

Bldg. 18
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310067
Status: Excess
Base closure Number of Units: 1
Comment: 7000 sq. ft., 2 story, most recent use - fire station, need repairs, presence of asbestos, scheduled to be vacated 9/95.

Bldg. 2
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310068
Status: Excess
Base closure Number of Units: 1
Comment: 144233 sq. ft., 2 story, most recent use - reserve training bldg., need repairs, presence of asbestos, scheduled to be vacated 9/95.

Bldg. 27
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310069
Status: Excess
Base closure Number of Units: 1
Comment: 114617 sq. ft., 4 story, most recent use - reserve training bldg., need repairs, presence of asbestos, scheduled to be vacated 9/95.

Bldg. 38
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310070
Status: Excess
Base closure Number of Units: 1
Comment: 58 sq. ft., 1 story, most recent use - sentry house, limited utilities, scheduled to be vacated 9/95.

Bldg. 401
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310071
Status: Excess
Base closure Number of Units: 1
Comment: 60 sq. ft., 1 story, most recent use - sentry house, limited utilities, scheduled to be vacated 9/95.

Bldg. 6
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310072
Status: Excess
Base closure Number of Units: 1
Comment: 10793 sq. ft., 2 story, most recent use - bowling alley, need repairs, presence of asbestos scheduled to be vacated 9/95.

Bldg. 15
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310073
Status: Excess

Base closure Number of Units: 1
Comment: 3268 sq. ft., 1 story, most recent use - hobby shop--arts & crafts, roof needs replacing, presence of asbestos, scheduled to be vacated 9/95.

Bldg. 31
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310074
Status: Excess
Base closure Number of Units: 1
Comment: 3141 sq. ft., 2 story, most recent use - boat house w/4 boat slips, need repairs, presence of asbestos, scheduled to be vacated 9/95.

Bldg. 275
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310075
Status: Excess
Base closure Number of Units: 1
Comment: 288 sq. ft., 1 story, most recent use - boat house (marina office), needs paint, scheduled to be vacated 9/95.

Bldg. 47
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310076
Status: Excess
Base closure Number of Units: 1
Comment: 50060 sq. ft., 2 story, most recent use - recreation, need repairs, presence of asbestos, scheduled to be vacated 9/95.

Bldg. 40
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310077
Status: Excess
Base closure Number of Units: 1
Comment: 924 sq. ft., 1 story, most recent use - storage, no utilities, need repairs, scheduled to be vacated 9/95.

Bldg. 115
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310078
Status: Excess
Base closure Number of Units: 1
Comment: 1500 sq. ft., 1 story, most recent use - storage, needs rehab, presence of asbestos, scheduled to be vacated 9/95.

Bldg. 299
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310079
Status: Excess
Base closure Number of Units: 1
Comment: 1120 sq. ft., 1 story, most recent use - storage, need repairs, scheduled to be vacated 9/95.

Bldg. 29
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310080
Status: Excess
Base closure Number of Units: 1
Comment: 33745 sq. ft., 3 story, most recent use - medical/dental clinic, need repairs, scheduled to be vacated 9/95, presence of asbestos.

Bldg. 5
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310081
Status: Excess
Base closure Number of Units: 1
Comment: 417467 sq. ft., 4 story, most recent use - warehouse, need repairs, presence of asbestos, scheduled to be vacated 9/95.

Bldg. 12
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310082
Status: Excess
Base closure Number of Units: 1
Comment: 5653 sq. ft., 1 story, most recent use - boiler plant, need exterior repairs, presence of asbestos, scheduled to be vacated 9/95.

Bldg. 406
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310084
Status: Excess
Base closure Number of Units: 1
Comment: 29270 sq. ft., 1 story, most recent use - confinement facility, scheduled to be vacated 9/95.

Bldg. 26
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310085
Status: Excess
Base closure Number of Units: 1
Comment: 17282 sq. ft., 3 story, most recent use - officer's quarters, scheduled to be vacated 9/95.

Bldg. 26A
Naval Station Puget Sound
Seattle Co: King WA 98115-
Landholding Agency: Navy
Property Number: 779310087
Status: Excess
Base closure Number of Units: 1
Comment: 16082 sq. ft., 3 story, most recent use - storage, possible asbestos, scheduled to be vacated 9/95.

West Virginia

Naval & Marine Corps Res. Ctr.
N. 13th St & Ohio River
Wheeling Co: Ohio WV 26003-
Landholding Agency: Navy
Property Number: 779010077
Status: Excess
Comment: 32000 sq. ft.; 1 floor; most recent use - offices; 15% of total space occupied; needs rehab; land leased from city - expires September 1990.

Land (by State)

Florida

Naval Public Works Center
Naval Air Station
Pensacola Co: Escambia FL 32508-
Location: Southeast corner of Corey station - next to family housing.
Landholding Agency: Navy
Property Number: 779010157
Status: Unutilized
Comment: 22 acres

Georgia

Naval Submarine Base
Grid AA–1 to AA–4 to EE–7 to FF–2
Kings Bay Co: Camden GA 31547-
Landholding Agency: Navy
Property Number: 779010255
Status: Underutilized
Comment: 495 acres; 86 acre portion located in floodway; secured area with alternate access.

Pennsylvania

North East Plot (K13)
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310019
Status: Excess
Base closure Number of Units: 1
Comment: 2 paved parking areas, paved roads, (approx. 9.5 acres), scheduled to be vacated 3/94.

North West Plot (K12)
Former Naval Hospital
1701 Pattison Avenue
Philadelphia PA 19145–5199
Landholding Agency: Navy
Property Number: 779310020
Status: Excess
Base closure Number of Units: 1
Comment: 2 paved parking lots, paved roads, (2.7 acres), scheduled to be vacated 3/94.

Texas

H.A.L.F. Goliad
Hwy. 59, 6 miles NE of Berclair
Berclair Co: Goliad TX 78107-
Landholding Agency: Navy
Property Number: 779320013
Status: Excess
Base closure Number of Units: 1
Comment: 1136.32 acres, most recent use - auxiliary landing field, contains 8 bldgs.—maintenance sheds, control tower, paint locker, electrical distribution, etc.

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508-
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 779010156
Status: Unutilized
Comment: 60 acres; most recent use - sandpit; secured area with alternate access.

Suitable/To Be Excessed

Buildings (by State)

California

Bldg. 100
Naval Facilities Point Sur
CVB Detachment

Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010259
Status: Unutilized
Comment: 2628 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; use - office space.

Bldg. 102
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010260
Status: Unutilized
Comment: 580 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use - office.

Bldg. 103
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010261
Status: Unutilized
Comment: 3675 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use - dinning hall.

Bldg. 109
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010262
Status: Unutilized
Comment: 1045 sq. ft.; 2 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use - barracks.

Bldg. 110
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010263
Status: Unutilized
Comment: 4439 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use - shop.

Bldg. 113
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010264
Status: Unutilized
Comment: 100 sq. ft.; 1 story permanent bldg; secured facilities with alternate access; most recent use - storage.

Bldg. 138
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010265
Status: Unutilized
Comment: 110 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use - filling station.

Bldg. 144
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010266
Status: Unutilized
Comment: 4320 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use - bowling alley.

Bldg. 145
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010267
Status: Unutilized
Comment: 4000 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use - recreation building.

Land (by State)

Illinois

Libertyville Training Site
Libertyville Co: Lake IL 60048-
Landholding Agency: Navy
Property Number: 779010073
Status: Excess
Comment: 114 acres; possible radiation hazard; existing FAA use license.

Michigan

Marine Corps Reserve Center
3109 Collingwood Parkway
Flint MI 48502-
Landholding Agency: Navy
Property Number: 779240019
Status: Excess
Comment: 5 acres, previously had four bldgs on it.

Unsuitable Properties

Buildings (by State)

Alaska

Sand Shed, Map Grid 45024
Naval Air Station
Adak Co: Adak AK 98791-
Landholding Agency: Navy
Property Number: 779120004
Status: Unutilized
Reason: Secured Area

LORAN Station, Map Grid 09L11
Naval Air Station
Adak Co: Adak AK 98791-
Landholding Agency: Navy
Property Number: 779120006
Status: Unutilized
Reason: Secured Area

8 Bldgs.
Naval Security Group Activity
Adak Co: Adak AK 98791-
Landholding Agency: Navy
Property Number: 779310021–779310028
Status: Unutilized
Reason: Secured Area

California

Bldgs. 105, 165
Naval FPS, CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010159–779010160
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 146
Naval Facilities Point Sur
CVB Detachment
Monterey Co: Monterey CA 93940-
Landholding Agency: Navy
Property Number: 779010268
Status: Unutilized
Reason: sewer treatment facility

Bldgs. 37, 85, 88, 107 Naval Hospital
Pool Road
Oakland Co: Alameda CA 94627-
Landholding Agency: Navy
Property Number: 779320014–779320017
Status: Excess
Reason: Secured Area, Extensive Deterioration

Bldgs. 99, 99A, 115
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592-
Landholding Agency: Navy
Property Number: 779320018–779320020
Status: Unutilized
Reason: Secured Area

Bldgs. 335, 3904
Naval Air Station
Alameda Co: Alameda CA 94501-
Landholding Agency: Navy
Property Number: 779320021, 779330002
Status: Excess
Reason: Secured Area, Extensive Deterioration

Bldg. A-194
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592-
Landholding Agency: Navy
Property Number: 779330004
Status: Unutilized
Reason: Detached latrine

Florida

East Martello Bunker #1
Naval Air Station
Key West Co: Monroe FL 33040-
Landholding Agency: Navy
Property Number: 779010101
Status: Excess
Reason: Within airport runway clear zone

Georgia

Naval Submarine Base-Kings Bay
1011 USS Daniel Boone Avenue
Kings Bay Co: Camden GA 31547-
Landholding Agency: Navy
Property Number: 779010107
Status: Unutilized
Reason: Secured Area

Guam

Bldg. 96
U.S. Naval Ship Repair Facility
PSC 455 Co: Box 191, FPO AP GU 96540-1400
Landholding Agency: Navy
Property Number: 779240018
Status: Unutilized
Reason: Extensive deterioration

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792-
Landholding Agency: Navy
Property Number: 779230012
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material, Extensive Deterioration

Bldgs. Q75, 7 Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792-
Landholding Agency: Navy

Property Number: 779230013–779230014
Status: Unutilized
Reason: Secured Area, Extensive Deterioration

Facilities 189, 342, 343, S6194, S7124 Naval Air Facil.
Midway Island
Pearl Harbor HI 96516-
Landholding Agency: Navy
Property Number: 779310045–779310049
Status: Unutilized
Reason: Secured Area Extensive deterioration

Facility 5985
Naval Station Pearl Harbor
Honolulu Co: Honolulu HI 96860-
Landholding Agency: Navy
Property Number: 779310086
Status: Excess
Reason: Extensive deterioration

Bldgs. 989, 990, 996, 1026, 1028, S959
Naval Submarine Base
Pearl Harbor Co: Honolulu HI 96860–6500
Landholding Agency: Navy
Property Number: 779320025–779320030
Status: Unutilized
Reason: Extensive deterioration

Bldg. 69
Pearl Harbor Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–5350
Landholding Agency: Navy
Property Number: 779330005
Status: Unutilized
Reason: Extensive deterioration

Bldgs. S1, S2, S3, S7
Lualualei Branch, Naval Magazine
Lualualei Co: Oahu HI 96792-
Landholding Agency: Navy
Property Number: 779330006–779330009
Status: Underutilized
Reason: Extensive deterioration

Illinois

10 Bldgs.
Naval Training Center
Great Lakes
Great Lakes Co: Lake IL 60088-
Landholding Agency: Navy
Property Number: 779010120–779010123, 779010126, 779110001, 779310039, 779310041–779310044
Status: Unutilized
Reason: Secured Area

Maine

Bldg. 293, Naval Air Station
Brunswick Co: Cumberland ME 04011-
Landholding Agency: Navy
Property Number: 779240015
Status: Excess
Reason: Secured Area

Pennsylvania

Bldg. 62
Philadelphia Naval Shipyard
Philadelphia Co: Philadelphia PA 19112-
Landholding Agency: Navy
Property Number: 779010112
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Rhode Island

Bldg. 32
Naval Underwater Systems Center
Gould Island Annex
Middletown Co: Newport RI 02840-
Landholding Agency: Navy
Property Number: 779010273
Status: Excess
Reason: Secured Area

Parcel 3, Oil Storage Tank
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310036
Status: Excess
Base closure Number of Units: 1
Reason: Oil Storage Tank

Parcel 4A
Naval Construction Battalion Center
Davisville Co: Kent RI 02854–1161
Landholding Agency: Navy
Property Number: 779310037
Status: Excess
Base closure Number of Units: 1
Reason: Electric Substation

Texas

20 Bldgs.
Laguna Shores Housing Area
Corpus Christi Co: Nueces TX 78419-
Landholding Agency: Navy
Property Number: 779010279–779010298
Status: Underutilized
Reason: Floodway

Bldg. 2137, Aircraft Hangar
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103-
Landholding Agency: Navy
Property Number: 779210015
Status: Excess
Base closure Number of Units: 1
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 1032, Warehouse
Naval Air Station, Chase Field
Beeville Co: Bee TX 78103-
Landholding Agency: Navy
Property Number: 779210016
Status: Excess
Base closure Number of Units: 1
Reason: Structural deterioration

Washington

Bldg. 57
Naval Supply Center Puget Sound
Manchester Co: Kitsap WA 98353-
Landholding Agency: Navy
Property Number: 779010091
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 47 (Report 1)
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353-
Landholding Agency: Navy
Property Number: 779010230
Status: Unutilized
Reason: Secured Area

Land (by State)

California

Salton Sea Test Range
ElCentro Co: Imperial CA 93555-
Landholding Agency: Navy
Property Number: 779010068
Status: Excess
Reason: Secured Area

Land—Marine Corps Base
Camp Pendleton
Camp Pendleton Co: San Diego CA 92055-
Landholding Agency: Navy
Property Number: 779330003
Status: Underutilized
Reason: Secured Area

Florida

Boca Chica Field
Naval Air Station
Key West Co: Monroe FL 23040-
Landholding Agency: Navy
Property Number: 779010097
Status: Unutilized
Reason: Floodway

East Martello Battery #2
Naval Air Station
Key West Co: Monroe FL 33040-
Landholding Agency: Navy
Property Number: 779010275
Status: Excess
Reason: Within airport runway clear zone

Georgia

Naval Submarine Base
Grid G–5 to G–10 to Q–6 to P–2
Kings Bay Co: Camden GA 31547-
Landholding Agency: Navy
Property Number: 779010228
Status: Underutilized
Reason: Secured Area

Maryland

5,635 sq. ft. of Land
Solomon's Annex
Solomon's MD
Landholding Agency: Navy
Property Number: 779230001
Status: Excess
Reason: Drainage Ditch

Puerto Rico

Destino Tract
Eastern Maneuver Area
Vieques PR 00765-
Landholding Agency: Navy
Property Number: 779240016
Status: Excess
Reason: Inaccessible

Punta Figueras - Naval Station
Ceiba PR 00735-
Landholding Agency: Navy
Property Number: 779240017
Status: Excess
Reason: Floodway

Washington

Land (Report 2), 234 acres
Naval Supply Center, Puget Sound
Manchester Co: Kitsap WA 98353-
Landholding Agency: Navy
Property Number: 779010231
Status: Unutilized
Reason: Secured Area

[FR Doc.93–23901 Filed 9–30–93; 8:45 a.m.]

Billing Code 4210–29–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-4210-05; N-22427, N-22428]

Termination of Desert Land Classifications and Opening Order; Nevada

September 21, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates desert land classifications N-22427 and N-22428 in their entirety and provides for opening the land to the operation of the public land laws, including location under the mining laws.

EFFECTIVE DATE: Termination of the classifications and segregation is effective October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, Bureau of Land Management, 850 Harvard Way, Reno, NV 89520, (702) 785-6530.

SUPPLEMENTARY INFORMATION: The lands affected by this action are described as follows:

Mount Diablo Meridian, Nevada

T. 38 N., R. 62 E.,
Sec. 35, Parcels A-J, inclusive, NE¼SW¼ NW¼NE¼, S½SW¼NW¼NE¼, SE¼ NW¼NE¼, E½NE¼SE¼NW¼, S½ SW¼NE¼SE¼NW¼, S½SE¼NW¼, NW¼SE¼SW¼, N½NE¼SE¼SW¼, NW¼NE¼SE¼, S½SE¼, S½SE¼ SW¼, E½NE¼SE¼, SW¼NE¼SE¼;
Sec. 36, lots 3-7, inclusive, 7, 9, 15, 17 and 18.

The area described contains 607.88 acres in Elko County, Nevada.

The classification was made pursuant to the Desert Land Act of March 3, 1877, as amended and supplemented (43 U.S.C. 321, et seq.). Entries were allowed on June 4, 1985, and on that date the lands became segregated from all other forms of appropriation under the public land laws, including location under the mining laws. By decision dated June 6, 1989, the entries were canceled because of the entrypersons' inability to construct the necessary irrigation works and make final proofs within the mandated timeframe.

Pursuant to section 7 of the Taylor Grazing Act (48 Stat. 1272), desert land classification N-22427 and N-22428 are hereby terminated in their entirety.

At 10 a.m. on October 1, 1993, the lands will become open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on October 1, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. At 10 a.m. on October 1, 1993, the lands will be open to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law.

The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

K. Lynn Bennett,

Associate State Director, Nevada.

[FR Doc. 93-24084 Filed 9-30-93; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-03-4210-07]

Emergency Closure of Public Lands; Washoe County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Emergency Closure of Public Lands; Washoe County, Nevada.

SUMMARY: Notice is hereby given that certain public lands in the vicinity of the Wedekind Mining District near Sparks, Nevada are closed to the public. This closure is necessary to provide for public safety on land known to be contaminated with TNT.

EFFECTIVE DATES: This closure goes into effect on October 1, 1993 and will remain in effect until the Carson City District Manager determines the closure is no longer needed.

FOR FURTHER INFORMATION CONTACT: James M. Phillips, Lahontan Resource Area Manager, Carson City District, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706. Telephone (702) 885-6000.

SUPPLEMENTARY INFORMATION: This closure applies to all the public, on foot or in vehicles. The public lands affected by this closure are fenced and lie within the area described as follows:

Mount Diablo Meridian

T. 20 N., R. 20 E.,
Sec. 28, SW¼NE¼SW¼SE¼, SE¼NW¼SW¼SE¼, NE¼SW¼SW¼SE¼, NW¼SE¼SW¼SE¼.

The authority for this closure is 43 CFR 8364.1. Any person who fails to comply with this closure order is subject to arrest and fine of up to $1,000.00 and/or imprisonment not to exceed 12 months.

A map of the closed area is posted in the Carson City District Office.

Dated this 22nd day of September, 1993.

James W. Elliott,

Carson City District Manager.

[FR Doc. 93-24083 Filed 9-30-93; 8:45 am]

BILLING CODE 4310-HC-M

[CA-060-02-5101-B002; CA-27365]

Broadwell Basin Residuals Repository for Specified Hazardous Waste Final Environmental Impact Report/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, a Final Environmental Impact Statement has been prepared for the proposed Broadwell Basin Residuals Repository for Specified Hazardous Waste in the California Desert Conservation Area, San Bernardino County, California. The proposed action is located at Broadwell Dry Lake, approximately 60 miles east of Barstow and approximately 8 miles north of Interstate 40 and Ludlow, California. This document has been prepared by the Bureau of Land Management (BLM) and the County of San Bernardino as a joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) to meet the requirements of the National Environmental Policy Act and the California Environmental Quality Act.

Reading copies are available at: BLM, Barstow Resource Area, 150 Coolwater Lane, Barstow; BLM, California Desert District, 6221 Box Springs Blvd, Riverside; San Bernardino County Government Center, 385 N. Arrowhead Avenue, Third Floor, San Bernardino; San Bernardino County Building, 15505 Civic Drive, Victorville; Newberry Springs: and libraries in Victorville, Barstow, and San Bernardino.

DATES: Written comments on the Final EIR/EIS must be postmarked no later than November 1, 1993.

ADDRESSES: Written comments should be addressed to County of San Bernardino, Planning Department, 385 N. Arrowhead Avenue, Third Floor, San Bernardino, CA 92415-0182, Attn: Mr. Randy Scott.

FOR FURTHER INFORMATION CONTACT:

Edy Seehafer, BLM Project Manager, 150 Coolwater Lane, Barstow, CA 92311; telephone (619) 256–3591.

SUPPLEMENTARY INFORMATION: The Final EIR/EIS responds to comments on the Draft EIR/EIS concerning the probable environmental impacts that would result from the proposed construction and operation of a specified hazardous waste disposal and treatment facility. The proposed action consists of an aboveground disposal area located on private lands with a capacity of approximately 16 million tons, an 8.5 mile 60-foot wide right-of-way for an access road located on public and private lands, and the mining of 10.4 million tons of coarse borrow material on a 363 acre public lands site and 5.5 million tons of clay material on a 227 acre public lands site.

The Final EIR/EIS consists of two volumes; Volume I provides responses to the comments received on the Draft EIR/EIS and the mitigation and monitoring program for the proposed project, while Volume II includes additional technical information on the project. The Final EIR/EIS is an extension of the Draft EIR/EIS that was distributed for public review and comment in July, 1992. The Final document plus the Draft document and associated appendices and attachments constitute the complete EIR/EIS for the project.

Major issues identified in the scoping process and/or comments on the Draft EIR/EIS include: geology and the dessication features of the lake bed; soils; seismic issues; cultural and paleontological resources; air quality; hydrology issues including water supply, groundwater aquifer flow, and water quality; noise; biological resources; changes in traffic flow; scenic and visual resources; wilderness study areas; and public health and safety. Volume II of the Final EIR/EIS includes specific studies and associated reports to address the dessication features of the dry lake and their potential impacts on the project, and a human health and ecological risk assessment for the project.

Dated: September 22, 1993.

Karla K.H. Swanson,

Barstow Resource Area Manager.

[FR Doc. 93–24024 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–40–M

[AZ–050–03–4830–01; 1784]

Arizona: Yuma District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

FOR FURTHER INFORMATION CONTACT: Merv Boyd, Acting Associate District Manager, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365, (602) 726–6300.

SUPPLEMENTARY INFORMATION: A meeting of the Yuma District Advisory Council will be held Friday, October 29, 1993, 10:30 a.m. to 1:30 p.m., at the Bureau of Land Management, Yuma District Office, Arizona. Agenda topics will include:.

(1) Imperial Oasis,
(2) Long-Term Visitor Areas,
(3) Rangeland Reform 94,
(4) Re-Engineering for Quality,
(5) Parker Strip Recreation Area Management Plan,
(6) Lake Havasu Fisheries Improvement Program, and
(7) Fiscal Year 1994 Direction.

Members of the public are invited to attend the meeting. Summary minutes of the meeting will be maintained in the Yuma District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

This notice is published under the authority of title 5, United States Code, section 552b(e)(3).

Dated: September 24, 1993.

Merv Boyd,

Acting District Manager.

[FR Doc. 93–24072 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–32–M

[MT–066–4333–01–21 1A]

Montana Off-Road Vehicle Designation; Meeting

AGENCY: Bureau of Land Management, Department of the Interior, Havre Resource Area.

ACTION: Notice to limit off-road vehicle use on public lands.

SUMMARY: The Bureau of Land Management is hereby restricting all motorized vehicle traffic to designated county and BLM roads/trails on all lands within the property commonly known as the Richard E. Wood Watchable Wildlife Area or Wood River Ranch Sikes Act Management Area. This property is further described as follows:

Location: This property is located south of US Highway 87, 0.4 mile south of Loma, MT and 10.5 miles northeast of Fort Benton, MT. It starts at the confluence of the Marias and Missouri Rivers, and extends upstream on the Missouri River for 3.0 miles.

Legal Location:

T. 25 N., R. 9 E., P.M.M.
Section 13: SE¼, S½NE¼, E½SW¼, S½SE¼NW¼, SW¼SW¼.
Section 23: N½NE¼, SE¼NW¼.
Section 24: N½N½, SE¼NW¼, NE¼SW¼.

T. 25 N , R. 10 E., P.M.M.
Section: NW¼, SW¼ West of Missouri River.
Section: NW¼ West of Missouri River, S½, NE¼, SE¼, E½SW¼.
Section: S½, S½N½.
Section: W½SW¼.
Section: W½NE¼, NE¼NW¼, NW¼SE¼, S½NW¼, N½SW¼

All vehicle traffic is restricted to designated county and BLM roads/trails. This would not restrict vehicles from parking within 50 feet of designated roads on established grass or grain stubble.

This closure is being implemented to protect public resources and prevent the spread of noxious weeds.

Persons exempted from such restriction are all MT Fish, Wildlife and Parks, and BLM personnel during the performance of their duties on described lands. Also exempted are cooperators in the management of agricultural lands, at such time as they are working on described lands to prepare fields, plant, control weeds, or harvest crops.

Copies of maps which show open roads are posted at various locations in Loma, on the property, and at BLM offices in Havre, Ft. Benton and Great Falls.

Any persons in violation of closures of off-road traffic will be subject to all applicable penalties, including fines not to exceed $1,000 and/or one year imprisonment.

DATES: These restrictions will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Area Manager, Havre Resource Area, West 2nd Street, Havre, MT (406) 265–5891.

Dated: September 22, 1993.

B. Gene Miller,

Acting District Manager.

[FR Doc. 93–24073 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–DN–M

[WY–920–41–5700; WYW99024]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW99024 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all

the required rentals accruing from the date of termination. The lessee has agreed to the amend lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW99024 effective April 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Mary Jo Rugwell,

Acting Supervisory Land Law Examiner.

[FR Doc. 93–24164 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–22–M

[OR–117–6332–05; 3–432]

Josephine County, OR; Intent to Prepare an Environmental Impact Statement

AGENCY: Medford District Office, Grants Pass Resource Area; Bureau of Land Management, DOI.

ACTION: Notice of intent to prepare an environmental impact statement to revise the Wild and Scenic Rogue River's Hellgate Recreation Area Management Plan, Josephine County, Oregon.

SUMMARY: Notice is hereby given that the United States Department of the Interior (USDI), Bureau of Land Management (BLM), Medford District Office (MDO) will prepare an environmental impact statement (EIS) to revise the Wild and Scenic Rogue River's Hellgate Recreation Area Management Plan (RAMP). The EIS may, in effect, amend or supplement the existing Josephine Management Framework Plan (MFP) or a future MDO Resource Management Plan (RMP).

The need for action is based on BLM visitor use reports that show major increases in water-based visitor use activities, on a recreation use study, and on a scoping effort which identified visitor use conflicts. A BLM funded recreation use study was conducted by Oregon State University's Department of Forest Resources in 1992. The results highlighted a concern that there is evidence of on-river conflicts among users, particularly between jet boaters or motorized tour boats and floaters during the summer months, and between jet boaters and anglers in the fall fishing season.

The need for the action is also based upon a previous 20-month scoping process conducted by BLM from May 1991 to December 1992. There were 2,701 written responses analyzed during this previous scoping to revise the Hellgate RAMP through the use of an environmental assessment (EA) process. The issues identified by the public during EA scoping addressed several areas of concern: possible impacts to river resources from visitor use, health and safety concerns, socioeconomic benefits, motorized versus nonmotorized boating, and the social carrying capacity of the river. Social carrying capacity relates to the question of the increased visitor use altering or degrading the recreational experience. The jet boat or motorized tour boat service was clearly identified as the major point of controversy among users of the Hellgate Recreation Area. The common interests of all users and/or visitor were the opportunity to view scenery and wildlife, to be in a natural setting, and to enjoy the river. The BLM is concerned with protecting the recreational resources and reducing visitor use conflicts within the Hellgate Recreation Area.

The purpose of the action is to ensure recreational use levels are in alignment with the purposes of the Wild and Scenic Rivers Act of October 2, 1968, hereinafter referred to a the "Act" (Pub. L. 90–542).

DATES: Comments concerning the scope and implementation of this proposal must be received by November 30, 1993. Informal meetings may be scheduled before the comment period closes.

ADDRESSES: Submit written comments and suggestions concerning this proposal to Michael Walker, Planning Team Leader, BLM Medford District Office, 3040 Biddle Road, Medford, Oregon 97504.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Michael Walker, telephone (503) 770–2428, or Jim Leffmann, telephone (503 770–2275.

SUPPLEMENTARY INFORMATION: The 27-mile Hellgate Recreation Area of the National Wild and Scenic Rogue River (i.e., from its confluence with the Applegate River to Grave Creek) provides a broad range of land and water-based recreation opportunities. Recreational use of this segment of the river is managed with a minimum of regulations. Campgrounds several day-use recreation sites, and boat launching facilities are available. All commercial recreation is regulated by permit. Present commercial activities permitted are motorized tour boats, guided floats, and guided fishing trips. Private recreation activities are presently unregulated by the BLM. The river's proximity to Medford and Grants Pass Oregon, abundant nearby recreation support services (e.g., raft rentals and supplies, commercial guide services, shuttles, motels, restaurants, etc.), and a growing public interest in river recreation have led to a tremendous increase in visitor use.

The BLM, as the lead agency, requests other Federal, State, local, and tribal agencies to participate as a cooperating agency on the RAMP/EIS, as appropriate.

Public participation will be especially important at several points during the RAMP/EIS process, beginning, with the EIS scoping process, but also including the development of a range of alternatives. Normally, in the EIS scoping process which is the first step toward forming a revised plan, commenters should identify issues, interests, and concerns regarding public lands in the planning area. However, the earlier EA scoping process which had almost 3,000 letters form the public helped identify eight (8) issues the BLM is proposing to address. The order of the following recommended planning issues reflected the level of public and agency interest.

1. How should motorized boating, both commercial and private, be managed (e.g., how much, what kind, permitted season, mix between commercial and private etc.)?
2. How should nonmotorized boating be managed (e.g., how much, what kind, permitted season, mix between commercial and private, etc.)?
3. How should commercial services or activities along the Hellgate section of the Rogue River be managed (e.g., how much, what kind, permitted season, etc.)?
4. Should user fees be levied for private use of the Hellgate section of the Rogue River?
5. How should a quality fishing experience be maintained or enhanced?
6. What types of recreational opportunities should be provided?
7. How should visitor services be provided?
8. What actions should BLM take in river related law enforcement?

A "scoping" document, which summarizes the public concerns during the previous 20-month EA scoping process, was completed within the MDO and is available on request by writing Mike Walker, River Planner, in Medford, or by calling (503) 770–2428.

The EA scoping process to revise the Hellgate RAMP and its identification of public concerns were the major influences in the design of the Rogue River Studies Program. It is a combination of the eight contracted studies (i.e., cultural resources, economic effects, erosion, fisheries (expert panel on adult salmon spawning), fisheries (juveniles), Indian history, safety, and visitor attitudes) and BLM staff resource or background papers.

In considering solutions to the various issues in the Hellgate Recreation Area, a wide range of possibilities exist. Some solutions to the identified issues could create a more developed and highly used environment. At the other end of the spectrum, a less accessible river could be restored with fewer visitors accommodated. A general description of a possible range of RAMP/EIS alternatives follows:

Alternative A would stress the protection of the natural environment with a visitor use level consistent with the time before the general controversy over river management began. This alternative would include permits and fees for commercial and private watercraft use at a visitor use level much lower than today. There would be no new recreational facilities developed.

Altenative B would be current management with the level of visitor use expected to occur in 1995, a higher level of use than today. Permits and fees would only be applicable for commercial use. Market forces would control the level of commercial use. Private use would be unregulated. The existing restrictions for the jet boat or motorized tour boat service would remain in effect.

The number and type of recreational facilities would, in general, remain consistent with the level of development in 1993.

Alternative C would stress the enhancement of the angling and floating experience. The alternative would be designed around management actions which would minimize the potential to impact the fisheries resource, increase fishing opportunities and the fishing experience, and maximize the floating opportunity and floating experience.

Motorized boating would be prohibited during the spring and fall spawning/fishing seasons. Total daily motorized tour boat trips would be limited to the historical number for the year 1985. Motorized boat traffic would be prohibited downstream of Hellgate Canyon to Grave Creek from October through May. The interim permit stipulations for the motorized tour boat service would remain in effect. Anglers and floaters would be unregulated. Market forces would control the level of commercial use. Visitor use for floaters and anglers would equal alternative B as adjusted for 2005.

The number and type of recreational facilities would, in general, remain consistent with the level of development in 1993 except that several new fishing access sites would be developed.

Alternative D would be the maximum visitor use which would occur with the minimum of management necessary to administer commercial use. For example, there would be no fees for private use, almost no limits to visitor use (i.e., private and commercial except for motorized tour boats), and except for trips per day, elimination of the interim permit stipulations for motorized tour boats. There would be no restrictions on private motorized use. Visitor use for anglers and floaters would equal alternative B for 2005. Watercraft use for motorized tour boats would be increased from the existing level of 19 trips per day to 25 trips per day. The use patterns for motorized tour boats would equal alternative B as adjusted to estimate visitor use for all months during 1995.

The number and type of recreational facilities would increase above all other alternatives. Many additional facilities would be developed including a multi-million dollar information, administration, camping, and recreation complex.

Additional information concerning the Rogue River Studies Program and possible alternatives is also available by writing or calling Mike Walker.

Dated: September 23, 1993.

Wayne M. Kuhn,

Acting District Manager.

[FR Doc. 93–24071 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–33–M

[CO–050–4410–02]

Notice of Availability of the Royal Gorge Draft Resource Management Plan/Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management, Cañon City District has prepared a draft resource management plan/environmental impact statement for the Royal Gorge Resource Area (RGRA) in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) and 43 CFR part 1600. This document is now available to the public for a 90-day comment period.

SUMMARY: A draft resource management plan/environmental impact statement for the Royal Gorge Resources Area has been prepared and is now available to the public. This plan, when finalized, will replace and supersede the existing land use plans and other related environmental documents. This plan will provide the overall framework for managing and allocating BLM-administered land and mineral resources in the RGRA for the next 15 to 20 years. Located in eastern Colorado, the Royal Gorge Planning Area encompasses 653,000 acres of Federal surface estate and a total of 2,560,000 acres of Federal subsurface mineral estate within Baca, Bent, Chaffee, Crowley, Custer, El Paso, Fremont, Huerfano, Kiowa, Lake, Las Animas, Otero, Park, Prowers, Pueblo, and Teller Counties.

DATES: The draft Royal Gorge Resource Management Plan/Environmental Impact Statement public review and comment period will begin on October 8, 1993, and will run through January 10, 1994. BLM invites interested or affected parties to provide written comments on this draft document prior to the January 10 closing date. The public is also invited to attend three draft RMP/EIS public hearings to be held to obtain public testimony on November 1, 1993, in Denver, November 2, 1993, in Buena Vista, and on November 3, 1993, in Cañon City.

Public hearings will have two sessions each day; one from 2 p.m. until 4 p.m. and one from 7 p.m. until 9 p.m. The public is invited to come early at 1 p.m. and at 6 p.m. each day to meet informally with BLM personnel, review maps, ask questions, or sign up to give testimony on the draft RMP/EIS. The hearings will be held at the Ramada Inn (formerly the Rodeway Inn) at 11595 West 6th Avenue, Denver, Colorado, at the Buena Vista Community Center at East Main and Evans, Buena Vista, Colorado, and at the BLM District Office, at 3170 East Main Street, Cañon City, Colorado.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain a copy of the draft resource management plan/environmental impact statement by writing RMP Project, Bureau of Land Management, P.O. Box 1171, Cañon City, Co 81215–1171 or by calling Dave Taliaferro, RMP Project Manager (719) 275–0631. Copies also may be obtained from the Royal Gorge Resource Area Office, 3170 East Main, Cañon City, CO 81212; Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215. Interested parties who wish to make written comments are requested to send

them to the following address: RMP Project, Bureau of Land Management, P.O. Box 1171, Cañon City, CO 81215–1171.

SUPPLEMENTARY INFORMATION: Some of the highlights of the Royal Gorge Draft RMP/EIS are:

1. The plan focuses on the principles of multiple use and sustained yield as mandated by section 202 of FLPMA. Decisions within the plan cover a 15- to 20-year period. The plan directs future resource condition objectives, land use allocations, and management actions on BLM-administered lands and minerals within the Royal Gorge Resource Area.

2. The draft RMP/EIS utilizes a range of four plan alternatives for the planning/environmental analysis. These alternatives are (a) Existing Management Alternative (No Action); (b) Resource Conservation Alternative; (c) Resource Utilization Alternative; and (d) Preferred Alternative. The range of alternatives was limited to those considered reasonable and implementable.

3. The Preferred Alternative was developed and analyzed to represent the best estimate of an optimum multiple use mix of land management for these BLM-administered lands. Ten of the 14 areas considered for management of special concerns are designated as areas of critical environmental concern (ACECs) in the Preferred Alternative. Proposed ACECs and acreages are as follows:

a. Garden Park Paleo area (2,728 acres).
b. Browns Canyon (11,697 acres).
c. Beaver Creek (12,081 acres).
d. Grape Creek (15, 978 acres).
e. Phantom Canyon (6,096 acres).
f. Droney Gulch (705 acres).
g. Mosquito Pass (4,036 acres).
h. Cucharas Canyon (1,314 acres).
i. Arkansas Canyonlands (23,921 acres, which includes 1,510 acres of High Mesa Grassland).

4. This document also serves as the draft environmental impact statement required for the Wild and Scenic River Act. Within this draft RMP/EIS is an analysis of 20 stream miles of Beaver Creek determined eligible and suitable for potential wild and scenic designation and 126 stream miles of the Arkansas River determined eligible and suitable for potential wild and scenic designation. A total of 146 stream miles would not be recommended to Congress as a potential additional to the National Wild and Scenic River System. River segments determined eligible and suitable would be managed under a protective interim management prescription for 3 years after the approved RMP/record of decision (ROD) is signed).

5. Within this draft RMP/EIS is an analysis of approximately 125,000 acres in the Arkansas River corridor for recommendation to Congress as a national recreation area. This includes the segments of the Arkansas River determined eligible and suitable for W&SR designation.

All substantive written comments and hearing testimony will be analyzed in the preparation of the proposed resource management plan (RMP) and final environmental impact statement (EIS). The proposed resource management plan/final environmental impact statement is tentatively scheduled to be completed during the fall of 1994.

Donnie R. Sparks,

District Manager.

[FR Doc. 93–23915 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–JB–M

[OR–943–4210–06; GP3–408; OR–48631]

Partial Termination of Proposed Withdrawal; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has canceled its application in part to withdraw certain lands for the protection of the Mariposa Botanical Area and the Lower Table Rock Parking/Staging Area. This action will terminate that portion of the proposed withdrawal for the Lower Table Rock Parking/Staging Area. The lands involved are not in Federal ownership.

EFFECTIVE DATE: November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7162.

SUPPLEMENTARY INFORMATION: The notice of the Bureau of Land Management application OR–48631 for withdrawal was published as FR Doc. 93–10180 of the issue of April 30, 1993. The purpose of the proposed withdrawal is to protect the special botanical area and developed recreation site. The applicant agency has determined that a portion of the proposed withdrawal is no longer needed and has canceled the application insofar as it effects the following described land, which is not in Federal ownership:

Willamette Meridian

Tract B, Lower Table Rock Parking/Staging Area
T. 36 S., R. 2 W.,
Sec. 4, that portion of the NE¼SW¼, as more particularly identified and described in the official records of the Bureau of Land Management, Oregon/Washington State Office.

The area described contains approximately 37.65 acres in Jackson County.

Pursuant to the regulations in 43 CFR 2310.2–1(c), at 8:30 a.m., on November 1, 1993, the proposed withdrawal will be terminated in part. The land described above is not in Federal ownership and will not be opened to operation of the public land laws generally, including the mining and mineral leasing laws.

The land remaining in withdrawal application OR–48631 is described and amended to read as follows:

Willamette Meridian

Tract A, Mariposa Botanical Area
T. 41 S., R. 2 E.,
Sec. 8, those portions of the W½NE¼, NW¼, and N½SW¼ lying westerly of Interstate 5, excepting those lands now owned by the State of Oregon as more particularly identified and described in the official records of the Bureau of Land Management, Oregon/Washington State Office.

The area described contains approximately 220.77 acres in Jackson County.

Dated: September 20, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–24074 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–4210–06; GP3–147; OR–17434 (WASH)]

Termination of Proposed Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has rejected the application of the Bureau of Reclamation to withdraw 144 acres in connection with proposed fish enhancement developments at Enloe Dam, Chief Joseph Dam Project. This action will terminate the proposed withdrawal.

DATES: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7162.

SUPPLEMENTARY INFORMATION: The notice of the Bureau of Reclamation application OR–17434 (WASH) for the withdrawal was published as FR Doc. 77–18484 of the issue of June 28, 1977.

The purpose of the proposed withdrawal was to protect the proposed fish enhancement developments at Enloe Dam, Chief Joseph Dam Project. Plans for the developments have been suspended indefinitely and the application does not meet the requirements of 43 CFR 2310.1–2(c). The application is therefore rejected in its entirety as to the following described land:

Willamette Meridian

T. 40 N., R. 26 E.,
Sec. 13, lots 4, 5, 6, and 7.

The area described contains 144 acres in Okanogan County.

The proposed withdrawal is hereby terminated in its entirety. On June 28, 1979, the land involved was relieved of the segregative effect of the above-referenced application.

Dated: September 21, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–24075 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Availability of the Agency Draft Recovery Plan for Schweinitz's Sunflower for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of an agency draft recovery plan for Schweinitz's sunflower (*Helianthus schweinitzii*). The rare perennial herb is known from 36 locations in the piedmont of North Carolina and South Carolina. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the agency draft recovery plan must be received on or before November 30, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (Telephone 704/665–1195). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Ms. Nora Murdock at the address and telephone number shown above (Ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the 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 recognizing 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, as amended (16 U.S.C. 1531 *et seq.*) (Act), 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 a 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 implementing approved recovery plans.

The primary species considered in this draft recovery plan is Schweinitz's sunflower (*Helianthus schweinitzii*). The area of emphasis for recovery actions is the piedmont of North Carolina and South Carolina. Habitat protection, reintroduction, and preservation of genetic material are major objectives of this recovery plan.

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: September 20, 1993.

Brian P. Cole,

Field Supervisor.

[FR Doc. 93–29070 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0041); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella; Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR Part 250, Subpart K, Oil and Gas Production Rates

OMB approval number: 1010–0041

Abstract: The information submitted by respondents is used by the Minerals Management Service in its efforts to conserve natural resources, prevent waste, and protect correlative rights including the Government's royalty interest.

Bureau form number: None

Frequency: On occasion

Description of respondents: Federal Outer Continental Shelf oil and gas lessees

Estimated completion time: 2.03 hours (rounded)

Annual responses: 1,524 (rounded)

Recordkeeping hours: 10,400

Annual burden hours: 13,488

Bureau Clearance Officer: Arthur Quintana (703) 787–1239

Dated: September 17, 1993.

Jeffrey P. Zippin,

Acting Deputy Associate Director for Operations and Safety Management.

[FR Doc. 93–24076 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0068); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella; Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR Part 250, Subpart M, Unitization

OMB approval number: 1010–0068

Abstract: Respondents are required to obtain approval from MMS's Regional Supervisors when they enter into an agreement to unitize operations under two or more leases. Any proposed modifications to the agreement must also be approved by the Regional Supervisor. This information is necessary to ensure that operations under the proposed unit agreement will result in the prevention of waste, conservation of natural resources, and protection of correlative rights including the Government's interest.

Bureau form number: None

Frequency: On occasion

Description of respondents: Federal Outer Continental Shelf oil and gas lessees

Estimated completion time: 45.7 hours (rounded)

Annual responses: 53

Annual burden hours: 2,424 (rounded)

Bureau Clearance Officer: Arthur Quintana (703) 787–1239

Dated: September 14, 1993.

G.R. Daniels,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 93–24077 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: Gettysburg National Military Park Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the ninth meeting of the Gettysburg National Military Park Advisory Commission.

DATES: October 21, 1993.

TIME: 2 p.m–4 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Gettysburg Hotel, One Lincoln Square, Gettysburg, Pennsylvania 17325.

AGENDA: Sub-Committee Reports, briefings on the status of the Draft White-tail Deer Environmental Impact Statement, historic structures in the park and necessary maintenance and preservation work needed, status of Park's Land Protection Plan, use of mountain bikes on park trails, Memorial Landscape and an operational update on the park.

FOR FURTHER INFORMATION CONTACT: Jose A. Cisneros, Superintendent, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 95 Taneytown Road, Gettysburg, Pennsylvania 17325.

B.J. Griffin,

Regional Director, Mid-Atlantic Region.

[FR Doc. 93–24139 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–70–M

Mississippi River Corridor Study Commission

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATES AND TIMES: December 1, 1993; 8 a.m. until 4:30 p.m., December 2, 1993; 8 a.m. until 4:30 p.m., December 3, 1993; 8 a.m. until noon.

ADDRESSES: Mississippi River Commission Conference Room, First Floor Conference Room, 1400 Walnut Street, Vicksburg, Mississippi.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: David N. Given, Associate Regional Director, Planning and Resource Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221–3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101–398, September 28, 1990.

Dated: September 23, 1993.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 93–24140 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–70–P

Santa Fe National Historic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Santa Fe National Historic Trail Advisory Council will be held on November 4–5, 1993, at 8:30 a.m., at New Mexico Highlands University, Kennedy Lounge, University and 11th Street, Las Vegas, New Mexico.

The Santa Fe National Historic Trail Advisory Council was established pursuant to Public Law 90–543 establishing the Santa Fe National Historic Trail to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, as well as administrative matters.

The matters to be discussed include:

—Review of interpretive planning matters.
—Cultural resources management.
—Auto tour route signing.
—Fundraising proposals.
—Status of certification projects and agreements with cooperators.
—Historical research projects.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public

may file a written statement concerning the matters to be discussed with David Gaines, Trail Manager.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Trail Manager, Santa Fe National Historic Trail, P.O. Box 728, Santa Fe, New Mexico 87504–0728, telephone 505/988–6888. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of the Trail Manager, located in room 358, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Dated: September 21, 1993.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 93–24146 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–3 (Sub. No. 109X)]

Missouri Pacific Railroad Co.—Discontinuance of Trackage Rights Exemption—in St. Charles County and St. Louis, Mo; Exemption

Missouri Pacific Railroad Company (MP), as successor to Missouri-Kansas-Texas Railroad Company (MKT), has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments and Discontinuances of Trackage Rights to discontinue trackage rights on approximately 22.66 miles of rail line owned by Burlington Northern Railroad Company (BN), successor to Chicago, Burlington & Quincy Railroad Company (CBQ), between milepost 26.83 near Machens, and milepost 4.24 in St. Louis, including side and/or connecting tracks at Machens, West Alton and Baden Yard in St. Louis, in St. Charles County and St. Louis, Mo.[1] BN will continue its operations on the subject line.

MP has certified that: (1) No local traffic has moved pursuant to the trackage rights operation over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[2]

As a condition to use of this exemption, any employee adversely affected by the discontinuance shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on October 31, 1993, unless stayed pending reconsideration. Petitions to stay must be filed by October 12, 1993. Petitions to reopen must be filed by October 21, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[3]

A copy of any petition filed with the Commission should be sent to applicant's representatives: Joseph D. Anthofer and Jeanna L. Regier, 1416 Dodge Street, room 830, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Decided: September 24, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–24182 Filed 9–30–93; 8:45 am]

BILLING CODE 7035–01–M

[1] The trackage rights operation was granted to MKT by CBQ pursuant to an order served by the Commission on September 27, 1966, in Finance Docket No. 24243, as subsequently modified in the Sub.-No. 1 proceeding, in a Notice of Exemption served by the Commission on September 5, 1985.

[2] No environmental or historical documentation is required here pursuant to 49 CFR 1105.6(b)(3).

[3] Because BN will continue to provide service over the line, there is no need to provide for trail use/rail banking or public use conditions, or to include offer of financial assistance language, routinely provided for in abandonment proceedings.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on August 31, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Advanced Lead-Acid Battery Consortium ("ALABC"), a discrete program of the International Lead Zinc Research Organization, Inc. ("ILZRO"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of two members to the ALABC. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the ALABC advised that written commitments to become members of the ALABC have been received from Industrial Technology Research Institute, TAIWAN, R.O.C. and Metaleurop S.A., Fontenay-sous-Bois Cedex, FRANCE.

No other changes have been made in either the membership or planned activity of the ALABC. Membership in the ALABC remains open and the ALABC intends to file additional written notification disclosing all changes in membership.

On June 15, 1992, the ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1992, 57 FR 33522. The last notification was filed with the Department on June 2, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 28, 1993, 58 FR 34590.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–24080 Filed 9–30–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Controlled Substances: Established 1993 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim rule establishing 1993 aggregate production quotas and request for comments.

SUMMARY: This interim rule establishes revised 1993 aggregate production quotas for some controlled substances in Schedules I and II, as required under the Controlled Substances Act (CSA) of 1970.

DATES: This is effective on October 1, 1993. Comments must be submitted on or before November 1, 1993.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug

Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S.C. 826), requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of title 28 of the Code of Federal Regulations.

On December 16, 1992, a notice establishing the initial 1993 aggregate production quotas for controlled substances in Schedules I and II was published in the **Federal Register** (57 FR 59845). The notice stipulated that the Administrator could adjust the quotas in 1993 as provided for in title 21, Code of Federal Regulations, § 1303.13(c).

On July 27, 1993, a notice proposing revised 1993 aggregate production quotas for controlled substances in Schedules I and II was published in the **Federal Register** (58 FR 40153). All interested persons were invited to comment on or object to those proposed aggregate production quotas on or before August 26, 1993. Since publication of the proposed revised 1993 aggregate production quotas, information has been submitted which necessitates additional revisions in some controlled substances which were initially established. Since there is not enough time for notice and comment periods for a second proposal, an interim rule is being entered providing for these revisions. These increases are required to meet the 1993 year-end medical needs of the United States.

Based on a review of 1992 year-end inventories, 1993 manufacturing quotas, actual and projected 1993 sales, export requirements and other information available to the DEA, the Administrator of the DEA, under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826) and delegated to the Administration by § 0.100 of title 28 of the Code of Federal Regulations, hereby establishes the following revised 1993 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous base:

Basic class	Established 1993 aggregate production quota
Schedule I:	
Methaqualone	12
3,4-Methylenedioxyamphetamine	12
3,4-Methylenedioxymethamphetamine	12
Schedule II:	
Dextropropoxyphene	115,162,000
Methadone (for sale)	3,675,000
Methadone Intermediate (for conv)	4,598,000
Oxycodone (for sale)	3,520,000
Phencyclidine	54
Thebaine	7,795,000

All interested persons are invited to submit their comments in writing regarding this interim rule. A person may comment on any of the above mentioned substances without filing comments regarding the others.

Pursuant to section 3(c)(3) and 3(e)(2)(c) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

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

The Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substance.

Dated: September 24, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–24093 Filed 9–30–93; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 92–16]

Centrum Medical Enterprises, Inc.; Revocation of Registration

On November 5, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Centrum Medical Enterprises, d/b/a B & B Medical Supplies (Respondent) proposing to revoke its DEA Certificate of Registration, RC0155297, under 21 U.S.C. 824(a)(4) and deny its pending application for registration as a distributor in Schedules III through V under 21 U.S.C. 823(e). The basis for seeking the revocation of the registration was that Respondent's continued registration would be inconsistent with the public interest.

Respondent, by counsel, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Los Angeles, California on April 14, 1992.

On May 14, 1993, in her opinion and recommended ruling, the administrative law judge recommended that Respondent's DEA Certificate of Registration be revoked and that any pending applications for renewal be denied. No exceptions were filed in response to Judge Bittner's opinion. On June 14, 1993, the administrative law judge transmitted the record to the Administrator.

The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that the Respondent is registered with DEA as a distributor of Schedule III through V controlled substances in North Hollywood, California, and has been in business for approximately twenty-five years. The Respondent was purchased by Consuelo Dy in August 1990. Ms. Dy has several years experience in the pharmaceutical business and holds a Bachelor of Pharmacy degree.

In August 1990, Ms. Dy applied on behalf of Respondent for a DEA registration reflecting the new ownership. During a DEA pre-registration inspection of Respondent's premises on August 13, 1990, Investigators discussed recordkeeping, inventory, and security requirements with Ms. Dy and her manager, Twila Stanley, and notified them that the storage area did not currently meet security requirements. Also, Ms. Dy was apprised of Respondent's prior history of recordkeeping and security violations and Investigators presented Ms. Dy, for her signature, an agreement of understanding which outlined Respondent's regulatory responsibilities with regard to maintaining complete and accurate records, preparation of biennial inventories, implementation of a system to disclose suspicious orders, and maintenance of an adequate electrical alarm system. Ms. Dy returned

the executed agreement to investigators at a follow-up inspection on September 12, 1991. Ms. Dy later testified that she thought the signing of the agreement had been simply a standard procedure for all applicants. On September 14, 1990, Respondent was issued DEA Certificate of Registration RC0155297.

A subsequent DEA inspection of Respondent's facility was conducted on March 4, 1991. It was discovered that the electrical alarm system which had been approved at the pre-registration inspection had been replaced by a different system which did not transmit properly. An inventory recordkeeping violation was also found. Ms. Dy testified that she had changed the alarm because a new system would cost less. Subsequently, DEA issued Respondent a letter of Admonition, giving it thirty days to complete corrective action.

During the March 4, 1991 inspection, Ms. Stanley advised a DEA Diversion Investigator that the firm was planning to relocate in June or July and asked what steps needed to be taken. The Investigator advised her of the requirement that she submit a written request for approval of a new location and the need for a pre-move site inspection. On June 26, 1991, Respondent executed an application for DEA registration at a new location in Paramount, California. The application was received on July 1, 1991, in DEA headquarters, but not received by the Los Angeles DEA office until July 23. On July 3, DEA Investigators learned that Respondent had relocated to Paramount and visited that facility on July 8, 1991. The security cage at the new facility did not lock, the alarm was not operative, and eight bottles of a Schedule III controlled substance were found in an area not under any supervisory control. Since the new Paramount facility had not been issued a Certificate of Registration, the DEA placed the Respondent's controlled substance inventory under seal, and notified Ms. Dy that the Respondent was not properly registered to handle controlled substances at that location.

The administrative law judge found that during the period August through October, 1991, the Respondent continued to order controlled substances for delivery to its old site and then transfer those substances to its new unregistered location for distribution to its customers. Ms. Dy testified that these deliveries were authorized because the Respondent still maintained a presence at the north Hollywood site. An investigative review of these transactions indicated further recordkeeping violations.

The administrative law judge credited the testimony of the DEA Investigator, but did not find Ms. Dy or Ms. Stanley to be credible witnesses as they seemed to tailor their testimony to suit their defenses. Judge Bittner found that the Investigator had discussed regulatory requirements with Ms. Dy on August 13, 1990, and that the September 12, 1990 agreement gave Ms. Dy notice of prospective regulatory compliance problems. Judge Bittner found that despite this, in March 1991, Ms. Stanley was not aware of the biennial inventory requirement, and Ms. Dy continued to exhibit a disregard for the maintenance of adequate security, by directing a change from an approved alarm system without notifying DEA. This continued inability to maintain an integral security system was carried over to the new unregistered location, where the security cage and alarm system were not functioning properly, and controlled substances were improperly stored.

Lastly, the administrative law judge found no merit to the Respondent's contention that the application submitted on June 26, 1991, was a reregistration which served to continue the prior registration in effect pursuant to 21 CFR 1301.47. Judge Bittner found that 21 CFR 1301.23(a) requires a separate registration for each place of business, and found, as a matter of law, that the registration of the North Hollywood location terminated upon the move of the business. Since the application for registration at the Paramount location had never been approved, the Respondent could not lawfully store or handle controlled substances there.

Although Ms. Dy was informed on July 8, 1991, that the Paramount location was not authorized to handle controlled substances, the Respondent continued to unlawfully distribute controlled substances from that site.

The Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a)(4), or deny any application under 21 U.S.C. 823(e), if he determines that the registrant has committed such acts as would render his registration under 21 U.S.C. 823 inconsistent with the public interest. In determining the public interest, the Administrator shall consider the following factors enumerated in 21 U.S.C. 823(e):

"(1) maintenance of effective controls against diversion of particular controlled substances into other than legitimate medical, scientific and industrial channels;

(2) compliance with applicable State and local law;

(3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) past experience in the distribution of controlled substances; and

(5) such other factors as may be relevant to and consistent with the public health and safety."

It is well established that these factors are to be considered in the disjunctive, *i.e.*, the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989).

Of the stated factors, the administrative law judge found that 21 U.S.C. 823(e) (1), (4), and (5) are relevant in determining whether or not the Respondent's continued registration would be in the public interest. The administrative law judge concluded that the record established Respondent's pattern of violating security requirements; that Respondent's owner and manager are not conversant with DEA regulations; that Respondent had diverted controlled substances; and that Respondent moved its business to a new location without informing DEA or obtaining the requisite approval, and then maintained controlled substances at the new facility. Judge Bittner further found that the record established that Respondent was repeatedly warned of its obligations and ignored those warnings.

The Administrator adopts the opinion and recommended ruling of the administrative law judge in its entirety. Based on the foregoing, Respondent's continued registration is inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, RC0155297, previously issued to Centrum Medical Enterprises d/b/a B & B Medical Supplies be, and it hereby is, revoked, and that any pending applications for registration be, and they hereby are, denied. This order is effective on November 1, 1993.

Dated: September 27, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–24172 Filed 9–30–93; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 92–73]

Anant N. Mauskar, M.D.; Revocation of Registration

On June 18, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Anant N. Mauskar, M.D. (Respondent) proposing to revoke his DEA Certificate of Registration, AM9760338, as a practitioner under 21 U.S.C. 824(a)(4), and to deny any pending applications under 21 U.S.C. 823(f). The Order to Show Cause alleged that the continued registration of the Respondent would be inconsistent with the public interest.

The Respondent requested a hearing on the issues raised in the Order to Show Cause. The matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Houston, Texas on February 10–11, 1993.

On May 7, 1993, Judge Tenney issued his findings of fact, conclusions of law, and recommended ruling in which he recommended that the Respondent's registration be revoked. Neither party filed exceptions to this opinion, and on June 16, 1993, the administrative law judge transmitted the record of the proceedings to the Administrator.

The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, enters his final order in this matter, based on findings of fact and conclusions of law as hereinafter set forth.

Judge Tenney found that the Respondent is registered as a practitioner in Schedule II through V controlled substances. On December 5, 1990, July 22, 1991, and August 29, 1991, DEA conducted an undercover operation in which a law enforcement officer, under the aliases of Sherman Scott and Sherman Davis, acquired prescriptions for the Schedule III controlled substance, Tylenol #4 with codeine, and the Schedule IV controlled substance, Xanax, from the Respondent. During the course of these office visits with the Respondent, the undercover officer told Respondent that he wanted Tylenol #4 to make him feel good. The officer did not assert any valid medical indication to justify receiving the controlled substance prescriptions. On two occasions, the Respondent falsified the patient record of Sherman Scott and Sherman Davis by making an entry that the "patient" was suffering from pain, when in fact the undercover officer had indicated no such complaint existed. The Respondent was indicted on three State felony counts involving the prescribing of controlled substances without a valid medical purpose, but at the time of the hearing, criminal trial was pending.

Under 21 U.S.C. 824(a)(4), the Administrator of the Drug Enforcement Administration may revoke the registration of a practitioner if he determines that such registration would be inconsistent with the public interest as determined under 21 U.S.C. 823.

Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

Of the stated factors, the administrative law judge found that the Government established a prima facie case for revocation under 21 U.S.C. 823(f) (2), (4), and (5). Judge Tenney found that the evidence supported a finding that the Respondent's experience with regard to dispensing controlled substances included three occasions where he prescribed controlled substances absent a valid medical indication; that he violated Federal regulation by prescribing controlled substances on three occasions without a legitimate medical purpose; and that his conduct in falsifying patient records posed a threat to the public health and safety.

The Administrator adopts the findings of fact, conclusion of law and recommended ruling of the administrative law judge in its entirety. Based on the foregoing, the Administrator concludes that the Respondent's continued registration is inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AM9760338, issued to Anant N. Mauskar, M.D., be and it hereby is, revoked, and any pending applications, be, and they hereby are, denied. This order is effective November 1, 1993.

Dated: September 27, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–24173 Filed 9–30–93; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 92–87]

Robert L. Vogler, D.D.S.; Denial of Application

On May 26, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert L. Vogler, D.D.S. (Respondent) of Lakewood, California, seeking to deny his application for a DEA Certificate of Registration. The statutory basis for the Order to Show Cause was that Respondent's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f).

Respondent filed a request for a hearing on the issues raised in the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held on May 4, 1993, in Long Beach, California. On June 21, 1993, Judge Tenney issued his findings of fact, conclusions of law, and recommended ruling, recommending that the Administrator deny Respondent's application for a DEA Certificate of Registration. No exceptions were filed, and on July 21, 1993, the administrative law judge transmitted the record in this proceeding to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that on February 28, 1979, the Office of the Attorney General for the State of California filed a complaint against the Respondent alleging gross ignorance or inefficiency in this profession in connection with a root canel performed on a patient. Following a hearing on the matter in August 1980, a California State Administrative Law Judge ordered that effective September 16, 1980, Respondent's dental licenses be revoked, however, the revocation was stayed and Respondent was placed on probation for two years, with certain terms and conditions.

The administrative law judge found that Respondent filed an application for a DEA Certificate of Registration, dated October 15, 1990. A question on the application asks:

Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law, or ever surrendered or had a DEA registration revoked, suspended or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restrict or placed on probation.

This question was answered negatively on the application when, in fact, respondent knew that effective September 16, 1980, his California State dental license was placed on probation.

At the hearing in this matter, Respondent attempted to explain the incorrect response by stating that his dental nurse assisted him in filling out the application because he had a compound fracture on one of his knuckles. The administrative law judge noted however, that Respondent was able to sign his name to the application. The Government further argued that the Respondent provided falsified information on his registration application regarding his business address. However, the administrative law judge did not find reliable the testimony of the Government's witness on this point, and therefore, did not make a finding regarding the matter.

The administrative law judge also found that on three occasions, the Respondent issued prescriptions to patients for controlled substances without a valid DEA Certificate of Registration. Respondent was initially registered with DEA in 1971, however, he allowed his registration to expire on May 31, 1988. The administrative law judge found that the Respondent was verbally informed by DEA as to the expiration of his registration approximately seven or eight times subsequent to the expiration of his DEA registration. Despite Respondent's lack of a valid DEA registration, he issued two controlled substance prescriptions between November 1991 and January 1992, to an individuals with whom he lived, and a third controlled substance prescription to another individual, using his expired DEA registration number.

At the DEA administrative hearing, Respondent testified on his own behalf, and discussed his skill in dentistry. Respondent's testimony was corroborated by an affidavit from a patient who attested to Respondent's assistance in an emergency dental procedure.

The Administrator may deny any application for registration if he determines that such registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of the factors and give each factor the weight he deems appropriate. See, Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

The administrative law judge found factors two, four, and five relevant with respect to Respondent's issuance of three prescriptions for controlled substances without a valid DEA registration. The administrative law judge also found factor five relevant based on Respondent's falsification of his DEA application for registration. Material falsification is not expressly mentioned under section 823 as it is under 21 U.S.C. 824(a)(1). Factor five however, is a broad public health and safety standard, and as such the falsification is considered under section 823. See, Gary L. Gaines, M.D., Docket No. 91–37, 57 FR 21135 (1992).

In his findings of fact, conclusions of law, and recommended ruling, the administrative law judge concluded that the Respondent materially falsified his DEA application for registration, and that he prescribed controlled substances without a valid DEA number. The administrative law judge recommended that the Respondent's application for registration to be denied. The Administrator adopts the findings of the administrative law judge.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application of Robert L. Vogler, D.D.S., executed on October 15, 1990, for registration under the Controlled Substances Act, be, and it hereby is, denied. This order is effective October 1, 1993.

Dated: September 27, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–24174 Filed 9–30–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and

supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Florida
FL930056 (Oct. 1, 1993)
FL930057 (Oct. 1, 1993)
FL930058 (Oct. 1, 1993)
FL930059 (Oct. 1, 1993)
New York
NY930044 (Oct. 1, 1993)
NY930045 (Oct. 1, 1993)
Pennsylvania
PA930042 (Oct. 1, 1993)

Volume II

Indiana
IN930020 (Oct. 1, 1993)
IN930021 (Oct. 1, 1993)
Michigan
MI930021 (Oct. 1, 1993)
MI930022 (Oct. 1, 1993)
MI930023 (Oct. 1, 1993)
MI930024 (Oct. 1, 1993)
MI930025 (Oct. 1, 1993)
MI930026 (Oct. 1, 1993)
MI930027 (Oct. 1, 1993)
MI930028 (Oct. 1, 1993)
MI930029 (Oct. 1, 1993)
MI930030 (Oct. 1, 1993)
MI930031 (Oct. 1, 1993)
MI930032 (Oct. 1, 1993)
MI930033 (Oct. 1, 1993)
MI930034 (Oct. 1, 1993)
MI930035 (Oct. 1, 1993)
MI930036 (Oct. 1, 1993)
MI930037 (Oct. 1, 1993)
MI930038 (Oct. 1, 1993)
MI930039 (Oct. 1, 1993)
MI930040 (Oct. 1, 1993)
MI930041 (Oct. 1, 1993)
MI930042 (Oct. 1, 1993)
MI930043 (Oct. 1, 1993)
MI930044 (Oct. 1, 1993)
MI930045 (Oct. 1, 1993)
MI930046 (Oct. 1, 1993)
MI930047 (Oct. 1, 1993)
MI930048 (Oct. 1, 1993)
MI930049 (Oct. 1, 1993)
MI930050 (Oct. 1, 1993)
MI930051 (Oct. 1, 1993)
MI930052 (Oct. 1, 1993)
MI930053 (Oct. 1, 1993)
MI930054 (Oct. 1, 1993)
MI930055 (Oct. 1, 1993)
MI930056 (Oct. 1, 1993)
MI930057 (Oct. 1, 1993)
MI930058 (Oct. 1, 1993)
MI930059 (Oct. 1, 1993)
MI930060 (Oct. 1, 1993)
MI930061 (Oct. 1, 1993)
Missouri
MO930018 (Oct. 1, 1993)
MO930019 (Oct. 1, 1993)
New Mexico
NM930005 (Oct. 1, 1993)

Volume III

Colorado
CO930020 (Oct. 1, 1993)
CO930021 (Oct. 1. 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Alabama
AL930003 (Feb. 19, 1993)
AL930004 (Feb. 19, 1993)
AL930005 (Feb. 19, 1993)
District of Col
DC930001 (Feb. 19, 1993)
New Jersey
NJ930002 (Feb. 19, 1993)
NJ930003 (Feb. 19, 1993)
NJ930004 (Feb. 19, 1993)
New York
NY930014 (Feb. 19, 1993)
Pennsylvania
PA930004 (Feb. 19, 1993)
PA930014 (Feb. 19, 1993)
Virginia
VA930025 (Feb. 19, 1993)

Volume II

Iowa
IA930003 (Feb. 19, 1993)
IA930004 (Feb. 19, 1993)
Illinois
IL930001 (Feb. 19, 1993)
IL930002 (Feb. 19, 1993)
IL930003 (Feb. 19, 1993)
IL930004 (Feb. 19, 1993)
IL930005 (Feb. 19, 1993)
IL930006 (Feb. 19, 1993)
IL930007 (Feb. 19, 1993)
IL930008 (Feb. 19, 1993)
IL930009 (Feb. 19, 1993)
IL930011 (Feb. 19, 1993)
IL930012 (Feb. 19, 1993)
IL930013 (Feb. 19, 1993)
IL930014 (Feb. 19, 1993)
IL930016 (Feb. 19, 1993)
IL930017 (Feb. 19, 1993)
IL930020 (Feb. 19, 1993)
Indiana
IN930006 (Feb. 19, 1993)
Michigan
MI930001 (Feb. 19, 1993)
MI930002 (Feb. 19, 1993)
MI930003 (Feb. 19, 1993)
MI930004 (Feb. 19, 1993)
MI930005 (Feb. 19, 1993)
MI930007 (Feb. 19, 1993)
MI930012 (Feb. 19, 1993)
MI930017 (Feb. 19, 1993)
MI930018 (Feb. 19, 1993)
MI930019 (Feb. 19, 1993)
MI930020 (Feb. 19, 1993)
Minnesota
MN930008 (Feb. 19, 1993)
New Mexico
NM930001 (Feb. 19, 1993)
Ohio
OH930001 (Feb. 19, 1993)
OH930002 (Feb. 19, 1993)
OH930003 (Feb. 19, 1993)
OH930014 (Feb. 19, 1993)
OH930028 (Feb. 19, 1993)
OH930029 (Feb. 19, 1993)
OH930034 (Feb. 19, 1993)
Texas
TX930003 (Feb. 19, 1993)
Wisconsin
WI930001 (Feb. 19, 1993)
WI930002 (Feb. 19, 1993)
WI930003 (Feb. 19, 1993)
WI930004 (Feb. 19, 1993)
WI930005 (Feb. 19, 1993)
WI930009 (Feb. 19, 1993)
WI930010 (Feb. 19, 1993)

Volume III

Alaska
AK930002 (Aug. 2, 1993)
Idaho
ID930001 (Feb. 19, 1993)
North Dakota
ND930001 (Feb. 19, 1993)
ND930002 (Feb. 19, 1993)
ND930004 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office

(GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 24th day of September 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–23870 Filed 9–30–93; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Correction.

SUMMARY: This notice amends a petition for modification of a mandatory safety standard published in the **Federal Register** on August 24, 1993 (56 FR 44701), to include an additional mine name.

Jim Walter Resources, Inc.

[Docket No. M–93–209–C]

Jim Walter Resources, Inc., P.O. Box 830079, Birmingham, Alabama 35283–0079 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley-wires, trolley feeder wires, high-voltage cables and transformers) to its No. 3 Mine (I.D. No. 01–00758) located in Jefferson County, Alabama and its No. 4 Mine (I.D. No. 01–01247) located in Tuscaloosa County, Alabama. The petitioner proposes to use 2300 A.C. high-voltage cable to supply power to permissible longwall face equipment in or inby the last open crosscut. The petitioner asserts that the proposed alternate method would provide at least the same protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 1, 1993. Copies of these petitions are available for inspection at that address.

Dated: September 27, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 93–24179 Filed 9–30–93; 8:45 am]

BILLING CODE 4510–43–P

Occupational Safety and Health Administration

Connecticut State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a state Plan, which has been approved in accordance with Section 18(c) of the Act and 29 CFR part 1902. On November 3, 1978, notice was published in the **Federal Register** (43 FR 51390) of the approval of the Connecticut Public Service State Plan and the adoption of subpart E to part 1956 containing the decision.

The Connecticut Public Sector only State Plan provides for the adoption of Federal standards as State standards after:

a. Publishing an intent to amend the State Plan by adopting the standard(s) in the Connecticut Law Journal.

b. Approval by the Commissioner of Labor and the Attorney General of the State of Connecticut.

c. Approval by the Legislative Regulation Review Committee, State of Connecticut.

d. Filing in the Office of the Secretary of State, State of Connecticut.

e. Publishing a notice that the State Plan is amended by adopting the standard(s) in the Connecticut Law Journal.

The Connecticut Public Sector State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6, of the Act. By letter dated July 28, 1993, from Commissioner Ronald F. Petronella, Connecticut Department of Labor, to John B. Miles, Jr., Regional Administration, and incorporated as part of the plan, the State submitted updated State standards identical to 29 CFR Parts 1910, 1915, and 1926 and subsequent amendments thereto, as described below:

(1) Amendment to 29 CFR Part 1926, Safety Standards for Stairways and Ladders Used in the Construction Industry (56 FR 41794 dated 8/23/91).

(2) Addition of 29 CFR 1910.1030, Occupational Exposure to Bloodborne Pathogens (56 FR 64175, dated 12/6/91).

(3) Addition of 29 CFR Part 1910, Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents; Final rule (57 FR 6403, dated 2/24/92).

(4) Amendment and Corrections to 29 CFR part 1910, Occupational Exposure to Formaldehyde (57 FR 22307, dated 5/27/92; 57 FR 24701, dated 6/10/92 and; 57 FR 27160, dated 6/18/92).

(5) Amendment and Correction to 29 CFR parts 1910 and 1926, Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite (57 FR 24330, dated 6/8/92 and 57 FR 29119, dated 6/30/92).

(6) Additions and Amendments to 29 CFR parts 1910 and 1926, Occupational Exposure to 4,4' Methylenedianiline (MDA) (57 FR 35666, dated 8/10/92 and 57 FR 49649, dated 11/3/92).

(7) Addition to 29 CFR parts 1910, 1915, and 1926, Occupational Exposure to Cadmium (57 FR 42388, dated 9/14/92).

These standards, contained in the Regulations of Connecticut State Agencies became effective April 28, 1992; May 22, 1992; September 17, 1992; July 2, 1993, and July 21, 1993, pursuant to Section 31–372 of Connecticut State Law.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards, and are accordingly approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Admninistrator, 133 Portland Street, Boston, Massachusetts 02114; Office of the Commissioner, State of

Connecticut, Department of Labor, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, and the Office of State Programs, Room N3700, 200 Constitution Avenue, NW, Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Connecticut Public Sector Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards were adopted in accordance with the procedural requirements of State law which included public comment, and further public participation would be repetitious.

This decision is effective on October 1, 1993.

Authority: Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667). Signed at Boston, Massachusetts, this 10th day of August 1993.

John B. Miles, Jr,

Regional Administrator.

[FR Doc. 93–24180 Filed 9–30–93; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On July 9, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for taking/importing was issued to J. Ward Testa and Michael Castellini on September 16, 1993.

Thomas Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–24119 Filed 9–30–93; 8:45 am]

BILLING CODE 7555–01–M

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978 Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On August 13, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for take, import into USA-Port of Entry-Miami, was issued to Dr. Steven D. Emslie on September 22, 1993.

Thomas F. Forhan,

Permit Officer, Office of Polar Programs.

[FR Doc. 93–24120 Filed 9–30–93; 8:45 am]

BILLING CODE 7555–01–M

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On July 23, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for taking, import and into USA-Port of entry, enter site of special scientific interest, was issued to Dr. Diana W. Freckman on September 22, 1993.

Thomas Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–24121 Filed 9–30–93; 8:45 am]

BILLING CODE 7555–01–M

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On May 17, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for introduction of non-indigenous species into Antarctic, was issued to Bill J. Baker on September 21, 1993.

Thomas Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–24122 Filed 9–30–93; 8:45 am]

BILLING CODE 7555–01–M

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

September 27, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On July 10, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for taking and entering specially protected area, was issued to Gerald L. Kooyman on September 16, 1993.

Thomas Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–24123 Filed 9–30–93; 8:45 am]

BILLING CODE 7555–01–M

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

September 27, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT:

Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550; 202–357–7817.

SUPPLEMENTARY INFORMATION: On July 1, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for taking, was issued to William R. Fraser on September 21, 1993.

Thomas Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–24124 Filed 9–30–93; 8:45 am]

BILLING CODE 7555–01–M

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

September 27, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT:

Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550; 202–357–7817.

SUPPLEMENTARY INFORMATION: On July 1, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for enter specially protected area, was issued to William R. Fraser on September 21, 1993.

Thomas Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–24125 Filed 9–30–93; 8:45 am]

BILLING CODE 7555–01–M

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT:

Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550; 202–357–7817.

SUPPLEMENTARY INFORMATION: On April 27, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for taking, import into USA–San Francisco, and enter site of special scientific interest, was issued to Wayne J. Trivelpiece on September 21, 1993.

Thomas Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–24126 Filed 9–30–93; 8:45 am]

BILLING CODE 7555–01–M

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

September 27, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT:

Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550; 202–357–7817.

SUPPLEMENTARY INFORMATION: On May 26, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for introduction of non-indigenous species into Antarctica, was issued to Arthur L. DeVries on September 21, 1993.

Thomas Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–24127 Filed 9–30–93; 8:45 am]

BILLING CODE 7555–01–M

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

September 27, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT:

Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550; 202–357–7817.

SUPPLEMENTARY INFORMATION: On May 26, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for introduction of non-indigenous species into Antarctica, was issued to Arthur L. DeVries on September 21, 1993.

Thomas Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–24128 Filed 9–30–93; 8:45 am]

BILLING CODE 7555–01–M

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT:

Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550; 202–357–7817.

SUPPLEMENTARY INFORMATION: On August 30, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for taking, import and into USA-Los Angeles, was issued to Dr. Gary D. Miller on September 21, 1993.

Thomas Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–24129 Filed 9–30–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 73—Physical Fitness Programs for Security Personnel at Category I Licensee Fuel Cycle Facilities.

3. *The form number if applicable:* Not applicable.

4. *How often is the collection required:* Revisions to the Fixed Site Physical Protection Plan are required once—upon rule implementation. Recordkeeping requirements associated with physical fitness performance testing are required once each year for each security force member.

5. *Who will be required or asked to report:* Applicants for license or licensees authorized to possess formula quantities of strategic special nuclear material.

6. *An estimate of the number of responses annually:* .67

7. *An estimate of the number of hours needed annually to complete the requirement or request:* 86 (approximately 54 hours of reporting burden and approximately 32 hours of recordkeeping burden).

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Applicable.

9. *Abstract:* The proposed rule would require an applicant for license or a licensee authorized to possess formula quantities of strategic special nuclear material to institute annual physical fitness performance testing. Licensees would be required to submit revisions to their Fixed Site Physical Protection Plan and to retain certificates prepared by examining physicians and records of all attempts to perform the physical fitness performance test or the site specific content-based performance test. The information collections are mandatory and will be used by the NRC to ensure licensee compliance with the commitments made in the Fixed Site Physical Protection Plan.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0002), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 23rd day of September, 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–24159 Filed 9–30–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 7–8, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on August 18, 1993.

Thursday, October 7, 1993

8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–11 a.m.: EPRI Passive LWR Requirements Document (Open)—The Committee will discuss the EPRI Utility Requirements Document for Passive LWRs and the associated NRC staff's Safety Evaluation Report, with emphasis on how the policy issues related to the passive plant designs have been dealt with the EPRI document. Representatives of the NRC staff and industry will participate.

11 am.–12:30 p.m.: Proposed Resolution of Generic Issue–23, "Reactor Coolant Pump Seal Failure" (Open)—The Committee will review and comment on the proposed rule to address the resolution of Generic Issue 23. Representatives of the NRC staff will participate. Representatives of the industry will participate, as appropriate.

1:30 p.m.–5:30 p.m.: Severe Accident/PRA Issues for the ABWR Design (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and GE on the severe accident/PRA issues for the ABWR design. The Committee will develop comments and recommendations, as appropriate.

5:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Friday, October 8, 1993

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–10 a.m.: Steam Generator Tube Rupture Event at Palo Verde, Unit 2 (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the issues arising from the steam generator tube rupture event that occurred at Palo Verde, Unit 2 on March 14, 1993. Representatives of the industry will participate, as appropriate.

10 a.m.–11 a.m.: Proposed Final Amendments to 10 CFR Part 55 (Open)—The Committee will review and comment on the proposed final amendments to 10 CFR part 55 regarding renewal of license and requalification requirements for licensed operators. Representatives of the NRC staff will participate. Representatives of the industry will participate, as appropriate.

11:15a.m.–12:15 p.m.: Resolution of Generic Issue 67.5.1, "Reassessment of SGTR Radiological Consequences" (Open)—The Committee will review and comment on the proposed resolution of Generic Issue 67.5.1 that addresses the validity of present techniques to calculate offsite radioactive dose due to releases from a design basis steam generator tube rupture. Representatives of the NRC staff will participate.

1:15 p.m.–1:45 p.m.: Future ACRS Activities (Open)—The Committee will discuss topics proposed for consideration during future ACRS meetings.

1:45 p.m.–2:15 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of internal organizational and personnel matters relating to ACRS staff members.

Portions of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee pursuant to 5 U.S.C. 552b(c)(2) and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

2:15 p.m.–2:30 p.m.: Arrangements for Multilateral Meering (Open)—The Committee will discuss the arrangements for its multilateral meeting.

2:30 p.m.–2:45 p.m. Reconciliation of ACRS Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

3 p.m.–5 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

5 p.m.–6 p.m.: ACRS Subcommittee Activities (Open/Closed)—The Committee will hear reports and hold discussions

regarding the status of ACRS subcommittee activities, including reports from the Subcommittee on Thermal Hydraulic Phenomena, and Computers in Nuclear Power Plant Operations.

Portions of this session may be closed to discuss Westinghouse Proprietary information related to these matters.

6 p.m.–6:30 p.m.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 16, 1992 (57 FR 47494). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss information that involves the internal personnel rules and practices of the agency per 5 U.S.C. 552b(c)(2), to discuss Proprietary Information applicable to the matters being considered per 5 U.S.C. 552b(c)(4), and to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301–492–4516), between 7:30 a.m. and 4:15 p.m. EST.

Dated: September 27, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–24158 Filed 9–30–93; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment drafts of two new guides planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guides are temporarily identified as DG–1023, "Evaluation of Reactor Pressure Vessels With Charpy Upper-Shelf Energy Less Than 50 Ft-Lb," and DG–1025, "Calculational and Dosimetry Methods for Determining Pressure Vessel Fluence." The draft guides are intended for Division 1, "Power Reactors." DG–1023 is being developed to provide guidance on methods acceptable to the NRC staff for evaluating reactor pressure vessels when the Charpy upper-shelf energy falls below the 50 ft-lb limit specified in NRC's regulations. DG–1025 is being developed to describe methods and assumptions acceptable to the NRC staff for determining the reactor pressure vessel neutron fluence.

These draft guides are being issued to involve the public in the early stages of the development of a regulatory position in these areas. The draft guides have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on the guides. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by December 17, 1993.

Although a time limit is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on all automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 24th day of September 1993.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 93–24160 Filed 9–30–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, Oct. 14, 1993
Thursday, Nov. 4, 1993
Thursday, Nov. 18, 1993

The meetings will start at 10:45 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: September 23, 1993.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 93–24130 Filed 9–30–93; 8:45 am]

BILLING CODE 6325–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, October 28 and Friday, October 29, 1993 at the Omni Georgetown Hotel, 2121 P Street NW, Washington, DC. The meetings are expected to begin at 9 a.m. each day. Much of the meeting will be devoted to reviewing a number of issues related to health system reform and the approaches currently being considered by the Congress. It also plans to discuss the impact of reform on academic health centers, the changing market for health services, staffing patterns in group practices and managed care organizations, retraining physicians to provide primary care, and integrating physicians into managed care practices.

ADDRESSES: The Commission is located at 2120 L Street, NW in Suite 510, Washington, DC. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, or Annette Hennessey, Executive Assistant at 202/653–7220.

SUPPLEMENTARY INFORMATION: Agendas for the meeting will be available on Friday, October 22, 1993 and will be mailed out at that time. To receive an agenda, please direct all requests to the receptionist at 202/653–7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 93–24181 Filed 9–30–93; 8:45 am]

BILLING CODE 6820–SE–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32965; File No. SR–BSE–93–13]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Account Identification Codes

September 27, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 22, 1993, as subsequently amended on September 20, 1993,[1] the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated September 14, 1993. Amendment No. 1 clarified that the language of the proposed rule would be added to Chapter II, Section 15 of the Rules of the Exchange following the first paragraph.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE seeks to adopt a set of account identification codes to enhance its audit trail capabilities.[2] The Exchange proposes to adopt the following account identification codes:[3]

	Program trade index arbitrage	Program trade non-index arbitrage	All other orders
Member/member organization:			
—Proprietary.	D	C	P
—As agent for other member.	M	N	W
Customer:			
—Individual (80A).	J	K	I
—Other agency.	U	Y	A

Definitions:

Member/member organization, proprietary: A member/member organization trading for its own account.

Member/member organization, as agent for other member: A member/member organization trading as agent for the account of another member/member organization.

Program Trade, Index Arbitrage: The purchase or sale of "baskets" or groups of stocks in conjunction with the intended purchase or sale of one or more cash-settled options or futures contracts in an attempt to profit by the price difference, as defined in NYSE Rule 80A.

Program Trade, Non-Index Arbitrage: A trading strategy involving the related purchase or sale of a group of 15 or more stocks having a total market value of $1 million or more, as defined in NYSE Rule 80A.

Individual (80A): An account for an individual as defined by NYSE Rule 80A.

Other Agency: Any other non-member or non-member organization.

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

[2] An audit trail is a surveillance tool produced and utilized by a self-regulatory organization to detect fraudulent or illegal trading and for investigative purposes in disciplinary proceedings. It is comprised of trade-by-trade data, in chronological order, including the name of the security, quantity, price, execution time and parties to each trade.

[3] The BSE proposes to add the identification codes to Chapter II, Section 15 of the BSE Rules of the Board of Governors following the first paragraph. In addition, the proposed language would be entitled "Account Identification Codes." See Amendment No. 1, *supra* note 1.

and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to enhance the Exchange's audit trail capabilities by requiring member firms to specify the account type on all orders sent to the Exchange. There will be three separate categories of trade types consisting of (1) program trading, index arbitrage; (2) program trading, non-index arbitrage; and (3) all other orders. Each category will be broken down by four customer types consisting of (1) member/member organization proprietary; (2) member/member organization as agent for other members; (3) individual investors (80A); and (4) other agency.

The Exchange believes that these new account identifiers will enhance the efficiency and accuracy of audit trail information and will facilitate surveillance investigations by readily identifying a member's own proprietary trading, thus reducing information requests to member firms. Member firms would be given a reasonable period of time in which to make changes to their systems to comply with the new order identification requirements.[4]

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it furthers the objectives to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulations, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[4] The BSE stated that member firms would have 90 days following Commission approval of the proposal to comply with the account identification requirements. Telephone conversation between Karen A. Aluise, Assistant Vice President, BSE, and Louis A. Randazzo, Attorney, Commission, on July 28, 1993.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–93–13 and should be submitted by October 22, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24194 Filed 9–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32959; File No. SR–CHX–93–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc., To Establish a Policy on Transfers of Specialists' Books

September 24, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 16, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to publish to members the following existing policy concerning transfers of a specialist's book under Article XXX, Rule 1, Interpretation and Policy .01 of the Exchange Rules:

The Exchange's Committee on Specialist Assignment and Evaluation (the "CSAE") has recently been requested to approve the "sale" of several specialists' books from one specialist unit to another. Although the CSAE may approve one or more of these transactions, it is important to recognize that specialists do not own their books and have no right to sell them. The books are an Exchange franchise and, consequently, the assignment of a book to a specialist by the Exchange is a privilege which the Exchange grants based upon a variety of factors, including the capital commitment of the specialist unit and the trading performance of the co-specialist. Transfers of books from one specialist unit to another will only be approved by the CSAE if, among other factors, it finds that the new specialist and co-specialist would meet the requirements of an initial assignment in competition for those books, and is in the overall best interests of the Exchange. Even if the transfer is approved, it is the transfer of the franchise which has been approved, and the continued trading of such books is subject to the continuing authority of the CSAE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in 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

The purpose of the proposed change is to publish to members an existing Exchange policy concerning transfers of a specialist's book under Article XXX, Rule 1, Interpretation and Policy .01. Specifically, the proposed change will set forth the Exchange's position that transfers of specialists' books from one specialist unit to another are subject to the approval of the CSAE, and that a book is not an asset which can be sold by a specialist unit, but is an Exchange franchise, the use of which is subject to Exchange Rules.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been endorsed by the Committee on Specialist Assignment and Evaluation.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–93–21 and should be submitted by October 22, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24104 Filed 9–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32957; File No. SR–DTC–93–9]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to Implementation of a Deposit Automated Management Service

September 24, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on August 16, 1993, The Depository Trust Company ("DTC") 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 substantially by DTC. 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 will establish procedures for implementation of the Deposit Automated Management ("DAM") service. DAM is an enhanced automated deposit service that will allow DTC participants to send details of deposits to DTC in advance of forwarding physical certificates.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC 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

Once implemented, DAM will enable a DTC participant to send to DTC advance Computer-to-Computer Facility (CCF/CCF II) or PTS transmissions with details regarding securities that the participant plans to deposit. DTC then will determine whether the proposed deposit is acceptable and will adjust the proposed deposit by deleting items such as ineligible issues, chilled issues, and incorrect CUSIPs. After DTC flags rejects and notes the record date of any corporate event or other special processing items, it will direct the printing of a special bar-coded deposit ticket automatically for all accepted items on a thermal bar-code printer located either at the participant's site or at DTC.[2] The bar-coded ticket will

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] If a participant chooses not to acquire a bar-code printer (which costs between $2,000 and $8,000, depending on printer speed), DTC will print bar-coded deposit tickets on a printer located at DTC

Continued

contain such information as the identity of the transfer agent, the nature of the deposit (*e.g.*, whether the deposit is made pursuant to a special corporate event or whether the shares are those of a limited partnership), and other information that is required for DTC's internal processing of the deposit. After the participant presents the physical certificates of the bar-coded deposit ticket to DTC, DTC will scan the bar-coded deposit ticket, and the information contained therein immediately will update DTC's mainframe computer. This process eliminates the need to enter data by keystroke.

Among other benefits, this service will:

(1) Provide an opportunity for participants to consolidate deposits in the same issue (whether or not the advanced deposit notifications are transmitted to DTC together) and enable DTC to produce a single deposit ticket for the total quantity of an issue deposited on a particular day;[3]

(2) Provide a unique deposit control number that will be printed on the deposit ticket for each deposit, which will speed research, when needed, on the deposited item;

(3) Permit participants to suspend deposits for up to ten business days in the event of an emergency transportation delay, or error.

Participants that have a low volume of deposits and that do not want to purchase a bar-coded printer will be able to use the PTS Deposit Automation Management Participant ("DAMP") function to enter details of their intended deposits. The PTS DAMP function also can be used by CCF users to modify or delete deposit data already transmitted to DTC as well as to enter additional deposit data.

In 1993, DTC expects to process more than 4.5 million deposits comprised of approximately 17.5 million certificates. The automation features of DAM will reduce DTC's costs and enhance DTC's efficiency in handling these deposits. DTC will pass the savings that it will realize from DAM directly to participants by lowering deposit fees as follows: (a) for deposits made under DAM, DTC will reduce the deposit charge by 40¢ (29¢ for legal deposits) from the applicable zone deposit charge for participants that print bar-coded tickets in their office and present the physical deposits to DTC and (b) by 29¢ (for deposits other than legal deposits) from the applicable zone deposit charge for participants that ask DTC to print the bar-coded tickets and to attach the tickets to the physical certificates when they arrive at DTC. In addition, because DTC will prescreen the issues of securities that participants deposit, the new service will help participants save money by minimizing costly deposit rejects. The proposal will neither add new rules nor amend DTC's existing rules.[4]

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act in that it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not sought comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room at the address above. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File Number SR–DTC–93–9 and should be submitted by October 22, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24105 Filed 9–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25890]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 24, 1993.

Notice is hereby given that the following filling(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 18, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended,

---

and will match the bar-coded tickets against the participant's deposit tickets when they are received.

[3] Participants can save by avoiding separate fees for multiple deposits made in the same issue on the same day.

[4] Telephone conversation between Jack R. Wiener, Associate Counsel, and Cheryl Lambert, Group Director, DTC, and Richard C. Strasser, Attorney, Division of Market Regulation, Commission (September 7, 1993).

[5] 17 CFR 200.30–3(a)(12) (1992).

may be granted and/or permitted to become effective.

Allegheny Power System, Inc. (70–8271)

Notice of Proposal to Increase Number of Shares of Authorized Common Stock; Order Authorizing Solicitation of Proxies

Allegheny Power System, Inc. ("Allegheny"), 12 East 49th Street, New York, New York 10017, a registered holding company, has filed a declaration under sections 6(a)(2), 7 and 12(e) of the Act and Rules 62 and 65 thereunder.

Allegheny proposes to amend ("Amendment") its corporate charter to reclassify each share of its common share, par value $2.50 per share, issued or unissued, into two shares of common stock, par value $1.25 per share.

Allegheny also requests authority to increase the number of shares which it has authority to issue to 260 million shares, $1.25 par value per share. Allegheny's authorized common stock now consists of 130 million shares, $2.50 par value per share, of which 57,291,992 share are now outstanding. At the close of business on the date the Amendment is filed with the Maryland State Department of Assessments and Taxation, Allegheny's authorized common stock will consist of 260 million shares, $1.25 par value per share, of which 114,583,984 shares will be outstanding. The amount of Allegheny's stated capital will not be changed as a result of the Amendment.

Allegheny states that such increases in the amount of authorized but unissued common stock is necessary to effect a two-for-one stock split. Consequently, Allegheny proposes to issue, through December 31, 1994, one additional share of common stock for each share of common stock outstanding on the record date for such distribution.

Allegheny proposes to submit the Amendment for consideration and action by its stockholders at a special meeting to be held on or about November 3, 1993, and in connection therewith, to solicit proxies from its stockholders. Consequently, Southern requests that the effectiveness of its declaration with respect to such solicitation of proxies be permitted to become effective as provided in Rule 62(d).

It appearing to the Commission that Allegheny's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to Rule 62:

It is ordered, that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith, pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24103 Filed 9–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25892]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 24, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 18, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Fitchburg Gas and Electric Light Co. (70–8098)

Fitchburg Gas and Electric Light Company ("Fitchburg"), 216 Epping Road, Exeter, New Hampshire 03833, a subsidiary of UNITIL Corporation, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

Fitchburg proposes to issue and sell its debentures by private placement, in a aggregate principal amount not exceeding $19 million, in one series prior to December 31, 1993 ("Debentures"). The Debentures will have such interest rate, maturity date, redemption provisions, be sold in such manner and at such price and have such other terms and conditions as shall be determined through negotiation and approved by the Commission prior to their issuance and sale.

Fitchburg proposes to use the net proceeds derived from the issuance and sale of the Debentures for general corporate purposes, including, but not limited to, principally the payment at maturity and redemption of certain outstanding long-term notes in the total principal amount of $21.225 million, as well as for the repayment of certain outstanding short-term borrowings and/or for certain capital expenditures. Specifically, such net proceeds would be used, among other things, for: (1) the payment of the $12 million principal of its Six Year Notes, 10.51%, at maturity on December 3, 1993; and (2) the early redemption, on or after November 1, 1993, of: (a) $5.925 million principal amount of its Twenty-five Year Notes, 9⅜%, due March 1, 1995; (b) $600,000 principal amount of its Twenty-five Year Notes, 10%, due September 1, 1996; and (c) $2.7 million principal amount of its Twenty-five Year Notes, 10¼%, due May 1, 1990. Fitchburg states that in connection with the early redemption of certain notes, Fitchburg will be obligated to pay a redemption premium to holders of those notes. Any additional funds required to pay or redeem the notes will derive from internally generated funds and/or short-term borrowings.

Fitchburg requests that, pursuant to paragraph (a)(5) of Rule 50 under the Act, the Commission grant it an exception from the competitive bidding requirements of Rule 50 so that Fitchburg may undertake negotiations with respect to the issuance and sale of the Debentures. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24102 Filed 9–30–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1874]

Russian, Eurasian and East European Studies Advisory Committee; Meeting

The Department of State announces that the Russian, Eurasian and East European Studies (Title VIII) Advisory

Committee will convene on December 3, 1993, beginning at 10 a.m. in room 1105, U.S. Department of State, 2201 C Street, NW., Washington, DC.

The Advisory Committee will recommend grant recipients for the FY 1994 competition of the Russian, Eurasian and East European Research and Training Program in connection with the Soviet-Eastern European Research and Training Act of 1983. The agenda will include: Opening statements by the Chairman and members of the Committee and, within the Committee, discussion, approval, and recommendation that the Department of State negotiate grant agreements with certain "national organizations with an interest and expertise in conducting research and training concerning the [former] USSR and Eastern Europe," based on the guidelines contained in the call for applications published in the Federal Register on July 19, 1993. Following committee deliberation, interested members of the public may make oral statements concerning the Title VIII program in general.

This meeting will be open to the public; however, attendance will be limited to the seating available. Entry into the Department of State building is controlled and must be arranged in advance of the meeting. Those planning to attend should notify Joanne Bramble, INR/RES, U.S. Department of State, (202) 736–9050, by November 29, 1993, providing their date of birth, social Security number, and any requirements for special needs. All attendees must use the 2201 C Street, NW., entrance to the building. Visitors who arrive without prior notification and without a photo ID will not be admitted.

Dated: September 17, 1993.

Kenneth E. Roberts,

Executive Director, Russian, Eurasian and East European Studies Advisory Committee.

[FR Doc. 93–24801 Filed 9–30–93; 8:45 am]

BILLING CODE 4710–32–M

[Public Notice 1875]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea and Associated Bodies Working Group on Stability and Load Lines and on Fishing Vessels Safety; Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on October 15, 1993, at 9 a.m. in room 6319 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this Working Group meeting is to discuss the preparations for the 38th Session of the International Maritime Organization (IMO) Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF), which is scheduled for March 14–18, 1994.

Items of discussion will include the following: Subdivision and damage stability standards of passenger ships; harmonization of probabilistic damage stability provisions for all ship types; technical revisions to the 1966 Load Line Convention; and probabilistic oil outflow.

Members of the public may attend this meeting up to the seating capacity of the room.

For the information on this SLF Working Group meeting, contact Mr. H.P. Cojeen or Mr. W. M. Hayden at (202) 267–2988; U.S. Coast Guard Headquarters (G–MTH), 2100 Second Street, SW., Washington, DC 20593–0001.

Dated: September 17, 1993.

Marie Murray,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 93–24082 Filed 9–30–93; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 93–064]

Merchant Marine Personnel Advisory Committee; Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Merchant Marine Personnel Advisory Committee (MERPAC) and working groups. The full Committee meeting will beheld on Wednesday, December 8, 1993, in room 2415 of U.S. Coast Guard Headquarters. The meeting is scheduled to run from 9 a.m. to 4 p.m. Attendance is open to the public. The agenda follows:

1. Opening remarks.
2. Chairman's remarks.
3. Issue Briefs.
   a. Foreign licensing practices.
   b. Non-traditional licensing practices.
   c. Review of lower level examination questions.
   d. Applicability of OPA 90 to mariner licensing.
   e. Coast Guard position paper concerning the revision of STCW.
4. Working Group Reports.
   a. Adopt or reject the three resolutions on physical standards prepared by the physical standards working group during the last meeting.
5. Presentations by the public.
6. Other topics of discussion
   a. Review of Coast Guard Focus Group report.
   b. Adopt or reject the recommendation that the committee include members from the inland and near coastal towing, small passenger and offshore industries.

A preliminary meeting of the Committee working groups will be held on Tuesday, December 7, 1993, in room 2415 of U.S. Coast Guard Headquarters. This meeting is scheduled to run from 9 a.m. to 4 p.m. Attendance is open to the public.

SUPPLEMENTARY INFORMATION: With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the MERPAC Executive Director no later than the day before the meeting.

Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written material should be submitted to the Executive Director by December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Commander Scott J. Glover, Executive Director, Merchant Marine Personnel Advisory Committee (MERPAC), room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–0221.

Dated: September 24, 1993.

A. E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–24211 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Recommended Traffic Patterns and Practices for Aeronautical Operations at Airports Without Operating Control Towers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of Advisory Circular (AC) No. 90–66A. This AC provides recommended traffic pattern procedures

and practices at airports without operating control towers for aircraft, lighter than air, glider, parachute, rotorcraft, and ultralight vehicle operations.

EFFECTIVE DATE: August 26, 1993.

ADDRESSES: A copy of AC No. 90–66A, Recommended Traffic Patterns and Practices for Aeronautical Operations at Airports without Operating Control Towers, may be obtained by sending a written request with a self-addressed mailing label to: Department of Transportation, Utilization and Storage Section, M–443.2, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ellen Crum, Air Traffic Rules Branch, ATP–230, Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION: AC No. 90–66A supersedes AC No. 90–66, Recommended Standard Traffic Patterns for Airplane Operations at Uncontrolled Airports, dated February 27, 1975.

Issued in Washington, DC on September 23, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–24153 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss transport airplane and engine issues.

DATES: The meeting will be held on October 20, 1993 at 8 a.m. Arrange for oral presentations by October 10, 1993.

ADDRESSES: The meeting will be held at McDonnell Douglas, 1735 Jefferson-Davis Highway, suite 1200, Crystal City, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR–1), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held on October 20, 1993, at McDonnell Douglas, 1735 Jefferson-Davis Highway, suite 1200, Crystal City, Virginia. The agenda for the meeting will include:.

- Opening Remarks.
- Review of Action Items.
- Reports of working groups.
- Discussion of harmonization and working group schedules.
- Status of harmonization activities

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by October 10, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on September 23, 1993.

William J. Sullivan,

Assistant Executive Director for Transport Airplane and Engine Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–24154 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Albany County Airport, Albany, New York.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Albany County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 1, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager, New York Airports District Office, 181 South Franklin Avenue, room 305, Valley Stream, New York 11581.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Michael N. Polovina, Director of the Albany County Airport, at the following address: Albany County Airport, ARFF Building, 2nd Floor, Albany, New York 12211.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Albany under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager of the New York Airports District Office, 181 South Franklin Avenue, room 305, Valley Stream, New York, 11581, (718) 553–1882. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Albany County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 10, 1993, the FAA determined that the application to impose a PFC submitted by the County of Albany was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later then December 3, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: February 1, 1994
Proposed charge expiration date: February 28, 2005
Total estimated PFC revenue: $40,700,000

Brief description of proposed projects:
—Terminal Building Renovation and Expansion
—Runway and Taxiway Improvements
—Flood Management Improvements
—Air Traffic Control Tower
—Environmental Remediation
—New Interior Roadways
—Airport Studies
—Airport Equipment
—New Storage Building

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER**

INFORMATION CONTACT and at the FAA Regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Albany County Airport.

Issued in Jamaica, New York on September 23, 1993.

Louis P. DeRose,

Manager, Airports Division, Eastern Region.

[FR Doc. 93–24151 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Hilton Head Island Airport, Hilton Head Island, SC; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of intent to rule on application.

SUMMARY: This corrects the class or classes of air carriers which the public agency has requested not be required to collect PFCs. The Beaufort County Council has supplemented their application to impose and use the revenue from a PFC at Hilton Head Island Airport to include a request to exclude a class of air carriers from the requirement to collect PFCs.

In notice document FR 93–20848, on page 45371, in the issue of Friday, August 27, 1993, make the following correction:

In the second column, after "Class or classes of air carriers which the public agency has requested not be required to collect PFCs:", "None" should read "Part 135 air taxi/commercial operators filing FAA Form 1800–31".

Issued in Washington, DC, on September 24, 1993.

Lowell H. Johnson,

Manager, Financial Assistance Division.

[FR Doc. 93–24152 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Fairfield County, Connecticut

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed transportation improvements within the Route 25 corridor in the towns of Trumbull, Monroe and Newtown, Connecticut.

FOR FURTHER INFORMATION CONTACT: Bradley Keazer, Division Planning, Environment and Research Program Manager, Federal Highway Administration, Abraham A. Ribicoff Federal Building, 450 Main Street, Hartford, Connecticut 06103. Telephone: (203) 240–3705; or Edgar T. Hurle, Director of Environmental Planning, Connecticut Department of Transportation, 24 Wolcott Hill Road, Wethersfield, Connecticut 06109 Telephone: (203) 566–5704.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Connecticut Department of Transportation (ConnDOT) will prepare an Environmental Impact Statement (EIS) to analyze potential impacts of proposed transportation improvements within the Route 25 corridor in the towns of Trumbull, Monroe and Newtown, Connecticut. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Alternatives under consideration for the draft EIS, include but are not limited to: No action, widening existing Route 25, and various expressway and/or arterial alternatives on new location. Prior to selecting these alternatives, the ConnDOT conducted a series of scoping meetings to solicit public input. These alternatives were identified in a feasibility study that was prepared by the ConnDOT during 1988 and 1989. As part of the feasibility study, the ConnDOT solicited comments from appropriate Federal, State and local agencies.

The Federal Highway Administration and the ConnDOT will be holding a public hearing or hearings approximately thirty (30) days after the draft EIS has been made available for public review and comment. Public notice will be given of the time and place of the hearings.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on September 24, 1993.

Bradley Keazer,

Division Planning, Environment and Research Program Manager, Hartford, Connecticut.

[FR Doc. 93–24163 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

[Docket No. 93–44; No. 2]

Chrysler Corp.; Grant of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards Nos. 108 and 111

Chrysler Corporation of Sterling Heights, Michigan, has petitioned for a temporary exemption from several requirements of Motor Vehicle Safety Standards Nos. 108 *Lamps, Reflective Devices, and Associated Equipment*, and 111 *Rearview Mirrors*. The basis of the petition is that requiring compliance would prevent it from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles.

Notice of receipt of the petition was published on August 3, 1993, and an opportunity afforded for comment (58 FR 41315). This notice grants the petition.

Chrysler wishes to institute a factory delivery program for two of its passenger cars, similar to programs established by European manufacturers where Americans purchase vehicles in Europe meeting the Federal motor vehicle safety standards, drive them there on holiday, and then return with them to the United States. The purchasers of the vehicles for which exemptions are sought would be "European citizens who are either visiting or temporarily assigned to work in the U.S.," who would drive them in the United States, and export them to their home countries. Chrysler notes that these vehicles would have to be built to European safety specifications, and that this necessitates a noncompliance with two Federal motor vehicle safety standards which, absent an exemption, precludes sale and use of the cars in the United States.

The petitioner seeks a 2-year exemption to cover, as limited by 15 U.S.C. 1410, not more than 2500 vehicles each year. These vehicles (some of them sold under different names abroad) are the Eagle Vision, Chrysler New Yorker, Plymouth/Dodge Neon, and Jeep Wrangler, Cherokee, and Grand Cherokee. The vehicles would comply with all Federal motor vehicle safety standards with the exception of

portions of the standards on lighting and rearview mirrors. Specifically, the headlamps will meet European (ECE R20) photometrics rather than those of Standard No. 108, the side marker lamps and reflectors will be eliminated, and the turn signals and stop lamps will meet the photometrics of ECE R7 and R6 respectively. The outside driver's side rearview mirror will be convex, and the passenger side convex mirror will not have the words "Objects in mirror are closer than they appear" etched on them.

Chrysler argued that the noncomplying vehicles will nevertheless have an equivalent overall level of safety for the following reasons. The vehicles will be equipped with lamps not required by Standard No. 108, such as rear fog lamps and "side repeater (turn signal) lamps," which "will serve to improve the conspicuity of the vehicle, and in the aggregate should compensate for the photometric variances." It notes that the center highmounted stop lamps will be supplied but will not be wired for use while the vehicles are in the U.S. Vehicles intended for use in Norway and Sweden may be equipped with daytime running lamps. With respect to headlamp photometrics, Chrysler states that safety evaluation of U.S. and European specifications tends to be subjective, that each has trade offs, and that a number of countries "including Sweden, Switzerland, Canada, Japan, and the Persian Gulf States permit headlamps with either European or U.S. beam patterns." More specifically, it discusses beam pattern differences. On the upper beam, minimum values for test points at 9 and 12 degrees left and right of H–V will not be met (Chrysler does not specify the shortfall). However, Chrysler argues that since "the primary purpose of the high beam is to provide illumination down the road, we do not believe that providing illumination below the minimum value at these wide test points poses a safety concern." As for the lower beam, the lamp provides only 80 percent of the minimum value at test point 2D 15R, and 67 percent at ½ D 2R. But since the drivers of the cars "will be Europeans who are accustomed to the forward illumination characteristics of these vehicles," the noncompliant lighting "should provide 'equivalent safety' for these drivers compared to vehicles with headlights complying with FMVSS 108 photometrics."

As for the noncompliance with Standard No. 111, Chrysler submits that right-hand mirrors without legends are used throughout Europe. Further, many European vehicles also use convex mirrors on the driver's side. In sum, Chrysler states that "since Europeans are more accustomed to convex mirrors than U.S. drivers, there is no safety value added by providing flat mirrors on the driver's side or the passenger side etched explanation to the users of the subject vehicles."

In addition to the supplemental lighting equipment described above, the vehicles will be equipped with safety equipment not required under the Federal motor vehicle safety standards. This equipment includes "vehicle sensitive and webbing sensitive seatbelt retractors", more rounded surfaces on the inside and exterior of the vehicle, and antiskid braking systems. Further, the mirrors that are required by the ECE have an added safety feature in that they fold-way rearward and upward.

According to the petitioner, Volvo Cars of North America, Volkswagen of America, and Mercedes-Benz of North America have argued that European lighting and mirror requirements do not compromise the safety provided by the Federal motor vehicle safety standards.

Chrysler submits that an exemption will be in the public interest in "improving the severe trade deficit currently being suffered by the U.S.," albeit in a small way. Further, the potential exists "for this type of export activity to expand in the future to include additional car models, and perhaps make a more significant contribution to reducing the deficit, provided regulatory constraints do not preclude such activity." Finally, Chrysler believes that the program has the potential to increase tourism due to the incentive of buying a vehicle in the United States.

Comments were received on the petition from National Automobile Dealers Association which supported it, and Henry Gluckstern of Maplewood, N.J., an attorney and Chrysler shareholder, who opposed it. Mr. Gluckstern's comments will be noted at appropriate places in the discussion below.

Chrysler's petition is virtually identical to one submitted by General Motors 5 years ago. GM requested an exemption from Standard No. 108 for the same items of motor vehicle lighting equipment, and from the same requirements of Standard No. 111 so that it, too, might sell nonconforming vehicles in the United States to foreign visitors. The agency granted the petition on August 18, 1988 (53 FR 13411), and that affords a precedent for granting the petition by Chrysler.

As NHTSA observed, the vehicles to be exempted are for purchase and use by persons whose countries require image-reducing mirrors and headlamps with different beam patterns. These drivers are already acclimated to the different motoring habits that use of these devices may entail, and their accident-avoidance potential should not be compromised.

Mr. Gluckstern disagrees with this comment, stating that there is nothing to preclude the operation of these cars by Americans, who are not used to driver side-convex mirrors which could cause serious errors in driver judgment. NHTSA believes that cars purchased by European tourists for use in the United States are unlikely to be operated by Americans other than parking attendants off the public roads. As for those cars purchased by nonresidents on assignment here, NHTSA notes that cars meeting European lighting and mirror specifications are legally importable by the same category of personnel, as well as by diplomats and foreign military personnel. The agency is not aware that operation of these vehicles has created a safety problem. In any event, if the experience of GM is an example, the actual number of exempted cars sold is likely to be far less than the maximum allowable of 2,500 per 12-month period during which the exemption is in effect.

Mr. Gluckstern also objects to the elimination of the side marker lamps, and does not believe that side turn signals adequately compensate for their loss. This comment is noted. Although the safety benefits of side marker lamps and reflectors will not be realized, there are other aspects of motor vehicle conspicuity not covered by Standard No. 108 which will be fitted. Rear fog lamps, side turn signal lamps, daytime running lamps have no mandatory U.S. counterparts but will be fitted on exempted vehicles. In addition, the vehicles will be equipped with other safety-related devices not required by the Federal safety standards but that are required by the ECE. Thus, their overall level of safety should be equivalent to those of conforming vehicles.

Further, as Chrysler argues, there is the potential, unevaluated at present, that the program could enhance tourism and contribute to reducing the foreign trade imbalance. Mr. Gluckstern argues that the effect would be de minimis and should not be a consideration in deciding the merits of the petition. NHTSA notes that the effect on foreign trade will be long term as well as immediate, as the cars age and require replacement parts. Further, many of the Chrysler products are also sold in Europe. If European purchasers of the exempted cars have a positive ownership experience, word of mouth

could result in increased sales of these cars abroad.

In consideration of the foregoing, it is hereby found that, in the absence of an exemption, the petitioner is otherwise unable to sell a motor vehicle whose overall level of safety equals or exceeds that of nonexempted motor vehicles, and that an exemption will be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. Accordingly, Chrysler Corporation is hereby granted NHTSA Temporary Exemption 93–6, expiring September 1, 1995, from the following requirements incorporated in 40 CFR 571.108 Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment* (S7: The photometric requirements for headlamps; Table III: All requirements for side marker lamps and reflex reflectors; the photometric requirements of SAE J583 FEB84 for stop lamps, and SAE J588 NOV84 for turn signal lamps), and from S5.2.1 and S5.4.2 of 49 CFR 571.111 Motor Vehicle Safety Standard No. 11, *Rearview Mirrors*.

The agency notes that changes are occurring in the European standards that presently preclude U.S. lighting equipment are changing. The ECE will allow, as an option, the installation of side marker lamps and reflex reflectors upon publication of the approved rules later this year by the United Nations Economic Commission for Europe. Further, the United States and Europe have completed amendment of their standards to achieve harmonization of turn signal and stop lamp photometrics through creating overlapping ranges of permissible values. Although Chrysler apparently has not taken advantage of this to build lamps that can comply with both regulations, it will be able to do so in the future. Thus, there will be no need to seek further exemption from these requirements should Chrysler wish to continue its sales program after September 1, 1995.

Finally, although Chrysler did not petition for exemption from compliance with the center highmounted stop lamp requirements, it informed NHTSA that the lamp would be supplied but not wired for use while the vehicles are in the United States. Mr. Gluckstern objected to this prospective practice. NHTSA observes that the manufacture and sale of a vehicle with an inoperative center highmounted stop lamp would be a failure to comply with Standard No. 108 and a violation of the National Traffic and Motor Vehicle Safety Act. Chrysler must ensure that the lamp is operative when an otherwise exempted vehicle is delivered to the purchaser, but it may also inform the purchaser the manner in which the lamp may be disconnected after it has left the United States. As with the side marker lamps and reflectors, the center lamp will be permitted in Europe later this year.

(15 U.S.C. 1410; delegation of authority at 49 CFR 1.50)

Issued on: September 28, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–24155 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

[Docket No. PS–132 ; Notice 1]

Office of Pipeline Safety; Risk Assessment Prioritization

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Request for information.

SUMMARY: RSPA is implementing a Risk Assessment Prioritization (RAP) process to rank actions that could be taken by the Office of Pipeline Safety (OPS) according to their potential for reducing the risk of pipeline failures. The ranked list will become the base upon which OPS management will decide how to commit limited resources to specific tasks. RSPA invites representatives of industry, government agencies, environmental organizations, and other members of the public to contribute information on causes of pipeline failures. The information will be used in the RAP process.

DATES: Responses to this request for information should be submitted on or before November 15, 1993. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice number stated in the heading of the notice. All comments and docketed material will be available for inspection and copying in room 8421 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: G. Joseph Wolf, (202) 366–4560, regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docket material.

SUPPLEMENTARY INFORMATION:

Background

RSPA, through OPS, prescribes and enforces the safety standards for the transportation of gases and hazardous liquids by pipeline and for liquefied natural gas facilities. OPS frequently must allocate its resources to address safety actions identified by authorities outside of the agency, including Congress, the National Transportation Safety Board, and the General Accounting Office. OPS believes that pipeline safety resources can be most effectively utilized through analysis and prioritization of potential pipeline safety actions.

The RAP process was developed following a thorough assessment of OPS operations conducted in 1991 and the adoption in 1992 of a set of goals necessary to enable OPS to respond most effectively to increasing pipeline safety concerns. The key goal of the RAP process is development of a credible and achievable agenda which will allocate OPS resources to tasks with the greatest potential to improve public safety and protect the environment without causing an undue burden to the pipeline industry. Toward that goal, OPS is developing the RAP process to provide a sound basis for identifying and ranking pipeline safety risks and their potential solutions. In the process, OPS will consider the effect of a solution on the probability and the consequence of incident occurrence and the economic impact of implementing a solution on both industry and government. OPS has committed to involve its stakeholders in this process. The purpose of this notice is to solicit stakeholder participation in the first data gathering step of the RAP process, the collection of statements of the problems contributing to pipeline failures.

Principles of the RAP Process

RAP is a process that will use a simple mathematical model to evaluate annually each pipeline safety and environmental protection issue, the potential solutions for each issue, and the appropriate corresponding actions to reduce risk. OPS believes that the process must be as uncomplicated as possible to be efficient. OPS welcomes external expertise and interest, and now is providing opportunities for interested parties to furnish input during the implementation of the process.

RAP will result in a numeric value of risk being assigned to each solution being considered using ratings by experts and simple mathematical calculations. The proven concept of the Pareto Principle,[1] widely used in quality improvement programs, is that

[1] Norbert L. Enrick, Quality, Reliability and Process Improvement, p. 329.

the greatest improvements can be achieved by implementing the few most significant solutions. Conversely, the implementation of the many least significant solutions will result in minimal improvement. OPS will apply the Pareto Principle in the rating criteria of its RAP process.

Using a ranked list of solutions and an estimate of resource availability, OPS management will assign resources to the highly ranked solutions. Resources will not be available to implement many of the solutions on the ranked list. However, the process will ensure that resources are assigned to implementing the solutions that will effect the greatest improvement in pipeline safety and environmental protection. Implementing the RAP process will lead to more effective use of OPS resources and to better understanding of the impact of proposed solutions to pipeline safety and environmental problems.

Details of the RAP Process

Each captioned section below represents a step in the RAP process. The narrative describing the step represents current thinking as how to best implement the step in a timely manner. The narrative descriptions are subject to change. OPS continues to welcome comment on the process and on the methods of implementation proposed in this narrative.

Chart Pipeline Safety Subjects

Key elements of RAP are identifying issues that create risk to pipeline safety and the environment and potential solutions for those issues. To assure that all facets within pipeline safety and environmental protection are considered, OPS prepared a list of the subjects affecting pipeline safety that considers government jurisdiction, operator responsibilities, and government compliance actions. The list, which appears later in this notice, is a road map for identifying issues and solutions.

Poll for Issues

Having established the list of pipeline safety subjects, OPS is conducting a poll announced by this notice to obtain the most important issues relevant to each subject. This approach to polling will give all interested parties an opportunity to suggest issues relevant to any listed subject. Staff will enter into a computer file all issues submitted through the poll.

Insert Mandated Issues

OPS is required to act on specific congressional direction in statutes and to respond to the recommendations of NTSB and GAO. These required actions are "mandates". Because most mandates direct solutions, OPS staff will add to the issues file statements of issues implied in the mandates.

Compile Issues List

OPS staff will analyze the contents of the issues file. OPS expects that similar issues will be derived from different sources and subject list items. The staff will group and restate similar issues into a single representative issue, regardless of the source or subject list item that was the origin of the issue.

Poll for Solutions

Having established the issues file, OPS will conduct a poll to obtain the solutions most effective in reducing risk relative to the issues. Again, OPS will consider the advice of other organizations, industry, and the public. OPS will compile solutions by conducting a poll during a public meeting to be announced in the **Federal Register**. Individual participants will pre-register to participate at the meeting. OPS is considering the feasibility of permitting limited discussion of the most significant issues identified earlier in the process, including proposed solutions. OPS staff will enter into a computer file the solutions submitted through the polls.

Insert Mandated Solutions

OPS staff will add to the solutions file those solutions contained in mandates.

Compile Solutions List

OPS staff will analyze the contents of the solutions file. OPS expects that similar solutions will be derived from different issues. Staff will group and restate similar solutions into a single representative solution, regardless of the issue that was the source of the solution. Each solution will be referenced to the issues it addresses.

Set Rating Criteria

In order to conduct the poll in the next step (Rate Solution Criteria), OPS has established criteria for rating each solution in terms of the potential to reduce the probability (frequency) and consequence (severity) of incidents, and the cost of implementation. The criteria are based on statistical principles and the data contained in incident records. The rating criteria are simple, consisting of three or four levels representing high to low predictions of the effect of a solution on probability and consequence, and of the cost of implementation. For probability and consequences, there should be few solutions generating high predictions and many generating low predictions. OPS will prescribe the rating levels. OPS also will prepare a tutorial document to ensure an understanding of the polling principles and criteria by those polled. So that benefits will be claimed only once, the tutorial document will contain sufficient information to enable the apportionment of the reduction in incident probability and consequence (benefits to be achieved) among all solutions.

At a February 1992 public meeting, participants requested the opportunity to contribute to establishing the criteria. OPS plans to present the criteria prepared by its staff at the same public meeting in which solutions will be collected. Criteria will be proposed for rating probability, consequence, and cost of implementation. Time will be provided during the meeting for registered participants to comment on the concept used for the criteria and the partitions proposed.

Rate Each Solution

OPS will ask regional and state enforcement experts and advisory committee members to rate each solution for probability and consequence according to the criteria established in the preceding step. Ideally, OPS believes that the rating process should include input from persons outside of OPS.

Estimate Economic Impact

OPS had planned to calculate the estimated implementation cost of each solution. OPS invited the pipeline industry, through its trade association representatives, to submit broad-based implementation costs for inclusion in a cost data base. Most initial responses indicate that industry is unable to provide such broad-based data because of the large number of variables to be considered in each category of information needed. The result is that OPS will rely upon ratings of implementation cost during the first implementation cycle.

As an element of estimating cost, OPS plans to estimate the OPS resource commitment necessary to implement each solution. OPS also will use the estimates later when assigning resources for implementing solutions.

Assemble Rated Priorities

OPS staff will develop a computation to factor probability, consequence, and implementation cost into a single number representing the overall impact of each solution. OPS staff will rank the calculated values from greatest to least. They also will tabulate the ranked

values, the computed factors, and the resources needed for implementation into a list of prioritized solutions.

Identify Mandates

On the list of prioritized solutions, OPS staff will identify each mandated solution.

Estimate Resource Availability

Because resources are limited, staff will be able to recommend the implementation of only the highest priority solutions. OPS will evaluate the commitments and availability of staff in each of its offices and the availability of funds for work outside of OPS in order to estimate the resources available to implement highly ranked solutions.

Assign Resources

OPS staff will present to OPS Management for review the list of prioritized solutions and the recommendations for implementation. At that time, management will:

- Consider the availability of resources for assignment to the highest ranked solutions and to mandated solutions that are not ranked within the range of the highest ranked solutions.
- Commit available resources to the implementation of mandated and appropriate high priority solutions.
- If appropriate, reassign otherwise committed resources to implement high priority solutions.

Mandated solutions that are not highly ranked and for which resources are limited will be identified. OPS Management will determine appropriate action, which may include a recommendation for a legislative proposal leading to modification of the mandate.

Issue Action Plan

OPS Management will issue an annual action plan incorporating the decisions made on the basis of risk assessment prioritization.

Monitor Performance

OPS staff will develop a system of monitoring performance for the implementation of risk based actions and for the effectiveness of RAP.

Maintain Data Base

OPS staff will continually update the data bases necessary for the execution of RAP by utilizing available information sources including input from industry and other interested parties. They will accumulate for consideration in the annual program new issues and solutions, cost information, and resource information. Staff will process an urgent issue or solution through the risk based model at any time as directed by management.

Repeat Cycle

OPS will repeat the RAP process annually. OPS realizes that no risk assessment process is static. As experience is gained using the model and as circumstances change, OPS will adjust the model to ensure and improve its utility and credibility. Through public meetings and notices, OPS intends to continue to disclose the product of each cycle and the progress in refining the RAP model, and to solicit input regarding issues, solutions, and implementation cost.

Request for Information

Information Needed

Through this notice, OPS invites all interested parties to propose issues, as described above in the detailed description of the RAP process, that contribute to pipeline incidents. The range of issues may address subjects within 49 CFR Parts 190–199. While there is no limit to the number of issues that may be submitted, responders are encouraged to propose those issues that represent the greatest threat to public safety and the environment.

Use of a Subject List

OPS has prepared a list of subjects detailed in the next section that addresses the scope of regulations, considers operator responsibilities, and concludes by addressing compliance actions. The purpose of the list is to direct the attention of the interested parties to subjects that may give rise to statements of issues. Responders are encouraged to use the list as a reminder of the full extent of pipeline subjects affecting safety and the environment. The categories listed in the Subject List are broad topics. It is not intended that every interested party furnish one or more issues representing each subject in the list, although that is acceptable.

The list is intended to cover all parts of the federal pipeline safety and environmental regulations. That the list covers certain parts is evident in the categories listed, for example, the filing of certain reports represents part 191, the conduct of spill response drills and exercises represents part 194, and training and qualification regarding drugs represents part 199. However, the list alone does not clearly indicate that the interested parties must consider parts 192, 193, and 195 regulating gas, liquified natural gas, and hazardous liquid facilities respectively. When identifying issues in response to this notice, the interested parties must keep in mind that the list applies to all categories of regulated facilities and all parts of the pipeline safety and environmental regulations.

Subject List (List C)

1. Jurisdiction:
   - 1a. Scope
   - 1b. Definitions
   - 1c. Commodity Transported
   - 1d. Location
   - 1e. Federal/State Authority
2. Design:
   - 2a. Material
   - 2b. Allowable pressure
   - 2c. Valves and Other Components
   - 2d. Compressor Stations and Vaults
   - 2e. Pressure Limiting and Regulating
   - 2f. Coating
   - 2g. Storage Facilities
   - 2h. Geological & Climatic Factors
   - 2i. Environmental Factors
   - 2j. Population Density
   - 2k. Piggability
3. Construction:
   - 3a. Planning
   - 3b. Joining
   - 3c. Bending
   - 3d. Clearance and Cover
   - 3e. Backfill
   - 3f. Crossings
4. Acceptance:
   - 4a. Compliance with Standards
   - 4b. Weld Inspection
   - 4c. Testing (Hydrostatic)
   - 4d. Final Inspection
5. Personnel Training and Qualification:
   - 5a. Operating
   - 5b. Maintenance
   - 5c. Emergency Procedures
6. Operation:
   - 6a. Operating Plan (Documents & Procedures)
   - 6b. Maximum Allowable Operating Pressure
   - 6c. Continuing Surveillance
   - 6d. Leak Detection
   - 6e. Investigation of Failures
7. Damage Prevention:
   - 7a. Markers
   - 7b. Cover and Barriers
   - 7c. One Call Systems
   - 7d. Public Education
8. Corrosion Prevention:
   - 8a. External Corrosion
   - 8b. Internal Corrosion
   - 8c. Atmospheric Corrosion
9. Maintenance:
   - 9a. Maintenance Plan (Documents and Procedures)
   - 9b. Periodic Inspection
   - 9c. Repair Procedures
10. Emergencies:
    - 10a. Emergency Plan (Documents and Procedures)
    - 10b. Response Capability
    - 10c. Reports, Coordination, and Communications
    - 10d. Drills and Exercises
11. Records and Reports:
    - 11a. Pipeline Locations (Maps)
    - 11b. Operations
    - 11c. Maintenance
    - 11d. Corrosion Prevention
    - 11e. Accidents, Incidents, and Safety-related Conditions

11f. Drug Testing
12. Compliance:
a. Inspection
b. Accident Investigation
c. Enforcement

Content of an Issue Statement

Early in developing the RAP process, subjects, issues and solutions were defined as follows:

A *Subject* is a broad topic related to pipeline safety selected from the subject list, such as damage prevention markers, internal corrosion, or investigation of operational failures.

An *Issue* is a unique sub-topic (an incident cause) within a subject, such as incorrectly placed pipeline markers at construction sites, smart pigging to detect internal corrosion, or failure of automatic shutoff valves. There will be many issues within any subject.

A *Solution* is one of a number of remedies to an issue, such as (regarding internal corrosion), a regulation requiring the periodic use of smart pigs, an enforcement policy requiring the use of smart pigs after a corrosion failure, or financial support of research to improve smart pigs.

To facilitate compilation of issues, responders are asked to distinguish among subjects, issues, and solutions. Issues are confined to specific problems causing incidents. Solutions will be requested later in the RAP process.

Form for Issue Statement

To aid OPS in processing issue statements, a standard format for an issue statement is suggested. An issue statement should contain:

A. The identification of the responder per List A below.

B. A statement of the problem, procedure, condition or situation that may cause an incident. (Ensure a complete statement of the cause. Be specific, but reasonably concise.);

C. The principal subject from the Subject List (List C above) to which the statement of the problem is applicable. (Secondary subjects may be listed in parentheses.);

D. The kind of incident caused, selected from List D below; and

E. The kind of facility affected, selected from List E below.

To simplify the task of OPS in reviewing and consolidating issues, responders are requested to respond in the suggested format of response items A through E. Item A may be furnished one time for all issues submitted from one responder at one time. As a guide for preparation of responses, the following examples are provided. In the examples, the phrases in parentheses are for illustration only. Phrases similar to the parenthetical phrases need not be included in the responses.

Example 1.

A. Responder identification.

B. Undetected corrosion of metallic pipe.

C. 8b, (8a, 8c).

D. D1, D2 (May cause a leak or rupture.)

E. E2, E4 (In a gas or hazardous liquid transmission pipeline.)

Example 2.

A. Responder identification.

B. Disturbance and movement of a service line caused by outside force.

C. 7c, (7d).

D. D1, D4 (May cause a leak and an explosion.)

E. E5 (In a gas distribution system.)

List A—Responder File Identification

A1 Responder name.
A2 Responder position.
A3 Responder organization.
Responder organization type (Operators indicate all applicable.)
A4a Operator, hazardous liquid, gathering.
A4b Operator, hazardous liquid, transportation.
A4c Operator, gas, gathering.
A4d Operator, gas, transmission.
A4e Operator, gas, distribution.
A4f Operator, LNG facility.
11111111111111
A4g Pipeline industry association.
A4h Pipeline contractor.
A4i Pipeline supplier.
A4j Environmental organization.
A4k Consumer safety organization.
A4l Government, federal.
A4m Government, state.
A4n Government, municipal.
A4o Public.
A4p Other (Please specify).
A5 Address.
A6 Contact name (If other than responder).
A7 Contact phone number.
A8 Contact facsimile number.

List D—Kinds of Incidents (Select All Applicable)

D1 Leak.
D2 Rupture.
D3 Fire.
D4 Explosion.
D5 Environmental damage.
D6 Other (Specify).

List E—Kinds of Facilities (Multiple Selections Are Acceptable)

E1 Liquid gathering pipelines.
E2 Liquid transportation pipelines.
E3 Two phase pipelines.
E4 Gas gathering pipelines.
E5 Gas transmission pipelines.
E6 Gas distribution pipelines.
E7 Gas master meter systems.
E8 LPG distribution systems.
E9 LNG facilities.
E10 All liquid pipelines.
E11 All gas pipelines.
E12 All pipelines.
E13 Other (Specify).

Future Public Participation

When OPS has collected and consolidated the issues, a meeting will be announced in a **Federal Register** notice for the principal purpose of collecting solutions for the issues (See Poll for Solutions under Details of the RAP process).

Authority: 49 App. U.S.C. 1672, 1804, and 2002; 49 CFR 1.53.

Issued in Washington, DC on September 28, 1993.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 93–24156 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 27, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form 8842.
Type of Review: New collection.
Title: Election to Use Different Corporate Annualization for Estimated Tax.

Description: Form 8842 is a form used by corporations (including S corporations), tax-exempt organizations subject to the unrelated business income tax, and private foundations to annually elect the use of an annualization period in section 6655(e)(2)(C) (i) or (ii) for purposes of figuring the corporation's estimated tax payments under the annualized income installment method.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 2,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 1 hour, 40 minutes.

Learning about the law or the form: 18 minutes.

Preparing and sending the form to the IRS: 20 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 4,620 hours.

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: New Employer Education Initiative (NEEDS) Focus Group Interviews.

Description: New employers in Independence and Kansas City, Missouri received educational assistance and an early intervention program as a means of promoting higher levels of compliance. Focus group moderators from Research Division will conduct focus group interviews with these new employers to solicit their opinions on the assistance they received and their satisfaction with the service.

Respondents: Small businesses or organizations.

Estimated Number of Respondents: 260.

Estimated Burden Hours Per Respondent:

Screening Call: 5 minutes.

Focus Group Interview Sessions: 2 hours.

Travel Time: 1 hour.

Frequency of Response: Other (one-time).

Estimated Total Reporting Burden: 130 hours.

OMB Number: 1545–1200.

Form Number: IRS Form 8435.

Type of Review: Extension.

Title: Volunteer Opportunity Survey.

Description: The Volunteer Opportunity Survey provides the IRS Taxpayer Education Coordinators with information which they use in giving training and/or orientation to individuals who volunteer for any of the Internal Revenue Service's eight volunteer and education programs.

Respondents: Individuals or households, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 40,000.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 6,664 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW. Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–24175 Filed 9–30–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

September 27, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0006.

Form Number: OTS Form 1450.

Type of Review: Revision.

Title: Branch Offices.

Description: 12 CFR Section requires federally chartered institutions proposing to establish a branch office or to change the location of a branch to file an application with the Office of Thrift Supervision (OTS). Section 228 of the Federal Deposit Insurance Corporation Improvement Act requires insured thrifts to adopt a policy with respect to branch closings and to provide notice to OTS of any decisions to close a branch office.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeeping: 1801.

Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.

Frequency of Response: Other (One-time requirement. After which only annual review and notice of closing to OTS.)

Estimated Total Reporting Burden: 14,916 hours.

OMB Number: 1550–0015.

Form Number: OTS Forms H–(e) and 1393.

Type of Review: Extension.

Title: Savings and Loan Holding Company Application.

Description: To obtain information necessary to determine whether a company meets the statutory standards to become a savings and loan holding company.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 850.

Estimated Burden Hours Per Respondent: 121 hours, 25 minutes.

Frequency of Response: Other (prior to acquisition of a savings association).

Estimated Total Reporting Burden: 103,200 hours.

Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street, NW., Washington, DC 20552.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–24176 Filed 9–30–93; 8:45 am]

BILLING CODE 4810–25–P

Fiscal Service

[Dept. Circ. 570, 1993 Rev., Supp. No. 3]

Surety Companies Acceptable on Federal Bonds; Pennsylvania General Insurance Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision, on page 35810 to reflect this addition:

Pennsylvania General Insurance Company. Business Address: 436 Walnut Street, P.O. Box 1109, Philadelphia, PA, 19105–1109. Underwriting Limitation [b]: $14,564,000. Surety Licenses [c]: AL, AZ, AR, CA, CO, CT, DC, FL, IL, IN, KS, KY, MD, MI, MN, MO, NE, NH, NJ, NM, NY, NC, OH, PA, RI, SC, TN, TX, UT, VA, WA, WV, WI. Incorporated in: Pennsylvania.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds

Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6507.

Dated: September 27, 1993.

Charles F. Schwan, III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93–24165 Filed 9–30–93; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register
Vol. 58, No. 189
Friday, October 1, 1993

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 HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435, 436, and 440

[MB-001-FC]
RIN 0938-AA58

Medicaid Program; Eligibility and Coverage Requirements

Correction

On page 50635, in the issue of Tuesday, September 28, 1993, in the first column, the correction to rule document 93-880 should be removed. The **DATES** published in the issue of January 19, 1993 were correct.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[CGD 91-211]

RIN 2115-AD92

Five-Year Term of Validity for Certificates of Registry and Merchant Mariner's Documents

Correction

In proposed rule document 93-22577 beginning on page 48572 in the issue of Thursday, September 16, 1993, make the following corrections:

1. On page 48573, in the 1st column, in the 12th line, "of one" should read "or one".

2. On the same page, in the third column, in the fourth full paragraph, in the last line, "requirements" was misspelled.

§ 10.209 [Corrected]

3. On page 48576, in the third column, in § 10.209(e)(3)(i), in the fifth line, "certificate or" should read "certificate of".

BILLING CODE 1505-01-D

federal register

Friday
October 1, 1993

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 888

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. N-93-3616; FR-3510-N-03]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Rental Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Rental Voucher Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of final fair market rents.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) periodically, but not less frequently than annually, to be effective on October 1 of each year. HUD published proposed Fiscal Year (FY) 1994 FMRs for the Section 8 Rental Certificate program on May 6, 1993 (58 FR 27062) and solicited public comments for a 60-day period. The FY 1994 FMRs were the first to be developed with revisions based on use of the 1990 Census data; they also included post-Census American Housing Surveys (AHSs) and Random Digit Dialing (RDD) telephone surveys. Because of the large number of requests in response to changes in the FMRs caused by the Census data rebenchmarking, the public comment period was extended to August 31, 1993 by notice on July 6, 1993 (58 FR 36175). Today's notice announces final FY 1994 FMR schedules for the Section 8 Rental Certificate program (part 882, subparts A and B), including space rentals by owners of manufactured homes under the Section 8 Rental Certificate program (part 882, subpart F); the Section 8 Moderate Rehabilitation program (part 882, subparts D and E); Section 8 housing assisted under part 886, subparts A and C (Section 8 Loan Management and Property Disposition programs); and as used to determine payment standard schedules in the Rental Voucher program (part 887).

EFFECTIVE DATE: The FMRs published in this notice are effective on October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Shirley C. Stone, Rental Assistance Division, Office of Elderly and Assisted Housing, telephone (202) 708-0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708-0577. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes a housing assistance program to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by Fair Market Rents (FMRs), or payment standards in the Housing Voucher Program, established by HUD for different areas. In general, the FMR for an area is the amount that would be needed to rent privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Section 8(c) of the Act requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually, to be effective on October 1 of each year. The FMRs must reflect changes based on the most recent available data so FMRs will be current for the year in which they apply. Today's notice announces and contains final FY 1994 FMRs for all areas. The large number of comments received late in the extended comment period prevented HUD from completing its review of all comments. The FMRs for 612 FMR areas, therefore, will continue to use the FY 1993 FMRs. These 612 areas, and the areas with RDD survey results higher than the proposed FMRs published on May 6, are identified by asterisk (* next to the FMR schedules) in Schedule B of this notice. There will be a second publication of final FMRs later this year to announce revisions, as appropriate, for the areas whose FMRs are still being evaluated.

Metropolitan Area Definitions

In the May 6, 1993 publication of the proposed FMRs, HUD announced that the FMR area definitions, with several exceptions, incorporated the changes made in the definitions of metropolitan areas by the Office of Management and Budget (OMB Bulletin No. 93-05). The HUD exceptions were for nine large metropolitan areas whose revised OMB definitions encompassed larger areas than what HUD considers appropriate for FMR area definitions.

At that time, the metropolitan area definitions for both the Boston and New York-Northern New Jersey areas were still under review by OMB. HUD decided, therefore, to continue using the previous definitions until OMB made its final decisions and HUD could evaluate them. On June 30, 1993, OMB announced its revised definitions in OMB Bulletin No. 93-17.

OMB's final decisions were, with minor differences, to return to the pre-1993 definitions for both the Boston and New York-Northern New Jersey areas. For the Boston area, the only significant change was to combine the former Salem-Gloucester PMSA with the former Boston PMSA to form the new Boston MA-NH PMSA. This change increased the FMRs for the Salem-Gloucester area, but did not change the Boston area FMRs. For the New York-Northern New Jersey area, Pike County Pennsylvania was combined with Orange County, New York to form the Newburgh NY-PA PMSA. This had the effect of increasing the FMRs for Pike County but did not change those for Orange County. Because these changes had no significant impact on HUD's existing FMR areas, this publication, adopts the revised OMB definitions of the Primary Metropolitan Statistical Areas (PMSAs) that comprise the greater Boston and the greater New York metropolitan areas as the area definitions for the final FY 1994 FMRs.

HUD also proposed modifying the FMR area definitions for seven other metropolitan areas by deleting counties that OMB had added to its revised definitions. The decision to delete these counties was based on an evaluation conducted by HUD headquarters and field staff. The counties deleted from the FMR areas are those that are the most remote from the central cities/counties of the metropolitan area and have the lowest rents, in most cases significantly below the FMR area rent averages. The following counties are deleted from the FMR area definitions of the seven areas:

FMR Area and Changes in Previous FMR Area

Atlanta, GA—Deleted Carroll, Pickens, Spalding, and Walton Counties.
Chicago, IL—Deleted Dekalb, Grundy and Kendall Counties.
Cincinnati-Hamilton, OH-KY-IN—Deleted Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana.
Dallas, TX—Deleted Henderson County.
Lafayette, LA—Deleted St. Landry and Acadia Parishes.
New Orleans, LA—Deleted St. James Parish.
Washington, DC—Deleted Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia.

The counties deleted from the FMR areas are included in Schedule B within their respective states as separate metropolitan FMR areas. Public comments with survey data questioning the accuracy of the proposed FMRs have

been submitted for two of these areas—Brown County, Ohio and Jefferson County, West Virginia. The FMRs for these two counties, therefore, will remain at the FY 1993 levels pending completion of the review of comments for the second publication of final FY 1994 FMRs. The only comments received concerning the revised FMR areas for the above areas were several from Lake County, Illinois, requesting that it be designated a separate FMR area independent of the Chicago FMR area. On the basis of its analysis, HUD has determined that Lake County is appropriately categorized as part of the Chicago housing market area and should remain a part of the Chicago FMR area. HUD, therefore, has not changed the definition.

OMB also modified the definitions of four other metropolitan areas in its final Bulletin. The four are: Augusta-Aiken, GA–SC; Baton Rouge, LA; Huntington-Ashland, WV–KY–OH; and Wilmington, NC. HUD is implementing the new definitions because the changes involved adding small counties that did not affect the FMRs or significantly alter the FMR area definitions.

HUD also proposed in the May 6, 1993 Notice that the FMRs for the independent cities and surrounding counties in Virginia be established by combining the city and county data, rather than having separate FMRs for the cities and counties. The final FY 1994 FMRs are based on the following FMR areas:

FMR area (county)	Independent cities included
Allegheny	Clifton Forge and Covington.
Augusta	Staunton and Waynesboro.
Carroll	Galax.
Frederick	Winchester.
Greensville	Emporia.
Halifax	South Boston.
Henry	Martinsville.
Montgomery	Radford.
Rockbridge	Buena Vista and Lexington.
Rockingham	Harrisonburg.
Southampton	Franklin.
Wise	Norton.

Public comments concerning the accuracy of the FMRs were submitted for two of these areas—the Augusta and Rockingham FMR areas. The FMRs for Augusta County and the cities of Staunton and Waynesboro will remain at the FY 1993 levels, pending evaluation of the comments for the second publication of final FMRs. The FMRs for Rockingham County and Harrisonburg City are being held at the FY 1993 levels for Harrisonburg, which had the higher FMRs of the two.

Method Used to Develop the FY 1994 FMRs

FMR Standard

The FMRs are gross rent estimates; they include shelter rent and the cost of utilities, except telephone. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many families as possible. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units. The current definition used is the 45th percentile rent, the dollar amount below which 45 percent of the standard quality rental housing units rent. The 45th percentile rent is drawn from the distribution of rents of units which are occupied by recent movers (renter households who moved into their unit within the past 15 months). Public housing units and newly built units less than two years old are excluded.

Data Sources

HUD used the most accurate and current data available to develop the FMR estimates. Three sources of survey data were used as the basis for the base-year estimates. They are: (1) The 1990 Census; (2) the RDD telephone surveys conducted since the Census; and (3) the post-1990 Census AHSs available up to the time the FMR estimates were prepared. The base-year FMRs were then updated using Consumer Price Index (CPI) data for rents and utilities or the HUD Regional rent change factors developed from RDD surveys. Annual average CPI data are available individually for 95 metropolitan FMR areas. RDD Regional rent change factors are developed annually for the metropolitan and nonmetropolitan parts of each of the 10 HUD Regions (a total of 20 separate factors). The RDD factors are used to update the base year estimates for all FMR areas that do not have their own local CPI survey.

The decennial Census provides statistically reliable rend data for use in establishing base-year FMRs. AHSs are conducted by the Bureau of the Census for HUD and have comparable accuracy to the decennial Census. These surveys enable HUD to develop between-census revisions for 44 of the largest metropolitan areas on a revolving schedule of 11 areas annually. The RDD telephone survey technique is based on a sampling procedure that uses computers to select statistically random samples of rental housing, dial and keep track of the telephone numbers and tabulate the responses.

Public Comments

In response to the request for public comments on the proposed FY 1994 FMRs, HUD received over 2,500 comments covering over 1,100 FMR areas. In order to meet the October 1 deadline and still ensure that all of the comments are fully evaluated, HUD has decided to delay its final decisions on the 612 FMR areas for which reviews have not been completed. The final FY 1994 FMRs for these areas are published at the FY 1993 levels. They and the areas with increased FMRs resulting from RDD surveys completed since the proposed FMRs were published are identified in the Schedule B with an asterisk (*) next to the FMR schedule. A second Federal Register publication later this year will announce the revisions approved, as appropriate, for these areas and the areas that had RDD surveys in process and had notified HUD by the August 31, 1993 deadline.

Many commenters expressed their concern that owners would have to accept the reduced FMRs and would not renew leases at a lower rent, and families would be forced to move. The Department wants to assure the PHAs administering the program and the families that are currently participating in the section 8 program that current participants will not be forced to move or have to pay a higher portion of the rent. The rents specified in the housing assistance contract between the owner and the PHA will continue to be paid by the PHA unless the owner requests a rent increase in accordance with the provisions of the housing assistance contract. In such cases, the rent increase will be calculated using the annual adjustment factors and will be approved by the PHA if the new rent does not exceed the amount of rent charged for comparable unassisted units. The amount of rent the family pays will continue to be based on the family's income, and for families in the rental voucher program the applicable payment standard. The new FMRs will be used for new families entering the program or for current participants when they move to a new unit.

RDD Surveys

Both HUD and PHAs used RDD telephone surveys to test the reliability of the proposed FY 1994 FMRs. The RDD surveys were concentrated in areas with large decreases proposed in FY 1994 FMRs where the Census-based

estimates were of most concern. The surveys are designed to ensure that estimates produced are within $20 of the true 45th percentile FMR standard. Of the 37 HUD RDD surveys completed this past summer, 21 had estimates that were within $20 of the proposed FMR, eight had estimates above the $20 range, and eight had estimates below the $20 range. The results of these surveys validated the procedures that HUD used to rebenchmark FMRs with the 1990 Census.

For the areas where RDD survey FMRs are higher than the proposed FMRs, the FMRs published for effect are based on the RDD surveys. The 1993 FMRs and the proposed and final 1994 FMRs for these areas are as follows:

	State	2-bedroom FMR's		
		FY 93 FMR	Proposed FY94 FMR	RDD-based FY94 FRM
HUD RDD surveys with increases				
Humboldt Co	CA	$583	$503	$552
Bannock Co	ID	478	345	357
Boise	ID	594	440	485
Kootenai Co	ID	478	403	501
Peoria	IL	552	426	450
Duluth	MN	466	382	422
Baker Co	OR	552	336	389
Deschutes Co	OR	584	504	543
Eugene	OR	608	521	536
Grant Co	OR	552	352	400
Malheur Co	OR	527	336	389
Provo	UT	462	388	409
Ferry Co	WA	424	362	382
Pend Oreille Co	WA	424	362	382
Spokane	WA	501	432	491
Stevens Co	WA	424	358	379
PHA RDD surveys with increases				
Mobile	AL	447	388	401
Phoenix	AZ	505	502	512
Humboldt Co	CA	583	503	521
Ft. Collins-Loveland	CO	581	472	530
Flathead Co	MT	495	382	419
Gallatin Co	MT	544	418	436
Great Falls	MT	487	394	395
Lewis & Clark Co	MT	564	398	413
Missoula Co	MT	495	415	476
Tulsa MSA	OK	396	397	467
Bryan-College St	TX	572	486	497

RDD survey results that are lower than the proposed FY 1994 FMRs are not being used this year, but will be used in developing the proposed FY 1995 FMRs. For such areas, this publication makes effective the proposed FY 1994 FMRs published on May 6, 1993.

RDD Surveys With No Change or Decreases

Baton Rouge, LA
Beaufort Co., NC
Billings, MT
Boston, MA
Dimmit Co., TX
Drew Co., AK
Duval Co., TX
Frio Co., TX
Gage Co., NE
Harrisburg, PA
Holmes Co., FL
Imperial Co., CA
Indiana Co., PA
Jamestown, NY
LaSalle Co., TX
Live Oak Co., TX
McMullen Co., TX
Miami, FL
Park County, MT
Raleigh Co., WV
Washington Co., FL
Zavala Co., TX

RDD surveys contracted for by PHAs have fixed sample size targets which normally produce estimates that are statistically reliable within a plus/minus $20 range at the 95 percent confidence level. The HUD surveys have sample sizes that are variable—they are always at least as large as required of PHAs, but are expanded when survey estimates are found to be less statistically reliable than desired. In unusual instances, HUD sample sizes are much larger than required of PHAs.

In the case of Humboldt County (CA), both HUD and the PHA funded RDD surveys. The results of both were statistically consistent in a technical sense, but HUD's estimate was $31 higher. The PHA survey had a very large estimation error because of the unusual characteristics of the area's rental market. To achieve the degree of statistical precision sought, the HUD sample size was much larger than normally required and produced the more accurate (and, in this case, higher) result.

HUD continues to recommend use of RDD surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of $12,0000–$20,000. Areas with 500 or more units meet this criterion, and areas with fewer units may meet it if the actual two-bedroom FMR rent standard is significantly different than that proposed by HUD. Interested organizations concerned about FMR accuracy may wish to begin contracting for an RDD survey in the next few months, since it takes two to three months to obtain survey rent estimates after contract award. The "PHA Guide To Conducting A Fair Market Rent Telephone Survey" is available from

HUD USER by calling 1–800–245–2691. This guide provides information on whether a PHA should consider using this approach, and includes a draft contractor solicitation letter and Contract Statement of Work.

FMRs For Flood Damaged Areas in the Midwest

Under the authority granted in 24 CFR part 899, the Secretary finds good cause to waive the regulatory requirements that govern requests for geographic area FMR exceptions for the flood areas that have been declared Federal disaster areas. HUD does not yet have accurate information on the number of FMR areas that experienced substantial losses and damage to the rental housing stock due to the storms and floods of the past summer in the midwestern states. Recognizing, however, that demand pressures and repair costs related to the disaster will have a direct effect on local rent levels, HUD is prepared to grant FMR exceptions under the following conditions. For areas where the proposed FMRs published on May 6, are made final in this publication, FMR exceptions up to 10 percent above the final FY 1994 FMRs may be approved for single-county FMR areas and for individual county parts of multi-county FMR areas. Exceptions shall not be approved for the areas (identified by asterisk) with proposed FMR decreases that are continuing to use the higher FY 1993 FMRs until the decisions on the public comments are announced in the second publication of final FY 1994 FMRs. The flood-related FMR exceptions will be approved by the HUD field office with jurisdiction on the grounds that: (1) the affected counties qualify as disaster areas under the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and (2) the PHA certifies that demand pressures and/or damage to the rental housing stock is so substantial that is has resulted in an increase in the prevailing rent levels. Such exceptions must be requested in writing by the responsible PHAs. The exceptions approved for this special disaster-related purpose will remain in effect until superseded by final FY 1995 FMRs.

Manufactured Home Space FMRs

In response to the May 6, 1993 proposed FMRs for manufactured home spaces, the Department received six comments. Two of the comments—one from Tompkins County, NY and the other from Orange County, NY—contained sufficient information to support modifications of the final FMRs.

Other Matters

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Rental Certificate program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities, because FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 program.

The General Counsel, as the Designated Official under Executive Order No. 12606, The Family, has determined that this notice will not have a significant impact on family formation, maintenance, or well-being. The notice amends Fair Market Rent Schedules for various Section 8 assisted housing programs, and does not affect the amount of rent a family receiving rental assistance pays, which is based on a percentage of the family's income.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, *Federalism*, has determined that this notice will not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. The Fair Market Rent Schedules do not have any substantial direct impact on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibility among the various levels of governments.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower Income Housing Assistance Program (section 8).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are amended as follows:

Dated: September 23, 1993.

Henry G. Cisneros,

Secretary.

Section 8 Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program; Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. FMRs for the Section 8 Certificate program (Schedule B) are established for Metropolitan Statistical Areas (MSAs), Primary Metropolitan Statistical Areas (PMSAs), other HUD-designated metropolitan FMR areas. FMRs also are established for nonmetropolitan counties and county equivalents in the United States, Puerto Rico, the Virgin Islands and the Pacific Islands and for nonmetropolitan parts of counties in the New England States.

b. FMRs for the areas in Virginia shown in the table below are established by combining the 1990 Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B includes only the name of the nonmetropolitan county. The full definitions of these areas including the independent cities are as follows:

Virginia nonmetropolitan county FMR area	Virginia independent cities included with county
Allegheny	Clifton Forge and Covington.
Augusta	Staunton and Waynesboro.
Carroll	Galax.
Frederick	Winchester.
Greensville	Emporia.
Halifax	South Boston.
Henry	Martinsville.
Montgomery	Radford.
Rockbridge	Buena Vista and Lexington.
Rockingham	Harrisonburg.
Southampton	Franklin.
Wise	Norton.

c. FMRs for Manufactured Home spaces in the Section 8 Certificate program (Schedule D) are established for MSAs, PMSAs, HUD-designated metropolitan counties, and for selected nonmetropolitan counties and the residual nonmetropolitan part of each State.

2. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedules B and D are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each State.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one State can be identified by consulting the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

e. The FMRs are listed by dollar amount on the first line beginning with the FMR area name.

BILLING CODE 4210-32-M

ALABAMA

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston, AL MSA	208	279	352	490	555	Calhoun
Birmingham, AL MSA	335	378	440	595	661	Blount, Jefferson, St. Clair, Shelby
Columbus, GA-AL MSA	324	362	431	565	613	Russell
Decatur, AL MSA	312	315	398	514	614	Lawrence, Morgan
Dothan, AL MSA	292	299	370	510	518	Dale, Houston
Florence, AL MSA	270	281	375	491	525	Colbert, Lauderdale
Gadsden, AL MSA	232	294	330	430	542	Etowah
Huntsville, AL MSA	327	384	474	630	749	Limestone, Madison
Mobile, AL MSA	*313	345	401	538	631	Baldwin, Mobile
Montgomery, AL MSA	361	387	456	621	748	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	309	331	441	605	640	Tuscaloosa

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barbour	159	227	290	402	475
Bullock	*221	268	316	397	444
Chambers	167	268	304	387	499
Chilton	246	249	320	400	448
Clarke	223	225	296	391	486
Cleburne	163	224	299	400	419
Conecuh	146	199	265	332	372
Covington	*217	263	311	389	436
Cullman	*262	318	377	471	528
Dekalb	*249	301	353	441	497
Fayette	213	236	289	371	404
Geneva	209	211	265	369	435
Hale	146	236	265	332	372
Jackson	259	273	329	411	540
Lee	248	346	444	577	729
Macon	259	291	388	485	543
Marion	146	199	265	369	372
Monroe	161	220	293	408	410
Pickens	228	231	307	385	431
Randolph	207	210	281	351	460
Talladega	217	243	315	438	442
Walker	*299	365	428	535	599
Wilcox	153	199	265	369	372

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bibb	182	248	331	454	543
Butler	*225	273	322	404	452
Cherokee	160	244	291	399	448
Choctaw	164	225	265	337	372
Clay	192	195	259	336	426
Coffee	235	330	428	595	669
Coosa	162	223	296	400	415
Crenshaw	*221	268	316	397	444
Dallas	231	244	326	436	456
Escambia	224	233	284	395	398
Franklin	*210	256	301	377	421
Greene	164	185	208	290	294
Henry	229	232	308	386	433
Lamar	146	199	265	369	372
Lowndes	*221	268	316	397	444
Marengo	209	236	265	369	425
Marshall	271	278	342	476	562
Perry	173	236	265	369	390
Pike	*234	286	339	422	473
Sumter	222	224	295	369	414
Tallapoosa	239	254	314	394	440
Washington	146	236	265	369	372
Winston	171	233	311	389	436

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

A L A S K A

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK MSA	*459	558	656	820	918	Anchorage

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aleutian East	482	543	611	763	1001
Bethel	621	778	984	1232	1379
Dillingham	601	610	812	1016	1138
Haines	448	555	632	859	885
Kenai Peninsula	*457	555	653	817	916
Kodiak Island	647	711	923	1154	1496
Matanuska-Susitna	*421	511	601	751	841
North Slope	718	737	910	1265	1474
Pr.Wales-Outer Ketchikan	337	533	613	851	901
Skagway-Yakutat-Angoon	412	418	542	678	760
Valdez-Cordova	*625	758	893	1116	1250
Wrangell-Petersburg	*556	675	794	993	1111

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aleutian West	408	459	516	646	723
Bristol Bay	498	575	648	900	978
Fairbanks North Star	*470	571	695	869	973
Juneau	*572	695	890	1057	1184
Ketchikan Gateway	*600	728	857	1073	1200
Lake & Peninsula	384	622	699	874	979
Nome	633	783	879	1223	1380
Northwest Arctic	760	856	961	1337	1577
Sitka	*556	675	794	993	1111
Southeast Fairbanks	422	443	534	668	749
Wade Hampton	359	542	610	762	854
Yukon-Koyukuk	480	541	609	761	882

A R I Z O N A

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	438	519	618	858	1014	Mohave
Phoenix-Mesa, AZ MSA	*338	408	512	711	839	Maricopa, Pinal
Tucson, AZ MSA	*343	392	490	612	686	Pima
Yuma, AZ MSA	334	397	529	737	742	Yuma

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Apache	247	278	312	425	512
Coconino	397	430	558	749	899
Graham	264	292	360	501	552
La Paz	295	333	374	520	613
Santa Cruz	323	385	475	594	717
Cochise	316	350	433	595	710
Gila	250	324	431	540	707
Greenlee	186	255	339	427	502
Navajo	256	302	360	501	534
Yavapai	361	377	502	699	770

A R K A N S A S

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR MSA	255	318	419	566	586	Benton, Washington
Fort Smith, AR-OK MSA	*273	333	393	494	553	Crawford, Sebastian
Little Rock-North Little Rock, AR MSA	343	380	452	624	728	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	337	392	462	642	674	Crittenden
Pine Bluff, AR MSA	261	311	409	515	670	Jefferson
Texarkana, TX-Texarkana, AR MSA	282	344	420	555	588	Miller

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

ARKANSAS continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Arkansas	251	254	339	473	495
Baxter	217	296	393	504	614
Bradley	210	222	297	413	487
Carroll	266	292	337	439	546
Clark	*237	291	341	427	480
Cleburne	258	261	326	453	519
Columbia	189	258	343	434	481
Craighead	*285	344	406	506	570
Dallas	170	232	310	412	434
Drew	*240	291	343	461	482
Fulton	235	238	302	377	492
Grant	236	281	315	438	517
Hempstead	182	249	332	441	491
Howard	186	254	339	425	476
Izard	169	226	302	401	423
Johnson	*223	270	320	401	447
Lawrence	171	233	311	388	511
Lincoln	246	263	351	470	491
Logan	238	251	302	377	423
Marion	171	234	312	434	512
Monroe	231	234	312	390	512
Nevada	211	256	340	474	477
Ouachita	264	268	342	477	562
Phillips	195	231	309	411	476
Poinsett	184	251	335	419	469
Pope	213	297	375	521	600
Randolph	166	260	302	386	489
Scott	166	263	302	380	495
Sevier	249	252	336	420	471
Stone	213	217	288	401	474
Van Buren	189	258	343	443	565
Woodruff	218	226	302	377	423

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Ashley	184	248	330	427	542
Boone	263	268	356	495	584
Calhoun	166	269	302	419	495
Chicot	168	228	305	388	427
Clay	206	235	302	377	495
Cleveland	163	223	298	372	488
Conway	206	281	375	469	526
Cross	236	287	334	465	547
Desha	196	245	326	453	457
Franklin	238	265	302	384	489
Garland	213	290	388	540	637
Greene	239	243	315	413	474
Hot Spring	189	258	343	430	481
Independence	239	277	312	434	512
Jackson	235	238	318	430	445
Lafayette	238	269	302	419	438
Lee	252	256	340	426	477
Little River	193	262	350	486	573
Madison	260	263	351	438	491
Mississippi	259	281	375	494	555
Montgomery	166	226	302	419	495
Newton	166	269	302	377	423
Perry	166	226	302	377	495
Pike	166	226	302	377	495
Polk	*242	293	344	430	484
Prairie	163	223	298	414	440
St. Francis	184	275	336	468	549
Searcy	162	224	296	411	414
Sharp	173	236	315	435	441
Union	288	303	365	489	598
White	190	256	340	474	477
Yell	236	268	334	418	468

CALIFORNIA

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield, CA MSA	*432	525	618	772	866	Kern
Chico-Paradise, CA MSA	309	394	525	720	862	Butte
Fresno, CA MSA	*394	479	565	705	791	Fresno, Madera

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

C A L I F O R N I A continued

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Los Angeles-Long Beach, CA PMSA	570	683	864	1167	1391	Los Angeles
Merced, CA MSA	*371	451	531	684	776	Merced
Modesto, CA MSA	*413	503	595	744	832	Stanislaus
Oakland, CA PMSA	538	651	815	1117	1337	Alameda, Contra Costa
Orange County, CA PMSA	653	714	882	1227	1367	Orange
Redding, CA MSA	348	386	483	672	792	Shasta
Riverside-San Bernardino, CA PMSA	*470	555	647	838	943	Riverside, San Bernardino
Sacramento, CA PMSA	440	496	620	862	1016	El Dorado, Placer, Sacramento
Salinas, CA MSA	542	633	764	1061	1114	Monterey
San Diego, CA MSA	*503	618	725	908	1016	San Diego
San Francisco, CA PMSA	613	794	1004	1376	1456	Marin, San Francisco, San Mateo
San Jose, CA PMSA	678	773	954	1308	1469	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA PMSA	*490	596	702	878	985	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA	592	658	834	1160	1310	Santa Barbara
Santa Cruz-Watsonville, CA PMSA	589	701	936	1301	1525	Santa Cruz
Santa Rosa, CA PMSA	538	610	791	1100	1299	Sonoma
Stockton-Lodi, CA MSA	393	445	569	791	934	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	507	577	704	978	1155	Napa, Solano
Ventura, CA PMSA	626	717	909	1209	1409	Ventura
Visalia-Tulare-Porterville, CA MSA	344	367	477	664	759	Tulare
Yolo, CA PMSA	443	506	624	868	1024	Yolo
Yuba City, CA MSA	307	352	452	629	633	Sutter, Yuba

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alpine	271	437	492	685	689
Calaveras	*433	526	620	774	868
Del Norte	298	408	543	755	891
Humboldt	*304	420	552	768	907
Inyo	302	407	522	684	731
Lake	*395	480	566	706	793
Mariposa	*433	526	620	774	868
Modoc	317	322	429	536	601
Nevada	376	513	685	952	1103
San Benito	437	514	643	895	1049
Siskiyou	306	334	444	577	729
Trinity	327	331	430	551	705

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Amador	402	443	590	821	916
Colusa	317	322	429	566	704
Glenn	289	355	438	562	614
Imperial	*410	499	588	735	823
Kings	334	387	484	673	793
Lassen	356	360	469	629	676
Mendocino	*427	464	610	763	854
Mono	445	532	708	984	1162
Plumas	*362	439	518	646	727
Sierra	265	389	480	668	787
Tehama	304	322	429	597	704
Tuolumne	*433	526	620	774	868

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

COLORADO

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder-Longmont, CO PMSA	398	478	613	852	1005	Boulder
Colorado Springs, CO MSA	307	353	472	657	776	El Paso
Denver, CO PMSA	332	408	544	755	891	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	*349	430	530	737	871	Larimer
Greeley, CO PMSA	*352	426	501	630	705	Weld
Pueblo, CO MSA	242	304	404	522	639	Pueblo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alamosa	*351	424	500	627	703
Baca	224	227	303	422	497
Chaffee	287	291	388	532	587
Clear Creek	345	411	466	649	765
Costilla	205	331	373	519	563
Custer	205	328	373	514	611
Dolores	202	326	365	457	512
Elbert	390	434	493	617	810
Garfield	385	412	521	651	854
Grand	423	428	542	678	820
Hinsdale	331	374	419	584	587
Jackson	205	279	373	466	522
Kit Carson	213	290	387	485	542
La Plata	*390	468	552	690	774
Lincoln	*306	368	428	536	602
Mesa	*441	535	632	790	885
Moffat	192	302	351	488	575
Montrose	255	297	376	523	617
Otero	235	279	373	466	560
Park	279	391	509	707	804
Pitkin	530	724	965	1274	1447
Rio Blanco	276	279	373	519	570
Routt	331	427	563	783	923
San Juan	*351	424	500	627	703
Sedgwick	164	224	299	374	471
Teller	307	418	558	775	781
Yuma	198	270	360	500	503

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Archuleta	*351	424	500	627	703
Bent	205	280	374	476	523
Cheyenne	205	280	374	467	614
Conejos	172	278	312	391	485
Crowley	172	269	312	415	512
Delta	276	279	373	499	522
Eagle	491	534	712	991	1169
Fremont	229	301	401	558	658
Gilpin	328	470	596	786	871
Gunnison	317	334	428	596	703
Huerfano	219	279	373	481	611
Kiowa	192	312	351	446	501
Lake	328	332	444	554	692
Las Animas	256	318	365	509	600
Logan	205	279	373	499	522
Mineral	258	290	327	413	537
Montezuma	*351	424	500	627	703
Morgan	272	276	369	500	604
Ouray	254	348	463	588	750
Phillips	229	233	310	413	453
Prowers	248	251	337	457	552
Rio Grande	205	279	373	496	522
Saguache	201	295	364	456	529
San Miguel	*464	561	661	827	927
Summit	414	496	636	885	1044
Washington	260	306	373	466	611

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

CONNECTICUT

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT PMSA	533	692	833	1042	1300	Fairfield county towns of Bridgeport town, Easton town Fairfield town, Monroe town, Shelton town Stratford town, Trumbull town New Haven county towns of Ansonia town, Beacon Falls town Derby town, Milford town, Oxford town, Seymour town
Danbury, CT PMSA	631	754	942	1244	1433	Fairfield county towns of Bethel town, Brookfield town Danbury town, New Fairfield town, Newtown town Redding town, Ridgefield town, Sherman town Litchfield county towns of Bridgewater town New Milford town, Roxbury town, Washington town
Hartford, CT PMSA	446	554	709	887	1078	New Haven county towns of Hartford county towns of Avon town, Berlin town Bloomfield town, Bristol town, Burlington town Canton town, East Granby town, East Hartford town East Windsor town, Enfield town, Farmington town Glastonbury town, Granby town, Hartford town Manchester town, Marlborough town, New Britain town Newington town, Plainville town, Rocky Hill town Simsbury town, Southington town, South Windsor town Suffield town, West Hartford town, Wethersfield town Windsor town, Windsor Locks town Litchfield county towns of Barkhamsted town Harwinton town, New Hartford town, Plymouth town Winchester town Middlesex county towns of Cromwell town, Durham town East Haddam town, East Hampton town, Haddam town Middlefield town, Middletown town, Portland town New London county towns of Colchester town, Lebanon town Tolland county towns of Andover town, Bolton town Columbia town, Coventry town, Ellington town Hebron town, Mansfield town, Somers town, Stafford town Tolland town, Vernon town, Willington town Windham county towns of Ashford town, Chaplin town Windham town
New Haven-Meriden, CT PMSA	518	636	786	1007	1165	Middlesex county towns of Clinton town, Killingworth town New Haven county towns of Bethany town, Branford town Cheshire town, East Haven town, Guilford town Hamden town, Madison town, Meriden town, New Haven town North Branford tow, North Haven town, Orange town Wallingford town, West Haven town, Woodbridge town
New London-Norwich, CT-RI MSA	476	575	700	876	1001	Middlesex county towns of Old Saybrook town New London county towns of Bozrah town, East Lyme town Franklin town, Griswold town, Groton town, Ledyard town Lisbon town, Montville town, New London town North Stonington t, Norwich town, Old Lyme town Preston town, Salem town, Sprague town, Stonington town Waterford town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

C O N N E C T I C U T continued

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA	784	918	1119	1500	1657	Windham county towns of Canterbury town, Plainfield town Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT MSA	401	540	668	834	934	Litchfield county towns of Bethlehem town, Thomaston town Watertown town, Woodbury town New Haven county towns of Middlebury town, Naugatuck town Prospect town, Southbury town, Waterbury town Wolcott town
Worcester, MA MSA	461	558	697	871	976	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Hartford	343	555	625	868	1024	Hartland town
Litchfield	398	542	723	904	1028	Canaan town, Colebrook town, Cornwall town, Goshen town Kent town, Litchfield town, Morris town, Norfolk town North Canaan town, Salisbury town, Sharon town Torrington town, Warren town
Middlesex	589	668	892	1240	1463	Chester town, Deep River town, Essex town Westbrook town
New London	500	612	695	897	1139	Lyme town, Voluntown town
Tolland	343	555	625	868	874	Union town
Windham	394	482	625	782	981	Brooklyn town, Eastford town, Hampton town Killingly town, Pomfret town, Putnam town, Scotland town Sterling town, Woodstock town

D E L A W A R E

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	*385	467	550	687	770	Kent
Wilmington-Newark, DE-MD PMSA	407	538	626	851	1026	New Castle

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Sussex	*385	467	550	687	770

D I S T . O F C O L U M B I A

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Washington, DC-MD-VA	633	719	844	1149	1385	District of Columbia

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

F L O R I D A

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	347	430	551	732	777	Flagler, Volusia
Fort Lauderdale, FL PMSA	475	559	690	960	1132	Broward
Fort Myers-Cape Coral, FL MSA	411	474	571	795	830	Lee
Fort Pierce-Port Lucie, FL MSA	420	462	600	779	840	Martin, St. Lucie
Fort Walton Beach, FL MSA	351	391	444	618	729	Okaloosa
Gainesville, FL MSA	*331	403	473	594	663	Alachua
Jacksonville, FL MSA	369	413	498	658	731	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	329	370	452	578	663	Polk
Melbourne-Titusville-Palm Bay, FL MSA	350	438	548	734	855	Brevard
Miami, FL PMSA	471	590	737	1011	1173	Dade
Naples, FL MSA	394	555	668	928	1036	Collier
Ocala, FL MSA	*311	402	445	556	622	Marion
Orlando, FL MSA	447	509	606	795	971	Lake, Orange, Osceola, Seminole
Panama City, FL MSA	318	343	419	582	624	Bay
Pensacola, FL MSA	*309	378	445	556	622	Escambia, Santa Rosa
Punta Gorda, FL MSA	345	417	556	772	911	Charlotte
Sarasota-Bradenton, FL MSA	370	470	596	768	835	Manatee, Sarasota
Tallahassee, FL MSA	378	417	549	719	867	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	369	439	543	722	874	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton, FL MSA	487	572	707	940	1160	Palm Beach

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Baker	209	339	382	478	565
Calhoun	159	217	290	400	475
Columbia	260	288	330	458	541
Dixie	232	260	293	408	481
Gilchrist	195	270	355	445	583
Gulf	205	280	374	468	523
Hardee	235	382	428	535	600
Highlands	304	337	448	562	628
Indian River	343	461	592	741	829
Jefferson	184	246	328	449	538
Levy	260	264	330	412	535
Madison	229	257	290	402	449
Okeechobee	244	395	444	555	622
Sumter	296	324	376	470	527
Taylor	288	291	388	485	617
Wakulla	*273	332	390	488	548
Washington	161	256	294	368	412

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bradford	196	314	356	482	532
Citrus	301	324	431	546	602
Desoto	310	314	414	542	579
Franklin	217	348	396	550	554
Glades	340	384	431	539	602
Hamilton	208	217	290	362	475
Hendry	311	400	471	589	660
Holmes	213	217	290	402	475
Jackson	*221	267	315	396	444
Lafayette	239	242	323	402	529
Liberty	169	276	308	386	433
Monroe	528	595	765	1055	1254
Putnam	271	304	342	461	525
Suwannee	273	277	346	433	484
Union	247	251	335	438	469
Walton	*290	350	413	518	581

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092493

GEORGIA

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	272	288	383	532	536	Dougherty, Lee
Athens, GA MSA	340	364	473	643	775	Clarke, Madison, Oconee
Atlanta, GA	454	506	589	784	949	Barrow, Bartow, Cherokee, Clayton, Cobb, Coweta, Dekalb Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry Newton, Paulding, Rockdale
Augusta-Aiken, GA-SC MSA	325	389	458	623	738	Columbia, Mcduffie, Richmond
Carroll County, GA	303	307	410	570	673	Carroll
Chattanooga, TN-GA MSA	316	370	444	573	654	Catoosa, Dade, Walker
Columbus, GA-AL MSA	324	362	431	565	613	Chattahoochee, Harris, Muscogee
Macon, GA MSA	336	375	435	602	618	Bibb, Houston, Jones, Peach, Twiggs
Pickens County, GA	211	287	384	533	538	Pickens
Savannah, GA MSA	338	421	489	657	685	Bryan, Chatham, Effingham
Spalding County, GA	329	333	445	560	623	Spalding
Walton County, GA	317	342	440	612	721	Walton

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Appling	174	259	317	422	444
Bacon	174	269	317	396	444
Baldwin	228	339	414	530	579
Ben Hill	177	247	317	396	520
Bleckley	174	237	317	408	485
Brooks	234	237	317	408	520
Burke	210	213	285	397	399
Calhoun	162	177	216	271	303
Candler	249	282	317	440	444
Chattooga	184	275	335	419	529
Clinch	167	228	303	422	425
Colquitt	234	237	317	408	444
Crawford	264	268	335	425	469
Dawson	255	348	464	580	716
Dodge	234	237	317	440	463
Early	234	237	317	415	466
Elbert	245	277	311	389	510
Evans	249	263	317	427	444
Floyd	259	307	399	528	558
Gilmer	253	256	342	428	480
Glynn	379	422	480	642	787
Grady	249	269	317	411	520
Habersham	291	320	368	512	592
Hancock	199	293	362	453	530
Hart	192	303	349	436	489

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Atkinson	216	243	273	363	383
Baker	175	215	265	369	379
Banks	183	293	333	464	546
Berrien	174	237	317	440	444
Brantley	188	257	343	430	481
Bulloch	330	335	430	554	704
Butts	248	340	453	606	634
Camden	372	420	471	654	772
Charlton	254	257	343	430	512
Clay	153	209	279	366	390
Coffee	174	253	317	402	520
Cook	174	282	317	440	520
Crisp	249	282	317	440	520
Decatur	174	282	317	402	444
Dooly	175	206	275	382	384
Echols	249	282	317	440	444
Emanuel	244	276	308	426	433
Fannin	177	237	317	440	444
Franklin	192	248	331	431	543
Glascock	148	201	269	336	440
Gordon	321	326	407	526	669
Greene	216	294	392	491	550
Hall	281	427	502	628	702
Haralson	256	259	347	475	503
Heard	257	260	348	435	487

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

G E O R G I A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Irwin	174	237	317	396	444
Jasper	220	300	399	543	558
Jefferson	216	243	273	380	448
Johnson	177	237	317	396	444
Lanier	174	282	317	440	444
Liberty	333	373	423	588	592
Long	215	348	391	490	547
Lumpkin	223	361	406	544	666
Macon	252	258	319	399	446
Meriwether	185	287	337	428	472
Mitchell	217	221	294	409	483
Montgomery	232	235	313	391	438
Murray	207	310	378	476	530
Pierce	234	256	317	411	444
Polk	210	291	384	533	538
Putnam	215	270	359	499	589
Rabun	189	303	344	431	544
Schley	174	237	317	440	444
Seminole	174	263	317	440	444
Stewart	174	237	317	440	520
Talbot	173	236	314	437	516
Tattnall	234	237	317	440	444
Telfair	211	279	317	396	444
Thomas	195	315	354	457	496
Toombs	240	243	324	404	531
Treutlen	139	189	253	341	415
Turner	186	254	339	431	475
Upson	265	269	358	447	501
Warren	249	282	317	396	444
Wayne	245	277	311	433	510
Wheeler	207	280	314	394	453
Whitfield	243	347	419	535	631
Wilkes	174	282	317	408	494
Worth	197	273	359	449	503

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Jackson	284	289	385	481	631
Jeff Davis	174	282	317	440	520
Jenkins	174	282	317	440	520
Lamar	212	319	367	467	602
Laurens	275	303	352	440	578
Lincoln	174	282	317	440	444
Lowndes	276	332	404	564	624
Mcintosh	176	285	321	401	449
Marion	171	233	311	389	510
Miller	174	282	317	440	444
Monroe	198	288	360	501	504
Morgan	212	291	388	485	543
Oglethorpe	218	282	317	440	491
Pike	300	325	410	571	575
Pulaski	239	269	302	421	495
Quitman	163	266	299	416	419
Randolph	223	227	301	419	494
Screven	210	268	335	419	469
Stephens	264	268	356	493	532
Sumter	*265	325	384	479	539
Taliaferro	145	234	263	329	432
Taylor	222	249	281	390	394
Terrell	175	268	319	411	523
Tift	218	263	337	451	526
Towns	177	242	323	448	529
Troup	244	369	415	519	581
Union	228	310	412	517	578
Ware	262	294	331	414	543
Washington	249	282	317	415	520
Webster	249	282	317	440	520
White	199	323	362	504	594
Wilcox	160	258	291	367	478
Wilkinson	178	288	324	404	515

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1 30 times the 4 BR FMR. 092493

HAWAII

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Honolulu, HI MSA	760	909	1069	1445	1563	Honolulu

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Hawaii	460	598	687	914	1126
Maui	733	910	1110	1433	1622
Kauai	580	866	1056	1395	1510

IDAHO

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City, ID MSA	*349	387	485	674	795	Ada, Canyon

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	162	262	295	383	412
Bear Lake	174	239	318	442	522
Bingham	*336	410	478	600	672
Boise	207	335	376	470	526
Bonneville	*361	437	517	646	724
Butte	162	221	295	410	412
Caribou	157	216	288	400	471
Clark	167	268	305	423	427
Custer	180	247	328	443	538
Franklin	167	247	305	420	499
Gem	*321	392	462	576	647
Idaho	*334	405	478	600	672
Jerome	*342	415	490	612	688
Latah	*334	405	478	600	672
Lewis	222	225	300	375	480
Madison	254	258	339	471	513
Nez Perce	*334	405	478	600	672
Owyhee	*321	392	462	576	647
Power	176	281	323	403	451
Teton	282	286	376	523	618
Valley	*321	392	462	576	647
Bannock	*203	268	357	495	584
Benewah	162	258	296	382	414
Blaine	399	440	586	816	962
Bonner	*334	405	478	600	672
Boundary	195	282	344	430	481
Camas	162	239	295	368	412
Cassia	*342	415	490	612	688
Clearwater	*334	405	478	600	672
Elmore	*321	392	462	576	647
Fremont	167	263	296	387	485
Gooding	190	225	297	398	487
Jefferson	266	299	336	467	527
Kootenai	*326	375	501	696	822
Lemhi	*361	437	517	646	724
Lincoln	182	224	299	374	476
Minidoka	*342	415	490	612	688
Oneida	259	262	349	440	552
Payette	*321	392	462	576	647
Shoshone	*334	405	478	600	672
Twin Falls	*342	415	490	612	688
Washington	*321	392	462	576	647

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I L L I N O I S

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	292	358	478	664	702	Mclean
Champaign-Urbana, IL MSA	315	385	499	684	819	Champaign
Chicago, IL	*480	591	692	870	974	Cook, Dupage, Kane, Lake, Mchenry, Will
Davenport-Moline-Rock Island, IA-IL MSA	*368	448	528	659	738	Henry, Rock Island
Decatur, IL MSA	247	320	411	554	576	Macon
De Kalb County, IL	376	438	554	770	892	Dekalb
Grundy County, IL	328	379	505	667	708	Grundy
Kankakee, IL PMSA	295	352	469	609	657	Kankakee
Kendall County, Il	453	516	622	865	871	Kendall
Peoria-Pekin, IL MSA	*387	469	552	692	774	Peoria, Tazewell, Woodford
Rockford, IL MSA	*350	427	502	627	702	Boone, Ogle, Winnebago
St. Louis, MO-IL MSA	295	361	468	609	674	Clinton, Jersey, Madison, Monroe, St. Clair
Springfield, IL MSA	286	352	470	624	710	Menard, Sangamon

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	196	267	356	446	585
Bond	244	248	330	413	462
Bureau	237	314	369	466	517
Carroll	171	241	314	401	439
Christian	263	266	355	465	498
Clay	236	238	314	398	514
Crawford	177	248	321	447	450
De Witt	254	257	343	477	487
Edgar	185	249	319	399	447
Effingham	215	289	357	451	529
Ford	177	246	320	446	449
Fulton	181	246	329	428	510
Greene	226	251	314	401	514
Hancock	232	236	315	393	441
Henderson	171	236	314	392	442
Jackson	*303	366	433	544	608
Jefferson	250	294	367	500	514
Johnson	219	231	308	429	505
La Salle	215	292	390	527	590
Lee	279	287	382	478	537
Logan	277	294	391	489	614
Macoupin	217	274	351	450	491
Marshall	192	257	326	406	456
Massac	245	276	311	431	435
Montgomery	193	245	327	418	457

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alexander	171	236	314	392	514
Brown	177	241	321	401	527
Calhoun	151	244	275	382	385
Cass	251	255	340	426	476
Clark	171	236	314	430	439
Coles	260	310	413	549	648
Cumberland	182	254	314	437	471
Douglas	266	273	337	468	472
Edwards	232	236	314	392	514
Fayette	207	254	314	437	439
Franklin	179	248	326	434	456
Gallatin	161	240	292	406	425
Hamilton	171	279	314	392	439
Hardin	171	236	314	408	439
Iroquois	215	265	331	431	464
Jasper	167	272	306	426	489
Jo Daviess	277	299	351	442	491
Knox	*308	374	437	550	617
Lawrence	158	234	289	397	405
Livingston	221	302	402	518	564
Mcdonough	221	286	345	450	567
Marion	255	272	332	455	465
Mason	180	245	328	447	538
Mercer	190	258	345	432	504
Morgan	241	312	416	553	583

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092493

ILLINOIS continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Moultrie	207	263	351	485	491
Piatt	217	304	394	538	553
Pope	143	196	261	327	428
Putnam	190	281	317	441	444
Richland	239	242	311	388	435
Schuyler	184	281	317	416	466
Shelby	188	255	340	426	489
Stephenson	263	302	381	477	535
Vermilion	226	306	382	486	537
Warren	263	266	355	448	504
Wayne	163	231	296	379	486
Whiteside	258	294	391	489	549

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Perry	233	253	295	401	466
Pike	205	211	280	370	406
Pulaski	161	219	292	366	434
Randolph	236	269	337	462	472
Saline	231	241	321	418	450
Scott	182	248	330	413	462
Stark	171	234	313	435	438
Union	178	229	302	419	423
Wabash	188	266	341	454	560
Washington	219	299	398	498	646
White	171	256	302	392	423
Williamson	202	275	366	509	516

INDIANA

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington, IN MSA	299	387	516	716	845	Monroe
Cincinnati, OH-KY-IN	*342	415	489	611	684	Dearborn
Elkhart-Goshen, IN MSA	342	391	495	634	728	Elkhart
Evansville-Henderson, IN-KY MSA	265	324	421	527	589	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	294	377	466	601	653	Adams, Allen, De Kalb, Huntington, Wells, Whitley
Gary, IN PMSA	313	411	513	642	718	Lake, Porter
Indianapolis, IN MSA	*355	432	508	635	711	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison Marion, Morgan, Shelby
Kokomo, IN MSA	273	323	420	542	588	Howard, Tipton
Lafayette, IN MSA	294	373	497	692	816	Clinton, Tippecanoe
Louisville, KY-IN MSA	269	345	420	583	614	Clark, Floyd, Harrison, Scott
Muncie, IN MSA	*272	328	387	480	538	Delaware
Ohio County, IN	188	272	341	473	491	Ohio
South Bend, IN MSA	295	392	517	645	723	St. Joseph
Terre Haute, IN MSA	*280	342	399	497	551	Clay, Vermillion, Vigo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bartholomew	374	403	486	608	798
Blackford	218	298	396	495	554
Carroll	240	262	349	471	488
Crawford	178	242	323	403	503
Decatur	*312	381	448	563	631
Fayette	212	288	385	481	582
Franklin	204	278	370	464	608

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Benton	185	296	337	454	472
Brown	255	353	465	647	671
Cass	*274	335	394	493	552
Daviess	219	275	366	459	513
Dubois	238	282	372	487	559
Fountain	255	258	332	416	465
Fulton	294	308	372	516	521

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092493

I N D I A N A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Gibson	203	263	333	450	467
Greene	*258	312	371	465	519
Jackson	*312	381	448	563	631
Jay	254	261	323	449	452
Jennings	279	283	368	493	515
Kosciusko	250	352	425	552	595
La Porte	274	332	443	567	621
Marshall	318	323	430	542	602
Miami	*274	335	394	493	552
Newton	279	282	377	472	529
Orange	248	251	323	426	457
Parke	*265	323	381	477	534
Pike	178	264	323	426	452
Putnam	*300	365	429	536	600
Ripley	239	272	362	503	568
Spencer	180	255	328	456	504
Steuben	326	369	440	550	615
Switzerland	181	273	329	457	477
Wabash	219	291	343	477	522
Washington	191	261	348	463	490
White	266	285	365	456	599

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Grant	285	289	386	502	541
Henry	224	270	335	465	468
Jasper	214	323	362	492	506
Jefferson	266	298	338	469	473
Knox	277	299	397	497	556
Lagrange	272	312	399	518	603
Lawrence	238	282	377	498	529
Martin	181	244	323	449	477
Montgomery	311	327	408	517	572
Noble	305	310	386	498	549
Owen	256	260	347	448	568
Perry	178	244	323	449	506
Pulaski	214	295	339	424	475
Randolph	*251	305	359	448	504
Rush	275	278	349	485	568
Starke	233	292	370	464	518
Sullivan	192	262	350	438	525
Union	178	248	323	449	455
Warren	177	279	321	447	527
Wayne	245	287	373	466	541

I O W A

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	*359	433	510	640	719	Linn
Davenport-Moline-Rock Island, IA-IL MSA	*368	448	528	659	738	Scott
Des Moines, IA MSA	*355	432	509	639	716	Dallas, Polk, Warren
Dubuque, IA MSA	*331	400	472	592	662	Dubuque
Iowa City, IA MSA	301	385	494	687	811	Johnson
Omaha, NE-IA MSA	284	388	491	643	721	Pottawattamie
Sioux City, IA-NE MSA	*322	392	461	576	647	Woodbury
Waterloo-Cedar Falls, IA MSA	*360	434	512	642	721	Black Hawk

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

I O W A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	*265	324	380	479	534
Allamakee	*281	341	403	504	565
Audubon	*282	343	406	506	567
Boone	*322	390	459	575	645
Buchanan	*281	341	403	504	565
Butler	*281	341	403	504	565
Carroll	*282	343	406	506	567
Cedar	195	313	355	444	497
Cherokee	*282	343	406	506	567
Clarke	*265	324	380	479	534
Clayton	*281	341	403	504	565
Crawford	*282	343	406	506	567
Decatur	*265	324	380	479	534
Des Moines	*295	360	423	529	594
Emmet	*277	335	396	494	556
Floyd	*279	339	400	499	560
Fremont	*290	353	414	519	582
Grundy	*281	341	403	504	565
Hamilton	*282	343	406	506	567
Hardin	206	269	349	446	492
Henry	*295	360	423	529	594
Humboldt	*282	343	406	506	567
Iowa	200	300	365	467	512
Jasper	*297	363	426	533	598
Jones	238	241	318	420	450
Kossuth	201	275	367	460	514
Louisa	*295	360	423	529	594
Lyon	*277	335	396	494	556
Mahaska	*265	324	380	479	534
Marshall	*293	357	419	525	590
Mitchell	*279	339	400	499	560
Monroe	*265	324	380	479	534
Muscatine	241	308	410	545	574
Osceola	*277	335	396	494	556
Palo Alto	*277	335	396	494	556
Pocahontas	*282	343	406	506	567
Ringgold	*265	324	380	479	534
Shelby	*290	353	414	519	582
Story	325	395	465	646	739
Taylor	*265	324	380	479	534

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	*265	324	380	479	534
Appanoose	*265	324	380	479	534
Benton	258	262	349	437	492
Bremer	*360	434	512	642	721
Buena Vista	*277	335	396	494	556
Calhoun	*282	343	406	506	567
Cass	*290	353	414	519	582
Cerro Gordo	*279	339	400	499	560
Chickasaw	*281	341	403	504	565
Clay	*277	335	396	494	556
Clinton	*314	380	451	563	632
Davis	192	262	349	437	489
Delaware	192	278	349	437	495
Dickinson	*277	335	396	494	556
Fayette	*281	341	403	504	565
Franklin	*279	339	400	499	560
Greene	*282	343	406	506	567
Guthrie	*282	343	406	506	567
Hancock	*279	339	400	499	560
Harrison	*290	353	414	519	582
Howard	*281	341	403	504	565
Ida	*282	343	406	506	567
Jackson	*314	380	451	563	632
Jefferson	231	315	420	547	691
Keokuk	170	232	310	397	435
Lee	*295	360	423	529	594
Lucas	198	262	336	467	522
Madison	222	302	403	516	565
Marion	*297	363	426	533	598
Mills	*290	353	414	519	582
Monona	*282	343	406	506	567
Montgomery	*290	353	414	519	582
O'Brien	*277	335	396	494	556
Page	*290	353	414	519	582
Plymouth	*282	343	406	506	567
Poweshiek	*293	357	419	525	590
Sac	*282	343	406	506	567
Sioux	*277	335	396	494	556
Tama	235	281	374	467	525
Union	*265	324	380	479	534

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR

092493

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I O W A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Van Buren	197	246	324	451	454
Washington	216	269	349	446	572
Webster	*282	343	406	506	567
Winneshiek	*281	341	403	504	565
Wright	*282	343	406	506	567
Wapello	*314	379	450	561	630
Wayne	167	226	302	411	432
Winnebago	*279	339	400	499	560
Worth	*279	339	400	499	560

K A N S A S

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kansas City, MO-KS MSA	316	398	478	661	732	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	321	384	493	686	789	Douglas
Topeka, KS MSA	305	351	455	615	694	Shawnee
Wichita, KS MSA	298	360	481	649	702	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allen	215	219	276	385	453
Atchison	190	261	348	438	570
Barton	*259	315	372	465	521
Brown	177	241	322	403	529
Chautauqua	177	286	322	448	529
Cheyenne	210	213	273	376	381
Clay	177	241	322	403	451
Coffey	264	277	339	423	555
Cowley	272	275	367	489	526
Decatur	177	241	322	403	451
Doniphan	179	244	325	406	455
Elk	153	225	277	377	431
Ellsworth	232	235	314	437	440
Ford	273	322	402	506	571
Geary	310	326	407	526	571
Graham	194	214	246	343	404
Gray	177	258	322	403	451
Greenwood	177	241	322	448	451
Harper	173	243	315	439	489
Hodgeman	177	241	322	403	451
Jefferson	208	283	377	499	529
Kearny	283	286	381	512	562
Kiowa	238	241	322	441	529
Lane	157	257	287	400	403
Linn	207	241	322	448	451
Lyon	213	272	362	475	572
Anderson	177	241	322	448	451
Barber	169	231	308	427	431
Bourbon	212	241	322	444	487
Chase	177	286	322	415	451
Cherokee	175	253	320	418	448
Clark	192	276	350	438	490
Cloud	223	252	283	354	397
Comanche	148	219	270	348	377
Crawford	214	286	381	478	535
Dickinson	237	256	340	425	476
Edwards	177	241	322	448	490
Ellis	238	241	322	448	529
Finney	311	333	426	554	700
Franklin	276	281	374	467	584
Gove	168	272	305	424	427
Grant	*265	323	380	478	535
Greeley	177	286	322	448	451
Hamilton	177	241	322	403	529
Haskell	*265	323	380	478	535
Jackson	177	283	322	438	451
Jewell	142	193	258	322	368
Kingman	180	254	326	435	457
Labette	237	256	340	425	476
Lincoln	153	209	277	348	389
Logan	218	245	275	366	432
Mcpherson	258	262	349	478	489

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092493

KANSAS continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Marion	241	244	322	403	451
Meade	237	240	321	430	527
Montgomery	208	256	340	462	509
Morton	*265	323	380	478	535
Neosho	177	276	322	444	454
Norton	177	276	322	403	451
Osborne	130	185	235	327	387
Pawnee	*259	315	372	465	521
Pottawatomie	182	272	332	418	544
Rawlins	164	243	283	354	407
Republic	149	205	272	340	443
Riley	312	344	458	573	693
Rush	*259	315	372	465	521
Saline	*280	341	401	504	563
Seward	286	312	415	520	582
Sherman	177	244	322	432	451
Stafford	*259	315	372	465	521
Stevens	183	289	333	463	546
Thomas	177	241	322	441	529
Wabaunsee	238	241	322	448	451
Washington	150	206	274	380	385
Wilson	174	243	316	440	519

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Marshall	188	232	310	403	508
Mitchell	168	228	304	380	436
Morris	177	241	322	405	451
Nemaha	169	239	308	385	431
Ness	*265	323	380	478	535
Osage	238	241	322	429	451
Ottawa	193	269	316	395	443
Phillips	177	254	322	403	529
Pratt	*259	315	372	465	521
Reno	196	267	356	481	584
Rice	236	254	299	415	420
Rooks	148	202	271	358	444
Russell	184	270	328	456	460
Scott	*265	323	380	478	535
Sheridan	141	220	256	355	418
Smith	156	213	284	387	398
Stanton	177	259	323	449	491
Sumner	197	269	359	499	502
Trego	177	241	322	448	451
Wallace	170	274	309	429	506
Wichita	210	286	381	478	592
Woodson	189	241	322	403	451

KENTUCKY

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cincinnati, OH-KY-IN	*342	415	489	611	684	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	*297	374	468	569	632	Christian
Evansville-Henderson, IN-KY MSA	265	324	421	527	589	Henderson
Gallatin County, KY	212	317	387	484	634	Gallatin
Grant County, KY	207	284	377	525	620	Grant
Huntington-Ashland, WV-KY-OH MSA	*320	389	460	575	647	Boyd, Carter, Greenup
Lexington, KY MSA	*332	405	474	596	667	Bourbon, Clark, Fayette, Jessamine, Madison, Scott Woodford
Louisville, KY-IN MSA	269	345	420	583	614	Bullitt, Jefferson, Oldham
Owensboro, KY MSA	265	271	362	485	507	Daviess
Pendleton County, KY	239	276	368	461	516	Pendleton

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	160	244	291	404	407
Anderson	*304	371	436	545	611
Barren	*259	314	373	464	522
Bell	*263	322	379	473	532
Bracken	162	222	295	410	414
Breckinridge	*238	293	343	430	480
Caldwell	*260	316	376	469	526
Carlisle	230	233	294	368	445
Casey	145	197	263	329	368
Clinton	148	201	269	336	376
Cumberland	155	197	263	366	382
Elliott	195	197	263	329	432
Fleming	164	225	300	375	421
Franklin	*304	371	436	545	611
Garrard	*296	357	423	529	593
Grayson	*238	293	343	430	480
Hancock	*253	307	363	454	507
Harlan	*263	322	379	473	532
Hart	*205	250	294	367	411
Hickman	*250	303	355	446	500
Jackson	*224	271	320	401	450
Knott	*251	304	357	448	502
Larue	153	209	279	349	390
Lawrence	*224	271	322	403	451
Leslie	195	197	263	329	368
Lewis	146	199	265	353	435
Livingston	278	281	375	521	525
Lyon	175	239	318	397	445
Mccreary	*245	297	346	428	478
Magoffin	145	218	263	329	432
Marshall	*260	306	360	446	500
Mason	230	265	328	449	459
Menifee	*245	297	348	437	490
Metcalfe	145	227	263	329	368
Montgomery	*245	296	348	437	490
Muhlenberg	215	242	272	378	446
Nicholas	186	254	339	424	482
Owen	174	236	315	438	518
Perry	269	272	362	453	507
Powell	*220	266	314	395	444

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allen	168	260	306	399	430
Ballard	145	198	264	367	401
Bath	*245	296	348	437	490
Boyle	284	288	384	480	538
Breathitt	*251	304	357	448	502
Butler	*205	250	294	367	411
Calloway	*250	303	355	446	500
Carroll	236	266	299	374	491
Clay	*224	271	320	401	450
Crittenden	145	197	263	366	368
Edmonson	*205	250	294	367	411
Estill	*296	357	423	529	593
Floyd	*264	323	380	475	534
Fulton	240	253	338	423	493
Graves	183	249	332	416	472
Green	*245	297	346	428	478
Hardin	301	308	386	518	614
Harrison	*296	359	423	528	592
Henry	217	221	294	409	483
Hopkins	209	249	307	388	505
Johnson	178	243	324	427	453
Knox	*260	314	369	462	516
Laurel	*224	313	395	410	450
Lee	*251	304	357	448	502
Letcher	216	218	284	355	398
Lincoln	*296	357	423	529	593
Logan	191	259	347	458	485
Mccracken	*260	306	360	446	500
Mclean	145	197	263	366	376
Marion	148	239	269	374	440
Martin	163	223	297	396	489
Meade	249	310	356	471	586
Mercer	182	275	330	458	461
Monroe	204	230	258	329	380
Morgan	*245	297	348	437	490
Nelson	*238	293	343	430	480
Ohio	233	236	314	409	503
Owsley	152	208	278	347	389
Pike	*264	323	380	475	534
Pulaski	243	246	328	439	463

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092493

KENTUCKY continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Robertson	145	197	263	348	368
Rowan	*245	296	348	437	490
Shelby	243	318	356	496	499
Spencer	187	287	341	444	478
Todd	159	217	290	402	475
Trimble	155	249	281	390	394
Warren	*261	318	377	471	528
Wayne	*245	297	346	428	478
Whitley	*263	322	379	473	532

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Rockcastle	*224	271	320	401	450
Russell	158	216	288	360	402
Simpson	194	303	352	450	493
Taylor	241	272	305	425	483
Trigg	161	260	293	408	481
Union	236	240	319	444	446
Washington	*238	293	343	430	480
Webster	230	233	311	389	436
Wolfe	145	227	263	366	368

LOUISIANA

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	257	319	403	558	566	Rapides
Acadia Parishes, LA	*237	291	343	427	480	Acadia
Baton Rouge, LA MSA	*353	428	504	630	707	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA	242	296	379	527	622	Lafourche, Terrebonne
Lafayette, LA MSA	*353	428	504	630	707	Lafayette, St. Martin
Lake Charles, LA MSA	285	331	420	550	688	Calcasieu
Monroe, LA MSA	277	311	414	559	580	Ouachita
New Orleans, LA	322	368	460	626	756	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles St. John the Baptist, St. Tammany
St. James Parish, LA	213	290	387	483	541	St. James
St. Landry Parish, LA	170	240	307	385	467	St. Landry
Shreveport-Bossier City, LA MSA	293	334	419	561	687	Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allen	225	227	304	423	438
Avoyelles	199	201	269	374	441
Bienville	239	244	324	450	532
Cameron	167	271	304	423	426
Claiborne	174	237	317	397	444
De Soto	167	268	304	423	499
East Feliciana	181	248	329	413	462
Franklin	179	271	304	423	499
Iberia	*282	345	405	505	566
Jackson	167	227	303	379	425
La Salle	167	237	304	423	499
Madison	159	257	288	401	407
Natchitoches	271	278	358	496	500
Red River	167	227	304	423	499

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Assumption	278	297	353	441	494
Beauregard	309	336	400	521	573
Caldwell	167	271	304	423	426
Catahoula	173	227	304	423	426
Concordia	234	237	317	397	444
East Carroll	116	173	211	292	302
Evangeline	203	248	278	348	404
Grant	227	231	304	423	466
Iberville	246	254	311	398	511
Jefferson Davis	*189	231	274	344	383
Lincoln	297	300	375	514	615
Morehouse	223	250	333	416	466
Pointe Coupee	200	247	328	411	539
Richland	167	227	304	398	499

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

L O U I S I A N A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Sabine	174	283	318	442	522
St. Mary	*282	345	405	505	566
Tensas	200	203	271	377	379
Vermilion	*237	291	343	427	480
Washington	156	212	283	393	396
West Feliciana	243	330	441	552	619
St. Helena	160	260	291	393	410
Tangipahoa	272	283	363	476	507
Union	225	227	304	380	499
Vernon	288	322	366	473	559
West Carroll	168	228	305	381	427
Winn	167	227	304	423	426

M A I N E

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME MSA	340	415	531	692	744	Penobscot county towns of Bangor city, Brewer city Eddington town, Glenburn town, Hampden town, Hermon town Holden town, Kenduskeag town, Milford town Old Town city, Orono town, Orrington town Penobscot Indian I, Veazie town Waldo county towns of Winterport town
Lewiston-Auburn, ME MSA	267	378	485	606	679	Androscoggin county towns of Auburn city, Greene town Lewiston city, Lisbon town, Mechanic Falls tow Poland town, Sabattus town, Turner town, Wales town
Portland, ME MSA	398	514	676	845	947	Cumberland county towns of Cape Elizabeth tow, Casco town Cumberland town, Falmouth town, Freeport town Gorham town, Gray town, North Yarmouth tow Portland city, Raymond town, Scarborough town South Portland cit, Standish town, Westbrook city Windham town, Yarmouth town York county towns of Buxton town, Hollis town Limington town, Old Orchard Beach
Portsmouth-Rochester, NH-ME PMSA	439	527	676	866	1062	York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Androscoggin	292	378	503	629	705	Durham town, Leeds town, Livermore town Livermore Falls to, Minot town
Aroostook	267	317	423	529	593	
Cumberland	450	457	609	829	951	Harpswell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town
Franklin	314	357	436	581	612	
Hancock	330	406	501	631	702	
Kennebec	320	398	479	600	671	
Knox	282	395	513	683	719	
Lincoln	399	445	505	703	829	
Oxford	254	356	446	558	625	
Penobscot	290	334	446	562	625	Alton town, Argyle unorg., Bradford town, Bradley town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

M A I N E continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
						Burlington town, Carmel town, Carroll plantation Charleston town, Chester town, Clifton town Corinna town, Corinth town, Dexter town, Dixmont town Drew plantation, East Central Penob, East Millinocket t Edinburg town, Enfield town, Etna town, Exeter town Garland town, Greenbush town, Greenfield town Howland town, Hudson town, Kingman unorg., Lagrange town Lakeville town, Lee town, Levant town, Lincoln town Lowell town, Mattawamkeag town, Maxfield town Medway town, Millinocket town, Mount Chase town Newburgh town, Newport town, North Penobscot un Passadumkeag town, Patten town, Plymouth town Prentiss plantatio, Seboeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town Woodville town
Piscataquis	236	352	430	537	602	
Sagadahoc	432	494	609	811	999	
Somerset	322	366	435	544	693	
Waldo	250	359	455	569	646	Belfast city, Belmont town, Brooks town, Burnham town Frankfort town, Freedom town, Islesboro town Jackson town, Knox town, Liberty town, Lincolnville town Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town Searsmont town, Searsport town, Stockton Springs t Swanville town, Thorndike town, Troy town, Unity town Waldo town
Washington	242	331	442	552	619	
York	378	435	581	726	813	Acton town, Alfred town, Arundel town, Biddeford city Cornish town, Dayton town, Kennebunk town Kennebunkport town, Lebanon town, Limerick town Lyman town, Newfield town, North Berwick town Ogunquit town, Parsonsfield town, Saco city Sanford town, Shapleigh town, Waterboro town, Wells town

M A R Y L A N D

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baltimore, MD	404	494	603	796	911	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Anne's, Baltimore city
Columbia, MD	523	703	818	1081	1350	Columbia
Cumberland, MD-WV MSA	228	287	374	493	541	Allegany
Hagerstown, MD PMSA	260	359	473	591	700	Washington
Washington, DC-MD-VA	633	719	844	1149	1385	Calvert, Charles, Frederick, Montgomery, Prince George's
Wilmington-Newark, DE-MD PMSA	407	538	626	851	1026	Cecil

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M A R Y L A N D continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Caroline	322	339	435	570	610
Garrett	229	286	353	442	579
St. Mary's	*449	544	634	796	880
Talbot	408	431	576	720	944
Worcester	258	375	470	653	657
Dorchester	292	391	456	570	638
Kent	312	384	512	640	772
Somerset	337	380	427	593	700
Wicomico	346	402	517	657	723

M A S S A C H U S E T T S

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable-Yarmouth, MA MSA	450	603	805	1007	1127	Barnstable county towns of Barnstable town, Brewster town Chatham town, Dennis town, Eastham town, Harwich town Mashpee town, Orleans town, Sandwich town, Yarmouth town
Boston, MA-NH PMSA	*566	647	809	1011	1133	Bristol county towns of Berkley town, Dighton town Mansfield town, Norton town, Taunton city Essex county towns of Amesbury town, Beverly city Danvers town, Essex town, Gloucester city, Hamilton town Ipswich town, Lynn city, Lynnfield town, Manchester town Marblehead town, Middleton town, Nahant town Newbury town, Newburyport city, Peabody city Rockport town, Rowley town, Salem city, Salisbury town Saugus town, Swampscott town, Topsfield town Wenham town Middlesex county towns of Acton town, Arlington town Ashland town, Ayer town, Bedford town, Belmont town Boxborough town, Burlington town, Cambridge city Carlisle town, Concord town, Everett city Framingham town, Holliston town, Hopkinton town Hudson town, Lexington town, Lincoln town Littleton town, Malden city, Marlborough city Maynard town, Medford city, Melrose city, Natick town Newton city, North Reading town, Reading town Sherborn town, Shirley town, Somerville city Stoneham town, Stow town, Sudbury town, Townsend town Wakefield town, Waltham city, Watertown town Wayland town, Weston town, Wilmington town Winchester town, Woburn city Norfolk county towns of Bellingham town, Braintree town Brookline town, Canton town, Cohasset town, Dedham town Dover town, Foxborough town, Franklin town Holbrook town, Medfield town, Medway town, Millis town Milton town, Needham town, Norfolk town, Norwood town Plainville town, Quincy city, Randolph town, Sharon town Stoughton town, Walpole town, Wellesley town Westwood town, Weymouth town, Wrentham town Plymouth county towns of Carver town, Duxbury town Hanover town, Hingham town, Hull town, Kingston town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Marshfield town, Norwell town, Pembroke town Plymouth town, Rockland town, Scituate town Wareham town Suffolk county towns of Boston city, Chelsea city Revere city, Winthrop town Worcester county towns of Berlin town, Blackstone town Bolton town, Harvard town, Hopedale town, Lancaster town Mendon town, Milford town, Millville town Southborough town, Upton town
Brockton, MA PMSA	417	532	673	840	956	Bristol county towns of Easton town, Raynham town Norfolk county towns of Avon town Plymouth county towns of Abington town, Bridgewater town Brockton city, East Bridgewater t, Halifax town Hanson town, Lakeville town, Middleborough town Plympton town, West Bridgewater t, Whitman town
Fitchburg-Leominster, MA MSA	372	522	677	874	948	Middlesex county towns of Ashby town Worcester county towns of Ashburnham town, Fitchburg city Gardner city, Leominster city, Lunenburg town Templeton town, Westminster town, Winchendon town
Lawrence, MA-NH PMSA	429	500	650	813	1001	Essex county towns of Andover town, Boxford town Georgetown town, Groveland town, Haverhill city Lawrence city, Merrimac town, Methuen town North Andover town, West Newbury town
Lowell, MA-NH PMSA	435	544	679	850	952	Middlesex county towns of Billerica town, Chelmsford town Dracut town, Dunstable town, Groton town, Lowell city Pepperell town, Tewksbury town, Tyngsborough town Westford town
New Bedford, MA MSA	400	489	555	694	778	Bristol county towns of Acushnet town, Dartmouth town Fairhaven town, Freetown town, New Bedford city Plymouth county towns of Marion town, Mattapoisett town Rochester town
Pittsfield, MA MSA	330	469	579	724	898	Berkshire county towns of Adams town, Cheshire town Dalton town, Hinsdale town, Lanesborough town, Lee town Lenox town, Pittsfield city, Richmond town Stockbridge town
Providence-Fall River-Warwick, RI-MA PMSA	396	539	649	813	1001	Bristol county towns of Attleboro city, Fall River city North Attleborough, Rehoboth town, Seekonk town Somerset town, Swansea town, Westport town
Springfield, MA MSA	*414	502	591	739	827	Franklin county towns of Sunderland town Hampden county towns of Agawam town, Chicopee city East Longmeadow to, Hampden town, Holyoke city Longmeadow town, Ludlow town, Monson town Montgomery town, Palmer town, Russell town Southwick town, Springfield city, Westfield city West Springfield t, Wilbraham town Hampshire county towns of Amherst town, Belchertown town Easthampton town, Granby town, Hadley town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Hatfield town, Huntington town, Northampton city Southampton town, South Hadley town, Ware town Williamsburg town
Worcester, MA MSA	461	558	697	871	976	Hampden county towns of Holland town Worcester county towns of Auburn town, Barre town Boylston town, Brookfield town, Charlton town Clinton town, Douglas town, Dudley town East Brookfield to, Grafton town, Holden town Leicester town, Millbury town, Northborough town Northbridge town, North Brookfield t, Oakham town Oxford town, Paxton town, Princeton town, Rutland town Shrewsbury town, Southbridge town, Spencer town Sterling town, Sturbridge town, Sutton town Uxbridge town, Webster town, Westborough town West Boylston town, West Brookfield to, Worcester city

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Barnstable	437	598	797	996	1115	Bourne town, Falmouth town, Provincetown town Truro town, Wellfleet town
Berkshire	360	438	516	708	847	Alford town, Becket town, Clarksburg town, Egremont town Florida town, Great Barrington t, Hancock town Monterey town, Mount Washington t, New Ashford town New Marlborough to, North Adams city, Otis town Peru town, Sandisfield town, Savoy town, Sheffield town Tyringham town, Washington town, West Stockbridge t Williamstown town, Windsor town
Bristol	487	572	696	870	1086	
Dukes	578	587	782	977	1095	
Franklin	388	481	616	770	930	Ashfield town, Bernardston town, Buckland town Charlemont town, Colrain town, Conway town Deerfield town, Erving town, Gill town, Greenfield town Hawley town, Heath town, Leverett town, Leyden town Monroe town, Montague town, New Salem town Northfield town, Orange town, Rowe town, Shelburne town Shutesbury town, Warwick town, Wendell town Whately town
Hampden	392	534	712	948	1169	Blandford town, Brimfield town, Chester town Granville town, Tolland town, Wales town
Hampshire	549	556	743	929	1041	Chesterfield town, Cummington town, Goshen town Middlefield town, Pelham town, Plainfield town Westhampton town, Worthington town
Nantucket	694	929	1239	1549	1735	
Worcester	437	455	607	759	850	Athol town, Hardwick town, Hubbardston town New Braintree town, Petersham town, Phillipston town Royalston town, Warren town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

MICHIGAN

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	431	522	644	845	947	Lenawee, Livingston, Washtenaw
Benton Harbor, MI MSA	347	352	462	578	648	Berrien
Detroit, MI PMSA	342	466	562	703	787	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Flint, MI PMSA	326	372	465	595	651	Genesee
Grand Rapids-Muskegon-Holland, MI MSA	354	409	505	632	707	Allegan, Kent, Muskegon, Ottawa
Jackson, MI MSA	251	365	462	578	648	Jackson
Kalamazoo-Battle Creek, MI MSA	321	386	487	610	682	Calhoun, Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	342	403	518	678	783	Clinton, Eaton, Ingham
Saginaw-Bay City-Midland, MI MSA	315	347	462	578	648	Bay, Midland, Saginaw

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alcona	263	286	381	508	535
Alpena	199	307	361	459	592
Arenac	252	298	366	459	539
Barry	270	339	452	565	633
Branch	318	326	402	548	564
Charlevoix	333	338	428	582	603
Chippewa	237	299	382	478	586
Crawford	302	305	406	554	578
Dickinson	229	338	417	521	584
Gladwin	273	277	369	484	540
Grand Traverse	364	390	520	651	728
Hillsdale	209	300	374	498	523
Huron	190	303	344	448	483
Iosco	260	308	376	500	617
Isabella	311	332	443	598	727
Keweenaw	185	258	337	431	472
Leelanau	373	405	472	617	774
Mackinac	261	294	363	454	508
Marquette	267	303	388	501	587
Mecosta	264	313	400	556	658
Missaukee	290	305	367	466	514
Montmorency	211	287	382	478	560
Oceana	294	313	372	473	521
Ontonagon	217	254	311	431	453
Oscoda	260	305	342	441	538
Presque Isle	266	273	341	440	477
St. Joseph	245	320	396	518	554
Schoolcraft	245	252	337	448	472
Tuscola	296	323	430	538	602

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alger	276	279	373	466	522
Antrim	214	333	375	506	555
Baraga	169	248	310	387	457
Benzie	288	291	384	535	538
Cass	276	305	405	552	568
Cheboygan	287	303	364	502	597
Clare	286	294	363	468	515
Delta	236	295	347	481	520
Emmet	308	369	435	570	608
Gogebic	245	262	337	422	481
Gratiot	*324	392	462	580	648
Houghton	212	282	337	422	552
Ionia	337	341	427	534	598
Iron	185	252	337	428	472
Kalkaska	263	304	399	518	655
Lake	279	282	367	511	525
Luce	276	279	373	466	522
Manistee	190	278	344	444	483
Mason	237	286	353	442	579
Menominee	263	266	351	488	491
Montcalm	283	304	389	487	546
Newaygo	316	339	399	499	560
Ogemaw	287	314	364	505	510
Osceola	206	291	374	478	523
Otsego	280	337	426	591	686
Roscommon	305	308	390	488	547
Sanilac	219	323	384	518	576
Shiawassee	274	345	416	578	620
Wexford	274	320	416	545	644

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I N N E S O T A

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth-Superior, MN-WI MSA	*245	329	422	562	656	St. Louis
Fargo-Moorhead, ND-MN MSA	*335	407	478	600	672	Clay
Grand Forks, ND-MN MSA	*317	385	457	570	638	Polk
La Crosse, WI-MN MSA	242	318	419	566	687	Houston
Minneapolis-St. Paul, MN-WI MSA	*440	535	630	788	882	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Sherburne, Washington, Wright
Rochester, MN MSA	287	401	522	725	813	Olmsted
St. Cloud, MN MSA	*334	407	480	602	672	Benton, Stearns

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aitkin	*299	364	428	537	602
Beltrami	243	320	427	560	598
Blue Earth	*332	403	468	579	640
Carlton	245	295	378	473	530
Chippewa	166	228	304	416	429
Cook	299	303	403	549	570
Crow Wing	*281	341	426	529	587
Douglas	227	262	344	478	548
Fillmore	173	236	315	435	441
Goodhue	246	319	426	553	596
Hubbard	258	287	364	466	510
Jackson	218	257	304	406	426
Kandiyohi	*314	382	449	563	629
Koochiching	306	311	414	516	678
Lake	179	269	325	405	533
Le Sueur	202	275	367	481	602
Lyon	223	269	360	475	590
Mahnomen	*287	349	412	513	578
Martin	183	249	332	416	546
Mille Lacs	269	294	391	545	641
Mower	*275	334	395	494	552
Nicollet	316	338	451	596	631
Norman	*287	349	412	513	578
Pennington	*287	349	412	513	578
Pipestone	169	231	308	416	505
Red Lake	*287	349	412	513	578
Renville	*314	382	449	563	629
Rock	166	228	304	379	474
Sibley	228	231	296	412	427
Stevens	*297	363	426	535	600
Todd	*281	341	401	503	564

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Becker	*297	363	426	535	600
Big Stone	166	228	304	379	468
Brown	*283	345	405	507	568
Cass	207	281	376	471	526
Clearwater	*287	349	412	513	578
Cottonwood	181	246	329	412	461
Dodge	236	283	327	425	534
Faribault	179	252	308	400	435
Freeborn	221	303	403	529	565
Grant	*297	363	426	535	600
Itasca	*301	366	428	537	602
Kanabec	226	317	412	514	576
Kittson	*287	349	412	513	578
Lac qui Parle	170	232	311	388	435
Lake of the Woods	191	260	347	434	485
Lincoln	140	192	255	319	419
Mcleod	*314	382	449	563	629
Marshall	*287	349	412	513	578
Meeker	*314	382	449	563	629
Morrison	263	266	355	444	498
Murray	168	230	307	408	430
Nobles	207	276	363	454	508
Otter Tail	*297	363	426	535	600
Pine	280	283	369	491	551
Pope	166	228	304	379	426
Redwood	182	231	308	385	431
Rice	264	361	481	602	675
Roseau	306	311	408	526	572
Steele	273	315	420	525	588
Swift	*265	324	382	479	535
Traverse	*297	363	426	535	600

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

MINNESOTA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Wabasha	*287	349	409	507	568
Waseca	280	285	379	475	531
Wilkin	167	229	306	386	429
Yellow Medicine	166	228	304	389	426
Wadena	209	245	304	398	453
Watonwan	166	252	304	423	438
Winona	*300	364	429	603	625

MISSISSIPPI

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Biloxi-Gulfport-Pascagpula, MS MSA	284	334	384	534	630	Hancock, Harrison, Jackson
Jackson, MS MSA	353	404	491	654	689	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	337	392	462	642	674	Desoto

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	212	277	354	454	578
Amite	203	273	306	396	503
Benton	168	273	306	426	430
Calhoun	168	248	306	384	430
Chickasaw	*271	322	380	478	534
Claiborne	178	276	324	404	453
Clay	*261	305	356	448	502
Copiah	191	271	335	419	469
Forrest	234	287	350	486	575
George	186	260	339	424	498
Grenada	191	266	347	482	509
Humphreys	171	224	299	395	419
Itawamba	*250	303	355	446	499
Jefferson	168	273	306	426	463
Jones	228	230	306	426	430
Lafayette	247	337	449	563	629
Lauderdale	*260	315	373	467	522
Leake	*222	270	320	403	451
Leflore	236	253	329	450	540
Lowndes	*288	356	410	550	572
Marshall	233	236	315	438	518
Montgomery	168	230	306	384	503
Newton	*222	270	320	403	451
Oktibbeha	295	307	375	521	615
Pearl River	253	256	338	456	473
Pike	245	277	311	430	510
Prentiss	*225	274	324	407	456

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alcorn	*243	293	345	430	485
Attala	*203	248	290	363	407
Bolivar	275	278	371	463	530
Carroll	160	218	291	363	428
Choctaw	176	240	320	400	448
Clarke	*262	318	373	467	522
Coahoma	279	283	377	472	528
Covington	168	273	306	408	430
Franklin	242	273	306	426	430
Greene	168	230	306	411	430
Holmes	168	230	306	384	430
Issaquena	253	346	460	576	645
Jasper	*262	318	373	467	522
Jefferson Davis	205	230	306	384	463
Kemper	*262	318	373	467	522
Lamar	207	336	377	472	528
Lawrence	168	264	306	421	494
Lee	*282	342	401	505	565
Lincoln	168	273	306	426	430
Marion	221	233	306	418	503
Monroe	*250	303	355	446	499
Neshoba	*222	270	320	403	451
Noxubee	*251	305	356	448	502
Panola	248	254	314	437	440
Perry	168	257	306	426	503
Pontotoc	*271	322	380	478	534
Quitman	168	230	306	426	454

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Scott	*222	270	320	403	451
Simpson	242	252	306	426	467
Stone	168	273	306	384	503
Tallahatchie	201	205	273	341	426
Tippah	*225	274	324	407	456
Tunica	168	230	306	426	460
Walthall	184	252	306	426	430
Washington	257	306	408	527	580
Webster	*261	305	356	448	502
Winston	227	230	305	425	501
Yazoo	245	248	331	414	464

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Sharkey	205	231	259	330	426
Smith	*222	270	320	403	451
Sunflower	265	289	336	423	541
Tate	206	324	376	470	617
Tishomingo	*225	274	324	407	456
Union	*271	322	380	478	534
Warren	217	306	388	540	637
Wayne	224	230	306	384	430
Wilkinson	228	230	306	392	503
Yalobusha	233	240	295	369	414

M I S S O U R I

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Columbia, MO MSA	240	336	437	608	717	Boone
Joplin, MO MSA	234	270	359	472	507	Jasper, Newton
Kansas City, MO-KS MSA	316	398	478	661	732	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	*268	325	383	478	539	Andrew, Buchanan
St. Louis, MO-IL MSA	295	361	468	609	674	Crawford-Sullivan (part), Franklin, Jefferson, Lincoln St. Charles, St. Louis, Warren, St. Louis city
Springfield, MO MSA	*278	341	401	504	561	Christian, Greene, Webster

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	220	284	378	474	569
Audrain	243	246	328	456	527
Barton	167	215	286	359	469
Benton	258	261	348	435	487
Butler	184	238	318	407	446
Callaway	269	272	363	461	595
Cape Girardeau	232	285	379	505	619
Carter	211	237	267	372	374
Chariton	195	200	267	369	406
Cole	*278	338	399	499	559
Crawford	251	281	339	446	498
Dallas	*231	281	333	415	465
Dekalb	236	239	320	444	448
Douglas	221	223	286	399	401
Gasconade	179	244	325	437	455
Grundy	210	235	313	423	489

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Atchison	209	239	278	356	390
Barry	*231	281	333	415	465
Bates	172	234	312	435	512
Bollinger	*265	323	379	474	535
Caldwell	187	256	341	426	478
Camden	296	300	400	555	652
Carroll	149	205	272	378	446
Cedar	181	215	287	400	471
Clark	150	206	274	343	403
Cooper	170	234	309	429	476
Dade	*231	281	333	415	465
Daviess	162	222	296	411	484
Dent	216	219	291	403	479
Dunklin	182	202	267	366	393
Gentry	150	207	275	361	386
Harrison	201	206	273	342	381

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Henry	261	265	353	442	580
Holt	147	201	269	373	376
Howell	*219	267	312	391	439
Johnson	*253	308	380	489	509
Laclede	*253	307	362	454	508
Lewis	208	227	281	360	450
Livingston	211	236	315	439	463
Macon	184	251	334	417	467
Maries	153	209	277	369	389
Mercer	197	200	267	372	439
Mississippi	156	214	285	397	400
Monroe	162	222	296	411	413
Morgan	193	256	312	435	465
Nodaway	238	249	330	450	543
Osage	156	214	285	397	400
Pemiscot	214	218	278	388	390
Pettis	247	289	387	487	583
Pike	210	241	322	403	529
Pulaski	*253	307	362	454	508
Ralls	161	233	291	406	409
Reynolds	198	201	269	363	441
St. Clair	156	213	284	369	398
St. Francois	*265	323	379	474	535
Schuyler	207	212	283	393	411
Scott	273	276	368	497	572
Shelby	148	201	270	375	386
Stone	*231	281	333	415	465
Taney	*231	281	333	415	465
Vernon	195	244	325	449	455
Wayne	206	209	277	359	455
Wright	179	202	271	376	444

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Hickory	172	235	313	392	439
Howard	209	231	308	394	504
Iron	*265	323	379	474	535
Knox	149	206	273	379	381
Lawrence	*231	281	333	415	465
Linn	167	227	303	420	497
Mcdonald	218	220	282	392	414
Madison	*265	323	379	474	535
Marion	193	233	311	432	469
Miller	*253	307	362	454	508
Moniteau	208	220	292	399	413
Montgomery	180	245	327	413	458
New Madrid	216	235	314	393	440
Oregon	201	223	257	336	359
Ozark	147	200	267	372	374
Perry	265	269	359	478	502
Phelps	*283	342	404	511	574
Polk	*231	281	333	415	465
Putnam	150	206	274	343	385
Randolph	180	252	327	410	489
Ripley	153	209	278	351	457
Ste. Genevieve	*265	323	379	474	535
Saline	189	259	346	439	501
Scotland	161	219	291	406	417
Shannon	147	200	267	351	374
Stoddard	206	218	289	362	455
Sullivan	197	200	267	351	374
Texas	179	213	284	366	398
Washington	267	321	361	451	505
Worth	142	209	258	358	422

M O N T A N A

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	250	307	410	549	667	Yellowstone
Great Falls, MT MSA	*217	296	395	505	616	Cascade

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M O N T A N A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beaverhead	243	275	352	486	579
Blaine	219	275	365	457	512
Carbon	230	306	359	470	502
Chouteau	204	278	371	486	549
Daniels	205	332	374	493	614
Deer Lodge	183	250	334	424	503
Fergus	201	274	364	456	598
Gallatin	*261	326	436	562	716
Glacier	216	295	393	491	551
Granite	195	279	353	443	495
Jefferson	288	292	390	514	546
Lake	267	280	338	468	506
Liberty	177	241	322	448	529
Mccone	187	304	342	476	479
Meagher	205	332	374	520	523
Missoula	*305	357	476	614	781
Park	219	289	385	482	632
Phillips	209	280	374	467	614
Powder River	191	295	348	434	493
Prairie	162	226	293	409	424
Richland	*318	388	457	572	641
Rosebud	266	288	374	467	614
Sheridan	233	235	313	414	514
Stillwater	277	280	374	520	614
Teton	190	264	346	482	486
Treasure	205	299	374	520	523
Wheatland	154	214	282	379	395

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Big Horn	199	272	363	455	596
Broadwater	226	309	412	527	675
Carter	165	268	301	418	493
Custer	202	258	337	434	470
Dawson	195	266	354	464	553
Fallon	163	222	296	406	475
Flathead	*260	314	419	583	687
Garfield	189	258	344	431	564
Golden Valley	180	291	328	411	459
Hill	280	284	374	517	531
Judith Basin	205	332	374	467	523
Lewis and Clark	*265	311	413	576	680
Lincoln	295	310	374	512	523
Madison	277	280	374	493	523
Mineral	216	296	394	493	646
Musselshell	251	255	340	427	476
Petroleum	197	269	359	449	502
Pondera	189	307	344	479	564
Powell	261	266	354	444	582
Ravalli	205	280	374	520	580
Roosevelt	269	272	354	482	496
Sanders	205	280	374	467	523
Silver Bow	205	280	374	470	523
Sweet Grass	244	256	312	434	456
Toole	277	280	374	520	523
Valley	170	258	308	427	431
Wibaux	246	332	374	520	614

N E B R A S K A

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE MSA	*331	402	474	594	665	Lancaster
Omaha, NE-IA MSA	284	388	491	643	721	Cass, Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	*322	392	461	576	647	Dakota

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	*291	355	417	523	585
Arthur	202	276	368	461	516
Blaine	*239	290	341	427	481
Box Butte	*272	331	390	487	546
Brown	*239	290	341	427	481
Burt	167	227	303	394	466
Cedar	167	201	269	352	376
Cherry	183	297	333	463	546
Clay	179	243	324	435	454
Cuming	174	283	317	416	444
Dawes	232	249	330	460	543
Deuel	159	216	288	395	442
Dodge	*260	317	373	468	525
Fillmore	196	256	340	429	476
Frontier	216	219	291	386	409
Gage	*285	346	408	512	571
Garfield	*239	290	341	427	481
Grant	186	256	340	425	476
Hall	*291	355	417	523	585
Harlan	186	262	340	471	476
Hitchcock	180	245	326	409	457
Hooker	186	302	340	471	476
Jefferson	184	251	334	417	467
Kearney	186	282	340	452	557
Keya Paha	186	256	340	425	476
Knox	141	225	257	323	381
Logan	161	220	292	366	481
Mcpherson	186	256	340	471	476
Merrick	*291	355	417	523	585
Nance	*260	317	373	468	525
Nuckolls	163	223	298	372	416
Pawnee	157	241	287	400	403
Phelps	251	256	340	471	557
Platte	207	277	369	514	529
Red Willow	188	258	343	469	545
Rock	*243	298	351	436	487
Saunders	190	261	348	452	522
Seward	278	282	376	470	528
Sherman	*239	290	341	427	481
Stanton	186	256	340	445	476

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Antelope	136	221	249	346	349
Banner	186	256	340	471	476
Boone	*260	317	373	468	525
Boyd	*239	290	341	427	481
Buffalo	*291	355	417	523	585
Butler	185	252	336	420	470
Chase	167	270	303	378	497
Cheyenne	251	256	340	449	476
Colfax	*260	317	373	468	525
Custer	*239	290	341	427	481
Dawson	*246	299	353	441	493
Dixon	241	245	327	416	514
Dundy	186	256	340	425	476
Franklin	150	212	275	384	386
Furnas	164	193	258	329	422
Garden	137	220	250	348	410
Gosper	*246	299	353	441	493
Greeley	151	232	276	351	453
Hamilton	*291	355	417	523	585
Hayes	145	236	265	368	436
Holt	*243	298	351	436	487
Howard	*291	355	417	523	585
Johnson	186	291	340	425	476
Keith	*246	299	353	441	493
Kimball	186	278	340	471	557
Lincoln	*246	299	353	441	493
Loup	122	167	222	277	364
Madison	*282	343	406	505	568
Morrill	188	263	310	415	508
Nemaha	186	256	340	425	493
Otoe	209	276	342	444	560
Perkins	207	254	339	448	519
Pierce	174	238	317	403	444
Polk	173	238	314	393	458
Richardson	176	240	321	401	450
Saline	*257	313	368	461	519
Scotts Bluff	*278	334	390	484	538
Sheridan	184	251	334	417	526
Sioux	186	256	340	452	557
Thayer	162	262	295	367	412

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092493

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Thomas	186	259	340	425	476
Valley	*239	290	341	427	481
Webster	156	213	284	355	426
York	206	281	374	467	525
Thurston	155	231	282	353	443
Wayne	247	251	326	451	535
Wheeler	186	256	340	471	476

N E V A D A

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	438	519	618	858	1014	Clark, Nye
Reno, NV MSA	*403	489	575	719	805	Washoe

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Churchill	414	419	560	773	918
Elko	377	429	572	756	939
Eureka	301	487	548	685	766
Lander	240	372	436	546	716
Lyon	299	358	459	638	754
Pershing	423	429	572	716	818
White Pine	304	416	554	748	786
Douglas	376	548	685	951	1060
Esmeralda	342	428	481	602	674
Humboldt	448	470	566	742	794
Lincoln	212	317	386	483	541
Mineral	309	422	562	737	922
Storey	429	435	572	796	939
Carson City	322	440	587	816	964

N E W H A M P S H I R E

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Lawrence, MA-NH PMSA	429	500	650	813	1001	Rockingham county towns of Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town
Lowell, MA-NH PMSA	435	544	679	850	952	Hillsborough county towns of Pelham town
Manchester, NH MSA	347	494	617	772	864	Hillsborough county towns of Bedford town, Goffstown town, Manchester city, Weare town Merrimack county towns of Allenstown town, Hooksett town Rockingham county towns of Auburn town, Candia town, Londonderry town
Nashua, NH PMSA	413	556	713	970	1155	Hillsborough county towns of Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town
Portsmouth-Rochester, NH-ME PMSA	439	527	676	866	1062	Rockingham county towns of Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Portsmouth city, Rye town, Stratham town Strafford county towns of Barrington town, Dover city Durham town, Farmington town, Lee town, Madbury town Milton town, Rochester city, Rollinsford town Somersworth city
NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Belknap	413	476	626	845	1027	
Carroll	345	472	629	787	982	
Cheshire	427	507	649	844	999	
Coos	271	353	410	558	673	
Grafton	378	457	609	787	994	
Hillsborough	405	505	674	890	1071	Antrim town, Bennington town, Deering town Francestown town, Greenfield town, Hancock town Hillsborough town, Lyndeborough town, New Boston town Peterborough town, Sharon town, Temple town Windsor town
Merrimack	425	508	634	812	907	Andover town, Boscawen town, Bow town, Bradford town Canterbury town, Chichester town, Concord city Danbury town, Dunbarton town, Epsom town, Franklin city Henniker town, Hill town, Hopkinton town, Loudon town Newbury town, New London town, Northfield town Pembroke town, Pittsfield town, Salisbury town Sutton town, Warner town, Webster town, Wilmot town
Rockingham	442	517	691	959	1106	Deerfield town, Northwood town, Nottingham town
Strafford	390	530	708	886	992	Middleton town, New Durham town, Strafford town
Sullivan	412	418	542	711	759	

NEW JERSEY

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic-Cape May, NJ PMSA	510	579	772	965	1104	Atlantic, Cape May
Bergen-Passaic, NJ PMSA	631	767	902	1200	1481	Bergen, Passaic
Jersey City, NJ PMSA	583	687	800	1015	1119	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	684	749	936	1272	1469	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ PMSA	569	680	862	1146	1345	Monmouth, Ocean
Newark, NJ PMSA	*535	650	765	956	1071	Essex, Morris, Sussex, Union, Warren
Philadelphia, PA-NJ PMSA	453	558	688	861	1080	Burlington, Camden, Gloucester, Salem
Trenton, NJ PMSA	455	634	773	1045	1261	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	439	535	645	806	904	Cumberland

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

NEW MEXICO

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albuquerque, NM MSA	*393	479	562	704	789	Bernalillo, Sandoval, Valencia
Las Cruces, NM MSA	279	344	411	571	673	Dona Ana
Santa Fe, NM MSA	358	502	627	841	954	Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Catron	189	299	342	477	562
Cibola	235	257	299	415	490
Curry	*287	350	412	516	577
Eddy	262	265	354	475	581
Guadalupe	*287	350	412	516	577
Hidalgo	*279	338	400	499	558
Lincoln	291	297	394	518	647
Mckinley	253	323	409	511	572
Otero	221	284	369	514	518
Rio Arriba	299	307	378	474	530
San Juan	287	308	384	533	630
Sierra	212	258	342	477	480
Taos	351	356	475	593	780
Union	*287	350	412	516	577

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Chaves	251	292	386	529	541
Colfax	215	269	309	429	506
Debaca	*287	350	412	516	577
Grant	236	268	353	463	557
Harding	*287	350	412	516	577
Lea	236	258	342	477	536
Luna	264	268	342	477	562
Mora	183	251	334	418	468
Quay	*287	350	412	516	577
Roosevelt	*287	350	412	516	577
San Miguel	285	288	385	481	539
Socorro	194	289	353	490	579
Torrance	282	304	358	447	529

NEW YORK

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	382	468	578	723	809	Albany, Montgomery, Rensselaer, Saratoga, Schenectady Schoharie
Binghamton, NY MSA	296	373	478	608	670	Broome, Tioga
Buffalo-Niagara Falls, NY PMSA	326	405	487	609	682	Erie, Niagara
Dutchess County, NY PMSA	498	632	780	1014	1186	Dutchess
Elmira, NY MSA	*352	427	503	630	708	Chemung
Glens Falls, NY MSA	*363	442	520	649	730	Warren, Washington
Jamestown, NY MSA	*325	397	466	586	653	Chautauqua
Nassau-Suffolk, NY PMSA	684	824	1005	1397	1497	Nassau, Suffolk
New York, NY PMSA	647	721	819	1025	1147	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester County, NY	615	801	976	1269	1513	Westchester
Newburgh, NY-PA PMSA	495	645	787	999	1141	Orange
Rochester, NY MSA	364	473	577	738	807	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	349	422	521	667	739	Cayuga, Madison, Onondaga, Oswego
Utica-Rome, NY MSA	323	363	453	567	635	Herkimer, Oneida

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

NEW YORK continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allegany	239	295	363	457	508
Chenango	*363	440	517	649	725
Columbia	420	442	567	743	794
Delaware	321	370	435	575	714
Franklin	283	345	415	524	587
Greene	326	431	518	669	815
Jefferson	*372	455	536	670	751
Otsego	312	394	453	585	744
Schuyler	*344	418	493	618	694
Steuben	*344	418	493	618	694
Tompkins	439	474	608	846	998
Wyoming	248	347	408	510	571

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Cattaraugus	239	293	380	475	586
Clinton	280	370	494	618	692
Cortland	274	398	498	623	737
Essex	262	380	475	595	665
Fulton	244	350	444	556	622
Hamilton	*334	405	475	595	669
Lewis	*359	434	512	640	718
St. Lawrence	*341	413	488	610	682
Seneca	356	383	462	596	647
Sullivan	445	499	609	841	853
Ulster	413	574	691	898	1133
Yates	325	346	433	540	606

NORTH CAROLINA

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Asheville, NC MSA	277	342	445	579	624	Buncombe, Madison
Charlotte-Gastonia-Rock Hill, NC-SC MSA	400	452	508	670	802	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	343	387	435	602	715	Cumberland
Goldsboro, NC MSA	199	300	362	503	594	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	341	387	462	637	647	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph Stokes, Yadkin
Greenville, NC MSA	338	342	444	596	729	Pitt
Hickory-Morganton, NC MSA	*305	369	437	547	615	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC MSA	321	376	423	588	695	Onslow
Norfolk-Virginia Beach-Newport News, VA-NC MSA	409	458	545	758	890	Currituck
Raleigh-Durham-Chapel Hill, NC MSA	381	462	543	728	858	Chatham, Durham, Franklin, Johnston, Orange, Wake
Rocky Mount, NC MSA	301	314	382	523	577	Edgecombe, Nash
Wilmington, NC MSA	362	400	488	669	663	Brunswick, New Hanover

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alleghany	*258	311	365	457	501
Ashe	*258	311	365	457	501
Beaufort	*286	348	410	511	573
Bladen	*275	337	396	496	555
Carteret	317	347	423	588	654
Cherokee	*222	270	320	403	451
Clay	*222	270	320	403	451
Columbus	*269	329	388	486	543
Dare	291	460	530	726	742
Gates	162	222	295	410	414

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anson	200	326	366	494	512
Avery	*267	323	380	474	520
Bertie	*286	348	410	511	573
Camden	265	361	482	602	675
Caswell	*259	314	370	465	520
Chowan	193	311	350	486	491
Cleveland	*299	363	427	534	598
Craven	*295	358	422	532	596
Duplin	233	263	295	392	414
Graham	*222	270	320	403	451

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Granville	299	321	378	526	593
Halifax	*267	326	384	483	541
Haywood	*287	349	412	517	580
Hertford	*286	348	410	511	573
Hyde	195	291	354	444	496
Jackson	*285	345	406	508	569
Lee	*303	374	432	540	607
Mcdowell	*270	330	388	487	543
Martin	*286	348	410	511	573
Montgomery	283	287	368	460	516
Northampton	156	253	284	395	398
Pasquotank	327	348	435	604	610
Perquimans	192	303	349	485	489
Polk	273	358	402	503	564
Robeson	*255	314	364	450	510
Rutherford	*270	330	388	487	543
Scotland	204	307	372	497	520
Surry	242	290	337	466	508
Transylvania	*280	344	405	506	567
Vance	297	336	377	475	528
Washington	241	244	326	449	456
Wilkes	*309	371	436	546	598
Yancey	*288	347	408	509	560

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Greene	*268	325	381	480	536
Harnett	278	282	376	507	556
Henderson	329	338	418	558	642
Hoke	198	300	361	467	506
Iredell	*259	400	467	538	602
Jones	*267	326	384	483	541
Lenoir	*267	326	384	483	541
Macon	*280	343	405	506	568
Mitchell	*267	323	380	474	521
Moore	287	348	415	569	681
Pamlico	*267	326	384	483	541
Pender	242	342	385	481	624
Person	233	323	424	555	648
Richmond	245	280	373	467	522
Rockingham	272	294	383	479	535
Sampson	252	255	336	420	470
Stanly	239	297	397	537	555
Swain	*222	270	320	403	451
Tyrrell	173	236	314	394	440
Warren	175	240	319	399	446
Watauga	*368	444	520	651	714
Wilson	296	301	401	502	563

NORTH DAKOTA

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	271	304	404	562	663	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	*335	407	478	600	672	Cass
Grand Forks, ND-MN MSA	*317	385	457	570	638	Grand Forks

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	162	234	295	390	485
Benson	240	244	324	406	500
Bottineau	167	229	306	425	427
Burke	229	258	290	372	477
Dickey	229	249	290	386	407
Dunn	161	259	291	364	408
Emmons	127	205	230	320	377
Golden Valley	198	270	360	450	503

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barnes	*290	352	415	520	585
Billings	229	258	290	404	407
Bowman	160	241	290	404	424
Cavalier	198	271	361	451	556
Divide	189	221	295	390	414
Eddy	161	260	292	407	422
Foster	166	226	302	377	465
Grant	138	205	250	349	361

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Griggs	160	241	290	363	477
Kidder	160	217	290	370	407
Logan	146	201	268	373	434
Mcintosh	160	217	290	363	407
Mclean	223	233	290	392	477
Mountrail	234	251	296	409	465
Oliver	160	226	290	363	475
Pierce	180	246	328	456	502
Ransom	214	239	319	398	447
Richland	226	266	354	444	524
Sargent	161	219	292	372	411
Sioux	124	201	225	282	316
Stark	*281	344	407	509	568
Stutsman	*290	352	415	520	585
Traill	221	281	330	419	466
Ward	209	286	382	516	615
Williams	190	233	302	419	496

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Hettinger	165	217	290	379	470
Lamoure	229	258	290	363	407
Mchenry	160	217	290	404	454
Mckenzie	142	211	259	361	411
Mercer	171	239	311	432	511
Nelson	160	217	290	363	477
Pembina	184	257	335	449	535
Ramsey	216	289	386	483	630
Renville	244	246	320	446	526
Rolette	189	241	290	363	477
Sheridan	160	258	290	372	477
Slope	160	258	290	384	407
Steele	154	211	281	383	448
Towner	241	270	360	450	591
Walsh	*290	352	415	520	585
Wells	224	227	300	375	491

OHIO

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH PMSA	324	395	507	634	711	Portage, Summit
Brown County, OH	*270	326	381	475	536	Brown
Canton-Massillon, OH MSA	*287	348	410	513	578	Carroll, Stark
Cincinnati, OH-KY-IN	*342	415	489	611	684	Clermont, Hamilton, Warren
Cleveland-Lorain-Elyria, OH PMSA	322	407	503	640	720	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA	315	374	479	608	699	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway
Dayton-Springfield, OH MSA	347	388	496	640	719	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	*342	419	491	615	689	Butler
Huntington-Ashland, WV-KY-OH MSA	*320	389	460	575	647	Lawrence
Lima, OH MSA	251	313	412	524	577	Allen, Auglaize
Mansfield, OH MSA	218	313	398	497	556	Crawford, Richland
Parkersburg-Marietta, WV-OH MSA	*300	364	428	539	602	Washington
Steubenville-Weirton, OH-WV MSA	195	288	357	450	501	Jefferson
Toledo, OH MSA	*348	425	502	626	702	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	*302	368	433	542	606	Belmont
Youngstown-Warren, OH MSA	*304	370	435	546	613	Columbiana, Mahoning, Trumbull

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

OHIO continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	*270	326	381	475	536
Athens	315	357	420	551	677
Clinton	225	339	408	567	572
Darke	291	296	394	493	553
Erie	239	348	435	587	712
Gallia	189	257	343	429	480
Hancock	335	339	429	549	600
Harrison	*273	334	392	494	550
Highland	260	263	351	453	491
Holmes	232	280	342	428	489
Jackson	184	274	335	442	468
Logan	*292	355	418	522	587
Meigs	189	239	300	389	491
Monroe	175	239	319	405	447
Morrow	206	301	375	469	529
Noble	230	258	344	431	565
Paulding	250	256	325	429	533
Pike	*266	324	380	475	536
Putnam	275	278	372	468	521
Sandusky	239	339	435	548	608
Seneca	263	281	361	498	505
Tuscarawas	*289	353	415	519	582
Van Wert	209	317	381	477	535
Wayne	*299	365	428	537	600
Wyandot	241	270	361	451	505

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Ashland	234	310	413	515	577
Champaign	228	319	415	518	580
Coshocton	256	263	325	405	454
Defiance	277	311	414	521	579
Fayette	*327	393	468	584	657
Guernsey	*291	354	417	521	585
Hardin	182	294	330	436	462
Henry	*308	374	440	550	618
Hocking	*292	355	418	522	587
Huron	307	332	416	549	583
Knox	*266	324	420	525	588
Marion	237	308	376	489	546
Mercer	206	281	375	499	574
Morgan	*294	359	422	531	592
Muskingum	256	286	362	453	506
Ottawa	248	391	450	612	653
Perry	*263	319	376	470	529
Preble	281	285	361	487	552
Ross	304	316	385	481	539
Scioto	*266	324	380	475	536
Shelby	241	329	439	549	614
Union	262	363	477	597	692
Vinton	*297	362	425	535	598
Williams	*308	374	440	550	618

OKLAHOMA

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Enid, OK MSA	271	275	366	509	581	Garfield
Fort Smith, AR-OK MSA	*273	333	393	494	553	Sequoyah
Lawton, OK MSA	332	335	425	591	647	Comanche
Oklahoma City, OK MSA	305	331	430	598	670	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
Tulsa, OK MSA	*298	360	467	651	767	Creek, Osage, Rogers, Tulsa, Wagoner

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

OKLAHOMA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	215	218	290	405	419
Atoka	160	248	290	384	448
Beckham	239	247	328	411	461
Bryan	231	253	316	440	487
Carter	198	273	341	476	517
Choctaw	152	213	277	386	388
Coal	223	234	283	393	465
Craig	181	248	329	458	541
Delaware	222	237	317	441	521
Ellis	175	262	320	399	448
Grady	257	261	347	473	570
Greer	183	263	307	383	469
Harper	160	259	290	384	407
Hughes	215	218	290	364	407
Jefferson	157	203	271	338	436
Kay	265	281	369	514	602
Kiowa	160	218	290	384	407
Le Flore	215	231	309	429	432
Love	186	254	339	425	476
Mcintosh	170	232	310	387	471
Marshall	181	248	330	417	464
Murray	160	218	290	364	407
Noble	228	232	310	430	434
Okfuskee	215	218	290	364	407
Ottawa	224	235	290	392	437
Payne	*286	347	408	510	572
Pontotoc	185	261	326	409	487
Roger Mills	158	215	287	399	403
Stephens	239	265	324	438	532
Tillman	217	245	274	381	450
Washita	230	238	290	405	477
Woodward	171	269	312	434	437

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alfalfa	160	218	290	364	419
Beaver	169	273	308	427	504
Blaine	160	218	290	405	477
Caddo	166	235	302	384	423
Cherokee	247	278	316	409	519
Cimarron	138	224	252	335	414
Cotton	224	227	303	422	464
Custer	224	254	339	473	546
Dewey	145	235	264	367	371
Garvin	172	235	314	409	516
Grant	160	259	290	405	477
Harmon	168	228	305	381	427
Haskell	230	232	290	398	477
Jackson	203	304	371	486	549
Johnston	156	253	284	394	466
Kingfisher	189	277	342	449	480
Latimer	167	227	303	403	496
Lincoln	252	261	318	437	488
Mccurtain	230	235	290	405	477
Major	184	282	335	466	469
Mayes	202	275	367	463	515
Muskogee	257	289	337	469	473
Nowata	170	232	310	387	474
Okmulgee	244	247	328	411	461
Pawnee	266	270	351	452	491
Pittsburg	218	236	315	438	517
Pushmataha	212	234	312	390	437
Seminole	*228	278	327	407	453
Texas	197	279	322	447	450
Washington	218	325	396	524	614
Woods	222	225	301	403	422

OREGON

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Eugene-Springfield, OR MSA	*300	403	536	747	865	Lane
Medford-Ashland, OR MSA	287	378	504	701	781	Jackson
Portland-Vancouver, OR-WA PMSA	*365	444	522	689	767	Clackamas, Columbia, Multnomah, Washington, Yamhill

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

OREGON continued

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Salem, OR PMSA	*394	483	568	710	795	Marion, Polk

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Baker	*260	292	389	541	544
Clatsop	262	334	444	605	685
Crook	220	300	400	499	560
Deschutes	*353	407	543	756	875
Gilliam	233	364	423	529	592
Harney	*367	448	527	659	739
Jefferson	236	323	430	576	646
Klamath	*367	448	527	659	739
Lincoln	*375	456	537	671	751
Malheur	*260	311	389	501	564
Sherman	*408	495	584	733	817
Umatilla	258	268	353	490	518
Wallowa	*385	468	552	690	773
Wheeler	168	231	307	384	430

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Benton	276	357	452	630	743
Coos	224	290	386	537	541
Curry	253	345	459	588	722
Douglas	277	301	401	557	618
Grant	*219	300	400	500	631
Hood River	*408	495	584	733	817
Josephine	248	346	449	607	711
Lake	*367	448	527	659	739
Linn	255	324	425	579	630
Morrow	220	288	359	496	528
Tillamook	*375	456	537	671	751
Union	*385	468	552	690	773
Wasco	*408	495	584	733	817

PENNSYLVANIA

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA MSA	355	481	573	745	837	Carbon, Lehigh, Northampton
Altoona, PA MSA	*338	409	484	603	678	Blair
Erie, PA MSA	233	318	389	506	544	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	*403	484	572	714	799	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	*328	400	470	587	659	Cambria, Somerset
Lancaster, PA MSA	348	428	534	695	748	Lancaster
Newburgh, NY-PA PMSA	495	645	787	999	1141	Pike
Philadelphia, PA-NJ PMSA	453	558	688	861	1080	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	310	380	458	574	641	Allegheny, Beaver, Butler, Fayette, Washington Westmoreland
Reading, PA MSA	290	428	528	661	745	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	250	368	438	547	662	Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA	290	316	368	460	537	Mercer
State College, PA MSA	381	467	577	756	809	Centre
Williamsport, PA MSA	227	342	411	514	576	Lycoming
York, PA MSA	292	401	496	621	694	York

Note. The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

PENNSYLVANIA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	259	355	473	611	775
Bedford	177	283	322	418	464
Cameron	238	278	326	408	457
Clearfield	*322	393	463	578	648
Crawford	*320	386	459	573	643
Forest	198	258	336	420	471
Fulton	*303	370	435	546	610
Huntingdon	182	279	332	414	465
Jefferson	*322	393	463	578	648
Lawrence	*320	386	459	573	643
Mifflin	*313	381	458	563	628
Montour	313	322	422	588	694
Potter	213	268	343	428	518
Snyder	*313	381	448	563	628
Susquehanna	317	329	401	503	623
Union	*362	425	524	650	708
Warren	243	292	369	462	517

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Armstrong	*377	458	538	675	755
Bradford	214	291	382	498	536
Clarion	*308	377	443	553	621
Clinton	193	284	338	471	474
Elk	*316	384	453	568	637
Franklin	229	332	409	561	573
Greene	204	259	292	406	455
Indiana	*377	458	538	675	755
Juniata	198	284	342	427	478
Mc Kean	*316	384	453	568	637
Monroe	422	504	622	851	951
Northumberland	231	292	356	474	527
Schuylkill	*350	410	500	604	658
Sullivan	201	275	367	460	514
Tioga	176	281	315	439	447
Venango	*308	377	443	553	621
Wayne	*382	465	548	683	767

RHODE ISLAND

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
New London-Norwich, CT-RI MSA	476	575	700	876	1001	Washington county towns of Hopkinton town, Westerly town
Providence-Fall River-Warwick, RI-MA PMSA	396	539	649	813	1001	Bristol county towns of Barrington town, Bristol town Warren town Kent county towns of Coventry town, East Greenwich tow Warwick city, West Greenwich tow, West Warwick town Newport county towns of Jamestown town Little Compton tow, Tiverton town Providence county towns of Burrillville town Central Falls city, Cranston city, Cumberland town East Providence ci, Foster town, Glocester town Johnston town, Lincoln town, North Providence t North Smithfield t, Pawtucket city, Providence city Scituate town, Smithfield town, Woonsocket city Washington county towns of Charlestown town, Exeter town Narragansett town, North Kingstown to, Richmond town South Kingstown to

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

RHODE ISLAND continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Newport	534	621	797	996	1115	Middletown town, Newport city, Portsmouth town
Washington	593	668	750	968	1066	New Shoreham town

SOUTH CAROLINA

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA	325	389	458	623	738	Aiken, Edgefield
Charleston-North Charleston, SC MSA	365	423	486	647	754	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	400	452	508	670	802	York
Columbia, SC MSA	392	431	496	656	754	Lexington, Richland
Florence, SC MSA	299	334	433	542	607	Florence
Greenville-Spartanburg-Anderson, SC MSA	311	374	424	535	628	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA	385	391	501	626	702	Horry
Sumter, SC MSA	313	348	395	542	641	Sumter

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Abbeville	180	244	326	433	534
Bamberg	173	235	313	391	438
Beaufort	397	487	561	700	784
Chester	188	256	342	428	486
Clarendon	*257	311	366	461	515
Darlington	203	277	368	460	516
Fairfield	233	373	424	530	593
Greenwood	279	283	377	472	528
Jasper	254	257	343	430	564
Lancaster	292	326	371	485	558
Lee	*257	311	366	461	515
Marion	243	246	329	457	540
Newberry	188	304	342	428	480
Orangeburg	223	297	342	428	534
Union	185	295	336	443	470

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allendale	171	277	311	389	436
Barnwell	293	296	396	495	554
Calhoun	207	243	325	450	454
Chesterfield	188	271	342	451	562
Colleton	*294	357	422	528	592
Dillon	246	278	312	409	437
Georgetown	218	353	397	496	603
Hampton	188	304	342	438	499
Kershaw	206	281	375	469	525
Laurens	196	296	356	485	499
Mccormick	206	282	376	470	617
Marlboro	254	295	348	435	487
Oconee	*279	343	404	505	566
Saluda	*222	270	319	400	448
Williamsburg	*274	335	394	493	553

SOUTH DAKOTA

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Rapid City, SD MSA	285	339	452	614	742	Pennington
Sioux Falls, SD MSA	*321	391	459	577	645	Lincoln, Minnehaha

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

S O U T H D A K O T A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aurora	146	237	267	371	402
Bennett	212	307	360	500	544
Brookings	*269	325	379	472	533
Brule	186	281	340	455	558
Butte	198	270	360	500	591
Charles Mix	165	248	285	356	398
Clay	215	293	392	493	643
Corson	159	215	287	369	402
Davison	*274	331	387	485	544
Deuel	*243	291	347	432	479
Douglas	225	229	306	418	427
Fall River	267	270	360	454	591
Grant	198	270	360	493	503
Haakon	198	320	360	500	591
Hand	171	225	301	396	424
Harding	198	320	360	450	503
Hutchinson	164	233	287	364	470
Jackson	180	291	328	426	474
Jones	191	260	348	469	487
Lake	206	278	312	434	481
Lyman	186	255	341	426	478
Mcpherson	185	221	295	411	414
Meade	255	277	360	500	591
Miner	149	243	272	364	433
Perkins	172	235	312	434	512
Roberts	161	245	291	364	408
Shannon	171	276	310	431	434
Stanley	198	320	360	500	522
Todd	260	266	353	443	495
Turner	167	244	304	398	426
Walworth	*249	302	356	446	499
Ziebach	198	270	360	450	591

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beadle	*274	331	387	481	537
Bon Homme	238	241	322	448	529
Brown	204	279	372	490	565
Buffalo	204	278	371	463	607
Campbell	*249	302	356	446	499
Clark	164	223	297	372	447
Codington	199	272	362	497	507
Custer	199	272	363	505	596
Day	239	243	323	450	505
Dewey	*249	302	356	446	499
Edmunds	*261	321	378	474	530
Faulk	*261	321	378	474	530
Gregory	218	248	327	409	458
Hamlin	*243	291	347	432	479
Hanson	240	328	437	548	614
Hughes	*325	397	465	582	650
Hyde	182	295	331	437	534
Jerauld	145	235	265	366	433
Kingsbury	*235	287	337	422	474
Lawrence	209	286	381	529	597
Mccook	153	218	280	390	459
Marshall	222	239	285	364	405
Mellette	255	287	322	423	451
Moody	*235	287	337	422	474
Potter	*249	302	356	446	499
Sanborn	198	288	360	450	503
Spink	*261	321	378	474	530
Sully	172	264	313	405	439
Tripp	190	259	346	444	486
Union	241	258	345	432	483
Yankton	198	310	360	490	591

T E N N E S S E E

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	316	370	444	573	654	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA	*297	374	468	569	632	Montgomery
Jackson, TN MSA	239	314	420	583	587	Madison

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

T E N N E S S E E continued

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Johnson City-Kingsport-Bristol, TN-VA MSA	246	286	363	472	537	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	*296	360	423	531	595	Anderson, Blount, Knox, Loudon, Sevier, Union
Memphis, TN-AR-MS MSA	337	392	462	642	674	Fayette, Shelby, Tipton
Nashville, TN MSA	348	415	512	697	784	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bedford	199	297	362	457	507
Bledsoe	163	223	297	373	418
Campbell	233	236	299	416	419
Carroll	*235	288	340	426	475
Claiborne	176	258	297	414	489
Cocke	173	239	297	399	489
Crockett	163	249	297	373	444
Decatur	210	227	301	377	494
Dyer	288	292	389	486	606
Franklin	242	263	337	469	552
Giles	199	294	363	455	508
Greene	185	265	336	420	470
Hamblen	209	270	355	473	498
Hardeman	*258	315	371	465	520
Haywood	243	281	375	469	525
Henry	*235	288	340	426	475
Houston	221	223	297	382	418
Jackson	163	223	297	373	418
Johnson	157	213	285	386	420
Lauderdale	188	257	343	433	481
Lewis	*250	304	358	448	504
Mcminn	207	253	325	450	454
Macon	171	254	310	388	434
Maury	331	337	448	562	628
Monroe	*252	310	363	454	508
Morgan	169	264	307	385	431
Overton	163	241	297	373	489
Pickett	*235	291	343	428	479
Putnam	280	283	363	498	538
Roane	248	253	337	458	552
Sequatchie	163	265	297	382	418
Stewart	*218	264	312	390	437
Van Buren	150	205	273	375	383

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Benton	*235	288	340	426	475
Bradley	212	291	388	525	637
Cannon	165	227	301	377	422
Chester	*258	315	371	465	520
Clay	235	258	297	373	489
Coffee	198	321	361	502	571
Cumberland	244	265	353	492	495
Dekalb	181	246	329	411	494
Fentress	*235	291	343	428	479
Gibson	*243	293	344	432	485
Grainger	235	265	297	382	489
Grundy	147	239	268	373	412
Hancock	144	213	260	362	428
Hardin	163	265	297	401	435
Henderson	169	240	307	385	431
Hickman	271	275	366	483	512
Humphreys	215	281	331	414	464
Jefferson	252	255	340	432	557
Lake	*243	293	344	432	485
Lawrence	222	225	300	375	421
Lincoln	189	258	344	431	483
Mcnairy	183	207	277	385	418
Marshall	270	296	386	486	540
Meigs	165	227	301	419	494
Moore	230	233	311	433	436
Obion	266	270	346	459	484
Perry	167	271	304	418	499
Polk	184	251	335	419	469
Rhea	180	288	327	454	460
Scott	163	223	297	373	418
Smith	176	246	320	400	448
Trousdale	207	283	377	472	618
Warren	257	260	348	435	487

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

TENNESSEE continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Wayne	162	264	296	388	415
White	*245	296	348	437	489
Weakley	249	258	320	438	468

TEXAS

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	269	290	387	521	634	Taylor
Amarillo, TX MSA	254	323	403	561	662	Potter, Randall
Austin-San Marcos, TX MSA	*380	457	538	673	753	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	289	350	426	564	598	Hardin, Jefferson, Orange
Brazoria, TX PMSA	397	442	553	770	907	Brazoria
Brownsville-Harlingen-San Benito, TX MSA	*302	367	431	540	605	Cameron
Bryan-College Station, TX MSA	*337	393	497	691	815	Brazos
Corpus Christi, TX MSA	*349	423	499	625	701	Nueces, San Patricio
Dallas, TX	*398	485	571	713	798	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	352	386	465	646	763	El Paso
Fort Worth-Arlington, TX PMSA	370	402	522	726	857	Hood, Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	403	414	518	720	849	Galveston
Henderson County, TX	275	327	398	545	653	Henderson
Houston, TX PMSA	381	426	553	769	907	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	*270	328	386	483	540	Bell, Coryell
Laredo, TX MSA	294	339	445	557	624	Webb
Longview-Marshall, TX MSA	*337	409	480	599	673	Gregg, Harrison, Upshur
Lubbock, TX MSA	276	349	454	631	699	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	*301	366	429	538	603	Hidalgo
Odessa-Midland, TX MSA	*383	467	550	686	770	Ector, Midland
San Angelo, TX MSA	*271	329	387	484	542	Tom Green
San Antonio, TX MSA	*331	402	473	591	662	Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	249	350	422	540	646	Grayson
Texarkana, TX-Texarkana, AR MSA	282	344	420	555	588	Bowie
Tyler, TX MSA	320	354	432	601	635	Smith
Victoria, TX MSA	*415	503	593	744	833	Victoria
Waco, TX MSA	279	342	450	599	630	Mclennan
Wichita Falls, TX MSA	308	329	396	552	650	Archer, Wichita

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anderson	316	356	400	556	561
Angelina	288	334	375	521	615
Armstrong	219	299	398	498	557
Austin	210	271	362	503	561
Bandera	283	304	359	498	502
Bee	205	268	353	490	546
Borden	169	274	309	429	432
Brewster	257	271	362	495	593
Brooks	156	205	230	320	322
Burleson	*260	315	373	467	523
Calhoun	282	300	366	508	601
Camp	356	361	450	564	631
Cass	*249	303	356	445	498
Cherokee	294	305	373	488	522
Clay	192	310	348	485	572
Coke	173	237	316	396	519
Collingsworth	172	235	314	392	468
Comanche	227	231	309	411	450
Cooke	286	290	387	524	581
Crane	206	271	362	452	506
Crosby	244	274	309	419	506
Dallam	192	261	348	457	488
Deaf Smith	232	284	347	482	570
Dewitt	239	250	316	396	442
Dimmit	212	258	300	417	419
Duval	244	259	309	429	466
Edwards	176	278	321	401	449
Falls	215	237	317	397	444
Fayette	251	254	339	428	556
Floyd	236	239	320	399	474
Franklin	199	271	362	503	506
Frio	*260	316	375	470	525
Garza	161	245	294	368	412
Glasscock	169	274	309	386	432
Gonzales	222	231	309	391	493
Grimes	*260	315	373	467	523
Hall	148	201	269	374	441
Hansford	263	281	351	488	576
Hartley	173	237	316	440	442
Hemphill	209	338	380	529	533

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Andrews	225	300	336	468	552
Aransas	237	324	432	601	605
Atascosa	180	247	328	457	539
Bailey	169	274	309	429	432
Baylor	169	262	309	386	432
Blanco	214	291	389	541	569
Bosque	199	292	362	478	543
Briscoe	192	261	348	461	488
Brown	*246	301	354	440	491
Burnet	206	281	374	520	609
Callahan	238	243	318	439	445
Carson	197	298	359	448	502
Castro	264	288	335	455	550
Childress	245	275	310	387	507
Cochran	202	230	259	360	425
Coleman	160	203	271	377	444
Colorado	203	231	309	429	506
Concho	176	240	322	447	450
Cottle	159	218	289	403	476
Crockett	244	257	309	429	432
Culberson	172	274	309	407	432
Dawson	169	274	309	429	506
Delta	*249	303	356	445	498
Dickens	173	218	289	383	476
Donley	186	256	340	474	477
Eastland	244	274	309	386	506
Erath	272	309	400	517	561
Fannin	266	276	355	493	561
Fisher	226	256	287	399	403
Foard	171	264	311	388	435
Freestone	210	247	328	457	490
Gaines	268	274	342	460	480
Gillespie	258	332	430	590	603
Goliad	179	271	326	418	536
Gray	289	294	391	490	580
Hale	238	271	358	486	500
Hamilton	244	274	309	429	503
Hardeman	169	231	309	429	506
Haskell	162	254	296	411	414
Hill	240	265	354	471	495

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Hockley	268	314	358	496	546
Houston	182	265	332	462	465
Hudspeth	317	358	401	502	658
Irion	210	302	339	425	476
Jackson	250	292	329	458	541
Jeff Davis	198	296	361	451	504
Jim Wells	190	281	346	481	568
Karnes	195	249	300	417	491
Kenedy	169	274	309	386	432
Kerr	251	340	426	592	698
King	189	258	343	430	481
Kleberg	320	332	405	564	664
Lamar	256	324	381	531	627
Lampasas	197	283	359	498	588
Lavaca	164	224	299	410	453
Leon	*268	325	384	483	539
Lipscomb	180	246	327	454	458
Llano	248	338	451	565	741
Lynn	169	253	309	426	506
Mcmullen	169	274	309	386	432
Marion	195	283	354	467	581
Mason	162	221	296	369	485
Maverick	246	263	351	438	491
Menard	227	231	309	429	432
Mills	*246	301	354	440	491
Montague	227	231	309	429	506
Morris	*249	303	356	445	498
Nacogdoches	278	335	435	543	640
Newton	181	248	330	424	542
Ochiltree	174	283	318	442	522
Palo Pinto	198	276	360	478	583
Parmer	185	271	338	443	474
Polk	294	321	373	503	611
Rains	225	340	411	571	575
Real	169	252	308	427	430
Reeves	169	274	309	417	432
Roberts	189	307	343	430	481
Runnels	244	253	309	429	491
Sabine	232	235	314	392	508
San Jacinto	276	311	350	476	573

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Hopkins	304	327	385	536	575
Howard	281	285	356	495	499
Hutchinson	235	301	380	529	624
Jack	167	227	304	423	499
Jasper	258	296	374	498	613
Jim Hogg	*266	322	381	480	536
Jones	172	235	314	396	440
Kendall	237	385	432	601	709
Kent	145	234	263	366	414
Kimble	220	301	400	501	561
Kinney	169	231	309	429	503
Knox	163	245	298	398	417
Lamb	244	262	309	414	469
La Salle	166	244	301	418	493
Lee	298	335	377	525	589
Limestone	251	298	334	465	468
Live Oak	169	274	309	429	503
Loving	169	231	309	386	432
Mcculloch	253	257	341	427	479
Madison	*268	325	384	483	539
Martin	169	274	309	429	432
Matagorda	304	333	411	571	575
Medina	239	284	334	448	547
Milam	*258	313	370	465	521
Mitchell	169	274	309	429	506
Moore	225	309	347	482	570
Motley	169	274	309	419	506
Navarro	315	332	399	506	558
Nolan	270	274	365	464	544
Oldham	219	299	398	498	582
Panola	236	310	348	470	527
Pecos	203	268	356	495	584
Presidio	226	256	286	359	401
Reagan	335	340	453	568	744
Red River	*249	303	356	445	498
Refugio	243	274	323	429	530
Robertson	*260	315	373	467	523
Rusk	274	277	347	482	528
San Augustine	183	251	334	418	468
San Saba	*246	301	354	440	491

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Schleicher	169	272	309	429	432
Shackelford	169	231	309	429	506
Sherman	249	281	315	438	441
Starr	232	272	305	381	427
Sterling	174	238	318	417	445
Sutton	173	282	316	440	442
Terrell	169	274	309	407	506
Throckmorton	224	266	300	417	419
Trinity	273	309	346	481	557
Upton	227	231	309	386	506
Val Verde	250	348	410	513	606
Walker	355	378	462	614	646
Washington	328	334	444	556	730
Wheeler	244	274	309	429	441
Willacy	*281	343	404	502	564
Wise	203	307	369	514	536
Yoakum	234	345	426	532	698
Zapata	169	257	309	386	506

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Scurry	210	286	381	531	627
Shelby	243	273	307	383	429
Somervell	301	338	380	521	533
Stephens	179	254	326	453	536
Stonewall	169	234	309	429	506
Swisher	169	274	309	429	506
Terry	180	290	327	454	498
Titus	277	343	390	539	546
Tyler	215	294	392	491	644
Uvalde	183	282	317	441	444
Van Zandt	282	286	381	519	627
Ward	244	274	309	429	506
Wharton	250	301	363	490	507
Wilbarger	261	264	353	490	579
Winkler	228	232	310	403	507
Wood	244	285	380	529	624
Young	257	260	346	481	568
Zavala	163	214	286	398	470

U T A H

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Provo-Orem, UT MSA	*313	331	409	568	670	Utah.
Salt Lake City-Ogden, UT MSA	*300	343	429	536	601	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beaver	184	251	337	421	552
Cache	265	293	377	524	607
Daggett	*405	492	579	724	811
Emery	261	300	337	454	538
Grand	*405	492	579	724	811
Juab	233	236	314	437	517
Millard	248	251	335	419	550
Piute	170	275	309	386	506
San Juan	266	300	337	421	552
Sevier	277	280	359	449	502
Tooele	248	330	388	513	637
Wasatch	215	348	391	544	642
Wayne	209	286	381	477	533

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Box Elder	293	297	382	531	596
Carbon	*405	492	579	724	811
Duchesne	*405	492	579	724	811
Garfield	245	267	355	445	498
Iron	*355	432	509	635	712
Kane	215	292	391	489	548
Morgan	214	291	388	540	637
Rich	184	251	337	431	470
Sanpete	184	292	337	440	507
Summit	405	498	623	840	1021
Uintah	*405	492	579	724	811
Washington	288	354	471	628	770

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

VERMONT

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington, VT MSA	393	483	644	877	1057	Chittenden county towns of Burlington city Charlotte town, Colchester town, Essex town Hinesburg town, Jericho town, Milton town, Richmond town St. George town, Shelburne town, South Burlington c Williston town, Winooski city Franklin county towns of Fairfax town, Georgia town St. Albans city, St. Albans town, Swanton town Grand Isle county towns of Grand Isle town South Hero town

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Addison	*381	462	545	680	763	
Bennington	349	439	564	717	836	
Caledonia	*325	394	463	580	650	
Chittenden	*439	537	631	791	887	Bolton town, Buels gore, Huntington town, Underhill town Westford town
Essex	*325	394	463	580	650	
Franklin	*361	439	519	647	726	Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town Sheldon town
Grand Isle	*325	394	463	580	650	Alburg town, Isle La Motte town, North Hero town
Lamoille	*393	477	560	701	785	
Orange	*387	472	555	693	777	
Orleans	*325	394	463	580	650	
Rutland	348	453	553	693	775	
Washington	*387	476	558	696	784	
Windham	*407	496	582	729	818	
Windsor	401	452	565	724	860	

VIRGINIA

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Charlottesville, VA MSA	376	444	569	757	848	Albemarle, Fluvanna, Greene, Charlottesville city
Clarke County, VA	285	401	520	713	728	Clarke
Culpeper County, VA	351	512	595	785	941	Culpeper
Danville, VA MSA	*288	349	412	514	576	Pittsylvania, Danville city
Johnson City-Kingsport-Bristol, TN-VA MSA	246	286	363	472	537	Scott, Washington, Bristol city
King George County, VA	348	462	519	722	727	King George
Lynchburg, VA MSA	*310	385	444	542	622	Amherst, Bedford, Campbell, Bedford city, Lynchburg city
Norfolk-Virginia Beach-Newport News, VA-NC MSA	409	458	545	758	890	Gloucester, Isle of Wight, James City, Mathews, York Chesapeake city, Hampton city, Newport News city Norfolk city, Poquoson city, Portsmouth city

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 50

V I R G I N I A continued

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Richmond-Petersburg, VA MSA	403	455	529	736	869	Suffolk city, Virginia Beach city, Williamsburg city Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights city, Hopewell city, Petersburg city Richmond city
Roanoke, VA MSA	272	333	439	563	703	Botetourt, Roanoke, Roanoke city, Salem city
Warren County, VA	284	388	518	679	849	Warren
Washington, DC-MD-VA	633	719	844	1149	1385	Arlington, Fairfax, Loudoun, Prince William, Spotsylvania Stafford, Alexandria city, Fairfax city Falls Church city, Fauquier, Fredericksburg city Manassas city, Manassas Park city

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Accomack	322	346	407	509	570
Amelia	182	295	332	462	520
Augusta	*300	364	429	537	601
Bland	169	274	308	386	431
Buchanan	203	283	317	399	444
Caroline	384	389	519	690	727
Charlotte	239	270	303	420	497
Cumberland	237	371	431	539	604
Essex	247	382	451	626	739
Franklin	263	276	333	416	466
Giles	215	258	336	420	471
Greensville	216	350	393	513	646
Henry	261	290	367	460	566
King and Queen	240	389	438	547	630
Lancaster	339	381	429	571	696
Louisa	239	353	435	604	610
Madison	273	405	455	569	746
Middlesex	265	343	385	535	539
Nelson	209	338	380	476	625
Northumberland	193	313	352	489	493
Orange	301	410	547	760	892
Patrick	214	216	274	343	384
Pulaski	196	282	356	481	498
Richmond	222	361	406	516	666
Rockingham	*344	417	492	614	687
Shenandoah	357	366	452	624	709
Southampton	187	303	376	485	545
Sussex	196	286	357	447	586

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alleghany	283	318	358	487	502
Appomattox	261	264	334	438	467
Bath	209	338	380	491	533
Brunswick	209	283	318	443	446
Buckingham	259	286	328	410	460
Carroll	238	264	318	417	446
Craig	174	238	317	442	520
Dickenson	174	283	317	442	520
Floyd	231	235	314	436	487
Frederick	367	423	510	699	837
Grayson	162	263	295	386	484
Halifax	187	273	317	431	444
Highland	174	283	317	419	444
King William	229	371	417	521	643
Lee	*256	311	369	461	515
Lunenburg	173	281	315	393	485
Mecklenburg	211	269	353	442	526
Montgomery	280	366	430	598	706
Northampton	195	267	355	455	497
Nottoway	271	274	356	445	498
Page	315	355	399	499	574
Prince Edward	304	343	385	535	539
Rappahannock	275	445	499	695	819
Rockbridge	211	305	386	537	540
Russell	*287	348	410	513	576
Smyth	230	232	292	406	478
Surry	282	317	356	445	498
Tazewell	252	284	320	444	524

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Westmoreland	269	366	488	611	792
Wythe	284	295	359	450	504
Wise	251	282	376	471	601

W A S H I N G T O N

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	313	405	540	746	886	Whatcom
Bremerton, WA PMSA	*403	490	576	718	808	Kitsap
Olympia, WA PMSA	*416	505	595	745	836	Thurston.
Portland-Vancouver, OR-WA PMSA	*365	444	522	689	767	Clark
Richland-Kennewick-Pasco, WA MSA	367	388	503	699	821	Benton, Franklin
Seattle-Bellevue-Everett, WA PMSA	424	516	653	908	1072	Island, King, Snohomish
Spokane, WA MSA	*295	367	491	667	746	Spokane
Tacoma, WA PMSA	350	417	555	773	872	Pierce
Yakima, WA MSA	275	321	418	560	586	Yakima

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	254	274	338	440	490
Chelan	*359	435	515	642	721
Columbia	176	287	323	448	451
Douglas	*359	435	515	642	721
Garfield	176	242	323	403	451
Grays Harbor	*387	470	555	693	779
Kittitas	*360	437	515	646	725
Lewis	261	310	408	537	594
Mason	*387	470	555	693	779
Pacific	233	287	382	512	534
San Juan	361	493	657	867	1031
Skamania	*360	437	515	646	725
Wahkiakum	211	293	357	447	543
Whitman	286	325	433	603	712
Asotin	*385	467	552	689	773
Clallam	*387	470	555	693	779
Cowlitz	*300	365	429	605	665
Ferry	*210	325	382	477	534
Grant	*296	361	424	533	597
Jefferson	*387	470	555	693	779
Klickitat	239	293	362	459	521
Lincoln	183	242	323	432	513
Okanogan	*328	396	469	588	658
Pend Oreille	*210	294	382	503	626
Skagit	*393	482	566	708	792
Stevens	*207	285	379	493	531
Walla Walla	236	286	381	529	626

W E S T V I R G I N I A

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Berkeley County, WV	353	375	447	559	626	Berkeley
Charleston, WV MSA	224	322	408	560	613	Kanawha, Putnam
Cumberland, MD-WV MSA	228	287	374	493	541	Mineral
Huntington-Ashland, WV-KY-OH MSA	*320	389	460	575	647	Cabell, Wayne
Jefferson County, WV	349	386	478	620	703	Jefferson

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

W E S T V I R G I N I A continued

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Parkersburg-Marietta, WV-OH MSA	*300	364	428	539	602	Wood
Steubenville-Weirton, OH-WV MSA	195	288	357	450	501	Brooke, Hancock
Wheeling, WV-OH MSA	*302	368	433	542	606	Marshall, Ohio

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barbour	178	242	324	405	454
Braxton	156	241	284	386	466
Clay	232	263	295	369	438
Fayette	161	259	292	406	439
Grant	174	252	316	395	443
Hampshire	188	257	343	453	481
Harrison	*321	377	437	569	627
Lewis	163	221	296	408	414
Logan	245	271	318	443	523
Marion	*329	400	470	590	659
Mercer	195	250	331	413	509
Monongalia	*329	400	470	590	659
Morgan	296	334	375	470	525
Pendleton	162	229	295	380	412
Pocahontas	*255	310	367	457	513
Raleigh	248	280	314	430	515
Ritchie	*235	286	335	418	470
Summers	209	213	284	395	466
Tucker	156	213	284	395	429
Upshur	*278	338	399	500	558
Wetzel	*281	342	403	504	564
Wyoming	210	229	306	382	428

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Boone	215	243	317	397	444
Calhoun	156	213	284	355	397
Doddridge	*270	331	391	488	547
Gilmer	265	279	335	419	470
Greenbrier	*255	310	367	457	513
Hardy	174	259	316	395	443
Jackson	185	300	336	467	481
Lincoln	198	213	284	395	406
Mcdowell	160	207	276	345	387
Mason	*267	325	382	478	537
Mingo	173	239	315	428	517
Monroe	*267	321	377	471	529
Nicholas	208	248	331	413	463
Pleasants	*235	286	335	418	470
Preston	*329	400	470	590	659
Randolph	183	275	327	419	459
Roane	209	213	284	395	397
Taylor	*270	331	391	488	547
Tyler	197	270	359	450	504
Webster	199	239	285	356	399
Wirt	*235	286	335	418	470

W I S C O N S I N

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton-Oshkosh-Neenah, WI MSA	288	356	451	569	655	Calumet, Outagamie, Winnebago
Duluth-Superior, MN-WI MSA	*245	329	422	562	656	Douglas
Eau Claire, WI MSA	283	308	405	519	584	Chippewa, Eau Claire
Green Bay, WI MSA	316	347	445	619	623	Brown
Janesville-Beloit, WI MSA	294	345	459	575	643	Rock
Kenosha, WI PMSA	*383	467	549	688	770	Kenosha
La Crosse, WI-MN MSA	242	318	419	566	687	La Crosse
Madison, WI MSA	390	491	592	823	971	Dane

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

WISCONSIN continued

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Milwaukee-Waukesha, WI PMSA	336	439	551	689	770	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI MSA	*440	535	630	788	882	Pierce, St. Croix
Racine, WI PMSA	295	366	483	623	681	Racine
Sheboygan, WI MSA	276	355	433	541	670	Sheboygan
Wausau, WI MSA	336	350	437	594	660	Marathon

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	189	285	343	477	556
Barron	202	275	366	465	524
Buffalo	206	258	344	431	483
Clark	166	239	303	409	466
Crawford	207	256	329	415	461
Door	234	324	404	517	627
Florence	240	261	348	484	487
Forest	175	241	318	398	446
Green	267	301	376	523	526
Iowa	272	287	378	511	530
Jackson	206	257	323	419	452
Juneau	268	278	340	452	476
Lafayette	266	270	361	455	505
Lincoln	242	258	345	480	550
Marinette	206	257	343	460	480
Menominee	229	232	310	387	434
Oconto	175	261	318	430	477
Pepin	173	237	316	434	517
Portage	318	336	436	545	675
Richland	246	280	338	456	473
Sauk	307	316	422	526	590
Shawano	267	275	366	459	513
Trempealeau	211	260	333	420	520
Vilas	244	292	370	464	535
Washburn	258	262	350	444	490
Waushara	209	291	343	432	480

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Ashland	286	316	372	465	521
Bayfield	184	265	336	427	469
Burnett	253	301	362	453	506
Columbia	245	311	409	537	601
Dodge	331	336	442	553	619
Dunn	261	302	401	535	659
Fond du Lac	*327	395	449	559	612
Grant	265	268	349	437	488
Green Lake	226	290	359	460	516
Iron	169	236	303	412	497
Jefferson	261	347	451	582	636
Kewaunee	178	242	324	404	453
Langlade	248	252	336	460	497
Manitowoc	264	287	335	425	512
Marquette	184	280	335	465	529
Monroe	261	300	378	518	530
Oneida	214	307	388	501	598
Polk	241	298	396	495	554
Price	187	267	339	427	550
Rusk	178	244	323	436	452
Sawyer	258	290	350	438	490
Taylor	233	273	333	437	467
Vernon	193	240	312	434	437
Walworth	274	384	499	650	728
Waupaca	209	286	381	496	588
Wood	*304	368	435	546	612

Note: The FMRS for unit sizes arger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

092493

WYOMING

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	*454	551	647	812	910	Natrona
Cheyenne, WY MSA	*374	454	537	673	752	Laramie

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Albany	248	310	414	575	678
Campbell	291	296	380	528	623
Converse	180	271	327	455	537
Fremont	190	258	345	459	560
Hot Springs	238	271	361	502	593
Lincoln	238	299	379	519	530
Park	205	279	373	519	611
Sheridan	246	279	373	499	611
Sweetwater	280	285	380	528	623
Uinta	282	290	387	527	636
Weston	254	257	343	443	546

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Big Horn	180	246	328	453	459
Carbon	217	255	340	471	558
Crook	268	302	340	425	486
Goshen	232	285	340	471	558
Johnson	251	255	340	471	520
Niobrara	185	253	338	422	544
Platte	186	257	340	425	476
Sublette	299	337	379	488	530
Teton	359	457	608	816	889
Washakie	199	272	362	454	595

GUAM

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Pacific Islands	*639	768	909	1138	1280

PUERTO RICO

METROPOLITAN FMR AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla, PR MSA	225	275	325	405	455	Aguada, Aguadilla, Moca
Arecibo, PR PMSA	330	400	470	590	660	Arecibo, Camuy, Hatillo
Caguas, PR PMSA	275	330	390	490	545	Caguas, Cayey, Cidra, Gurabo, San Lorenzo
Mayaguez, PR MSA	225	275	325	405	455	Anasco, Cabo Rojo, Hormigueros, Mayaguez, Sabana Grand San German
Ponce, PR MSA	320	390	460	575	645	Guayanilla, Juana Diaz, Penuelas, Ponce, Villalba, Yauco
San Juan-Bayamon, PR PMSA	320	390	460	575	645	Aguas Buenas, Barceloneta, Bayamon, Canovanas, Carolina Catano, Ceiba, Comerio, Corozal, Dorado, Fajardo, Florida Guaynabo, Humacao, Juncos, Las Piedras, Loiza, Luquillo Manati, Morovis, Naguabo, Naranjito, Rio Grande, San Juan Toa Alta, Toa Baja, Trujillo Alt, Vega Alta, Vega Baja Yabucoa

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

PUERTO RICO continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adjuntas	215	265	310	390	435
Arroyo	215	265	310	390	435
Ciales	215	265	310	390	435
Culebra	215	265	310	390	435
Guayama	215	265	310	390	435
Jayuya	215	265	310	390	435
Lares	215	265	310	390	435
Maricao	215	265	310	390	435
Orocovis	215	265	310	390	435
Quebradillas	330	400	470	590	660
Salinas	215	265	310	390	435
Santa Isabel	215	265	310	390	435
Vieques	215	265	310	390	435

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aibonito	215	265	310	390	435
Barranquitas	215	265	310	390	435
Coamo	215	265	310	390	435
Guanica	215	265	310	390	435
Isabela	225	275	325	405	455
Lajas	215	265	310	390	435
Las Marias	215	265	310	390	435
Maunabo	215	265	310	390	435
Patillas	215	265	310	390	435
Rincon	215	265	310	390	435
San Sebastia	215	265	310	390	435
Utuado	215	265	310	390	435

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Virgin Isl	439	533	629	785	880

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 092493

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 56

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: ALABAMA	73	84
MSA: Anniston, AL	76	86
MSA: Birmingham, AL	110	121
MSA: Columbus, GA-AL	100	110
MSA: Decatur, AL	73	85
MSA: Dothan, AL	71	81
MSA: Florence, AL	86	93
MSA: Gadsden, AL	76	86
MSA: Huntsville, AL	110	121
MSA: Mobile, AL	87	94
MSA: Montgomery, AL	87	93
MSA: Tuscaloosa, AL	103	117
EXCEPTION COUNTY: LIMESTONE	81	89
EXCEPTION COUNTY: MARSHALL	81	89
NON METRO STATE: ALASKA	173	173
MSA: Anchorage, AK	204	204
EXCEPTION COUNTY: KETCHIKAN	173	182
NON METRO STATE: ARIZONA	109	141
MSA: Phoenix-Mesa, AZ	153	183
MSA: Tucson, AZ	109	153
MSA: Yuma, AZ	109	140
NON METRO STATE: ARKANSAS	39	44
MSA: Fayetteville-Springdale-Rogers, AR	68	73
MSA: Fort Smith, AR-OK	37	40
MSA: Little Rock-North Little Rock, AR	58	60
MSA: Memphis, TN-AR-MS	102	102
MSA: Pine Bluff, AR	28	31
MSA: Texarkana, TX-Texarkana, AR	120	135
EXCEPTION COUNTY: BENTON	53	55
EXCEPTION COUNTY: LITTLE RIVER	88	99
NON METRO STATE: CALIFORNIA	173	227
MSA: Bakersfield, CA	161	247
MSA: Chico-Paradise, CA	172	226
MSA: Fresno, CA	247	280
PMSA: Los Angeles-Long Beach, CA	204	344
MSA: Merced, CA	172	226
MSA: Modesto, CA	258	280

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092493

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
PMSA: Oakland, CA	286	376
PMSA: Orange County, CA	422	422
MSA: Redding, CA	172	226
PMSA: Riverside-San Bernardino, CA	173	284
PMSA: Sacramento, CA	199	237
MSA: Salinas, CA	247	312
MSA: San Diego, CA	317	346
PMSA: San Francisco, CA	307	400
PMSA: San Jose, CA	365	426
PMSA: San Luis Obispo-Atascadero-Paso Robles, CA	238	282
MSA: Santa Barbara-Santa Maria-Lompoc, CA	203	312
PMSA: Santa Cruz-Watsonville, CA	267	334
PMSA: Santa Rosa, CA	267	320
MSA: Stockton-Lodi, CA	258	280
PMSA: Vallejo-Fairfield-Napa, CA	278	317
PMSA: Ventura, CA	299	398
MSA: Visalia-Tulare-Porterville, CA	172	226
PMSA: Yolo, CA	172	226
MSA: Yuba City, CA	172	226
NON METRO STATE: COLORADO	N/A	N/A
PMSA: Boulder-Longmont, CO	231	252
MSA: Colorado Springs, CO	169	190
PMSA: Denver, CO	263	284
MSA: Fort Collins-Loveland, CO	159	179
PMSA: Greeley, CO	159	179
MSA: Pueblo, CO	159	179
EXCEPTION COUNTY: ALAMOSA	132	159
EXCEPTION COUNTY: ARCHULETA	159	177
EXCEPTION COUNTY: BACA	132	159
EXCEPTION COUNTY: BENT	132	159
EXCEPTION COUNTY: CHAFFEE	159	177
EXCEPTION COUNTY: CHEYENNE	132	159
EXCEPTION COUNTY: CLEAR CREEK	159	177
EXCEPTION COUNTY: CONEJOS	132	159
EXCEPTION COUNTY: COSTILLA	132	159
EXCEPTION COUNTY: CROWLEY	132	159
EXCEPTION COUNTY: CUSTER	159	177
EXCEPTION COUNTY: DELTA	159	177
EXCEPTION COUNTY: DELORES	159	177
EXCEPTION COUNTY: EAGLE	257	289
EXCEPTION COUNTY: ELBERT	132	159
EXCEPTION COUNTY: FREMONT	159	177
EXCEPTION COUNTY: GARFIELD	257	289
EXCEPTION COUNTY: GILPIN	164	189

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092493

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: GRAND	159	177
EXCEPTION COUNTY: GUNNISON	159	177
EXCEPTION COUNTY: HINSDALE	159	177
EXCEPTION COUNTY: HUERFANO	132	159
EXCEPTION COUNTY: JACKSON	159	177
EXCEPTION COUNTY: KIOWA	132	159
EXCEPTION COUNTY: KIT CARSON	132	159
EXCEPTION COUNTY: LAKE	159	177
EXCEPTION COUNTY: LA PLATA	159	177
EXCEPTION COUNTY: LAS ANIMAS	132	159
EXCEPTION COUNTY: LINCOLN	132	159
EXCEPTION COUNTY: LOGAN	132	159
EXCEPTION COUNTY: MESA	159	177
EXCEPTION COUNTY: MINERAL	132	159
EXCEPTION COUNTY: MOFFAT	257	289
EXCEPTION COUNTY: MONTEZUMA	159	177
EXCEPTION COUNTY: MONTROSE	159	177
EXCEPTION COUNTY: MORGAN	132	159
EXCEPTION COUNTY: OTERO	132	159
EXCEPTION COUNTY: OURAY	159	177
EXCEPTION COUNTY: PARK	159	177
EXCEPTION COUNTY: PHILLIPS	132	159
EXCEPTION COUNTY: PITKIN	257	289
EXCEPTION COUNTY: PROWERS	132	159
EXCEPTION COUNTY: RIO BLANCO	257	289
EXCEPTION COUNTY: RIO GRANDE	132	159
EXCEPTION COUNTY: ROUTT	257	289
EXCEPTION COUNTY: SAGUACHE	132	159
EXCEPTION COUNTY: SAN JUAN	159	177
EXCEPTION COUNTY: SAN MIGUEL	159	177
EXCEPTION COUNTY: SEDGWICK	132	159
EXCEPTION COUNTY: SUMMIT	257	289
EXCEPTION COUNTY: TELLER	132	159
EXCEPTION COUNTY: WASHINGTON	132	159
EXCEPTION COUNTY: YUMA	132	159
NON METRO STATE: CONNECTICUT	168	168
PMSA: Bridgeport, CT	225	225
PMSA: Danbury, CT	172	172
PMSA: Hartford, CT	185	185
PMSA: New Britain, CT	185	185
PMSA: New Haven-Meriden, CT	167	167
MSA: New London-Norwich, CT-RI	158	158
PMSA: Stamford-Norwalk, CT	211	211
MSA: Waterbury, CT	171	171

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092493

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: DELAWARE	74 (1)	74 (1)
MSA: Dover, DE	160	160
PMSA: Wilmington-Newark, DE-MD	153	153
EXCEPTION COUNTY: DE SUSSEX	115	115
NON METRO STATE: DIST. OF COLUMBIA	N/A	N/A
PMSA: Washington, DC-MD-VA	209	209
NON METRO STATE: FLORIDA	92	92
MSA: Daytona Beach, FL	120	120
PMSA: Fort Lauderdale, FL	196	196
MSA: Fort Myers-Cape Coral, FL	126	126
MSA: Fort Pierce-Port Lucie, FL	90	90
MSA: Fort Walton Beach, FL	93	93
MSA: Gainesville, FL	93	93
MSA: Jacksonville, FL	86	102
MSA: Lakeland-Winter Haven, FL	93	93
MSA: Melbourne-Titusville-Palm Bay, FL	110	110
PMSA: Miami, FL	154	154
MSA: Naples, FL	93	93
MSA: Ocala, FL	93	93
MSA: Orlando, FL	110	110
MSA: Panama City, FL	93	93
MSA: Pensacola, FL	93	93
MSA: Punta Gorda, FL	92	92
MSA: Sarasota-Bradenton, FL	126	126
MSA: Tallahassee, FL	86	86
MSA: Tampa-St. Petersburg-Clearwater, FL	126	126
MSA: West Palm Beach-Boca Raton, FL	161	161
EXCEPTION COUNTY: BAKER	83	99
EXCEPTION COUNTY: COLUMBIA	92	92
EXCEPTION COUNTY: WAKULLA	83	99
NON METRO STATE: GEORGIA	67	67
MSA: Albany, GA	59	63
MSA: Athens, GA	67	67
MSA: Atlanta, GA	106	114
MSA: Augusta-Aiken, GA-SC	90	93
MSA: Chattanooga, TN-GA	59	86
MSA: Columbus, GA-AL	100	110
MSA: Macon, GA	60	66
MSA: Savannah, GA	74	86

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092493

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: BRYAN	67	67
EXCEPTION COUNTY: CARROLL	67	67
EXCEPTION COUNTY: PICKENS	67	67
EXCEPTION COUNTY: SPALDING	106	114
EXCEPTION COUNTY: TWIGGS	59	65
EXCEPTION COUNTY: WALTON	106	114
NON METRO STATE: HAWAII	N/A	N/A
MSA: Honolulu, HI	N/A	N/A
NON METRO STATE: IDAHO	129	129
MSA: Boise City, ID	143	167
NON METRO STATE: ILLINOIS	119	128
MSA: Bloomington-Normal, IL	137	137
MSA: Champaign-Urbana, IL	111	111
MSA: Chicago, IL	268	287
MSA: Davenport-Moline-Rock Island, IA-IL	150	158
MSA: Decatur, IL	150	150
PMSA: Kankakee, IL	108	108
MSA: Peoria-Pekin, IL	205	224
MSA: Rockford, IL	202	214
MSA: St. Louis, MO-IL	109	126
MSA: Springfield, IL	131	140
EXCEPTION COUNTY: DE KALB	119	128
EXCEPTION COUNTY: GRUNDY	268	287
EXCEPTION COUNTY: KENDALL	268	287
NON METRO STATE: INDIANA	65	84
MSA: Bloomington, IN	69	69
MSA: Cincinnati, OH-KY-IN	132	139
MSA: Elkhart-Goshen, IN	96	96
MSA: Evansville-Henderson, IN-KY	88	94
MSA: Fort Wayne, IN	81	111
PMSA: Gary, IN	129	149
MSA: Indianapolis, IN	104	120
MSA: Kokomo, IN	96	109
MSA: Lafayette, IN	89	132
MSA: Louisville, KY-IN	94	103
MSA: Muncie, IN	70	79
MSA: South Bend, IN	109	115
MSA: Terre Haute, IN	69	86

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092493

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: ADAMS	65	84
EXCEPTION COUNTY: BLACKFORD	73	84
EXCEPTION COUNTY: GIBSON	65	84
EXCEPTION COUNTY: GRANT	73	84
EXCEPTION COUNTY: HENRY	73	84
EXCEPTION COUNTY: JAY	73	84
EXCEPTION COUNTY: MARSHALL	74	84
EXCEPTION COUNTY: OHIO	65	84
EXCEPTION COUNTY: RANDOLPH	73	84
EXCEPTION COUNTY: SULLIVAN	66	78
EXCEPTION COUNTY: VERMILLION	66	78
EXCEPTION COUNTY: WAYNE	73	84
EXCEPTION COUNTY: WELLS	65	84
NON METRO STATE: IOWA	103	111
MSA: Cedar Rapids, IA	120	139
MSA: Davenport-Moline-Rock Island, IA-IL	151	158
MSA: Des Moines, IA	128	136
MSA: Dubuque, IA	120	150
MSA: Iowa City, IA	120	136
MSA: Omaha, NE-IA	112	131
MSA: Sioux City, IA-NE	116	116
MSA: Waterloo-Cedar Falls, IA	120	139
NON METRO STATE: KANSAS	91	103
MSA: Kansas City, MO-KS	104	127
MSA: Lawrence, KS	94	107
MSA: Topeka, KS	92	104
MSA: Wichita, KS	107	115
EXCEPTION COUNTY: JEFFERSON	87	100
EXCEPTION COUNTY: OSAGE	87	100
NON METRO STATE: KENTUCKY	80	88
MSA: Cincinnati, OH-KY-IN	132	138
MSA: Clarksville-Hopkinsville, TN-KY	86	93
MSA: Evansville-Henderson, IN-KY	87	93
MSA: Huntington-Ashland, WV-KY-OH	99	99
MSA: Lexington, KY	103	118
MSA: Louisville, KY-IN	93	102
MSA: Owensboro, KY	94	113
EXCEPTION COUNTY: GALLATIN	80	88
EXCEPTION COUNTY: GRANT	80	88
EXCEPTION COUNTY: PENDLETON	80	88

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092493

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 62

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: LOUISIANA	86	101
MSA: Alexandria, LA	86	102
MSA: Baton Rouge, LA	102	120
MSA: Houma, LA	85	100
MSA: Lafayette, LA	93	111
MSA: Lake Charles, LA	100	118
MSA: Monroe, LA	86	102
MSA: New Orleans, LA	108	124
MSA: Shreveport-Bossier City, LA	93	111
EXCEPTION COUNTY: ACADIA	86	101
EXCEPTION COUNTY: GRANT	82	97
EXCEPTION COUNTY: ST JAMES	86	101
EXCEPTION COUNTY: ST LANDRY	86	101
EXCEPTION COUNTY: WEBSTER	86	101
NON METRO STATE: MAINE	149	171
MSA: Bangor, ME	150	174
MSA: Lewiston-Auburn, ME	114	114
MSA: Portland, ME	188	215
PMSA: Portsmouth-Rochester, NH-ME	150	174
NON METRO STATE: MARYLAND	135 (1)	135 (1)
PMSA: Baltimore, MD	219	219
MSA: Cumberland, MD-WV	136	136
PMSA: Hagerstown, MD	208	208
PMSA: Washington, DC-MD-VA	209	209
PMSA: Wilmington-Newark, DE-MD	153	153
EXCEPTION COUNTY: ST MARYS	248	248
NON METRO STATE: MASSACHUSETTS	183	183
MSA: Barnstable-Yarmouth, MA	184	184
PMSA: Boston, MA-NH	177	191
PMSA: Brockton, MA	177	177
PMSA: Fall River, MA-RI	114	114
MSA: Fitchburg-Leominster, MA	136	136
PMSA: Lawrence, MA-NH	168	179
PMSA: Lowell, MA-NH	168	179
MSA: New Bedford, MA	158	158
MSA: Pittsfield, MA	172	172
PMSA: Salem-Gloucester, MA	177	191
MSA: Springfield, MA	134	134
MSA: Worcester, MA	117	117

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092493

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: MICHIGAN	128	142
PMSA: Ann Arbor, MI	191	206
MSA: Benton Harbor, MI	131	146
PMSA: Detroit, MI	185	200
PMSA: Flint, MI	160	160
MSA: Grand Rapids-Muskegon-Holland, MI	120	129
MSA: Jackson, MI	131	131
MSA: Kalamazoo-Battle Creek, MI	138	142
MSA: Lansing-East Lansing, MI	154	179
MSA: Saginaw-Bay City-Midland, MI	140	140
EXCEPTION COUNTY: BARRY	104	122
EXCEPTION COUNTY: IONIA	128	142
EXCEPTION COUNTY: OCEANA	111	113
EXCEPTION COUNTY: SHIAWASSEE	149	149
EXCEPTION COUNTY: VAN BUREN	128	132
NON METRO STATE: MINNESOTA	91	91
MSA: Duluth-Superior, MN-WI	96	108
MSA: Fargo-Moorhead, ND-MN	149	168
MSA: Minneapolis-St. Paul, MN-WI	223	238
MSA: Rochester, MN	135	135
MSA: St. Cloud, MN	119	119
EXCEPTION COUNTY: POLK	140	158
NON METRO STATE: MISSISSIPPI	86	103
MSA: Biloxi-Gulfport-Pascagpula, MS	102	120
MSA: Jackson, MS	110	135
MSA: Memphis, TN-AR-MS	102	102
EXCEPTION COUNTY: STONE	86	103
NON METRO STATE: MISSOURI	72	79
MSA: Columbia, MO	104	112
MSA: Joplin, MO	73	80
MSA: Kansas City, MO-KS	104	127
MSA: St. Joseph, MO	107	116
MSA: St. Louis, MO-IL	109	126
MSA: Springfield, MO	75	81
EXCEPTION COUNTY: ANDREW	101	108
NON METRO STATE: MONTANA	N/A	N/A
MSA: Billings, MT	200	223

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B 092493

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Great Falls, MT	169	190
EXCEPTION COUNTY: BEAVERHEAD	159	177
EXCEPTION COUNTY: BIG HORN	159	177
EXCEPTION COUNTY: BLAINE	112	132
EXCEPTION COUNTY: BROADWATER	159	177
EXCEPTION COUNTY: CARBON	159	177
EXCEPTION COUNTY: CARTER	112	132
EXCEPTION COUNTY: CHOUTEAU	112	132
EXCEPTION COUNTY: CUSTER	159	177
EXCEPTION COUNTY: DANIELS	112	132
EXCEPTION COUNTY: DAWSON	159	177
EXCEPTION COUNTY: DEER LODGE	159	177
EXCEPTION COUNTY: FALLON	112	132
EXCEPTION COUNTY: FERGUS	112	132
EXCEPTION COUNTY: FLATHEAD	159	177
EXCEPTION COUNTY: GALLATIN	159	177
EXCEPTION COUNTY: GARFIELD	112	132
EXCEPTION COUNTY: GLACIER	112	132
EXCEPTION COUNTY: GOLDEN VALLE	112	132
EXCEPTION COUNTY: GRANITE	159	177
EXCEPTION COUNTY: HILL	112	132
EXCEPTION COUNTY: JEFFERSON	159	177
EXCEPTION COUNTY: JUDITH BASIN	112	132
EXCEPTION COUNTY: LAKE	159	177
EXCEPTION COUNTY: LEWIS+ CLARK	159	177
EXCEPTION COUNTY: LIBERTY	112	132
EXCEPTION COUNTY: LINCOLN	159	177
EXCEPTION COUNTY: MCCONE	112	132
EXCEPTION COUNTY: MADISON	159	177
EXCEPTION COUNTY: MEAGHER	159	177
EXCEPTION COUNTY: MINERAL	159	177
EXCEPTION COUNTY: MISSOULA	159	177
EXCEPTION COUNTY: MUSSELSHELL	159	177
EXCEPTION COUNTY: PARK	159	177
EXCEPTION COUNTY: PETROLEUM	112	132
EXCEPTION COUNTY: PHILLIPS	112	132
EXCEPTION COUNTY: PONDERA	112	132
EXCEPTION COUNTY: POWDER RIVER	159	177
EXCEPTION COUNTY: POWELL	159	177
EXCEPTION COUNTY: PRAIRIE	112	132
EXCEPTION COUNTY: RAVALLI	159	177
EXCEPTION COUNTY: RICHLAND	112	132
EXCEPTION COUNTY: ROOSEVELT	112	132
EXCEPTION COUNTY: ROSEBUD	159	177
EXCEPTION COUNTY: SANDERS	159	177
EXCEPTION COUNTY: SHERIDAN	112	132

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092493

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: SILVER BOW	159	177
EXCEPTION COUNTY: STILLWATER	112	132
EXCEPTION COUNTY: SWEET GRASS	112	132
EXCEPTION COUNTY: TETON	112	132
EXCEPTION COUNTY: TOOLE	112	132
EXCEPTION COUNTY: TREASURE	159	177
EXCEPTION COUNTY: VALLEY	112	132
EXCEPTION COUNTY: WHEATLAND	112	132
EXCEPTION COUNTY: WIBAUX	112	132
EXCEPTION COUNTY: YL-ST-NT-PK	159	177
NON METRO STATE: NEBRASKA	94	115
MSA: Lincoln, NE	129	136
MSA: Omaha, NE-IA	112	131
MSA: Sioux City, IA-NE	116	116
NON METRO STATE: NEVADA	122	141
MSA: Las Vegas, NV-AZ	258	288
MSA: Reno, NV	258	288
NON METRO STATE: NEW HAMPSHIRE	134	149
PMSA: Lawrence, MA-NH	168	179
PMSA: Lowell, MA-NH	168	179
MSA: Manchester, NH	154	171
PMSA: Nashua, NH	191	191
PMSA: Portsmouth-Rochester, NH-ME	150	174
NON METRO STATE: NEW JERSEY	143	143
MSA: Allentown-Bethlehem-Easton, PA	139	139
PMSA: Atlantic-Cape May, NJ	219	219
PMSA: Bergen-Passaic, NJ	302	304
PMSA: Jersey City, NJ	293	293
PMSA: Middlesex-Somerset-Hunterdon, NJ	344	344
PMSA: Monmouth-Ocean, NJ	263	319
PMSA: Newark, NJ	283	293
PMSA: Philadelphia, PA-NJ	243	243
PMSA: Trenton, NJ	213	213
PMSA: Vineland-Millville-Bridgeton, NJ	188	188
PMSA: Wilmington-Newark, DE-MD	153	153
NON METRO STATE: NEW MEXICO	112	131

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092493

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Las Cruces, NM	115	133
MSA: Albuquerque, NM	129	151
MSA: Santa Fe, NM	115	133
EXCEPTION COUNTY: SANDOVAL	121	137
NON METRO STATE: NEW YORK ,	167	167
MSA: Albany-Schenectady-Troy, NY	207	207
MSA: Binghamton, NY	124	124
PMSA: Buffalo-Niagara Falls, NY	150	150
PMSA: Dutchess County, NY	316	316
MSA: Elmira, NY	132	132
MSA: Glens Falls, NY	166	166
MSA: Jamestown, NY	167	167
PMSA: Nassau-Suffolk, NY	230	298
PMSA: New York, NY	239	239
PMSA: Newburgh, NY-PA	275	300
MSA: Rochester, NY	189	189
MSA: Syracuse, NY	152	152
MSA: Utica-Rome, NY	154	154
EXCEPTION COUNTY: WESTCHESTER	281	281
EXCEPTION COUNTY: TOMPKINS	195	195
NON METRO STATE: NORTH CAROLINA	60	74
MSA: Asheville, NC	86	102
MSA: Charlotte-Gastonia-Rock Hill, NC-SC	86	102
MSA: Fayetteville, NC	86	102
MSA: Goldsboro, NC	60	74
MSA: Greensboro--Winston-Salem--High Point, NC	86	102
MSA: Greenville, NC	60	74
MSA: Hickory-Morganton, NC	60	74
MSA: Jacksonville, NC	60	74
MSA: Raleigh-Durham-Chapel Hill, NC	86	102
MSA: Rocky Mount, NC	60	74
MSA: Wilmington, NC	86	102
EXCEPTION COUNTY: BRUNSWICK	64	76
EXCEPTION COUNTY: CURRITUCK	101	101
EXCEPTION COUNTY: HAYWOOD	77	77
EXCEPTION COUNTY: MADISON	64	76
NON METRO STATE: NORTH DAKOTA	120	139
MSA: Bismarck, ND	174	192
MSA: Fargo-Moorhead, ND-MN	153	173
MSA: Grand Forks, ND-MN	132	164

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092493

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: OHIO	83	83
PMSA: Akron, OH	126	126
MSA: Canton-Massillon, OH	92	92
MSA: Cincinnati, OH-KY-IN	132	139
PMSA: Cleveland-Lorain-Elyria, OH	134	134
MSA: Columbus, OH	120	140
MSA: Dayton-Springfield, OH	92	92
PMSA: Hamilton-Middletown, OH	107	110
MSA: Huntington-Ashland, WV-KY-OH	100	100
MSA: Lima, OH	120	120
MSA: Mansfield, OH	112	112
MSA: Parkersburg-Marietta, WV-OH	100	100
MSA: Steubenville-Weirton, OH-WV	89	89
MSA: Toledo, OH	151	205
MSA: Wheeling, WV-OH	92	92
MSA: Youngstown-Warren, OH	112	112
EXCEPTION COUNTY: BROWN	83	83
EXCEPTION COUNTY: CHAMPAIGN	83	83
EXCEPTION COUNTY: OTTAWA	100	134
EXCEPTION COUNTY: PREBLE	83	83
EXCEPTION COUNTY: PUTNAM	83	83
EXCEPTION COUNTY: VAN WERT	83	83
NON METRO STATE: OKLAHOMA	82	89
MSA: Enid, OK	84	90
MSA: Fort Smith, AR-OK	37	40
MSA: Lawton, OK	85	93
MSA: Oklahoma City, OK	87	96
MSA: Tulsa, OK	93	102
EXCEPTION COUNTY: LE FLORE	35	38
EXCEPTION COUNTY: MAYES	82	89
NON METRO STATE: OREGON	165	174
MSA: Eugene-Springfield, OR	199	206
MSA: Medford-Ashland, OR	169	179
PMSA: Portland-Vancouver, OR-WA	228	252
PMSA: Salem, OR	199	206
NON METRO STATE: PENNSYLVANIA	98 (1)	98 (1)
MSA: Allentown-Bethlehem-Easton, PA	139	139
MSA: Altoona, PA	128	128
MSA: Erie, PA	128	128

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B 092493

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Harrisburg-Lebanon-Carlisle, PA	146	146
MSA: Johnstown, PA	128	128
MSA: Lancaster, PA	132	132
PMSA: Philadelphia, PA-NJ	241	241
PMSA: Pittsburgh, PA	102	102
MSA: Reading, PA	132	132
MSA: Scranton--Wilkes-Barre--Hazleton, PA	117	117
MSA: Sharon, PA	98	98
MSA: State College, PA	98	98
MSA: Williamsport, PA	98	98
MSA: York, PA	132	132
EXCEPTION COUNTY: MONROE	117	117
EXCEPTION COUNTY: PIKE	98	98
EXCEPTION COUNTY: SUSQUEHANNA	98	98
NON METRO STATE: RHODE ISLAND	149	149
PMSA: Fall River, MA-RI	114	114
MSA: New London-Norwich, CT-RI	158	158
PMSA: Providence-Fall River-Warwick, RI-MA	158	158
NON METRO STATE: SOUTH CAROLINA	67	67
MSA: Augusta-Aiken, GA-SC	90	93
MSA: Charleston-North Charleston, SC	86	86
MSA: Charlotte-Gastonia-Rock Hill, NC-SC	86	102
MSA: Columbia, SC	74	86
MSA: Florence, SC	67	67
MSA: Greenville-Spartanburg-Anderson, SC	74	74
MSA: Myrtle Beach, SC	67	67
MSA: Sumter, SC	67	67
NON METRO STATE: SOUTH DAKOTA	103	120
MSA: Rapid City, SD	104	122
MSA: Sioux Falls, SD	147	165
NON METRO STATE: TENNESSEE	67	67
MSA: Chattanooga, TN-GA	59	86
MSA: Clarksville-Hopkinsville, TN-KY	86	93
MSA: Johnson City-Kingsport-Bristol, TN-VA	93	93
MSA: Knoxville, TN	74	74
MSA: Memphis, TN-AR-MS	102	102
MSA: Nashville, TN	102	120
NON METRO STATE: TEXAS	71	89

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092493

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: TEXAS	71	89
MSA: Abilene, TX	63	70
MSA: Amarillo, TX	118	124
MSA: Austin-San Marcos, TX	108	126
MSA: Beaumont-Port Arthur, TX	111	126
PMSA: Brazoria, TX	118	137
MSA: Brownsville-Harlingen-San Benito, TX	86	102
MSA: Bryan-College Station, TX	108	120
MSA: Corpus Christi, TX	90	120
MSA: Dallas, TX	84	109
MSA: El Paso, TX	122	138
PMSA: Fort Worth-Arlington, TX	84	109
PMSA: Galveston-Texas City, TX	114	127
PMSA: Houston, TX	121	141
MSA: Killeen-Temple, TX	111	120
MSA: Laredo, TX	75	93
MSA: Longview-Marshall, TX	102	117
MSA: Lubbock, TX	117	120
MSA: Mc Allen-Edinburg-Mission, TX	100	120
MSA: Odessa-Midland, TX	120	126
MSA: San Angelo, TX	102	111
MSA: San Antonio, TX	86	102
MSA: Sherman-Denison, TX	93	111
MSA: Texarkana, TX-Texarkana, AR	120	135
MSA: Tyler, TX	93	99
MSA: Victoria, TX	73	90
MSA: Waco, TX	96	111
MSA: Wichita Falls, TX	67	75
EXCEPTION COUNTY: CALLAHAN	61	67
EXCEPTION COUNTY: CLAY	65	71
EXCEPTION COUNTY: HENDERSON	70	89
EXCEPTION COUNTY: HOOD	71	89
EXCEPTION COUNTY: JONES	61	67
EXCEPTION COUNTY: WISE	71	89
NON METRO STATE: UTAH	N/A	N/A
MSA: Provo-Orem, UT	159	179
MSA: Salt Lake City-Ogden, UT	179	200
EXCEPTION COUNTY: BEAVER	112	132
EXCEPTION COUNTY: BOX ELDER	112	132
EXCEPTION COUNTY: CACHE	112	132
EXCEPTION COUNTY: CARBON	159	177
EXCEPTION COUNTY: DAGGETT	112	132
EXCEPTION COUNTY: DUCHESNE	112	132

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092493

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 70

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: EMERY	159	177
EXCEPTION COUNTY: GARFIELD	112	132
EXCEPTION COUNTY: GRAND	159	177
EXCEPTION COUNTY: IRON	112	132
EXCEPTION COUNTY: JUAB	112	132
EXCEPTION COUNTY: KANE	112	132
EXCEPTION COUNTY: MILLARD	112	132
EXCEPTION COUNTY: MORGAN	112	132
EXCEPTION COUNTY: PIUTE	112	132
EXCEPTION COUNTY: RICH	112	132
EXCEPTION COUNTY: SAN JUAN	112	132
EXCEPTION COUNTY: SANPETE	112	132
EXCEPTION COUNTY: SEVIER	112	132
EXCEPTION COUNTY: SUMMIT	112	132
EXCEPTION COUNTY: TOOELE	108	120
EXCEPTION COUNTY: UINTAH	159	177
EXCEPTION COUNTY: WASATCH	112	132
EXCEPTION COUNTY: WASHINGTON	112	132
EXCEPTION COUNTY: WAYNE	112	132
NON METRO STATE: VERMONT	139	161
MSA: Burlington, VT	171	195
EXCEPTION COUNTY: CHITTENDEN	169	197
EXCEPTION COUNTY: FRANKLIN	144	166
EXCEPTION COUNTY: GRAND ISLE	158	181
EXCEPTION COUNTY: ORANGE	156	180
EXCEPTION COUNTY: WASHINGTON	172	200
EXCEPTION COUNTY: WINDHAM	208	240
EXCEPTION COUNTY: WINDSOR	224	256
NON METRO STATE: VIRGINIA	96 (1)	96 (1)
MSA: Charlottesville, VA	96	96
MSA: Danville, VA	96	96
MSA: Johnson City-Kingsport-Bristol, TN-VA	93	93
MSA: Lynchburg, VA	86	86
MSA: Norfolk-Virginia Beach-Newport News, VA-NC	137	137
MSA: Richmond-Petersburg, VA	135	135
MSA: Roanoke, VA	93	93
MSA: Washington, DC-MD-VA	209	209
EXCEPTION COUNTY: APPOMATTOX	83	83
EXCEPTION COUNTY: CLARKE	96	96
EXCEPTION COUNTY: CRAIG	90	90
EXCEPTION COUNTY: CULPEPER	96	96
EXCEPTION COUNTY: KING GEORGE	96	96

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092493

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: WARREN	96	96
NON METRO STATE: WASHINGTON	142	165
MSA: Bellingham, WA	145	189
PMSA: Bremerton, WA	145	189
PMSA: Olympia, WA	145	189
PMSA: Portland-Vancouver, OR-WA	228	252
MSA: Richland-Kennewick-Pasco, WA	199	199
PMSA: Seattle-Bellevue-Everett, WA	193	273
MSA: Spokane, WA	160	179
PMSA: Tacoma, WA	172	204
MSA: Yakima, WA	160	168
NON METRO STATE: WEST VIRGINIA	93 (1)	93 (1)
MSA: Charleston, WV	101	101
MSA: Cumberland, MD-WV	136	136
MSA: Huntington-Ashland, WV-KY-OH	98	98
MSA: Parkersburg-Marietta, WV-OH	98	98
MSA: Steubenville-Weirton, OH-WV	88	88
MSA: Wheeling, WV-OH	90	90
EXCEPTION COUNTY: BERKELEY	133	133
EXCEPTION COUNTY: JEFFERSON	133	133
EXCEPTION COUNTY: MORGAN	133	133
EXCEPTION COUNTY: WIRT	90	90
NON METRO STATE: WISCONSIN	101	109
MSA: Appleton-Oshkosh-Neenah, WI	131	140
MSA: Duluth-Superior, MN-WI	96	108
MSA: Eau Claire, WI	122	132
MSA: Green Bay, WI	128	137
MSA: Janesville-Beloit, WI	128	137
PMSA: Kenosha, WI	146	158
MSA: La Crosse, WI-MN	115	126
MSA: Madison, WI	193	204
PMSA: Milwaukee-Waukesha, WI	152	163
MSA: Minneapolis-St. Paul, MN-WI	223	238
PMSA: Racine, WI	144	151
MSA: Sheboygan, WI	104	112
MSA: Wausau, WI	104	112
NON METRO STATE: WYOMING	N/A	N/A
MSA: Casper, WY	269	291

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

092493

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 72

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Cheyenne, WY	159	192
EXCEPTION COUNTY: ALBANY	159	191
EXCEPTION COUNTY: BIG HORN	159	191
EXCEPTION COUNTY: CAMPBELL	266	289
EXCEPTION COUNTY: CARBON	266	289
EXCEPTION COUNTY: CONVERSE	266	289
EXCEPTION COUNTY: CROOK	159	191
EXCEPTION COUNTY: FREMONT	266	289
EXCEPTION COUNTY: GOSHEN	159	191
EXCEPTION COUNTY: HOT SPRINGS	159	191
EXCEPTION COUNTY: JOHNSON	159	191
EXCEPTION COUNTY: LARAMIE	159	191
EXCEPTION COUNTY: LINCOLN	159	191
EXCEPTION COUNTY: PARK	159	191
EXCEPTION COUNTY: PLATTE	159	191
EXCEPTION COUNTY: SHERIDAN	266	289
EXCEPTION COUNTY: SUBLETTE	159	191
EXCEPTION COUNTY: SWEETWATER	266	289
EXCEPTION COUNTY: TETON	159	191
EXCEPTION COUNTY: UINTA	159	191
EXCEPTION COUNTY: WASHAKIE	159	191
EXCEPTION COUNTY: WESTON	159	191

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

[FR Doc. 93-24026 Filed 9-30-93; 8:45 am]
BILLING CODE 4210-32-C

federal register

Friday
October 1, 1993

Part III

Securities and Exchange Commission

17 CFR Parts 250 and 259
Adoption of Rules, Forms, Form Amendments, Intrasystem Service, Sales and Construction Contracts Relating to Exempt Wholesale Generators and Foreign Utility Companies; Final Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 250 and 259

[Release No. 35–25886; International Series Release No. 583; File No. S7–9–93]

RIN: 3235–AF77, AF78 and AF82

Adoption of Rules, Forms and Form Amendments Relating to Exempt Wholesale Generators and Foreign Utility Companies

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Adoption of final rules and forms.

SUMMARY: The Commission today is adopting rules 53, 54 and 57, and related forms and form amendments, under sections 32 and 33 of the Public Utility Holding Company Act of 1935, as amended ("Act"). Rules 53 and 54 will streamline Commission review of transactions involving registered holding companies with interests in exempt wholesale generators ("EWGs") and foreign utility companies.

EFFECTIVE DATES: Section 250.57, Forms U–57 (§ 259.207) and U–33–S (§ 259.405), and the amendments to Forms U5S (§ 259.5s) and U–3A–2 (§ 259.402) will become effective November 1, 1993. Sections 250.53 and 250.54 will be effective October 1, 1993.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Associate Director, (202) 272–7676, Sidney L. Cimmet, Senior Special Counsel, (202) 272–7676, Joanne C. Rutkowski, Assistant Director, Office of Legal & Policy Analysis, (202) 504–2267, Robert P. Wason, Chief Financial Analyst, (202) 272–7684, or Karrie H. McMillan, Staff Attorney, (202) 504–3387, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On March 8, 1993, the Commission proposed for comment a rulemaking intended to give effect to the Energy Policy Act of 1992, which amended the Act to create two new classes of exempt entities, EWGs and foreign utility companies.[1] As adopted, rule 53 (17 CFR 250.53) creates a partial safe harbor with respect to the issue and sale of a security by a registered holding company to finance the acquisition of an EWG, or the guarantee by the parent of the securities of an EWG. Rule 54 (17 CFR 250.54) similarly creates a safe harbor for system transactions that do not involve EWGs or foreign utility companies. Rule 57 (17 CFR 250.57) and Forms U–57 and U–33–S address notification and reporting requirements for foreign utility companies and their associate public-utility companies. The Commission is also amending Forms U5S and U–3A–2 to add reporting requirements concerning EWG and foreign utility company activities. Many commenters have suggested that the Commission should request further comment upon the rules regarding foreign utility companies. In light of the comments and upon our own review of this matter, we have decided to defer action on proposed rules 55 and 56, pending further consideration.[2]

Comments were received from nine registered holding companies,[3] eight state or local public utility commissions,[4] and thirteen other parties, including the National Association of Regulatory Utility Commissioners ("NARUC"), the United States Departments of Energy and State, Chairman Donald W. Riegle, Jr. of the Senate Committee on Banking, Housing, and Urban Affairs, Senator Dale Bumpers, and Chairman Edward J. Markey of the House Subcommittee on Telecommunications and Finance.[5] The Commission has carefully considered these comments and has incorporated a number of the suggestions in the rules and related forms that it is adopting today.

In a separate release, the Commission is requesting comment on an amendment to rule 87 that would require prior Commission approval for intrasystem service, sales or construction contracts involving EWGs or foreign utility companies.[6]

Introduction

Title VII of the Energy Policy Act amends the Public Utility Holding Company Act of 1935 to create two new classes of exempt entities, EWGs[7] and foreign utility companies.[8] These entities will bring fundamental structural changes to the United States electric and gas utility industries which, for more than fifty years, have been shaped by the requirements of the Act.

The Public Utility Holding Company Act of 1935 is a remedial statute that was enacted in the wake of widespread fraud and mismanagement by large and far-flung public-utility holding companies.[9] The Act generally requires that a holding company limit its operations to a group of related operating utility properties within a confined geographic region.[10] To ensure that these standards are met, the Act also imposes a requirement of prior

[1] Holding Company Act Release No. 25757 (Mar. 8, 1993), 58 FR 13719 (Mar. 15, 1993).

[2] Section 33 does not set a date by which the Commission must promulgate rules regarding foreign utility companies. Compare section 32(h)(6) (directing the Commission to adopt rules within six months of the date of enactment of the legislation).

[3] American Electric Power Co., Inc. ("AEP"); Central and South West Corporation ("CSW"); Columbia Gas System, Inc. ("Columbia"); Consolidated Natural Gas Co. ("CNG"); Eastern Utilities Associates ("EUA"); Entergy Corporation ("Entergy"); General Public Utilities Corporation ("GPU"); Northeast Utilities ("Northeast") and The Southern Company ("Southern").

[4] Alabama Public Service Commission ("Alabama Commission"); Arkansas Public Service Commission ("Arkansas Commission"); Florida Public Service Commission ("Florida Commission"); Iowa Utilities Board ("Iowa Board"); Council of the City of New Orleans and the Mississippi Public Service Commission ("New Orleans City Council and the Mississippi Commission"); Pennsylvania Public Service Commission ("Pennsylvania Commission") and Public Utility Commission of Texas ("Texas Commission").

[5] The remaining commenters were Baker & Botts, L.L.P. ("Baker & Botts"); Catalyst Old River Hydroelectric Ltd. Partnership ("Catalyst"); Dewey Ballantine; Edison Electric Institute ("EEI"); The Electricity Consumers Resource Council, the American Iron and Steel Institute and the Chemical Manufacturers Association (collectively, "ECRC"); K&M Engineering & Consulting Corp. ("K&M") and Morgan Stanley & Co., Inc. ("Morgan Stanley").

[6] Holding Company Act Release No. 25887 (Sept. 23, 1993).

[7] An EWG is defined, in pertinent part, as any person determined by the Federal Energy Regulatory Commission to be engaged directly, or indirectly, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale. Section 32(a)(1). An "eligible facility" generally includes any facility, wherever located, that is used for the generation of electric energy exclusively for sale at wholesale. Section 32(a)(2). Section 32(b) further provides that notwithstanding the provisions of sections 32(a) (1) and (2), retail sales of electric energy produced by a facility located in a foreign country shall not prevent such facility from being an eligible facility, or prevent a person owning or operating, or both owning and operating, such facility from being a EWG if none of the electric energy generated by such facility is sold to consumers in the United States.

[8] The definition of a "foreign utility company" under section 33(a)(3)(A) could include any company that owns or operates facilities that are not located in any State and that are used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light or power. The definition further requires that a company derive no part of its income, directly or indirectly, from such utility operations within the United States, and that neither the company nor any of its subsidiaries is a public-utility company operating in the United States.

[9] See Federal Trade Commission Report to the Senate, Utility Corporations, S. Doc. No. 92, 74th Cong., 1st Sess. 24 (1935); Report on the Relation of Holding Companies in Power and Gas Affecting Control, H.R. Rep. No. 1827, 73rd Cong., 2d Sess. (1933–1935) (documenting the circumstances that gave rise to passage of the Act).

[10] See section 11 of the Act. But see Southern Co., Holding Co. Act Release No. 25639, International Release No. 460 (Sept. 23, 1992); SCEcorp, Holding Co. Act Release No. 25564, International Release No. 405 (June 29, 1992) (involving limited acquisitions of foreign utility operations).

Commission approval for the acquisition of securities of a public-utility company.[11] When Congress imposed these constraints, it believed them necessary to protect the public interest and the interests of investors and consumers.[12] The Congress in 1935, however, could not have foreseen the developments of recent years.

Historically, the electric utility industry was dominated by large vertically-integrated companies that controlled the means of production. This traditional structure began to change in 1978 when the Congress enacted the Public Utility Regulatory Policies Act of 1978 ("PURPA"). The legislation was intended to stimulate the development of alternative energy sources and thereby reduce the country's dependence on foreign oil. To that end, PURPA granted "qualifying facilities" ("QFs") significant regulatory advantages over traditional generating facilities; among other things, most QFs are exempted from regulation under the Act.

As PURPA brought new participants into the energy markets, developers of new generating facilities increasingly sought to construct, own and operate facilities that did not meet the narrow requirements for QF status under PURPA. During the same period, sweeping political and economic changes worldwide began to create a large foreign demand for American utility expertise and significant investment opportunities for United States companies.

Because the framework of existing law did not readily accommodate these developments, a number of legislative proposals were introduced in the Congress to amend or repeal the Act. The Commission testified on three occasions concerning proposals that were ultimately incorporated in the Energy Policy Act of 1992.[13] The Commission noted that legislation was necessary if Congress were to realize its goal of encouraging competition in the wholesale electric market and thereby reduce the cost of electric power and, ultimately, the nation's dependence on foreign energy.[14] We noted further that the mere exemption of independent power production from the provisions of the Act would not address other critical issues concerning Congress additional goal, protection of the public interest and the interests of investors and consumers.

Congress responded with the Energy Policy Act, which embodies these two potentially inconsistent goals. The legislation seeks to facilitate the participation of domestic companies in independent power production and foreign utility investment, by exempting EWGs and foreign utility companies from all provisions of the Act, and by providing for the acquisition of EWGs without Commission approval.[15] At the same time, however, the legislation attempts to protect domestic utilities and their consumers from the risks of these new ventures.[16] The Commission noted in the proposing release that there is an inherent tension between the drive toward a competitive energy market and the demand for effective consumer protection.[17] The rules required by the legislation cannot resolve this tension, but must instead operate within it. We believe that the rules adopted today strike an appropriate balance between the statutory goals embodied in Title VII of the Energy Policy Act.

I. Rule 53

The Energy Policy Act affirms the Commission's jurisdiction over certain EWG-related transactions. Commission approval is required, for example, before a registered holding company can issue securities to finance the acquisition of an EWG or guarantee securities issued by an EWG.[18] The issue and sale of securities are subject to sections 6 and 7 of the Act; a guarantee is governed by sections 6, 7 and 12(b).[19] Of interest here, section 7(d) precludes approval of a financing transaction if the Commission finds that—

(1) The security is not reasonably adapted to the security structure of the declarant and other companies in the same holding company system;

(2) The security is not reasonably adapted to the earning power of the declarant; [or]

* * * * *

(5) In the case of a security that is a guaranty of, or assumption of liability on, a security of another company, the circumstances are such as to constitute the making of such guaranty or the assumption of such liability an improper risk for the declarant.

These provisions reflect the legislative intent that each of the entities forming part of a traditional holding-company system have a simple capital structure and incur only those amounts of debt that can be adequately serviced by its operations.

Traditional financing standards, however, are not particularly suitable for EWGs, which are expected to be

---

[11] Section 9(a)(1) requires prior Commission approval for the direct or indirect acquisition of any securities or utility assets or any other interest in any business by a company in a registered system. In addition, section 9(a)(2) generally requires prior Commission approval for an acquisition that would result in an extension of a holding-company system.

[12] See section 1 (declaring that public-utility holding companies and their subsidiary companies are affected with a national public interest and directing the Commission to construe all sections of the Act to protect the public interest and the interest of investors and consumers).

[13] Testimony of Commissioner Edward H. Fleischman Concerning S. 341, Before the Senate Committee on Energy and Natural Resources (Mar. 14, 1991); Testimony of Commissioner Philip H. Lochner, Jr. Concerning H.R. 1301 and H.R. 1543, Before the House Subcommittee on Energy and Power (May 1, 1991); Testimony of General Counsel James R. Doty Concerning S. 1220, Before the Senate Subcommittee on Securities of the Committee on Banking, Housing and Urban Affairs (Sept. 17, 1991).

[14] Testimony of Commissioner Fleischman at 1.

[15] See, *e.g.*, statement of Sen. Wallop, 138 Cong. Rec. S17615 (Oct. 8, 1992) (section 32 is intended to "streamline and minimize" federal regulation); statement of Chairman Riegle, 138 Cong. Rec. S17629 (Oct. 8, 1992) ("the purpose of section 33 is to facilitate foreign investment, not burden it").

[16] The legislation seeks to "carefully strik[e] a balance between the concerns of many who are affected by its provisions, namely consumers, ratepayers, municipals, industrials, utility companies and State and Federal regulators." Statement of Chairman John D. Dingell of the House Committee on Energy and Commerce, 138 Cong. Rec. H11428 (Oct. 5, 1992).

[17] Chairman Markey's comments regarding section 33 may be read to apply generally to the amendments under the Energy Policy Act:

"This provision would invite utilities to shift valuable resources and management—paid for by captive retail ratepayers—from monopoly markets to competitive markets. Utility expansion into new markets raises the same problems as does utility diversification in general: risk of failure, diversification of utility profits from measures which would strengthen the utility's financial condition, reduced utility maintenance, the draining of top management from the core utility, and cross-subsidization."

138 Cong. Rec. H11446 (Oct. 5, 1992).

[18] Section 32(h) provides that:

"The entering into service, sales, or construction contracts, and the creation or maintenance of any other relationship *in addition to that described in subsection (g)* [concerning the ownership of EWGs by registered holding companies] between an exempt wholesale generator and a registered holding company, its affiliates and associate companies, shall remain subject to the jurisdiction of the Commission under the Act." (Emphasis added.)

The ECRC suggests that the acquisition of an EWG with "available funds" would be "the creation or maintenance of a relationship," and so jurisdictional, under section 32(h). ECRC at 20 (stating that rule 53 should not allow a registered holding company to acquire an EWG "without any regulatory oversight whatsoever").

It appears that the ECRC may have overlooked the interplay of various statutory provisions. In addition to the express exclusion of section 32(h), section 32(g) makes clear that a registered holding company can acquire an EWG without Commission approval "[n]otwithstanding any provision of this Act and the Commission's jurisdiction as provided under subsection (h) of this section."

[19] Section 12(b) provides, in pertinent part, that it is unlawful for a registered holding company, directly or indirectly, to lend or in any manner extend its credit to or indemnify any company in the same holding-company system in contravention of such rules or orders as the Commission deems necessary or appropriate to protect the financial integrity of companies in holding-company systems.

project-financed and generally capitalized with large amounts of nonrecourse debt. In a hearing before the Senate Committee on Energy and Natural Resources, the Commission suggested that Congress might wish to liberalize the standards applicable to EWG financings to accommodate participation in these new activities by registered holding companies. In response to an inquiry by Chairman Johnston, the Commission proposed the "substantial adverse impact" test that has been incorporated in section 32(h)(3).[20]

Under that section, the Commission cannot find, with respect to the issue or sale of a security by a registered holding company for purposes of financing the acquisition of an EWG, or the guarantee of a security of an EWG by a registered holding company, that:

> Such security is not reasonably adapted to the earning power of such [registered holding] company or to the security structure of such company and other companies in the same holding company system, or that the circumstances are such as to constitute the making of the guarantee an improper risk for such company, unless the Commission first finds that the issue or sale of such security, or the making of the guarantee, would have *a substantial adverse impact on the financial integrity of the registered holding company system* (emphasis added).

Section 32(h)(3) thus is intended to address the requirements of sections 7(d) (1), (2) and (5), and section 12(b).

The statute does not define "substantial adverse impact." Instead, section 32(h)(6) directs the Commission to make rules "with respect to actions which would be considered * * * to have a substantial adverse impact on the financial integrity of the registered holding company system; such regulations shall ensure that the action has no adverse impact on any subsidiary or its customers, or on the ability of State commissions to protect such subsidiary or customers." The statute further provides that such rules shall take into account "the type and amount of capital invested in exempt wholesale generators, the ratio of such capital to the total capital invested in utility operations, the availability of books and records, and the financial and operating experience of the registered holding company and the exempt wholesale generator."

Section 32 does not mandate any particular test of financial integrity. In proposing the rules, the Commission weighed the competing legislative purposes of consumer protection, on the one hand, and facilitation of these investments, on the other. Because investments by registered holding companies in independent power production and foreign utility operations were severely limited under prior law, we elected a conservative approach. We determined that the rules should consider the risks associated with both EWG and foreign utility company investments.

The Commission today is adopting a rule that creates a partial safe harbor for EWG financings. Rule 53 describes the circumstances in which the issue or sale of a security for purposes of financing the acquisition of an EWG, or the guarantee of a security of an EWG, will be deemed not to have a substantial adverse impact on the financial integrity of the registered holding-company system. To come within the safe harbor, the amount of a registered holding company's aggregate investments in EWGs and foreign utility companies cannot exceed 50% of the system's consolidated retained earnings. In addition, no more than 2% of the system's domestic utility employees can render services to EWGs and foreign utility companies, subject to prior Commission approval, and the registered holding company must undertake to provide the Commission reasonable access to the books and records of such entities, and to provide copies of filings under the rule to other affected regulators. Where the conditions of rule 53(a) are met, the Commission will not make a finding of "substantial adverse impact" unless there has been an event of bankruptcy or other evidence of financial or operating problems, as specified in rule 53(b). The Commission believes that these criteria will contribute to the protection of the financial integrity of the system and so help to shield the domestic utilities and their customers from the risks that may be associated with the new ventures.[21]

The ability to come within the safe harbor will preclude an adverse Commission finding under section 32(h)(3) and, by reference, section 7(d) (1), (2) and (5), and section 12(b). The rule will thus streamline our review of a proposed financing transaction, consistent with the legislative intent to facilitate EWG investments. Reliance upon the rule will not, however, obviate the need for an order upon application approving the financing transaction, since the rule creates a safe harbor only with respect to sections 7(d) (1), (2) and (5), and section 12(b). An applicant must make a factual showing that the conditions of the rule are met and establish compliance with the other applicable standards of the Act.[22] For each filing, there will be notice and an opportunity for hearing upon the applicant's factual representations with respect to rule 53 and generally upon compliance with other relevant provisions of the Act and rules thereunder.[23]

---

[20] Letter of Commissioner Edward H. Fleischman to Chairman Johnston, dated April 12, 1991. The Commission also proposed the "substantial adverse impact" standard that has been incorporated in section 32(h)(4).

[21] As explained hereinafter, the rules "take into account" each of these factors. To summarize, rule 53(a)(1) takes into account "the amount and type of capital invested in exempt wholesale generators" first, by limiting the amount of capital that can be invested in EWGs and foreign utility companies pursuant to the rule, and second, by providing that certain types of capital (*i.e.*, nonrecourse debt) will not be counted toward "aggregate investment."

Rule 53(b)(2) takes into account "the ratio of such capital to the total capital invested in utility operations." Under that provision, once a registered holding company has reported losses that cause a 10% decrease in consolidated retained earnings, the safe harbor will be unavailable if aggregate investment in EWGs and foreign utility companies exceeds 2% of total capital invested in utility operations. The restriction will be removed once retained earnings regain their previous level.

In addition, Item 10 of amended Form U5S requires the registered holding company to report, among other things, the ratio of aggregate investment in EWGs and foreign utility companies to total capital invested in utility operations.

Rule 53(a)(2) takes into account "the availability of books and records" by, among other things, providing for Commission access to books and records of any EWGs or foreign utility companies in which the registered holding company has an interest.

Rule 53(b) takes into account "the financial and operational experience of the registered holding company and the exempt wholesale generator" by defining circumstances in which the safe harbor would be unavailable, regardless of whether a proposed financing otherwise satisfied the requirements of the rule.

[22] The filing must satisfy the standards of sections 7(d) (3), (4) and (6), which require generally that the proposed financing is "necessary or appropriate to the economical and efficient operation of a business in which the applicant lawfully is engaged or has an interest," that the fees are "reasonable," and that the terms and conditions of the issue or sale of the security are not detrimental to the public interest or the interest of investors or consumers.

The filing could also involve provisions of sections 12 and 13, which govern certain intrasystem transactions.

[23] The ECRC believes it "very important that affected state commissions have a meaningful opportunity to review [registered holding company] acquisitions of foreign EWGs," and suggests that "if the SEC adopts a 'safe harbor' for [registered holding company] acquisition[s] of foreign EWGs, the 'safe harbor' should not be available * * * for a period of 60 days after the SEC has been notified by FERC of the grant of EWG certification." ECRC at 21. In this way, the ECRC would provide an opportunity for interested state commissions to comment on whether the safe harbor should be available. *Id.* See also Chairman Riegle at 2.

Congress provided, however, that the Commission has no jurisdiction over the acquisition of EWGs. The safe harbor under rule 53 is directed only to the transactions subject to section 32(h)(3), *viz.*, the issue and sale of a security by a registered holding company to finance the acquisition of an

An applicant that is unable to rely upon the safe harbor must demonstrate that the transaction will not have a substantial adverse impact upon system financial integrity. In addition, the applicant must demonstrate that the transaction will not adversely affect the system utilities, their ratepayers and the ability of state commissions to protect utilities and consumers.[24]

Sound capitalization is an essential component of the economical and efficient utility operations toward which the Act is directed.[25] The financial integrity of a holding-company system, the interests of its investors and consumers, and the ability of its state and local regulators to protect consumers are all inextricably linked.[26] Rule 53 attempts to ensure that, following an EWG financing, the system will remain strong and healthy, with sufficient resources for its core utility operations. Any transaction that would cause a system to fall short of this standard will be subject to review under a more stringent standard.

Certain commenters have argued that the rule does not conform to the express requirements of the statutory provisions. The NARUC, for example, asserts that the rules "do not comply with the clear language of the statute concerning the protection of consumers and the ability of States to regulate operating utilities of registered holding company systems."[27] The Alabama Commission states that:

> The SEC has not complied in the present [notice of proposed rulemaking] with the statutory requirements of section 32(h)(6). The proposed rules do not ensure the action has no adverse impact on any utility subsidiary or its customers. The rules do not address the ability of state commissions to protect such subsidiary or customers.[28]

The commenters further express concern that a particular transaction may have no substantial adverse impact on the registered system as a whole, and yet have an adverse impact upon utility subsidiaries or customers, or the ability of state and local regulators to protect their interests.[29] The NARUC argues that "[i]t is not enough to have no substantial adverse impact on the system; these regulations must assure no adverse impact on utility subsidiaries, customers or State commissions."[30]

These commenters, in apparent reliance upon an ambiguity created by the language of section 32(h)(6), suggest that the "no adverse impact" standard must be applied to every transaction under section 32(h)(3).[31] We disagree. The standard under section 32(h)(3) is clear: the Commission cannot make an adverse finding under sections 7(d) (1), (2) or (5), or section 12(b), unless it first determines that the proposed transaction will have a substantial adverse impact on the financial integrity of the registered holding company system. These commenters' argument—that a transaction with no such substantial adverse impact could nonetheless adversely affect utility subsidiaries, consumers or the powers of state regulators, and so should be disapproved—appears inconsistent with this statutory mandate. Further, such a selective focus upon the second clause of section 32(h)(6) would make the rules under section 32(h)(6) an almost insurmountable obstacle to financings under section 32(h)(3), and thereby frustrate the purpose of section 32 to facilitate these investments.[32]

Instead, the Commission has interpreted the statute to give effect to all provisions. The first clause of section 32(h)(6) directs the Commission to "promulgate regulations with respect to the *actions* which would be considered, for purposes of [section 32(h)], to have a substantial adverse impact on the financial integrity of the registered holding company system (emphasis added)." The Commission understands the second clause to provide that "such regulations shall ensure that the *action* [which would be deemed to have a substantial adverse impact] has no adverse impact on any utility subsidiary or its customers, or on the ability of State commissions to protect such subsidiary or customers (emphasis added)."

Rather than attempt to provide an exhaustive list of financing transactions that could be considered to have a substantial adverse impact on the financial integrity of a registered holding company system, the Commission is using a safe harbor approach to define the conditions under which a financing transaction would not be considered to have a substantial adverse impact. Safe harbors have been successfully applied throughout our regulations.[33] By providing a safe harbor for transactions that would not be considered to have a substantial adverse impact upon the financial integrity of a registered holding company system, the Commission has at the same time defined by exclusion a universe of transactions that could be considered to have a substantial adverse impact on the system's health, in accordance with the directives of section 32(h)(6).[34]

If a financing does not come within the safe harbor, the Commission must determine whether the transaction will indeed have the prohibited effect. The Commission will also consider whether the transaction will have an adverse effect on subsidiaries, consumers or state and local regulators, as directed by the second clause of section 32(h)(6). The rule ensures that any financing which does not come within the safe harbor will be carefully scrutinized under a heightened standard of consumer protection.[35]

EWG, or the guarantee by a registered holding company of the securities of an EWG. Affected state commissions will have an opportunity to comment on these transactions.

[24] *See* rule 53(c). The Commission will thus consider the issue of "adverse impact" with respect to a transaction that is not entitled to the benefit of the rule.

[25] *See* section 1 of the Act.

[26] *Id.*

[27] NARUC at 1. *Accord* Alabama Commission at 9; Arkansas Commission at 2; Chairman Markey at 3; New Orleans City Council and Mississippi Commission at 17.

[28] Alabama Commission at 9.

[29] See, *e.g.*, NARUC at 4.

[30] *Id.*

[31] The first clause of section 32(h)(6) refers to "no substantial adverse impact," while the second clause refers to "no adverse impact." The legislative history does not shed any light on this choice of language. We believe that Congress adopted the "substantial adverse impact" standard to afford the Commission some flexibility in its review of EWG-related financings. The "no adverse impact" standard was added by the conference committee.

[32] It is grammatically possible to read section 32(h)(6), as these commenters do, to require that the rules concerning actions that would have a substantial adverse impact on the financial integrity of the system must ensure that there will be no adverse impact on the utility subsidiaries, consumers or state and local regulators. The result, however, would be a requirement—of no adverse impact for every transaction under section 32(h)(3)—that the express language of section 32(h)(3) appears to exclude.

[33] See, *e.g.*, Regulation D (17 CFR 230.51 through 230.508) and Rules 144 (17 CFR 230.144) and 144A (17 CFR 230.144A) under the Securities Act of 1933.

[34] Section 32(h)(6) directs the Commission to adopt rules "*with respect to* actions which would be considered, for purposes of this subsection, to have a substantial adverse impact on the financial integrity of the registered holding company system." (emphasis added) We therefore disagree with the assertion that the Commission "did not answer the right question, and fails to identify those actions which would be considered to have a substantial adverse effect on the financial integrity of the system." NARUC at 13.

NARUC also asserts that "[i]t makes no sense for the SEC to promulgate a regulation permitting a substantial adverse impact on the financial integrity of the system." *Id.* at 10. Again, a transaction that would have a substantial adverse impact is not within the rule.

[35] Columbia suggests that a registered holding company that cannot rely upon the rule "should be placed in the same position it would otherwise be in terms of the Commission establishing whether there is any adverse impact under sections 7 and 12 of the Act." Columbia at 5; see also CSW at 6; Northeast at 7; Southern at 16. The Commission has considered, but declines to adopt, these suggestions, which would render the "no adverse impact" language nugatory.

The New Orleans City Council and the Mississippi Commission suggest on the other hand that inability to rely upon the rule should require

Continued

NARUC suggests that an applicant could evade the strictures of the rule by claiming that a securities issuance is for a purpose other than the acquisition of an EWG.[36] We agree that there is a possibility of abuse. Because money is fungible, it may be difficult to trace dollars to determine whether an EWG was, in fact, acquired with internally generated funds. This problem may require a legislative solution. In the interim, the rule will require that any internally generated funds used to acquire an EWG or a foreign utility company be counted toward a system's aggregate investment in such entities. In addition, the Commission is requesting representations with respect to every proposed financing transaction (other than those under section 32(h)(3)) that the proceeds will not be used to acquire an EWG. Section 29 imposes criminal liability for materially misleading statements in any filing under the Act.

The Commission is aware of another potential abuse. The payment of excessive dividends to the parent by companies in a registered system could generate internal funds so that the parent would not have to issue or sell securities to finance the acquisition of an EWG.[37] A depleted subsidiary could subsequently seek financing authority from the Commission to replenish its working capital. Because the subsidiary's financing would not be subject to section 32(h)(3) or rule 53, it appears that companies could purposefully evade the requirements of rule 53.

The states generally do not regulate the payment of dividends by utility companies.[38] The Commission believes that this problem may be an appropriate subject for a rulemaking in the near future.[39] In the meantime, we note that the bond indentures of companies in registered systems often have covenants restricting the use of retained earnings. In addition, section 27(a) makes it unlawful for any company, directly or indirectly, to cause to be done, through or by means of another company, an act which would be unlawful for such company under the Act and rules thereunder.

Finally, many foreign projects could elect either EWG or foreign utility company status. The Commission has considered whether the rules should distinguish between domestic and foreign EWGs.[40] We note that the statute makes special provision for foreign EWGs.[41] While we are concerned that foreign EWG investments may entail greater risk, and thus, greater potential detriment to a registered system's domestic utilities, we have little data and limited experience with the risks presented by foreign utility company activities, and thus have no reason at this time make a broad distinction between foreign and domestic EWGs. The Commission may, however, revisit this issue when it next takes action on the rules under section 33. In the interim, we will continue to monitor existing foreign EWGs.

A. Rule 53(a)

Rule 53(a) sets forth the affirmative criteria that must be satisfied for a financing to qualify for the partial safe harbor created in this rule.

1. Rule 53(a)(1)

Rule 53(a)(1) takes into account "the amount and type of capital invested in exempt wholesale generators" first, by limiting the aggregate amount of capital that can be invested in EWGs and foreign utility companies pursuant to the rule, and second, by providing that certain types of capital (*i.e.*, nonrecourse debt) will be disregarded for purposes of the rule. Specifically, the rule limits a system's aggregate investment to an amount equal to 50% of its consolidated retained earnings, and defines "aggregate investment" to exclude debt for which there is no recourse to a system company (other than an EWG or foreign utility company).

a. *Retained earnings test.* The Commission chose this standard as the one best suited to accomplish several key goals. The rules under section 32 are intended to protect system financial integrity and so protect utilities and their ratepayers. A key factor in this regard is the ability of system companies to raise capital at a reasonable cost. Because the parent company is an important source of the capital invested in the utility operations of its subsidiaries, its ability to raise capital economically, especially equity, the most expensive type of capital, protects the core business and keeps consumer rates down. Retained earnings are linked to the cost of capital and so provide a fundamental protection for "economy of management and operation" of the system utilities.[42]

Another consideration is the total amount at risk in these new activities. We reasoned that a cushion should remain if a system were forced to write off any of its investments in EWGs and foreign utility companies. For purposes of the rule, we have determined that 50% of a system's consolidated retained earnings is an appropriate amount of capital to be placed at risk in EWGs and foreign utility companies.[43]

The Commission has received a wide range of comments on this proposal.[44] Some commenters endorse the test, while others criticize it as inadequate or

disapproval of the proposed financing activity. New Orleans City Council and the Mississippi Commission at 19. We also decline to adopt this suggestion as inconsistent with the legislative intent to facilitate investments EWGs and foreign utility companies.

In the alternative, the New Orleans City Council and the Mississippi Commission recommend that the Commission propose specific rules to inform interested parties what "particular facts and circumstances" may cause the Commission to approve a transaction that is not within the safe harbor. New Orleans City Council and the Mississippi Commission at 20. The registered holding companies have limited experience with these new activities, and so it would be premature for the Commission to attempt to define such facts and circumstances. We would, of course, welcome the comments of affected state and local regulators with respect to these transactions.

[36] NARUC at 31. An issuance of securities for a purpose other than financing the acquisition of an EWG or a foreign utility company would be subject to rule 54. Under that rule, the Commission will not consider the effect of the capitalization or earnings of any EWG or foreign utility company subsidiary on a registered system where the provisions of rule 53 (a), (b) and (c) are satisfied.

[37] Generally, Commission approval is not required unless a company seeks to pay dividends out of paid-in-capital or unearned surplus. See section 12(c) of the Act and rule 46 thereunder.

[38] A state sets an allowable rate of return on the common equity of an operating utility. In so doing, the state generally considers historical data and satisfies itself that the rates are sufficient to cover all operating and financial charges. The remaining funds may be distributed to common stockholders; the disposition of these monies is generally not subject to further state review.

[39] Under section 12(c), the Commission has the authority to adopt rules with respect to the declaration or payment of dividends as it deems necessary or appropriate to protect the financial integrity of companies in holding-company systems, to safeguard the working capital of public-utility companies, to prevent the payment of dividends out of capital or unearned surplus, or to prevent the circumvention of the provisions of the Act and rules thereunder.

[40] The ECRC, for example, suggested that the rules should distinguish between domestic and foreign investments. ECRC at 21.

[41] See section 32(a)(2) ("'eligible facility' means a facility, *wherever located*") (emphasis added); see also section 32(b) ("retail sales of electric energy produced by a facility located in a foreign country shall not prevent such facility from being an eligible facility, or prevent a person owning or operating, or both owning and operating, such facility from being an [EWG] if none of the electric energy generated by such facility is sold to consumers in the United States").

[42] Section 1(b)(4).

[43] See Hawes, *Utility Holding Companies* § 1.03[a] (1987) (limiting the amount of investments mitigates the adverse impact of any failed investments upon the cost of equity capital).

[44] Generally, registered holding companies seeking to pursue aggressive investment programs urge the Commission to adopt standards that would increase the amount of financing within the safe harbor. See, *e.g.*, CSW at 2–3; Columbia at 2–3; GPU at 5; Southern at 3–4.

In contrast, state and local regulators generally favor more restrictive guidelines. See Alabama Commission at 5–6; City of New Orleans and the Mississippi Commission at 20–21; Pennsylvania Commission at 1–2; Texas Commission at 2–3.

misleading.[45] Many recommend that the test be modified or supplemented, or that a new standard be substituted. The proposed alternative or supplementary standards include consolidated capitalization,[46] consolidated assets,[47] earnings or cash flow,[48] utility investment,[49] and effect upon capital structure.[50] On balance, the Commission believes that the test under proposed rule 53(a)(1), with certain modifications discussed below, offers reasonable protection for the financial integrity of a registered holding company system.[51]

We have considered the alternative standards suggested by the commenters. A test based on the ratio of debt to equity could mask a deterioration in a system's financial health that would lead to higher capital costs. A system with modest retained earnings could, for example, incur charges that would significantly reduce or eliminate those earnings (thus precluding use of the rule for the time being), yet maintain an acceptable ratio of debt to equity in its consolidated capital structure. Other proposed tests, such as those based on revenues or cash flow, are unreliable to the extent they must be premised upon speculation concerning future developments. Because EWGs and foreign utility companies are still novel entities, there is little experience on which to base predictions concerning their performance.

Neither a test based on consolidated capitalization nor one based on consolidated assets would directly reflect the impact of a loss of an EWG or foreign utility company investment. Consolidated capitalization relates principally to the capital structure created to fund the holding company system's domestic utilities; consolidated assets reflect the acquisitions made with such capital. Again, retained earnings would best capture the effect upon a system's financial condition of reverses in EWG and foreign utility company investments.

We decline to adopt an overall dollar cap[52] or a limit in the amount invested in a particular project or country.[53] The statute does not require such restrictions. Moreover, the companies and their regulators have limited experience with these types of activities, which of course offer potential gains as well as risks. We believe that it would be premature to adopt such limitations at this time.

A procedure requiring a case-by-case review of all investments, as that approach would raise substantial obstacles and procedural complexities, contradicts the apparent legislative intent to facilitate EWG investments.[54] As Senator Wallop noted in a floor statement, "section 32 is intended to 'streamline and modernize' federal regulation."[55]

We have modified the rule in response to the comments concerning the reliability of retained earnings as a continuing measure of financial health. NARUC, for example, expresses concern that a company could artificially inflate its retained earnings by withholding funds from utility maintenance and construction.[56] The Alabama Commission observes that prior period adjustments and extraordinary items "could significantly mask the financial deterioration of a [registered holding company's] financial health."[57] Conversely, several registered holding companies note that extraordinary nonrecurring charges to earnings could depress retained earnings, and so preclude reliance on the rule.[58] We

---

[45] See Dept. of Energy at 4 (stating that a retained earnings test "provides greater protection to consumers and investors [than one based on net assets or total capitalization] while enabling a registered holding company to participate in domestic and foreign competitive ventures"); Entergy at 18 (supporting a retained earnings test). Compare CSW at 2 ("the '50% retained earnings' test alone creates a very conservative and restrictive threshold"); Columbia at 2–3 (criticizing retained earnings as "misleading" and "a very lagging indicator"); NARUC at 26 (noting that a utility can artificially inflate its retained earnings by withholding funds from utility maintenance and construction expenditures) and New Orleans City Council and the Mississippi Commission at 20 (suggesting that a registered holding company can artificially increase its retained earnings "by simply restructuring recapitalization").

[46] AEP asserts that retained earnings can be "more volatile" over a relatively short period of time and suggests a standard tied to an unspecified percentage of consolidated capitalization. AEP at 2 and 5.

[47] Southern proposes a test based upon 15% of consolidated assets, while CSW and Columbia recommend a standard tied to the greater of 50% of retained earnings or 15% of consolidated assets. Southern at 3; CSW at 2; Columbia at 3.

[48] Columbia urges the Commission to liberalize the standard by substituting "measures, such as earnings or cash flow projections, indicating the prospective financial health of the [registered holding company] at the time of the proposed investment in the EWG." Columbia at 2. The Texas Commission recommends that the standard instead be strengthened with a cash flow test in addition to a modified retained earnings test, since "[c]ash flow provides a good indication of a [registered holding company's] current financial ability to make investments." Texas Commission at 2–3.

[49] NARUC asserts that "the total invested should not exceed a particular ratio of total capital prudently invested for the purpose of selling electricity within the service territories of the utility subsidiaries." NARUC at 24–25; accord Arkansas Commission at 4–5 ("[l]imitations on investments in EWGs and foreign utilities should be considered in conjunction with the capital needs of the core utility business"); Florida Commission at 2 (appropriateness of a retained earnings test depends, among other things, on the relative magnitude of nonutility investments versus utility investments) and Pennsylvania Commission at 2 ("significant investments in EWGs and foreign utility companies could impact utility consumers negatively by impairing the ability of the affected operating utility in making improvements of the existing utility plant"). See also Alabama Commission at 9–10 (noting that the rule is silent on the ratio of EWG to utility investments); Chairman Markey at 2.

As discussed part I.B.2 of this release, the Commission is adopting a test based upon utility investment as an additional condition of the safe harbor.

[50] See Arkansas Commission at 4 ("[a] better solution would be to look at the effect of an investment on both retained earnings and on capital structure"); New Orleans City Council and the Mississippi Commission at 21, 26 (recommending use of a debt/equity test to safeguard against excessive leveraging). Some commenters propose an additional requirement to rule 53 that the securities of the registered holding company and its affiliates be at investment grade level, as determined by rating agencies. New Orleans City Council and the Mississippi Commission at 23, 26. We do not believe this further condition would provide significant increased protection, as it appears unlikely that a system with less than investment grade securities would have sufficient earnings capacity to issue securities under the rule.

[51] In addition, various commenters have suggested that the limit be raised or lowered. See GPU at 5 (recommending that the standard be raised to 60% of retained earnings). Compare Alabama Commission at 6 (recommending that the percentage limitation be "in the range of 20%," with a dollar cap, "with consideration given to the rate of inflation at the time of the investment"); ECRC at 19 (recommending a percentage "considerably lower than 50%" and different levels for domestic and foreign ventures); Pennsylvania Commission at 1–2 (stating that the 50% limitation is too high); Texas Commission at 2–3 (recommending a 30% limitation, to be increased by a later rule amendment once jurisdictional utilities "demonstrate a successful track record of investments"). None of the commenters explains why any given threshold is appropriate, except by reference to the proposed 50% limit. Accordingly, we decline to adopt the commenters' suggestions.

[52] The Alabama Commission suggests, among other things, a limit based upon the lesser of 20% of retained earnings or an unspecified dollar cap. Alabama Commission at 6.

[53] The Texas Commission suggests a limit of 10% of retained earnings on "any single foreign country or EWG or foreign utility." Texas Commission at 3. This requirement could arbitrarily prevent desirable investments. In addition, it could discriminate against the smaller systems that may have relatively smaller amounts to invest.

[54] A number of commenters suggest that regulatory safe harbors are inappropriate at this time. Chairman Markey at 2. The NARUC's procedural recommendations would similarly result in a case-by-case approach. See NARUC *passim*. The ECRC recommends that the Commission engage in "a thorough factual review" of EWG and foreign utility company investments "on a case-by-case basis." ECRC at 12. See also Florida Commission at 2 (appropriateness of retained earnings test depends, among other things, upon specific investment).

[55] Statement of Sen. Wallop, 138 Cong. Rec. S17815 (Oct. 8, 1992). See EEI at 3 ("the concept of a safe harbor is essential for predictable and timely investment decisions").

[56] NARUC at 26. See also New Orleans City Council and the Mississippi Commission at 20.

[57] Alabama Commission at 6–7.

[58] Several registered holding companies cited SFAS 106, which relates to post-retirement benefits, and recognition of the cost of providing the benefits

Continued

believe that these concerns can be addressed by averaging the consolidated retained earnings as stated on the four most recent quarterly reports.[59]

Some registered companies further urge the Commission to exclude from a system's retained earnings extraordinary, non-recurring charges.[60] These charges, however, reflect obligations of the registered system, the effects of which should properly be included in the computation of retained earnings for purposes of the rule.[61]

Finally, there appears to be some confusion among the commenters regarding continued reliance on the rule.[62] Once an applicant has established that a particular financing transaction comes within the partial safe harbor of rule 53, it can continue to rely upon the rule with respect to that transaction, regardless of subsequent changes in the system's consolidated retained earnings. A decline in retained earnings could, however, preclude further transactions under either rule 53 or 54, at least temporarily.[63]

The selection of a retained earnings standard represents the exercise of the Commission's best judgment based upon its nearly sixty years' experience in the administration of the Act. We believe that this standard, in combination with various other provisions of the rule, should contribute to the protection of the financial integrity of the system and so help to shield the domestic utilities and their customers from the adverse effects, if any, of the new ventures.

b. *Definition of "aggregate investment".* The rule defines "aggregate investment" to include both EWG and foreign utility company investments for which there is recourse to companies in the registered holding company system other than EWGs or foreign utility companies. Several commenters, noting that section 32 does not by its terms require consideration of foreign utility company investments, express concern that the rule is unduly restrictive and inconsistent with the legislative intent.[64] Consideration of both EWG and foreign utility company investments represents a conservative approach to these new activities.[65] The Commission is concerned with the total amount of capital at risk in these new ventures, and in particular, the potential impact on the cost of capital for a system's operating utilities. Because EWGs and foreign utility companies are both novel investments for registered holding companies, we believe that both should be considered when computing aggregate investment.

The proposed rule defined aggregate investment in terms of amounts invested or "proposed to be invested." A number of commenters suggest that the Commission to modify the latter phrase to make clear that aggregate investment does not include potential investments for which funds have not yet been committed. We have modified the rule accordingly.[66] We have also modified the rule to include development costs, such as costs incurred in preparing a bid, conducting due diligence examinations and engaging in preliminary discussions, when the preliminary activities culminate in the acquisition of the EWG or foreign utility company.

Several holding companies suggest that the rule would afford greater flexibility if aggregate investment did not include, or were reduced by: (1) A previous investment, to the extent the project is sold in whole or in part,[67] (2) a commitment to invest that is terminated without recourse to the registered system,[68] and (3) an amount representing a return of capital on a project investment.[69] Because these events would be reflected in subsequent computations of aggregate investment, we do not believe it is necessary to modify the rule.

GPU suggests that amounts invested pursuant to Commission order (for example, where the safe harbor is unavailable), or amounts authorized by the Commission to be invested in a qualifying facility that subsequently gains EWG status, should be excluded from aggregate investment.[70] We think it appropriate, however, to include amounts for which the registered system remains at risk in the computation of aggregate investment.

In addition, GPU urges the Commission to supplement the rule to exempt the guarantee by a parent company of certain EWG and foreign utility company securities in an aggregate amount of up to $50 million at any one time outstanding. GPU observes that credit support from the parent is almost always necessary for these projects.[71] The amount of such a guarantee will cease to be counted toward aggregate investment if the guarantee is unconditionally released, as when long-term financing is obtained. The statute, however, contains no provision for *de minimis* guarantees.[72]

---

over the employment period of the employee, as an example of an extraneous factor that could affect retained earnings. See AEP at 2; Southern at 4. The Financial Accounting Standards Board concluded that an employer could either recognize the prior working period of the employee immediately by adopting SFAS 106 or delay recognition by amortizing the obligation over a period of time.

[59] See AEP at 2; CSW at 2–3; Southern at 3–4. We believe that averaging will also minimize the potentially "volatile effect" of retained earnings, of concern to AEP.

[60] AEP at 2; CSW at 2–3.

[61] See also Alabama Commission at 6–7.

[62] EEI supports a provision that a company may rely upon the safe harbor for the life of the particular investment. EEI at 2–3. See also CSW at 3 (changes in consolidated retained earnings following satisfaction of rule 53(a)(1) and a commitment to acquire or invest in an EWG should not lead to reconsideration of this safe-harbor condition at the time the registered holding company sells securities for purposes of funding its commitment); GPU at 6 (reliance on the safe harbor protection should not be affected by subsequent changes in retained earnings).

NARUC, however, recommends modifying the rule to provide "a complaint process through which interested parties, State commissions or FERC could petition the SEC in cases of new or changed facts after safe-harbor status has been obtained." NARUC at 23. The ECRC believes it would be inappropriate to permit continued reliance on the safe harbor for a particular investment once there were changes in retained earnings or in the value of an investment. See ECRC at 21–22 ("[a] presumption of ongoing compliance with a 'safe harbor' may conflict with the statutory mandate to 'ensure that the action has no adverse impact' on domestic public utility customers").

A company has a continuing obligation to remain in compliance with the provisions of rule 53 concerning books and records, use of employees and information provided to regulators. An affected regulator or other interested person could petition the Commission in the event of noncompliance with these provisions. An applicant that satisfied the provisions of the rule concerning the amount of a proposed financing could continue to rely upon the rule for that particular transaction, regardless of subsequent changes in retained earnings or utility investment.

[63] Rule 54 provides a partial safe harbor with respect to the Commission's review of the system's financial structure for transactions other than with respect to an EWG or a foreign utility company.

[64] AEP contends that "Congress did not intend to restrict the amount of investment that registered holding company systems could make in domestic EWGs by considering, and using as an offset, amounts invested in [foreign utility companies]." AEP at 2–3; Southern at 4. Other commenters, including the ECRC, express concern that "indefinite and potentially devastating losses" could occur in foreign markets. ECRC at 18.

[65] The Department of Energy supports the use of a unified standard both as a matter of administrative efficiency and as a means of reducing regulatory uncertainty regarding these investments. Dept. of Energy at 3. But see GPU at 4–5 (stating, in connection with the history of the independent power production industry, "[w]e believe the Commission's concerns in this regard are unwarranted.").

[66] The commenters would exclude such potential investments as system investment goals and bids yet to be accepted. See, *e.g.*, CSW at 3; GPU at 6 and Southern at 4.

[67] See CSW at 3; Southern at 4.

[68] See Southern at 4.

[69] See CSW at 3; Southern at 4.

[70] See GPU at 6.

[71] Id.

[72] Guarantees that may be required in the preliminary stages of EWG and foreign utility company projects, to obtain performance bonds or allow a company to submit a bid, will not be included in aggregate investment unless the registered holding company ultimately acquires an interest in such EWG or foreign utility company.

Entergy requests that the rule provide for adjustments, following the initial investment in an EWG or foreign utility company, to "true up" a previous estimate of the investment.[73] The rule implicitly provides for such corrections, since it contemplates a recalculation of aggregate investment for each new transaction.

The Texas Commission asks the Commission to define aggregate investment to include the market value, at the time of conveyance, of assets transferred to EWGs and foreign utility companies.[74] The Commission concurs that capital assets should be included in aggregate investment, and has modified the rule accordingly.[75]

Several commenters suggest that aggregate investment should include nonrecourse debt, *i.e.*, debt for which there is no recourse to an associate company other than an EWG or foreign utility company.[76] Because the debt does not represent an obligation of the domestic utility companies or system companies, other than EWGs or foreign utility companies, it should have a minimal effect on the cost of capital to such companies.[77] We believe, therefore, that it is appropriate to exclude such debt from the definition of aggregate investment.

The ECRC suggests that the safe harbor should be unavailable where a registered holding company finances an acquisition of an EWG or foreign utility company with debt that is recourse to system companies (other than EWGs or foreign utility companies), or pledges the assets of a domestic system operating company as security for the debt of an associate EWG or foreign utility company. We decline to adopt these suggestions. The issuance of a security or the pledge of utility assets continues to be jurisdictional under the Act. Either transaction would require prior Commission approval by order upon application. In addition, both the debt and the pledge are recourse to companies in the registered system, and so will be counted toward aggregate investment.

A number of commenters have asked the Commission to extend the rule beyond EWG and foreign utility company investments, to include all diversified activities.[78] One commenter asserts that "PUHCA clearly distinguishes between holding company investments made to serve the utility system and off-system investments * * * [T]he Commission should take into account all off-system investments if it is going to implement an investment cap in order to adequately protect system ratepayers and investors."[79] The statute, however, requires only that the rules under section 32 take into account the ratio of EWG to core utility investments. The legislation does not address the proportion of all nonutility investments.

In addition, the commenters' request departs from the statutory treatment of nonutility interests, and relevant precedent. The Act generally limits registered holding companies to a single integrated public-utility system, "and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system."[80] Under new section 32, a registered holding company does not require Commission authorization to invest in EWGs, and the ownership of an interest in an EWG "shall be considered as reasonably incidental, or economically necessary or appropriate, to the operations of an integrated public utility system."[81]

In contrast, to acquire other nonutility interests, a registered holding company must obtain prior Commission approval, by order upon application.[82] The applicant must establish, among other things, an operating or functional relationship between the nonutility activities and the system utility operations.[83] During the notice period, affected state regulators and other interested parties can comment on the proposed transaction. We do not believe it appropriate to impose a further limit in the context of this rulemaking.

2. Rule 53(a)(2)

Rule 53(a)(2) prescribes recordkeeping requirements concerning EWGs and foreign utility companies in which a registered holding company directly or indirectly holds an interest. The proposed rule would have required the books and records of these entities to be kept in English, and in a manner consistent with United States generally accepted accounting principles ("GAAP") and with the Federal Energy Regulatory Commission's ("FERC's") Uniform System of Accounts. The comments on the proposed rule have led us to modify its terms.

A number of registered holding companies have suggested that compliance with the rule could be impractical, if not impossible, with respect to foreign EWGs and foreign utility companies in which a minority interest is held.[84] In addition, some commenters have objected that it would be unduly burdensome to require that books and records in respect of foreign EWGs and foreign utility companies be kept in accordance with the Uniform System of Accounts.[85] Other commenters are concerned that the rule does not go far enough. One state commission asserts, but does not explain, that the proposed rule "does not ensure the availability of all necessary books and records."[86]

---

[73] Entergy at 18–19.

[74] See Texas Commission at 2–3.

[75] For example, the transfer of a coal mine would be included while a sale of coal for fuel purposes generally would not. We note that a sale of goods may be jurisdictional under section 13, and the transfer of utility assets may require Commission approval under section 12(d).

[76] NARUC and the Alabama Commission suggest that default on such debt could nonetheless have an indirect effect upon the cost of capital to system companies. See NARUC at 29; Alabama Commission at 6.

[77] Morgan Stanley commented that:
Today, it is a common objective to finance independent power projects on a stand-alone basis with non-recourse debt placed with banks and other * * * institutional lenders. * * * [T]he project structure limits, and is intended to limit [the owners'] financial exposure to the amounts invested as project equity. As a result, they are insulated from defaults on the project debt, as well as from bankruptcies and other insolvency events at the project level.
Morgan Stanley at 1–2.

[78] Senator Bumpers at 2. See also Arkansas Commission at 4–5; Florida Commission at 1–2; NARUC at 24–25; New Orleans City Council and Mississippi Commission at 20–21.

[79] Senator Bumpers at 2.

[80] Section 11(b)(1).

[81] Section 32(h)(2). Section 33(c)(3) similarly provides that an interest in the business of one or more foreign utility companies shall be considered to be "reasonably incidental, or economically necessary or appropriate, to the operations of an integrated public-utility system."

[82] Section 9(a)(1).

[83] See *generally Michigan Cons. Gas Co.* v. *SEC*, 444 F.2d 913 (D.C. Cir. 1971).

[84] See AEP at 4 ("as a practical matter, it may be that the books of foreign EWGs and [foreign utility companies] cannot effectively be maintained as the Commission or the registered holding company wishes unless the latter holds voting control in such entities"); *accord* CSW at 3–4; CNG at 2; Entergy at 15; GPU at 8; Northeast at 2–3 and Southern at 5 (requirements should apply only with respect to "controlled subsidiary," defined as one in which the registered holding company holds 50% or more of the voting securities). In the alternative, GPU would waive the requirements in the case of a minority or otherwise noncontrolling interest. See GPU at 8 (the requirement is "therefore not necessary in the public interest or for the protection of investors or consumers").

Entergy proposes that the books and records of other foreign EWGs and foreign utility companies be maintained in accordance with the applicable requirements of foreign law, acceptable to the U.S. auditors of the parent company. Entergy at 16–17. Northeast recommends that where there are bona fide reasons to excuse compliance with GAAP, the company should be required to produce, upon reasonable notice, a reconciliation to the amounts that would be reportable under United States GAAP. Northeast at 3.

[85] Columbia at 3; Dewey Ballantine at 2 and Entergy at 17. See Southern at 5 (the rule "should not mandate use of the Uniform System of Accounts in cases where it is not required by FERC").

[86] Alabama Commission at 9.

Some state and local regulators ask the Commission to require that registered holding companies make available to retail ratemaking authorities all information reported to the Commission. They seek the right to audit the EWG or foreign utility company when retail or wholesale rates may be affected.[87] Several commenters suggest that the rule should ensure the access of state and local regulators to books and records of EWGs and foreign utility companies.[88] The NARUC states that "[o]n request of a state commission, FERC, or interested party, the Commission should require the registered holding company system to produce books, records or employees of the EWG or foreign utility company."[89]

The Energy Policy Act grants state commissions access to the books and records of electric utility companies that are subject to their jurisdiction, EWGs that sell electricity to such utilities, and electric utilities or holding companies affiliated with these EWGs.[90] The legislation does not provide state commissions access to employees or to the books and records of foreign utility companies or EWGs that do not sell to United States utility companies. We do not think it appropriate to adopt requirements that the Congress did not impose.[91]

The Commission, however, is adopting a number of the commenters' other suggestions. The treatment of investments under the rule, as adopted, will generally parallel the treatment of these interests under GAAP. A registered holding company must maintain books and records to identify investments in and earnings from any EWG or foreign utility company in which it directly or indirectly holds an interest.

In addition, the books and records of each United States EWG in which the registered holding company directly or indirectly holds an interest must be kept, and the financial statements for such entity prepared, according to GAAP. Further, the registered holding company must undertake to provide the Commission access to such books and records and financial statements as the Commission may request.

Similar requirements apply with respect to each foreign exempt wholesale generator or foreign utility company which is a majority-owned subsidiary of the registered holding company.[92] The rule defines a "majority-owned subsidiary company" as one in which the registered holding company directly or indirectly owns more than 50% of the voting securities.

For each foreign exempt wholesale generator or foreign utility company in which the registered holding company directly or indirectly owns 50% or less of the voting securities, the rule requires the registered holding company to "proceed in good faith, to the extent reasonable under the circumstances," to cause books and records to be kept, and financial statements prepared, in conformity with GAAP.[93] If, however, a comprehensive body of accounting principles other than GAAP is used, the registered holding company, upon request, must describe and quantify each material variation from GAAP in the accounting principles, practices and methods used to maintain the books and records.

The registered holding company must also "proceed in good faith, to the extent reasonable under the circumstances," to provide access to such books and records and financial statements, or copies thereof, in English, as the Commission may request. In any event, the registered holding company shall make available to the Commission any books and records of the foreign exempt wholesale generator or foreign utility company that are available to the registered holding company.

We note, in response to Northeast's request for clarification, that books and records are not required to be maintained in the United States, and may be kept in the language of the host country.[94]

3. Rule 53(a)(3)

Under the proposed rule, no more than 2% of the system's domestic utility employees could render services, at any one time, to EWGs and foreign utility companies in which the registered holding company holds an interest, subject to state approval of such transfer. Two registered holding companies oppose the inclusion of a percentage limitation. CSW states that the Energy Policy Act does not require a limitation; the company instead suggests that the Commission impose such a limit, on a case-by-case basis, where necessary to protect the financial integrity of the registered holding company.[95] Columbia believes that the provision is neither necessary nor appropriate.[96]

Although the legislation does not require this provision, the Commission believes it offers a further safeguard for the utility operations of the registered system.[97] Diversion of expertise from the system's core business is a basic concern of the Act.[98] This same concern reappears in the legislative history of the Energy Policy Act.[99]

A few commenters express concern that 2% is an arbitrary limit.[100] A number ask the Commission to clarify the interpretation and application of this feature of the rule.[101] The percentage is intended to ensure that a *de minimis* number of utility employees are diverted from the system's core utility operations. Certain state and local regulators also express concern that the provision is silent concerning the types of employees that may be transferred under the rule.[102] They suggest various factors for distinguishing among employees, such as salary,[103] or type of work.[104] Although the Commission agrees that these are important considerations, we have found it difficult to differentiate employees, either by title or job description, in a manner that would

---

[87] New Orleans City Council and the Mississippi Commission at 21.

[88] Dept. of Energy at 5.

[89] NARUC at 32.

[90] Section 714 of the Energy Policy Act of 1992.

[91] We note that, under section 19, the Commission:

Upon its own motion or *at the request of a State commission* may investigate, or obtain any information regarding the business, financial condition, or practices of any registered holding company or any subsidiary company thereof or facts, conditions, practices, or matters affecting the relations between any such company and any other company or companies in the same holding company system (emphasis added).

[92] The rule allows the registered holding company to provide the Commission copies of books and records in English.

[93] *Cf.* section 13(b) of the Securities Exchange Act of 1934, as amended by the Foreign Corrupt Practices Act Amendments of 1988, Public Law 100–418, 102 Stat. 1415 (1988).

[94] Northeast at 2–3.

[95] CSW at 4.

[96] Columbia at 3.

[97] "The SEC has appropriate discretion in considering the issues and promulgating the regulations to take the steps reasonably necessary to protect operating companies and their customers." Statement of Sen. Wallop, 138 Cong. Rec. S17615 (Oct. 8, 1992).

[98] See section 1(b)(2).

[99] See, *e.g.*, Statement of Chairman Markey, 138 Cong. Rec. H11446 (Oct. 5, 1992).

[100] See, *e.g.*, Dept. of Energy at 5–7; NARUC at 27.

[101] Among other things, the commenters voice concern that the provision is "too vague to be workable" (Dept. of Energy at 6–7); express confusion as to whether the test applies to all utility employees (ECRC at 22), and how to calculate the percentage of employees (Northeast at 3); recommend that the term "services" be defined to exclude incidental services (Northeast at 4); and question whether the limit may be calculated in aggregate equivalent working hours (Columbia at 3), or in terms of type of employee and length of time used (Alabama Commission at 8), or by reference to the total number of employees, the total salary base, the amount of allocated salary and other employee compensation measures (Florida Commission at 2).

[102] See, *e.g.*, New Orleans City Council and the Mississippi Commission at 22–23.

[103] Florida Commission at 2.

[104] Alabama Commission at 8.

give comparable treatment to similarly-situated persons in all registered holding company systems. The 2% limitation will apply on a full-time-equivalent basis to all domestic employees of the utility subsidiaries.[105]

The Commission received many comments regarding the requirement of prior state approval. The registered holding companies generally opposed the requirement as cumbersome,[106] or unnecessary.[107] The practical concern appears to be that the requirement would place registered holding companies at an unfair disadvantage.[108]

In contrast, the states accepted the premise that they are best able to assess the potential impact of transfers of domestic utility personnel.[109] They questioned, however, whether proposed rule 53(a)(3) would achieve the desired result. They noted, in particular, that the goal of the rule could be frustrated by the transfer of personnel under the service agreements commonly used among companies in a registered holding company system.[110]

The requirement of prior state approval was intended to draw upon the expertise of the state commissions that oversee the operating companies. Many of the comments stressed, however, that most, if not all, state commissions review management's use of personnel in the context of a rate proceeding.[111] In addition, many states lack jurisdiction to grant the approval required under proposed rule 53(a)(3).[112] It thus appears that the proposed requirement could burden the state commissions and the regulated companies without adding any significant protection for consumers.

We believe that the goal of consumer protection can be achieved through a requirement of prior Commission approval for transfers of utility personnel and an amendment to rule 87 to ensure that resources are not improperly diverted to EWGs and foreign utility companies through service company transactions. Accordingly, the Commission is modifying the rule to require prior approval, by order upon application, for the rendering of services by personnel of the operating companies. For each request for authorization, there will be notice and an opportunity for the states and other interested persons to comment on the proposed transaction.[113] In a separate release, the Commission is today requesting public comment on a proposed amendment to rule 87.[114] The amendment would require prior Commission approval, by order upon application, for intrasystem service, sales and construction arrangements involving EWGs or foreign utility companies and other associate companies in a registered system.

4. Rule 53(a)(4)

Several commenters asked the Commission to provide information to other affected regulators regarding a registered holding company's EWG and foreign utility company activities.[115] Under rule 53(a)(4), a registered holding company must simultaneously furnish copies of its filings under rule 53 and related certificates under rule 24 to each federal, state or local regulator having jurisdiction over the rates of a system public-utility company. The registered company must also provide certain additional information under the amendments to Form U5S, including the nature of the interest, its location and facilities, the type and amount of capital invested in the entity, the ratio of debt to equity and the entity's earnings as of the end of the reporting period, and any service, sales or construction contracts with system companies, as well as an organizational chart indicating the relationship of each EWG and foreign utility company to other system companies and, where the EWG or foreign utility company is a subsidiary of the registered holding company, financial data including balance sheets, income statements and cash flow statements.[116] We believe that access to this information will contribute to interagency communication and ratepayer protection.

B. Rule 53(b)

Congress directed that the rules "shall take into account * * * the financial and operating experience of the registered holding company and the exempt wholesale generator." As explained below, the rule implements this provision by defining certain situations in which the safe harbor would be unavailable, regardless of whether a transaction otherwise satisfied the requirements of the rule.

1. Rule 53(b)(1)

The Commission first proposed that an applicant could not rely upon the safe harbor if a system company had previously filed for bankruptcy, unless three calendar years had elapsed since the date of confirmation of a plan of reorganization. A number of registered

[105] Entergy at 12 ("8 employees each working one hour of a given day would equal a single [full-time-equivalent] employee working an 8-hour day, not 8 employees"). See EUA at 4; GPU at 9.

[106] GPU noted that, "in many jurisdictions, the rule would compel the state regulatory commission to exercise authority over matters which it does not normally regulate and perhaps in certain states, may not have jurisdiction to regulate, at least directly." GPU at 9–10. See also AEP at 4, Southern at 6–7; Entergy at 11; CSW at 4; Columbia at 3; and Northeast at 3–4.

AEP further suggested that the requirement would allow state regulators to override the legislative intent to facilitate investments in EWGs and foreign utility companies. AEP at 4. See also GPU at 9–10 (the requirement could be unduly burdensome where a particular state has a *de minimis* interest); Southern at 6–7.

[107] Several commenters indicate that state approval is unnecessary, since the 2% threshold allows only a *de minimis* amount of employee diversion. AEP at 4; CSW at 4; Columbia at 3; Entergy at 11 (2% should provide the ceiling for employee services, with state approval necessary to exceed that amount); GPU at 10; Southern at 6.

In addition, they noted that most state commissions regulate the use of utility personnel during rate proceedings. AEP at 4; Southern at 6 n.12; Florida Commission at 1.

[108] CSW at 4 (noting that "the same state commission would not be required to make similar findings with respect to affiliates of a stand alone utility company or a holding company which is exempt from registration under the Act"); GPU at 9–10 (stating that the percentage limitation is adequate to address the issue of cross-subsidization of EWG and foreign utility company activities by associate domestic utilities, and that it is inappropriate and unnecessary to impose a further layer of regulatory oversight at the state level on the ability of registered systems to invest in these entities); Entergy at 10–11 (stating that uncertainties of obtaining state approval "would seriously impede the ability of registered holding companies . . . to move quickly on making new investments or to administer existing investments, thus putting such companies at a competitive disadvantage").

[109] See Alabama Commission at 7–8; Arkansas Commission at 5; NARUC at 27; New Orleans City Council and the Mississippi Commission at 21. The Alabama Commission noted that the requirement may be impractical for short-term assignments. Alabama Commission at 7–8. Only one commission, however, appears to have opposed the requirement: the Florida Commission stated that it "would result in state commissions being involved in the day-to-day management of the utility." Florida Commission at 1.

[110] The Alabama Commission, for example, observed that many holding companies have already placed key personnel in service company subsidiaries. Alabama Commission at 5.

[111] See, *e.g.*, AEP at 4; CSW at 4; Florida Commission at 1.

[112] See CSW at 4; Southern at 6–7.

[113] State regulators will thus have notice of proposed transactions and current information concerning the deployment of utility personnel. See Dept. of Energy at 6 (proposing, in addition to state approval, that registered holding companies be required to inform state regulators of the number of employees assigned to EWGs and foreign utility companies, their titles and the percentage of their time devoted to these activities).

[114] Holding Company Act Release No. 25887 (Sept. 23, 1993).

[115] See, *e.g.*, Florida Commission at 1; New Orleans City Council and the Mississippi Commission at 21, 26; Dept. of Energy at 11; NARUC at 35.

[116] The FERC has incorporated a similar requirement in its rulemaking under section 32. Order Nos. 550 and 550–A, Filing Requirements and Ministerial Procedures for Person Seeking Exempt Wholesale Generator Status, 58 FR 8897 (Feb. 18, 1993) (as corrected at 58 FR 11886 (Apr. 14, 1993)), III FERC Stat. & Regs. ¶ 30,964 (1993).

holding companies criticized this provision as unduly restrictive.[117] They noted that, under the proposed rule, the bankruptcy of a small subsidiary or project, or a project in which a registered holding company had a relatively small equity investment, would result in the loss of the safe harbor, even if the bankruptcy had a negligible effect on retained earnings.[118] Instead, the companies urged the Commission to limit the exclusion to a "major,"[119] "material"[120] or "significant" subsidiary.[121]

In consideration of the comments and upon our own review, we believe that the provision should be limited to the bankruptcy of the registered holding company, or of any associate company with assets in an amount exceeding 10% of the system's consolidated retained earnings. A retained earnings benchmark is consistent with other provisions of the rule. We believe that 10% is an appropriate limitation and one consistent with other financial tests adopted by this Commission.[122]

A question has arisen whether the exclusion applies where a registered holding company acquires a company that has previously filed for bankruptcy. Northeast asks the Commission to make clear that the rule refers only to bankruptcy filings "while an associate company of such holding company."[123] CSW explains that, absent some clarification, "this condition would inhibit fiscally sound utilities from bringing financial stability to failing projects or neighboring utilities."[124] The exclusion is not intended to reach the bankruptcy of a nonassociate company, regardless of whether such company later becomes an associate of the registered holding company.

In addition, EUA asks the Commission to clarify that the bankruptcy of a former subsidiary, which is no longer a system company, will not preclude use of the safe harbor if the other conditions of the rule are met.[125] We confirm this interpretation.

The Alabama Commission suggests that the "mere passage of time" after confirmation of a plan should not be dispositive. The state regulators ask the Commission to prescribe "more quantifiable criteria to insure the condition of such a company."[126] The Texas Commission suggests, in this regard, a requirement that the reorganized associate company have been granted an investment grade bond rating by both Moody's and Standard & Poor's.[127] While we understand the states' concern, it is not clear what other criteria could usefully be added. The requirement of an investment grade bond rating, for example, may have no bearing on a subsidiary in bankruptcy if the subsidiary issues debt to its parent rather than to public investors.

Confirmation of a plan of reorganization, however, is predicated on a finding that such confirmation "is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan."[128] For this reason, we have deleted, as arbitrary, the requirement that three years elapse following confirmation of a plan. The Commission has modified the bankruptcy exclusion to apply where the registered holding company, or any associate company with assets in excess of 10% of the system's consolidated retained earnings, has been the subject of a bankruptcy or similar proceeding, unless a plan of reorganization has been confirmed.

2. Rule 53(b)(2)

Second, the Commission proposed that the safe harbor similarly would be unavailable if, within the previous fiscal year, the EWG to be acquired had reported losses attributable to operations, or other EWGs or foreign utility companies in which system companies hold interests had reported aggregate losses attributable to operations, in excess of 25% of the system's aggregate investment in such entities.

Several commenters suggested that the operating loss exclusion was unnecessary or unduly burdensome in light of the retained earnings test in rule 53(a).[129] Further, a number commented that the provision prohibiting the acquisition of EWGs or foreign utility companies with operating losses could discourage prudent acquisitions. CSW stated:

> If a project has losses, the bargained for purchase price of an EWG will necessarily reflect the existence of any such operating loss. The acquisition of a "failed project" by a financially strong entity at an appropriate price should be encouraged not discouraged.[130]

Morgan Stanley noted that "the previous operating experience of the project is not a valid indicator of how well it will perform financially under the new owner."[131]

CNG would modify the test to preclude reliance on the rule if the cost of the EWG interest to be acquired would exceed 10% of system consolidated retained earnings and the EWG had reported operating losses exceeding 50% of its equity.[132] GPU suggests that the safe harbor should be available if the operating losses of the EWG or foreign utility company to be acquired, excluding "extraordinary events," do not exceed 10% of the amount to be invested in the entity.[133]

The Commission has considered these criticisms and suggestions. We are persuaded that the rule as proposed may be overinclusive, and so have deleted this provision.[134] As a protective

---

[117] See CSW at 4–5; EUA at 1–2; Entergy at 13; GPU at 10–11 and Northeast at 4. *Accord* Morgan Stanley at 1. See also Columbia at 4 (the proposed bankruptcy exclusion "unfairly and unnecessarily attaches a stigma to bankruptcy that is contrary to the spirit of the Bankruptcy Code").

[118] Morgan Stanley at 2 ("Proposed Rule 53(b)(1) would exaggerate the importance of the financial effect of a project bankruptcy on a registered holding company.").

[119] CSW at 4–5 (a subsidiary representing more than 25% of the consolidated assets of the registered holding company). *Accord* EUA at 2. CSW believes that the exclusion is an unnecessary safeguard in the event a retained earnings test or consolidated assets test is adopted.

[120] Entergy at 12–13 (an associate "in which [the registered holding company's] aggregate investment exceeded 10% of its current consolidated retained earnings"). *Accord* EUA at 2 (the Commission should "carve out subsidiaries which are not material to the financial condition of the registered holding company"); Southern at 8 (the provision should only apply to the bankruptcy of an associate company owning assets equal to 25% or more of the consolidated assets of the registered system).

[121] GPU and Northeast urge the Commission to adopt the definition of this term under Rule 1–02(v) of Regulation S–X (17 CFR 210.1–02(v)) under the Securities Exchange Act of 1934. GPU at 11; Northeast at 4.

[122] See, *e.g.*, Rule 1–02(v)(3) of Regulation S–X.

[123] Northeast at 4.

[124] CSW at 5.

[125] See EUA at 1–2. In 1991, EUA Power Corporation ("EUA Power") filed a petition for relief under Chapter 11 of the Bankruptcy Code. At the time of the bankruptcy filing, EUA Power was a subsidiary of EUA. Pursuant to a settlement agreement among various parties, approved by the bankruptcy court in 1992, EUA Power was spun off as a stand-alone corporation. Thereafter, the bankruptcy court issued an order confirming a plan of reorganization for the new company.

[126] Alabama Commission at 7. The state commission "agrees in principle with the bankruptcy safeguards." *Id.*

[127] Texas Commission at 3.

[128] 11 U.S.C. 1129(a)(11).

[129] CSW at 5; Northeast at 5 ("in light of the other protections and limitations in the proposed rules, this provision could be eliminated entirely without reducing the protections afforded by the Act"); Southern at 8.

[130] CSW at 5. *Accord* Entergy at 14–15 ("distressed projects purchased at a bargain price may be more economic than profit-making projects selling for higher prices"); GPU at 11; Northeast at 5; Southern at 8.

[131] Morgan Stanley at 2. *Accord* Northeast at 7; Southern at 8. *But see* ECRC at 19 ("the safe harbors should not be available if an EWG to be acquired has reported an operating loss in any quarter of the last fiscal year.")

[132] CNG at 2.

[133] GPU at 11.

[134] "New PUHCA section 32(g) permits registered holding companies to acquire and hold the securities of EWGs, so registered companies may compete on an equal basis with other market

measure, however, we are adding a provision to help to ensure that financial resources are not diverted away from the system's integrated public-utility system, into new EWG and foreign utility company investments, at a time when the system is experiencing financial difficulties.[135]

Rule 53(b)(2) addresses the circumstances in which the ratio of aggregate investment in EWGs and foreign utility companies to total capital invested in utility operations will preclude reliance upon the safe harbor. Once a registered holding company has reported losses that cause a 10% decrease in its consolidated retained earnings, the safe harbor will be unavailable if aggregate investment in EWGs and foreign utility companies exceeds 2% of total capital invested in system utility operations.[136] These restrictions will cease to apply once consolidated retained earnings are restored to their previous level.[137] The rule thus "take[s] into account" the ratio of capital invested in EWGs to total capital invested in utility operations.[138]

NARUC and a number of the state regulators maintain that a utility capitalization ratio is necessary to satisfy the requirements of section 32(h)(6).[139] They suggest that the new ventures may lead to increased costs of capital for the domestic utility companies and higher rates for their consumers. In particular, NARUC expresses concern that problems with a system's EWG and foreign utility activities "will limit the capital available to the utility business."[140]

The central purpose of section 32(h)(6) is the protection of the financial integrity of the registered system. It is not yet clear how the capital markets will assess the risks associated with these investments. While a utility capitalization ratio will not, in itself, measure the success or failure of a system's investments in EWGs and foreign utility companies, it may help to allay the concerns of the markets with respect to these activities. Utilities have generally been viewed as relatively low-risk investments. To the extent this perception may now change as a result of the new activities, the cost of capital for the core utility operations may increase, resulting in higher rates for consumers.

We believe that the retained earnings test answers many of the commenters' concerns by helping to ensure access to capital at reasonable costs. But in view of the emphasis state regulators place on a utility capitalization ratio, we have determined that the rule should include a ratio of capital invested in EWGs and foreign utility companies to that invested in utility operations, as a condition of the safe harbor.[141] We believe that a 10% reduction in consolidated retained earnings is an appropriate benchmark for this purpose, and is consistent with the conservative approach that we have taken in other provisions of the rule.[142] We selected 2% of total capital invested in utility operations as a *de minimis* level of aggregate investment in EWGs and foreign utility companies.[143]

3. Rule 53(b)(3)

Finally, rule 53(b)(3) addresses losses attributable to previous investments in EWGs and foreign utility companies by the registered holding company. Under the proposed rule, the safe harbor would have been unavailable if, for the most recent fiscal year, such losses exceeded 25% of the system's aggregate investment in EWGs and foreign utility companies. Southern suggests that this test is unnecessary because, to the extent such losses would affect retained earnings, the results would be reflected in the test under rule 53(a).[144] We believe, however, the provision is appropriate because it takes into account the degree of success in new, competitive markets.

Columbia criticizes the test as "overly constraining." It explains that aggregate investment, which includes only at-risk capital, is likely to be a relatively small amount that could easily be exceeded during start-up or under other conditions that would adversely affect a project's performance.[145] In addition, CSW states that "many successful projects generate sufficient cash to service debt, but have operating losses during the first few years."[146] CNG further notes that major overhaul costs, which normally occur every four to five years, could result in a project loss for the year if the costs are expensed rather than amortized over the life of the

participants." Statement of Sen. Wallop, 138 Cong. Rec. S17815 (Oct. 8, 1992).

[135] Other new nonutility activities would, of course, be subject to Commission approval on a case-by-case basis.

[136] The term "consolidated retained earnings" is defined in rule 53(a)(1)(B). For purposes of the rule, loss will be determined by comparing the average consolidated retained earnings for the four most recent quarters with the average for the previous four quarters. The term "aggregate investment" is defined in rule 53(a)(1)(A). The total capital invested in utility operations consists of all debt, preferred stock, common stock and other equity. Utility capitalization would include capital lease obligations.

[137] If, for example, a system's retained earnings decreased from $100 million to $90 million, the safe harbor would be unavailable if aggregate investment in EWGs and foreign utility companies exceeded 2% of utility capitalization.

If the conditions of the rule are otherwise met (including the requirement that aggregate investment not exceed 50% of consolidated retained earnings), a company could rely upon the safe harbor so long as its aggregate investment did not exceed 2% of its total utility capitalization. Once retained earnings regain their previous level, rule 53(b)(2) will cease to apply. A company could, however, continue to rely upon the safe harbor with respect to existing investments in EWGs and foreign utility companies.

[138] See section 32(h)(6). The Commission had proposed an amendment to Form U3S which would require a registered holding company to report, each year, EWG and foreign utility company investments as percentages of the system's utility investments. The reporting requirement, which the Commission is also adopting today, will provide an additional means of monitoring EWG and foreign utility company investments.

[139] NARUC states that a ratio based on "the total capital prudently invested for the purpose of selling electricity within the service territories of the utility subsidiaries" is needed to protect the systems' public-utility companies. NARUC at 24–25. NARUC explains that "[t]he amount of capital in the utility business is the thing to be protected, and therefore is the number to which total diversified investment should be compared." See also Alabama Commission at 9; Arkansas Commission at 4; Florida Commission at 2; City of New Orleans and Mississippi Commission at 4–7; and Pennsylvania Commission at 2. *Accord* Chairman Riegle at 2 (the final rule must "explicitly take into account" the ratio of capital invested in EWGs to the total capital invested in utility operations).

[140] NARUC at 25.

[141] Because investments in foreign utility companies also represent novel activities for registered holding companies, the Commission is including them in the test.

[142] See also Rule 1–02(v)(3) of Regulation S–X (17 CFR 210.1–02(v)(3)) under the Securities Exchange Act of 1934.

[143] The following chart illustrates the thresholds under the rule, as of June 30, 1993 (in thousands):

Company	10% of consolidated retained earnings	2% of utility capitalization	50% of consolidated retained earnings
Allegheny	$86,990	$81,921	$429,902
AEP	135,274	204,262	676,368
CSW	173,476	117,601	867,380
Columbia	8,503	18,073	42,513
CNG	146,342	27,903	731,711
EUA	2,505	13,487	12,523
Entergy	210,944	146,080	1,054,718
GPU	174,813	108,378	874,064
National Fuel Gas	33,774	14,400	168,872
NEES	68,734	61,140	343,669
Northeast	86,450	149,713	432,248
Southern	275,560	341,355	1,377,801
Unitil	2,240	2,400	11,202

Consolidated retained earnings are computed as the average of the four quarters ending June 30, 1993. These figures are, of course, subject to change. The consolidated retained earnings of EUA, for example, increased steadily during this period, from approximately $20 million as of September 30, 1992, to almost $30 million by June 30, 1993.

[144] Southern at 7.

[145] Columbia at 4–5.

[146] CSW at 5. *Accord* CNG at 2 (a highly-leveraged EWG could have losses in the early years attributable to start-up problems or interest expense on high initial debt balances); Entergy at 14 (post-commercial operating losses should be recognized incrementally, at the rate of 20% per year for the first five years); GPU at 11.

project.[147] Baker & Botts suggests that the provision should not apply to "historical operations where, as in the privatization of most foreign utility companies, the operating assets have been placed in a new company with no prior operating history."[148]

The commenters suggest various alternative standards. CSW recommends a cash flow test to determine whether an EWG can make scheduled payments under applicable project loan documents and related securities.[149] CNG would modify the rule to preclude reliance on the safe harbor if, during three out of the five prior fiscal years, the system's losses from other EWG investments exceed 25% of the system's aggregate investment in such entities.[150] GPU would base the 25% operating loss test on an average of the three previous fiscal years.[151] Columbia asks the Commission to revise the standard so that "a history of aggregate losses is considered disqualifying based on potential impact to the [registered holding company]."[152] Southern proposes an alternative test based upon 15% of consolidated retained earnings.[153] In contrast, the ECRC recommends that the safe harbor be unavailable if other EWGs and foreign utility companies in which the registered holding company holds an interest have reported aggregate losses in excess of "a very modest percentage (considerably less than 25%)" of the registered holding company's aggregate investment in these entities.[154]

Morgan Stanley comments that the proposed test "will be especially harsh to holding companies that do not have a large portfolio of 'mature' projects generating book income." The commenter suggests that losses be evaluated in terms of consolidated retained earnings.[155] We believe that an assessment of previous investments in EWGs and foreign utility companies in terms of consolidated retained earnings will adequately address system financial health without penalizing companies that have invested in projects that are not yet profitable. The Commission is therefore modifying the rule to preclude reliance on the safe harbor if a registered system has reported losses in the previous fiscal year attributable to investments in EWGs and foreign utility companies in an amount that exceeds 5% of the system's consolidated retained earnings. A low percentage limitation appears to offer an appropriate safeguard, in view of the ability of registered holding companies to acquire entities with a history of operating losses.[156]

Several registered holding companies ask the Commission to make clear that pre-operational expenses and start-up costs do not constitute losses attributable to operations for purposes of the rule.[157] The companies also request clarification that only the registered holding company's proportionate share of losses are to be included in the computation.[158] We confirm these interpretations.

C. Rule 53(c)

Several commenters have stated that the operation of the rule is unclear.[159] Accordingly, the Commission is adding a new section, rule 53(c), to clarify the procedures under the rule. A company that is unable to rely upon the safe harbor must demonstrate first, that the proposed financing transaction will not have a substantial adverse impact upon the financial integrity of the system, and second, that the transaction will not have any adverse impact on any utility subsidiary or its customers, or on the ability of state commissions to protect the subsidiary or its ratepayers. This provision restates our interpretation of the statutory language.

D. Rule 53(d)

The legislation requires the Commission to make its decision under section 32(h)(3) "to approve or disapprove the issue or sale of a security or the guarantee of a security within 120 days of the filing of a declaration concerning such issue, sale or guarantee."[160] Rule 53(d) implements these provisions by requiring the Commission to issue an order with respect to such transactions within 120 days of completion of the record. Three registered holding companies opposed this provision.[161] CSW suggested, in the alternative, that the rule should specify all information to be included in an application, so that the 120-day period could run from the filing of such application.[162] We believe, however, that some experience is necessary to determine what information is sufficient in these matters. We also believe that the rule is consistent with the statutory language and with Commission practice. In particular, we find no indication in section 32 or in the legislative history that Congress intended to modify the Commission's procedures.

II. Rule 54

This rule is intended to guide the Commission in its review of transactions other than EWG or foreign utility company financings. The Commission generally considers such transactions in the context of the financial condition of registered holding company system as a whole. As we noted previously, a system's investments in EWGs and foreign utility companies may not conform to traditional financing standards. In response to an inquiry by Chairman Johnston, the Commission suggested language that has been incorporated in section 32(h)(4).[163] Under that section:

> In determining whether to approve (A) the issue or sale of a security by a registered holding company for purposes other than the acquisition of an exempt wholesale generator, or (B) other transactions by such registered holding company or by its subsidiaries other than with respect to exempt wholesale generators, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an exempt wholesale generator upon the registered holding company system, unless the approval of the issue or sale or other transaction, together with the effect of such capitalization and earnings, would have *a substantial adverse impact on the financial integrity of the registered holding company system* (emphasis added).

Rule 54 provides that, in determining whether to approve the issue or sale of a security by a registered holding company for purposes other than the acquisition of an EWG or a foreign utility company, or other transactions by such registered holding company or its subsidiaries other than with respect to EWGs or foreign utility companies,

147 CNG at 2.

148 Baker & Botts at 2.

149 CSW at 5.

150 CNG at 2.

151 GPU at 11.

152 Columbia at 4. Columbia asserts that "[t]he limitation on investments to a percentage of retained earnings or consolidated assets limits the amount at risk in these projects; further restrictions are unnecessary."

153 Southern at 9.

154 ECRC at 19–20.

155 Morgan Stanley at 2–3. Morgan Stanley generally believes that the tests of rule 53(b) are unnecessary, in that "the 50% retained earnings limitation in Rule 53(a) alone is sufficient limitation on the availability of the 'safe harbor.'" Morgan Stanley at 2. See also Northeast at 5–6.

156 The 5% limitation is consistent with other similar standards used in the administration of the Act. See, *e.g.*, section 2(a)(11)(A) (definition of "affiliate").

157 Northeast at 7 (citing the losses incurred during development, construction, start-up and warranty testing). See CSW at 5 (the computation should not include a project's "pre-operation/pre-acquisition phase losses and expenses of a non-recurring nature"); Entergy at 14.

158 See CSW at 5; Entergy at 14; Northeast at 6–7; Baker & Botts at 2.

159 See, *e.g.*, NARUC at 23; Sen. Bumpers at 2.

160 Section 32(h)(5).

161 CSW at 6; Northeast at 7; Southern at 8–10.

162 CSW at 8–9.

163 Letter of Commissioner Edward F. Fleischman to Chairman Johnston, dated April 12, 1991.

the Commission shall not consider the effect of the capitalization or earnings of any EWG or foreign utility company subsidiary on a registered system if the conditions of the safe harbor under rule 53 are satisfied.

We received only three comments on the rule. The Department of Energy supports the rule,[164] while Northeast and Southern criticize it as overbroad.[165] In particular, the registered holding companies state that the provisions concerning books and records and employee services are unnecessary. Northeast asserts that "adverse financial impact relates only to the level of investment and the economic returns on those investments, not books and records, nor use of system employees nor prior bankruptcies."[166] As we have stated, the rules are intended to represent a conservative approach to these new activities. We are not persuaded by the companies' arguments.

III. Rule 57 and Amendments to Forms

Rule 57 addresses the reporting requirements under section 33. Section 33(a)(3)(B) requires a company seeking foreign utility company status to provide notice "in such form as the [Commission] may prescribe," that it is a foreign utility company. Form U–57 provides the necessary format for this notification.

Baker and Botts requested clarification that Form U–57 may be signed by an investor, on behalf of a foreign utility company. We agree, and have modified the form accordingly. Any person with an interest in a foreign utility company can rely on a Form U–57 filed by, or on behalf of, such company. A company may file a Form U–57 with respect to an entity it seeks to acquire. In addition, we are amending the General Instructions of Form U–57 to require notice to the Commission within 45 days after a determination that an entity no longer requires foreign utility company status. Such notice would be appropriate, for example, if a company obtained foreign utility company status prior to submitting a bid which proved unsuccessful. The requirement will allow the Commission to maintain more accurate records concerning foreign utility company investments.

We have also revised Form U–57 to require disclosure of companies that hold an interest of 5% or more in a foreign utility company.[167] Northeast states that it would be unduly burdensome to require the identification and description of each interest, regardless of size. The Commission agrees, and has modified the form to require identification of interests of 5% or more, an approach that is consistent with the rules governing proxy statements.[168]

Section 33(e)(1) provides that:

> A public utility company that is an associate company of a foreign utility company shall file with the Commission such reports (with respect to such foreign utility company) as the Commission may by rules, regulations, or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

Form U–33–S is the annual report to be filed by a public-utility company (other than an associate company of a registered holding company or a holding company exempt from registration pursuant to rule 2) that is an associate of a foreign utility company, as required by section 33(e)(1). In addition, the Commission is amending Form U5S, filed by registered holding companies, and Form U–3A–2, filed by holding companies claiming exemption from registration under section 3(a)(1) or (2) pursuant to rule 2, to include a reporting requirement for EWG and foreign utility company activities.

The form proposals elicited few comments. CNG criticized as "too stringent" the requirement in Exhibit H of Form U5S that the balance sheet, income statement and cash flow statement of each EWG or foreign utility company subsidiary must be audited. CNG stated that "[t]here is currently no general requirement that an audit opinion be rendered on the separate financial statements of each other subsidiary of a registered holding company" and that the "expense of such an audit * * * is particularly not justified if the subsidiary is not significant in relation to the [registered holding company] system as a whole."[169] Consistent with our changes to rule 53(a)(2), the Commission is revising Exhibit H of Form U5S to require audited financial statements only for majority-owned EWG and foreign utility company subsidiaries.[170]

In addition, Northeast noted that, in many foreign countries, audited financial statements are not available for six to nine months after the close of the fiscal year.[171] We have modified Exhibit H to require submission of the most recently available audited financial statements. In addition, Exhibit H requires the submission of any analytical review, and discussions thereof, of majority-held EWGs or foreign utility companies that has been conducted by independent auditors in the ordinary course of auditing of the registered holding company. Such information will aid the Commission in fulfilling its audit responsibilities with respect to these companies.

We have added to Item 9 of Form U5S a requirement that an asset transfer be reported both at market and at book value.[172] Such transfers are generally recorded at book value. Rule 53, however, requires inclusion of the market value of the transferred assets.

IV. Other Comments

The Commission requested comments on a number of other issues. Some, such as the utility capitalization test, have been discussed in the context of the relevant rule. Others, which relate primarily to foreign utility companies, will be considered when the Commission addresses the foreign rules.[173] The remaining comments are discussed below.

The Pennsylvania Commission asks the Commission to consider the effect on consumers of the premature retirement of a generating plant and conversion of this facility to an EWG.[174] We note that the Energy Policy Act requires state consent for such a conversion of any facilities that were in rate base as of October 24, 1992.[175] There is no provision in the statute for state approval concerning facilities that were included in rate base after that date. Because jurisdiction over the determination of EWG status rests with the FERC, we believe the state's concerns are properly addressed to that agency.

Several commenters ask the Commission to require registered holding companies to give prior notice of any planned divestitures of EWGs and foreign utility companies.[176] The NARUC states that "[d]ivestitures can

[164] Dept. of Energy at 8.

[165] See Northeast at 7–8 and Southern at 10.

[166] Northeast at 8. Northeast also recommends deletion of the bankruptcy provision and modification of the operating loss provisions.

[167] Northeast at 10.

[168] See Item 6(d) of Schedule 14A, 17 CFR 240.14a–101.

[169] CNG at 3.

[170] All other companies should file audited financial statements, if available; otherwise, unaudited financial statements are permissible.

[171] Northeast at 9.

[172] See Texas Commission at 4.

[173] As noted previously, the Commission is deferring action on proposed rules 55 and 56 at this time.

[174] Pennsylvania Commission at 1.

[175] Section 32(c).

[176] See New Orleans City Council and the Mississippi Commission at 21, 26; NARUC at 32–33.

create risks, just as acquisitions can."[177] Because EWGs and foreign utility companies are nonutilities for purposes of the Act, the sale of these entities does not come within the Commission's broad authority over the sale of utility interests.[178]

NARUC asked the Commission to require that a registered holding company file with the Commission, FERC and all affected state commissions an analysis demonstrating that the system's cost of capital will not be adversely affected as a result of a proposed transaction.[179] The Commission believes that the proposed requirement is inconsistent with the safe harbor approach to the rules. An applicant that is unable to rely upon rule 53 will have to demonstrate that the proposed financing transaction will have no substantial adverse impact upon the financial integrity of the registered system, and no adverse effect upon any utility or its customers or on the ability of state commissions to protect such utility or customers.

The Pennsylvania Commission recommends that the Commission and the states adopt a diversification monitoring program to prevent cross-subsidization.[180] The NARUC suggests a rulemaking to define how the Commission will carry out its existing obligations in light of the changes wrought by sections 32 and 33, and further states that the Commission, the state commissions and FERC should explore new ways to coordinate their activities to avoid duplication of effort.[181] As we noted recently in our statement to the Senate Committee on Energy and Natural Resources, developments in the industry and in the law have led the Commission to intensify its efforts to work in consultation with other regulators.[182] We share the commenters' concerns and are exploring means for the affected regulatory bodies to share information.[183]

The Iowa Board asks the Commission to reaffirm "the important consumer protection role of state regulatory agencies, by finding that such state provisions with respect to utility affiliates are consistent with the new PUHCA sections 32 and 33, and by declaring that the Commission's rules are not intended to have any preemptive effect with respect to such state provision."[184] The Commission has long recognized the role of state regulators in protecting ratepayers. We are unable, however, to make the requested assurances concerning the preemption of state law. We note in particular that section 32, unlike section 33, is silent in this regard.[185]

Entergy requests that the Commission clarify the exempt status of companies that operate and maintain EWGs but do not engage in sales of electric energy.[186] The FERC initially found that such companies did not qualify for EWG status.[187] It subsequently reconsidered this issue, and in its release amending its rules, generally provided for EWG status for such companies.[188] It is not clear that further action by this Commission is necessary.[189]

CSW asks the Commission to confirm that EWGs and foreign utility companies are not subject to any of the Commission's rules, other than rules 53 through 57.[190] The request, however, is beyond the scope of this rulemaking. Although these entities are exempt from all sections of the Act, sections 32 and 33 expressly recognize the Commission's jurisdiction over various transactions related to EWGs and foreign utility companies. The Commission, in a separate release, is proposing for comment an amendment to rule 87 that would apply to service, sales or construction contracts with associate EWGs and foreign utility companies. In addition, the Commission may, in the future, amend or adopt rules that affect EWGs and foreign utility companies. For these reasons, we decline CSW's request.

Catalyst asks the Commission to amend rule 7(d) to accommodate changes that result from the Energy Policy Act. The rule provides an exemption from the definition of "electric utility company" for passive owners of utility assets leased to a public-utility company. The commenter notes that "if a lessee of utility assets under a sale leaseback arrangement were to become an EWG, such company would not, by definition, be * * * a public-utility company," so that the passive owners would lose the benefit of the rule.[191] The Commission staff has issued a favorable no-action letter to this commenter on behalf of a company that can no longer rely on rule 7(d) because Catalyst, as operator-lessee, has applied for and received a determination of EWG status.[192] While we agree that an amendment to rule 7(d) may be an appropriate subject for a future rulemaking, the request is beyond the scope of the present rulemaking.[193]

K&M asks the Commission to reaffirm the position represented by several no-letters issued prior to the enactment of the Energy Policy Act of 1992, concerning the status of participants in independent power projects.[194] K&M argues that the analysis in these letters should remain unchanged, since the issue turned on the interpretation of section 2, which the new legislation did

---

[177] NARUC explains: "Financial markets can mislabel the reasons for the event and cause increases in capital costs unnecessarily. Also, divestiture can signal a real diversification failure. Alternatively, the seller can fail to receive a fair price given the risks it undertook as an owner of the diversified business." NARUC at 32–33.

[178] Section 12(d) provides in pertinent part that:

It shall be unlawful for any registered holding company * * * to sell any security which it owns of any public-utility company, or any utility assets, in contravention of such rules and regulations or orders regarding the consideration to be received for such sale, maintenance of competitive conditions, fees and commissions, accounts, disclosure of interest, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

[179] See NARUC at 31–32.

[180] Pennsylvania Commission at 1.

[181] NARUC at 33–35.

[182] Statement of the Securities and Exchange Commission concerning S. 544, the Multistate Utility Company Consumer Protection Act of 1993 (May 25, 1993).

[183] The rules adopted today should assist state commissions and the FERC in obtaining information concerning the EWG and foreign utility company activities of registered holding companies. See, *e.g.*, rule 53(a)(4). The Commission also intends to encourage state regulators and the FERC to participate in audits of these activities, as has frequently been the practice in the past with respect to audits of service company subsidiaries.

[184] Iowa Board at 3.

[185] Section 33(d) generally provides that nothing in that section shall be deemed to limit the authority of any state, including any state regulatory body, with respect to any public utility company or holding company that is subject to the state's jurisdiction, or any affiliate transactions involving a foreign utility company and such public-utility company or holding company.

[186] Entergy at 20.

[187] See KFM Pepperell Inc., 62 FERC ¶61,182 (1993).

[188] Order Nos. 550 and 550–A, Filing Requirements and Ministerial Procedures for Person Seeking Exempt Wholesale Generator Status, 58 FR 8897 (Feb. 18, 1993) (as corrected at 58 FR 11886 (Apr. 14, 1993)), III FERC Stat. & Regs. ¶30,964 (1993).

[189] The staff of the Commission issued a no-action letter addressing the concerns raised by Entergy. Kenetech Facilities Management, Inc. (Feb. 24, 1993).

[190] CSW at 7.

[191] Catalyst at 2.

[192] See Catalyst Old River Hydroelectric Limited Partnership (Mar. 26, 1993).

[193] The FERC has indicated that a person engaged directly or indirectly, and exclusively in the business of owning all or part of one or more eligible facilities and leasing such facilities could qualify for status as an EWG. See Order No. 550–A, Filing Requirements and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status, 58 FR 11886 (Apr. 14, 1993), III FERC Stat. & Regs. ¶30,964 (1993).

[194] K&M at 1–3. See, *e.g.* Commonwealth Atlantic Limited Partnership (Oct. 30, 1991); Nevada Sun-Peak Limited Partnership (May 14, 1991); ESI Energy Inc. (Dec. 2, 1991); Colstrip Energy Limited Partnership (June 30, 1988).

not amend. Again, the interpretive question is beyond the scope of this rulemaking. We note, however, that section 32(i) provides:

> In the case of any person engaged directly and exclusively in the business of owning or operating (or both owning and operating) * * * eligible facilities, an advisory letter issued by the Commission staff under this Act after the date of enactment of this section, or an order issued by the Commission under this Act after the date of enactment of this section, shall not be required for the purpose, or have the effect, of exempting such person from treatment as an electric utility company under section 2(a)(3) or exempting such person from any provision of this Act.

K&M further requests a provision that *de minimis* ownership of the securities of an electric utility company will not cause the owner to be considered an electric utility company.[195] There appears to be some confusion. The owner of facilities used for the generation of electricity is an electric utility company for purposes of the Act.[196] Any person that directly or indirectly owns, controls, or holds with power to vote, 5% or more of the outstanding voting securities of an electric utility company is a statutory affiliate of such company.[197] A company that owns, controls, or holds with power to vote 10% of the voting securities of a utility is presumptively a holding company.[198] The Commission may, by order upon application, declare that a company is not a holding company.[199] Any further relief is beyond the scope of this rulemaking.

Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis regarding the proposed rules, forms and form amendments was published in the proposing release. No comments were received on that analysis. The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603, a copy of which may be obtained by contacting Karrie McMillan, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Costs and Benefits

Rule 53 defines a partial safe harbor that will be available where, among other things, the registered system's aggregate investment in EWGs and foreign utility companies does not exceed an amount equal to 50% of consolidated retained earnings, and prior Commission approval has been obtained for any provision of services to an EWG or a foreign utility company by domestic utility personnel. A registered holding company may incur costs associated with (1) computing the ratio of aggregate investment in EWGs and foreign utility companies to the amount of the system's consolidated retained earnings and , where necessary, the ratio of aggregate investment to total capital invested in utility operations, and (2) obtaining, where necessary, approval for services by utility personnel.

The cost of determining the investment ratio should be nominal. The cost of obtaining Commission approval may also be immaterial, since a request for authorization may be combined with the filing required by rule 53. Greater costs may be involved, however, if a hearing is ordered. Accordingly, it appears that the cost could range from $200, for a filing that does not involve services by utility personnel, to $10,000 or more if a request for hearing is filed. We estimate the average cost of compliance at $2,000.

A registered holding company will rely upon rule 53 only when it seeks to engage in one of the specified transactions. Because there are various other financing options for EWG acquisitions, we do not anticipate more than 7 filings per year under rule 53. Accordingly, we estimate the annual cost of reliance upon the rule as approximately $28,000.

Rule 54 similarly prescribes the conditions under which the Commission would not consider the effect of the capitalization and earnings of any subsidiary which is an EWG or a foreign utility company, when reviewing a proposed issue or sale of a security by a registered holding company for purposes other than the acquisition of an EWG, or other transactions by such company or its subsidiaries other than with respect to EWGs. A company that seeks to rely upon the rule will incur the cost associated with computing the ratio of aggregate investment to consolidated retained earnings and, where necessary, the ratio of aggregate investment to total capital invested in utility operations, approximately $200. In fiscal year 1992, the Commission received 166 filings from registered holding companies and their subsidiary companies. An estimated 175 filings annually would result in a compliance cost of $35,000 per year.

There are two reporting requirements under rule 57. First, a company must notify the Commission of its status as a foreign utility company. The cost of complying with this requirement should be nominal. Since all persons holding an interest in a foreign utility company can rely upon a single notification filed by or on behalf of such company, we anticipate an average of 20 filings per year, for a total annual compliance cost of approximately $12,000.

Second, any domestic public-utility company (other than an associate company of a registered holding company or a holding company exempt from registration pursuant to rule 2) that is an associate of a foreign utility company must file an annual report on Form U–33–S. The form will require approximately 3 hours to complete, at $200 per hour, for a total cost of approximately $600. At present, there are approximately 177 domestic public-utility companies that could be required to file under the rule. We estimate that one-half of these companies may ultimately be required to file Form U–33–S, for an average annual compliance cost of $53,400.

In addition, the Commission has adopted amendments to Forms U5S and U–3A–2 to require registered holding companies and holding companies that are exempt by rule under sections 3(a)(1) or 3(a)(2), respectively, to provide information concerning their interests in EWGs and foreign utility companies. We estimate a compliance cost of approximately $2,000 for each of the 14 active registered holding companies, for an annual cost of $28,000.

Form U–3A–2 requires less information and so will be less costly to complete. We estimate a compliance cost of approximately $600 per exempt holding company. Again, we do not know how many of the 116 companies that currently claim exemption pursuant to rule 2 will engage in EWG or foreign utility company activities. For purposes of this analysis, we estimate that one-half of these companies will participate in such activities, for an annual compliance cost of $34,800.

Benefits

The amendments under the Energy Policy Act made significant changes in the previous regulatory pattern. Registered holding companies and their subsidiaries no longer need to apply for Commission approval to acquire interests in EWGs. If a registered holding company can acquire the EWG with internally generated funds, it may avoid the time and expense associated with an application. A registered

---

[195] K&M at 3–6. K&M does not propose a definition of *de minimis* ownership.

[196] Section 2(a)(3).

[197] Section 2(a)(11).

[198] Section 2(a)(7).

[199] *Id.*.

holding company that seeks to issue or sell securities to finance the acquisition of an EWG, or to guarantee the security of an EWG, must file a Form U–1 to demonstrate that the requirements of rule 53 and other applicable statutory requirements are met. The registered companies may request financing for several projects in a filing.

The costs associated with such filings will be significantly reduced by the ability to rely upon the rule. We estimate that reliance on the rule will save approximately $30,000 in costs normally associated with a financing application. The inability to come within the safe harbor of rule 53 may increase the costs of a transaction ten-fold.

Rule 53 also provides that the Commission must issue an order within 120 days of the completion of the declaration. We estimate the benefits to be approximately $20,000 per EWG financing application.

Paperwork Reduction Act

The rules are subject to the Paperwork Reduction Act and have been approved by the Office of Management and Budget.

Effective Date

Rule 57, Forms U–57 and U–33–S, and the amendments to Forms U5S and U–3A–2 will become effective November 1, 1993. Rules 53 and 54 will be effective immediately upon publication in the **Federal Register**. These latter rules are substantive rules which grant an exemption or relieve restrictions.[200]

In addition, the Commission finds good cause exists for making rules 53 and 54 effective less than 30 days after publication.[201] In paragraph (6) of section 32(h), Congress provided only a six-month period for promulgation of rules under paragraphs (3), (4), and (5) of section 32(h). Congress further provided that, after the six-month period, the Commission could not approve certain transactions under section 32 until such rules were issued. The immediate effectiveness of rules 53 and 54 is necessary to implement the legislative intent to allow registered holding companies to benefit from rules under section 32 within six months of the enactment of the Energy Policy Act of 1992 or promptly thereafter. Immediate effectiveness also will remove the current restrictions upon the Commission's authority to approve certain transactions.

[200] 5 U.S.C. 553(d)(1).

[201] 5 U.S.C. 553(d)(3).

List of Subjects in CFR Parts 250 and 259

Holding companies, Reporting and recordkeeping requirements, Utilities.

For the reasons set out in the preamble, Parts 250 and 259 of chapter II, title 17, of the Code of Federal Regulations are amended as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The general authority citation for Part 250 continues to read, in part, as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3) and 79t, unless otherwise noted.

* * * * *

2. Section 250.53 is added to read as follows:

§ 250.53 Certain registered holding company financings in connection with the acquisition of one or more exempt wholesale generators.

(a) In determining whether to approve the issue or sale of a security by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator, or the guarantee of a security of an exempt wholesale generator by a registered holding company, the Commission shall not make a finding that such security is not reasonably adapted to the earning power of such company or to the security structure of such company or companies in the same holding company system, or that the circumstances are such as to constitute the making of such guarantee an improper risk for such company, if the following conditions are met:

(1) Aggregate investment does not exceed 50% of the system's consolidated retained earnings.

(i) *Aggregate investment* means all amounts invested, or committed to be invested, in exempt wholesale generators and foreign utility companies, for which there is recourse, directly or indirectly, to the registered holding company. Among other things, the term includes, but is not limited to, preliminary development expenses that culminate in the acquisition of an exempt wholesale generator or a foreign utility company; and the fair market value of assets acquired by an exempt wholesale generator or a foreign utility company from a system company (other than an exempt wholesale generator or a foreign utility company).

(ii) *Consolidated retained earnings* means the average of the consolidated retained earnings of the registered holding company system as reported for the four most recent quarterly periods on the holding company's Form 10–K or 10–Q (§ 249.308a or § 249.310 of this chapter, respectively) filed under the Securities Exchange Act of 1934, as amended.

(2) The registered holding company maintains books and records to identify investments in and earnings from any exempt wholesale generator or foreign utility company in which it directly or indirectly holds an interest. In addition:

(i) For each United States exempt wholesale generator in which the registered holding company directly or indirectly holds an interest:

(A) The books and records of such entity shall be kept in conformity with United States generally accepted accounting principles ("GAAP").

(B) The financial statements shall be prepared according to GAAP.

(C) The registered holding company undertakes to provide the Commission access to such books and records and financial statements as the Commission may request.

(ii) For each foreign exempt wholesale generator or foreign utility company which is a majority-owned subsidiary company of the registered holding company:

(A) The books and records of such entity shall be kept in conformity with GAAP.

(B) The financial statements for such entity shall be prepared in conformity with GAAP.

(C) The registered holding company undertakes to provide the Commission access to such books and records and financial statements, or copies thereof, in English, as the Commission may request.

(D) For purposes of this section, a "majority-owned subsidiary company" is one in which the registered holding company directly or indirectly owns more than 50% of the voting securities.

(iii) For each foreign exempt wholesale generator or foreign utility company in which the registered holding company directly or indirectly owns 50% or less of the voting securities, the registered holding company shall proceed in good faith, to the extent reasonable under the circumstances, to cause:

(A) The books and records of such entity to be kept in conformity with GAAP; provided, that if the books and records are maintained according to a comprehensive body of accounting principles other than GAAP, the registered holding company shall, upon request, describe and quantify each material variation from GAAP in the accounting principles, practices and methods used to maintain the books and records.

(B) The financial statements for such entity to be prepared according to GAAP; provided, that if the financial statements are prepared according to a comprehensive body of accounting principles other than GAAP, the registered holding company shall, upon request, describe and quantify each material variation from GAAP in the balance sheet line items and net income reported in the financial statements.

(C) Access by the Commission to such books and records and financial statements, or copies thereof, in English, as the Commission may request; provided, that in any event, the registered holding company shall make available to the Commission any books and records of the foreign exempt wholesale generator or foreign utility company that are available to the registered holding company.

(3) No more than two percent of the employees of the system's domestic public-utility companies render services, at any one time, directly or indirectly, to exempt wholesale generators or foreign utility companies in which the registered holding company, directly or indirectly, holds an interest; provided, that the Commission has previously approved the rendering of such services.

(4) The registered holding company simultaneously submits a copy of any Form U–1 (17 CFR 259.101) and certificate under section 250.24 filed with the Commission under this section, as well as a copy of Item 9 of Form U5S (17 CFR 259.5s) and Exhibits G and H thereof with every federal, state or local regulator having jurisdiction over the retail rates of any affected public-utility company.

(b) Notwithstanding the foregoing provisions, the section shall not be available if:

(1) The registered holding company, or any subsidiary company having assets with book value exceeding an amount equal to 10% or more of consolidated retained earnings, has been the subject of a bankruptcy or similar proceeding, unless a plan of reorganization has been confirmed in such proceeding; or

(2) The average consolidated retained earnings for the four most recent quarterly periods have decreased by 10% from the average for the previous four quarterly periods and the aggregate investment in exempt wholesale generators and foreign utility companies exceeds two percent of total capital invested in utility operations; provided, this restriction will cease to apply once consolidated retained earnings have returned to their pre-loss level; or

(3) In the previous fiscal year, the registered holding company reported operating losses attributable to its direct or indirect investments in exempt wholesale generators and foreign utility companies, and such losses exceed an amount equal to 5% of consolidated retained earnings.

(c) An applicant that is unable to satisfy the requirements of paragraphs (a) and (b) of this section must affirmatively demonstrate that the proposed issue and sale of a security to finance the acquisition of an exempt wholesale generator, or the guarantee of a security of an exempt wholesale generator:

(1) Will not have a substantial adverse impact upon the financial integrity of the registered holding company system; and

(2) Will not have an adverse impact on any utility subsidiary of the registered holding company, or its customers, or on the ability of State commissions to protect such subsidiary or customers.

(d) The Commission shall issue an order with respect to a proposed transaction under section 32(h)(3) of the Act within 120 days of completion of the record concerning such issue, sale or guarantee.

3. Section 250.54 is added to read as follows:

§ 250.54 Effect of Exempt Wholesale Generators on Other Transactions.

In determining whether to approve the issue or sale of a security by a registered holding company for purposes other than the acquisition of an exempt wholesale generator or a foreign utility company, or other transactions by such registered holding company or its subsidiaries other than with respect to exempt wholesale generators or foreign utility companies, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an exempt wholesale generator or a foreign utility company upon the registered holding company system if § 250.53 (a), (b) and (c) are satisfied.

4. Section 250.57 is added to read as follows:

§ 250.57 Notices and Reports to be Filed under Section 33.

(a) *Notification of Status as Foreign Utility Company.*—Form U–57 (§ 259.207 of this chapter), notification of status as a foreign utility company, may be filed by, or on behalf of, an entity that seeks to become a foreign utility company. If the criteria of section 33 of the Act are otherwise met, the entity shall be deemed to be a foreign utility company upon the filing of such form.

(b) *Reporting Requirement for Associate Public-Utility Companies.*—A United States public-utility company that is an associate company of a foreign utility company shall file with the Commission a report on Form U–33–S (§ 259.405 of this chapter) on or before May 1 of each year. This requirement shall not apply to public-utility companies that are subsidiaries of a registered holding company or of a holding company that is exempt from registration under section 3(a) (1) or (2) of the Act, pursuant to section 250.2. In addition, a holding company that is exempt from registration by Commission order may file a single Form U–33–S on behalf of all of its public-utility subsidiaries.

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Subpart A—Forms for Registration and Annual Supplements

5. The general authority citation for Part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q and 79t.

Note—The text of the following forms do not and amendments will not appear in the Code of Federal Regulations.

6. By amending Form U5S (§ 259.5s) by revising the first sentence of Item 8, redesignating Item 9 as Item 10, adding Item 9 and adding Exhibits G and H to newly redesignated Item 10 to read as follows:

Securities and Exchange Commission, Washington, DC

FORM U5S

Annual Report

* * * * *

Item 8. Service, Sales and Construction Contracts

Excluding (i) transactions included in the annual report on Form U–13–60 of a service company, (ii) the sharing of costs of jointly owned facilities or jointly employed personnel, (iii) contracts for the purchase, sale or interchange of electricity or gas, and (iv) contracts between an exempt wholesale generator or a foreign utility company and a system company, as reported under Item 9, *infra*, provide the following information:

* * *

* * * * *

Item 9. Wholesale Generators and Foreign Utility Companies

Part I. For each interest in an exempt wholesale generator (EWG) or a foreign utility company ("company"), provide the following information. State all monetary amounts in United States dollars. Indicate by

bold face type all data relevant to the current reporting period.

(a) Identify the company, its location and its business address. Describe the facilities used for the generation, transmission and distribution of electric energy for sale or for the distribution at retail of natural or manufactured gas. Identify each system company that holds an interest in the company and describe the interest held.

(b) State the type and amount of capital invested in the company by the registered holding company, directly or indirectly. Identify any debt or other financial obligation for which there is recourse, directly or indirectly, to the registered holding company or another system company, other than an EWG or foreign utility company. Identify separately any direct or indirect guarantee of a security of the EWG or foreign utility company by the registered holding company. Identify any transfers of assets from any system company (other than an exempt wholesale generator or foreign utility company) to an affiliate exempt wholesale generator or foreign utility company. State the market value at the time of transfer, the book value and the sale price of the transferred asset.

(c) State the ratio of debt to common equity of the company and earnings of the company as of the end of the reporting period.

(d) Identify any service, sales or construction contract(s) between the company and a system company, and describe the services to be rendered or goods sold and the fees or revenues under such agreement(s).

Part II. Submit as Exhibit G an organizational chart showing the relationship of each EWG and foreign utility company to other system companies. If the company is a subsidiary company of the registered holding company, submit the financial data required in Exhibit H.

Part III. State the registered holding company's aggregate investment in EWGs and foreign utility companies, respectively. Also state the ratio of aggregate investment to the aggregate capital investment of the registered holding company in its domestic public-utility subsidiary companies.

Item 10. Financial Statements and Exhibits

* * * * *

Exhibit G

An organizational chart showing the relationship of each EWG or foreign utility company in which the system holds an interest to other system companies.

Exhibit H

If the EWG or foreign utility company is a "majority-owned associate company," as defined in rule 53(a)(2)(ii), submit the most recently available audited balance sheet (including a capitalization table), income statement and cash flow statement of such EWG or foreign utility company. For all other EWG or foreign utility company subsidiaries of the registered holding company, submit either an audited (if available) or an unaudited balance sheet (including a capitalization table), income statement and cash flow statement of such EWG or foreign utility company. Submit a summary of any analytical reviews and conclusions drawn therefrom of majority-held EWG or foreign utility company subsidiaries performed in the ordinary course of an audit of the registered holding company.

7. Section 259.207 and Form U–57 are added to read as follows:

§ 259.207 Form U–57, for notification of foreign utility company status pursuant to Rule 57(a) (§ 250.57 of this chapter).

This form shall be filed pursuant to section 33(a)(3)(B) of the Act by a company claiming foreign utility company status.

Securities and Exchange Commission, Washington, D.C.

Form U–57

Notification of Foreign Utility Company Status

Filed under section 33(a) of the Public Utility Holding Company Act of 1935, as amended.

(Name of foreign utility company)

(Name of filing company, if filed on behalf of a foreign utility company)

General Instructions

1. Use of Form

A notification to the Commission that a company is or proposes to become a foreign utility company shall be filed on Form U–57 by or on behalf of such company.

2. Formal Requirements

(a) Two copies of the notification on this form, including the exhibit specified, shall be filed with the Commission. At least one of such copies shall be manually signed and filed at the place designated by the Commission for filings under the laws it administers. The second copy shall be addressed to the Division or Office responsible for administering the Act. Entities that have (or propose to have) a domestic associate public-utility company shall file one copy of this notification with each state or federal commission having jurisdiction over the retail rates of such public-utility company.

(b) The notification shall be on good quality, unglazed white paper, 8½" x 11" in size.

3. Definitions

All terms used have the same meaning as in the Public Utility Holding Company Act of 1935, as amended, and the rules and regulations thereunder.

4. Withdrawal of Filing

Within 45 days after determination that the entity filing for notification does not require foreign utility company status (whether due to termination of the proposed acquisition, change in applicable law or otherwise), all entities having filed a Notification of Foreign Utility Company Status with the Commission shall notify the Commission by amendment to such form that such entity no longer requires such status.

Item 1

State the name of the entity claiming foreign utility company status, its business address, and a description of the facilities used for the generation, transmission and distribution of electric energy for sale or for the distribution at retail of natural or manufactured gas. To the extent known, identify each person that holds five percent (5%) or more of any class of voting securities of the foreign utility company and describe the amount and nature of the interest.

Item 2

State the name of any domestic associate public-utility company and, if applicable, its holding company, and a description of the relationship between the foreign utility company and such company, and the purchase price paid by any such domestic associate public-utility company for its interest in the foreign utility company.

Exhibit A

If applicable, the state certification(s) required under section 33(a)(2) of the Act. Certification(s) previously filed with the Commission may be incorporated by reference. If the certification(s) is not available at the time of filing the Form U–57, so state, and undertake to file such certification as an amendment when available; however, foreign utility company status will not be deemed obtained until all required certification(s) have been filed.

Signature

The undersigned company has duly caused this statement to be signed on its behalf by the undersigned thereunto duly authorized.

By _____

_____

(Signature and printed name and title of signing officer)

Date _____

8. Form U–3A–2 (§ 259.402) is amended by revising the introductory paragraph and paragraph 1, and adding paragraph 4 and Exhibit B to read as follows:

Securities and Exchange Commission, Washington, D.C.

Form U–3A–2

Statement by Holding Company Claiming Exemption Under Rule U–3A–2 From the Provisions of the Public Utility Holding Company Act of 1935

* * * * *

_____

(Name of company)

hereby files with the Securities and Exchange Commission, pursuant to rule 2, its statement claiming exemption as a holding company from the provisions of the Public Utility Holding Company Act of 1935, and submits the following information:

1. Name, State of organization, location and nature of business of claimant and every subsidiary thereof, other than any exempt wholesale generator (EWG) or foreign utility company in which claimant directly or indirectly holds an interest.

* * * * *

4. The following information for the reporting period with respect to claimant and each interest it holds directly or indirectly in an EWG or a foreign utility company, stating monetary amounts in United States dollars:

(a) Name, location, business address and description of the facilities used by the EWG or foreign utility company for the generation, transmission and distribution of electric energy for sale or for the distribution at retail of natural or manufactured gas.

(b) Name of each system company that holds an interest in such EWG or foreign utility company; and description of the interest held.

(c) Type and amount of capital invested, directly or indirectly, by the holding company claiming exemption; any direct or indirect guarantee of the security of the EWG or foreign utility company by the holding company claiming exemption; and any debt or other financial obligation for which there is recourse, directly or indirectly, to the holding company claiming exemption or another system company, other than the EWG or foreign utility company.

(d) Capitalization and earnings of the EWG or foreign utility company during the reporting period.

(e) Identify any service, sales or construction contract(s) between the EWG or foreign utility company and a system company, and describe the services to be rendered or goods sold and fees or revenues under such agreement(s).

Exhibit A

* * * * *

Exhibit B

An organizational chart showing the relationship of each EWG or foreign utility company to associate companies in the holding-company system.

* * * * *

9. Section 259.405 and Form U–33–S are added to read as follows:

§ 259.405 Form U–33–S, for annual reports pursuant to Rule 57(b) (§ 250.57 of this chapter).

This form shall be filed by a public utility company that is an associate of one or more foreign utility companies, unless such public-utility company is an associate of a registered holding company, or of a holding company exempt from registration under § 250.2 of this chapter.

Securities and Exchange Commission, Washington, D.C.

Form U–33–S

Annual Report Concerning Foreign Utility Companies

Filed under Section 33(e) of the Public Utility Holding Company Act of 1935, as amended for the fiscal year ended ———.

Filed pursuant to the Public Utility Holding Company Act of 1935 by

(Name and address)

General Instructions

1. Use of Form

An annual report covering the preceding fiscal year shall be filed on Form U–33–S with the Commission on or before 120 days after the close of the fiscal year by a United States public-utility company, other than a subsidiary company of a registered holding company or of a holding company exempt from registration under the Public Utility Holding Company Act of 1935 pursuant to rule 2, that is an associate company of a foreign utility company; provided, that if the public-utility company is a subsidiary of a holding company that is exempt by Commission order, such holding company may file a single annual report on Form U–33–S on behalf of all of its subsidiary public-utility companies.

2. Formal Requirements

(a) Two copies of the report on this form, including the exhibits specified, shall be filed with the Commission. At least one of such copies shall be manually signed and filed at the place designated by the Commission for filings under the laws it administers. The second copy shall be addressed to the Division or Office responsible for administering the Act.

Every amendment to the annual report shall comply with the formal requirements governing an original annual report with respect to the number of copies filed, signature and similar matters. Each such amendment shall be numbered.

(b) The annual report, and where practicable all documents filed as part thereof, shall be on good quality, unglazed white paper, 8½" x 11" in size. Tabulations may be placed either vertically or horizontally on a page, may utilize facing pages, and may be reduced. All papers included in the annual report, except exhibits not especially prepared for such purpose, shall have a side margin of at least 1½" for binding, and each copy should be firmly bound on the left side.

(c) The report or any portion thereof may be prepared by any process. All copies shall be legible and suitable for repeated photocopying. Accordingly, items in tabulations which must be subtracted rather than added shall be distinguished in a manner which will not be obscured by black and white reproduction.

(d) The report shall contain the item number and caption of each item in the form, but shall omit all instructions and text. If any item is inapplicable or the answer thereto is negative, it shall be so stated. These items may be collected on a single page to economize on the space required.

3. Definitions

All terms used in this form and the instructions have the same meaning as in the Public Utility Holding Company Act of 1935 and the rules and regulations thereunder.

Item 1

Identify each foreign utility company, state its location and business address, and describe the facilities it utilizes for the generation, transmission and distribution of electric energy for sale or for the distribution at retail of natural or manufactured gas. Identify each system company that holds an interest in the company and describe the interest held.

Item 2

Identify any debt or other financial obligation of the foreign utility company for which there is recourse directly or indirectly to the reporting public-utility company or, if the reporting company is an exempt holding company, to any system company. Identify separately any direct or indirect guarantee of a security of a foreign utility company by any system company.

Item 3

Identify any service, sales or construction contract(s) between a foreign utility company and the reporting public-utility company or, if the reporting company is an exempt holding company, any system company. Describe the services to be rendered or goods sold, and the fees or revenues under such contract(s).

Exhibit A

An organizational chart showing the relationship of each foreign utility company to the reporting public-utility company or, in the event that the reporting company is an exempt holding company, to system public-utility companies.

Signature

The undersigned company has duly caused this annual report to be signed on its behalf by the undersigned thereunto duly authorized pursuant to the requirements of the Public Utility Holding Company Act of 1935. The signature of the undersigned company shall be deemed to relate only to matters having reference to such company or its subsidiaries.

By ———

(Signature and printed name and title of signing officer)

Date ———

Dated: September 23, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24109 Filed 9–30–93; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release No. 35–25887; International Series Release No. 584; File No. S7–28–93]

RIN 3235–AF87

Intrasystem Service, Sales and Construction Contracts Involving Exempt Wholesale Generators and Foreign Utility Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment.

SUMMARY: The Commission is requesting comment on a proposed amendment to rule 87 under the Public Utility Holding Company Act of 1935, as amended ("Act"). The rule currently allows subsidiary companies of a registered holding company to enter into certain intrasystem agreements without the need to apply for or receive prior Commission approval. The amended rule would make clear that Commission approval, by order upon application, is required for intrasystem service, sales and construction agreements involving an exempt wholesale generator ("EWG") or foreign utility company, and another subsidiary company in the registered holding company system, other than an EWG or a foreign utility company. The proposed amendment is intended to ensure that necessary personnel and other resources are not improperly shifted from the system's core utility business to EWG or foreign utility company activities, and that the operating utility companies do not subsidize these new activities.

DATES: Comments must be submitted on or before November 30, 1993.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–28–93. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Associate Director, Joanne C. Rutkowski, Assistant Director, Office of Legal & Policy Analysis (202) 504–2267; Sidney L. Cimmet, Senior Special Counsel (202) 272–7676, Robert P. Wason, Chief Financial Analyst (202) 272–7684, or Karrie H. McMillan, Staff Attorney (202) 504–3387, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION

I. Background

The Public Utility Holding Company Act of 1935 was intended, among other things, to promote economy of management and operation of public-utility companies in holding company systems.[1] Section 13 of the Act was designed to retain the benefits, while eliminating the abuses, associated with intrasystem service, sales and construction arrangements. To that end, section 13(b) prohibits such contracts between associate companies in a registered holding company system, except in accordance with such terms and conditions as the Commission prescribes by rule or order "as necessary or appropriate in the public interest or for the protection of investors or consumers and to insure that such contracts are performed economically and efficiently for the benefit of such associate companies at cost, fairly and equitably allocated" among them. The rules adopted under section 13 provide for the creation of special purpose service companies, and otherwise implement the directives of that section.

Rule 87 (17 CFR 250.87) addresses the circumstances in which a subsidiary company of a registered holding company may perform services or construction for, or sell goods to, an associate company without the need to apply for or receive prior Commission approval.[2] Among other things, the rule allows a subsidiary utility company to render incidental services to an associate company, and any subsidiary company to "perform services or construction for, or sell goods to" an associate nonutility company.

The Commission identified the need to amend rule 87 in its rulemaking under the Energy Policy Act of 1992, which created two new classes of entities, EWGs and foreign utility companies. These entities are nonutility companies for purposes of the Act. Under the present rule 87, a subsidiary of a registered holding company can "perform services or construction for, or sell goods to" an associate EWG or foreign utility company without the need to apply for or receive prior Commission approval.[3]

The legislation reflects a concern that valuable resources may be improperly diverted from the core utility business to these new entities. To that end, the legislation preserves the Commission's jurisdiction over various ancillary transactions, including service, sales and construction arrangements between an EWG or foreign utility company and its associate companies.[4] The Commission noted the need for a rulemaking to address rule 87.

II. Proposed Amendment to Rule 87

The amendment to rule 87 would close the regulatory gap created by Energy Policy Act. At present, rule 87 allows subsidiaries of registered holding companies to provide services or perform construction for, or sell goods, to associate EWGs and foreign utility companies without the need to apply for or receive Commission authorization. The proposed amendment would require an order of the Commission before a company (other than an EWG or foreign utility company) could perform services or construction for, or sell goods to, an associate EWG or

[1] Section 1(b)(5).

[2] Rule 87 provides in relevant part:

(a) Subject to compliance with the provisions of such rules, regulations, or orders of the Commission as may be applicable * * * the following classes of subsidiary companies of registered holding companies may perform services or construction for, or sell goods to, associate companies thereof:

(1) An approved mutual service company.

(2) A subsidiary company whose organization and conduct of business the Commission has found, pursuant to [rule 88], sufficient to meet the requirements of section 13(b) of the Act.

(3) A subsidiary company which is principally engaged in the business of an operating electric or gas utility company * * *.

(b) Any subsidiary of a registered holding company, whether or not it is a company specified in paragraph (b)(1), (2) or (3) of this section, may perform services or construction for; or sell goods to, an associate company thereof if:

(1) Such associate company is not an electric or gas utility company and is principally engaged in a business or businesses other than that of a holding company * * *.

Rule 88, relating to the approval of service companies, provides in part that the Commission may find that a subsidiary company of a registered holding company is so organized and conducted, or will be conducted, as to meet the requirements of section 13(b) of the Act and rules thereunder.

[3] The Commission previously proposed for comment an amendment to rule 83, which would provide allow subsidiary companies of registered holding companies to provide services for certain foreign associate companies without the need for prior approval under section 13(b), so long as the consideration to be paid by the foreign associate company is not less than the cost of the service, sales, or construction to the subsidiary company rendering such services. Holding Company Act Release No. 25688 (Nov. 16, 1992). The Commission has not taken final action on this proposed amendment. Commenters should consider the proposed amendment to rule 83 when responding to the request for comments on rule 87.

[4] See sections 32(h) and 33(c)(2). EWGs and foreign utility companies are generally exempt from the Act, and a registered holding company may acquire an EWG without prior Commission approval. In a companion release, the Commission today is adopting rules, forms and form amendments under new sections 32 and 33 of the Act. Holding Co. Act Release No. 25886 (Sept. 23, 1993).

foreign utility company. The amendment would further require an order before an EWG or a foreign utility company could provide services or construction for, or sell goods to, an associate company (other than an EWG or a foreign utility company).

The amendment is intended to prevent transactions that would adversely affect the operations of the core utility system or otherwise impair its ability to serve its customers. In a separate release, the Commission today is adopting rule 53, which allows no more than 2% of the system's domestic utility personnel to render services to EWGs and foreign utility companies in which the registered holding company holds an interest. Although the rule requires Commission approval for such transfers, we are concerned that this requirement could be evaded by means of rule 87.[5] We believe that the proposed amendment, together with the provisions of rule 53, should help to safeguard the interests of the registered systems' domestic utility operations.[6] In particular, the requirement of Commission approval under the amended rule will help to ensure that management and highly trained technical personnel do not render services to EWG and foreign utility company projects to the detriment of the registered holding company's ratepayers.

Rule 87, as proposed to be amended, will also prohibit a registered holding company or any of its subsidiaries (other than an EWG or foreign utility company) from receiving any services, or purchasing any goods from, an EWG or foreign utility company without prior Commission approval. Since these entities are exempt from all provisions of the Act, the rules which typically would have protected the purchasing registered holding company system no longer apply, thus necessitating Commission oversight.

Finally, the amendment requires that registered holding companies simultaneously file copies of any Form U–1 filed under this rule, as well as any rule 24 certification, with its state and local regulatory commissions and the Federal Energy Regulatory Commission.[7]

III. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed amended rule will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, may be obtained from Karrie H. McMillan at Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

IV. Costs and Benefits

Costs

The proposed amendment will require Commission approval under section 13(b) of the Act before any subsidiary of a registered holding company may perform services or construction for, or sell goods to, an EWG or a foreign utility company. The Commission estimates that seven of the fourteen registered holding companies will engage in these activities. Of those seven, we estimate that three will be able to combine their requests for authority under section 13 with an application or declaration under another provision of the Act. Thus, the Commission believes that four new Form U–1's will be filed each year as a result of the proposed change to rule 87.

We estimate that approximately 80 hours will be required for an applicant to prepare its Form U–1 describing the services sought to be approved, respond to questions or comments, and file post-effective amendments as may be necessary or appropriate. Accordingly, based upon an estimated cost of $200 per hour, it appears that an approximate cost of $16,000 for necessary legal and accounting expenses may be incurred. The annual compliance cost, assuming an average of four additional applications per year resulting from the rule change, would be $64,000.

The amendments will also increase the number of statements required under rule 24 which must be filed with the Commission. The Commission anticipates an increase of 1 burden hour for complying with the requirements of rule 24.

Benefits

The amendment will allow the Commission to monitor services to EWGs and foreign utility companies to prevent the diversion of management and goods to these companies by other system companies. The ability of the Commission to prevent transactions which could have a detrimental effect on the system's operating utilities will benefit domestic ratepayers in ways that are impossible to quantify.[8] The Commission's oversight will help ensure that operating utilities remain fully supported. The filing of certificates pursuant to rule 24 will inform the Commission of services rendered to EWGs and foreign utility companies and facilitate audits of system companies.[9] State and federal regulators will obtain such information through the requirement that registered holding companies furnish them copies of applications under rule 87 and certificates pursuant to rule 24. Finally, prior Commission approval will ensure that system companies are fairly reimbursed for the use of their employees' time or for the provision of goods.

V. Paperwork Reduction Act

The proposed amendment to rule 87 is subject to the Paperwork Reduction Act and will be submitted to the Office of Management and Budget for its review.

VI. Statutory Authority

The Commission is proposing to amend rule 87 pursuant to sections 13, 32 and 33 of the Act.

Text of Proposed Rule

List of Subjects in 17 CFR Part 250

Holding companies, Utilities.

For the reasons set out in the preamble, Part 250 of chapter II, title 17, of the Code of Federal Regulations is proposed to be amended as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The general authority citation for part 250 continues to read, in part, as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3) and 79t, unless otherwise noted.

* * * * *

[5] "We recognize that such services could be rendered through service companies or other nonutility subsidiary companies. Although the Commission has jurisdiction to review such arrangements under section 13, rule 87 generally allows a nonutility subsidiary of a registered holding company to perform services for an associate company without the need for Commission approval. The rule thus creates a potential regulatory gap, which we will address in a future rulemaking." 58 FR 13719, 13722 n.30 (Mar. 15, 1993).

[6] The operating utilities reimburse their affiliate service companies for services rendered or goods sold at the service companies' cost, which is generally passed on to consumers through rates. Service company employees are thus trained in their areas of expertise at captive ratepayer expense. Service companies were created expressly for the purpose of supporting the core utility operations; over time, their functions have expanded to that of servicing nonutility businesses, but their primary client remains the operating utilities.

[7] The Commission has today adopted a similar requirement in rule 53(a)(4).

[8] See *supra* note 5.

[9] Filings under rule 24 are normally made within ten days of the consummation of a transaction, but may be made quarterly, semiannually or annually, as specified by the relevant order.

2. Section 250.87 is amended by adding paragraphs (d) and (e), to read as follows:

§ 250.87. Subsidiaries authorized to perform services or construction or to sell goods.

* * * * *

(d) This section shall not be applicable to the performance of services or construction for, or the sale of goods to, an associate company of a registered holding company if such associate company is an exempt wholesale generator or a foreign utility company. This section shall further not be applicable to the receipt by an associate company of a registered holding company of services or construction from, or the purchase of goods from, an associate company that is an exempt wholesale generator or a foreign utility company.

(e) Any application, or amendment thereto, filed directly or indirectly by a registered holding company seeking authority to render services, construction or sell goods to an exempt wholesale generator or foreign utility company; or receive services, construction or goods from an exempt wholesale generator or foreign utility company, must be simultaneously submitted to every State, local and federal commission having jurisdiction over the retail rates of any affected public-utility company.

Dated: September 23, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23939 Filed 9–30–93; 8:45 am]

BILLING CODE 8010–01–P

federal register

Friday
October 1, 1993

Part IV

Department of the Interior

Fish and Wildlife Service

New and Increased Public Recreation Entrance and User Fees at Certain Units of the National Wildlife Refuge System; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

New and Increased Public Recreation Entrance and User Fees at Certain Units of the National Wildlife Refuge System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This Notice informs the public of new and increased public entrance and recreation user fees at certain units of the National Wildlife Refuge System.

DATES: The effective date of the new and increased fee schedule on certain units of the National Wildlife Refuge System is October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, room 3248, 1849 C Street, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: Under authority of Public Law 99–645, the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3911) and Public Law 88–578, the Land and Water Conservation Fund Act of 1964 (16 U.S.C. 460*l*–4—460*l*–11), the U.S. Fish and Wildlife Service (Service) may increase such fees for the purposes of operation, maintenance and expansion of the National Wildlife Refuge System. In addition, these increases speak to the Administration's desire that government agencies make every effort to utilize existing authorities to better administrate and account for the public's lands and the services attendant to such lands. The increase in the fee schedules have been accounted for in the FY '94 budget package of the Service. Additionally, they have had considerable local public comment and input, along with Regional Office guidance, regarding their impact to the communities, as appropriate. The purpose of this Notice is to inform the general public of the effective date of the identified fee schedules.

All public entrance fee revenues are utilized to help fund the operation, maintenance and acquisition of the National Wildlife Refuge System. Thirty percent (30%) of the fee revenues generated will be utilized to first defray the cost of collection, and secondly to the operation and maintenance of the collecting refuge unit, and finally for the operation and maintenance costs of all units of the National Wildlife Refuge System. Seventy percent (70%) of the fee revenues will be deposited into the Migratory Bird Conservation Fund, under authority of the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718d), and utilized in the land acquisition for the National Wildlife Refuge System. All recreation user fees are deposited in the Refuge Revenue Sharing Fund, from which payments are made annually to counties in which are located areas administered by the Service.

The new and increased fee schedules are attached and are as follows:

NATIONAL WILDLIFE REFUGE SYSTEM NEW AND INCREASED PUBLIC RECREATION ENTRANCE FEES

National Wildlife Refuge (NWR)	Fiscal year—	
	1993	1994
Region 4—Arkansas, Florida, Georgia		
Holla Bend NWR, Russellville, Arkansas:		
Individual	1.00	1.00
Vehicle	3.00	4.00
Arthur R. Marshall Loxahatchee NWR, Boynton Beach, Florida:		
Individual	1.00	1.00
Vehicle	3.00	4.00
Hobe Sound NWR, Boynton Beach, Florida:		
Individual	1.00	1.00
Vehicle	3.00	4.00
Saint Marks NWR, Saint Marks, Florida:		
Individual	1.00	1.00
Vehicle	3.00	4.00
Okefenokee NWR, Folkston, Georgia:		
Individual	1.00	1.00
Vehicle	3.00	4.00
Region 5—Delaware, Massachusetts, New York, New Jersey, Virginia		
Bombay Hook NWR, Smyrna, Delaware:		
Individual	1.00	2.00
Vehicle	3.00	4.00
Parker River NWR, Newburyport, Massachusetts:		
Individual	1.00	2.00
Vehicle	5.00	5.00
Target Rock NWR, Shirley, New York:		
Individual	1.00	2.00
Vehicle	3.00	4.00
Edwin B. Forsythe NWR, Oceanville, New Jersey:		
Individual	1.00	2.00
Vehicle	3.00	4.00
Back Bay NWR, Virginia Beach, Virginia:		
Individual	1.00	2.00
Vehicle	3.00	4.00
Chincoteague NWR, Chincoteague, Virginia:		
Individual	0	0
Vehicle	3.00	4.00

NATIONAL WILDLIFE REFUGE SYSTEM NEW AND INCREASED PUBLIC RECREATION ENTRANCE FEES—Continued

National Wildlife Refuge (NWR)	Fiscal year—	
	1993	1994
Region 6—Montana		
National Bison Range NWR, Moiese, Montana:		
Individual	0	0
Vehicle	0	4.00
Region 1—California, Oregon, Washington		
Lower Klamath NWR, Tulelake, California, Controlled Waterfowl Hunt:		
Application	0	0
Permit	0	10.00
Tule Lake NWR, Tulelake, California, Waterfowl Hunting Blind:		
Application	0	0
Permit	0	10.00
Tule Lake NWR, Tulelake, California, Controlled Waterfowl Hunt:		
Application	0	0
Permit	0	10.00
Modoc NWR, Alturas, California, Controlled Waterfowl Hunt:		
Application	0	0
Permit	0	10.00
McKay Creek NWR, Pendleton, Oregon, Controlled Hunt:		
Application	0	2.00
Permit	0	0
Umatilla NWR, McCormack Slough Unit, Umatilla, Oregon, Waterfowl Hunting Blind:		
Application	0	2.00
Permit	10.00	10.00
McNary NWR, Burbank Washington, Waterfowl Hunting Blind:		
Application	0	2.00
Permit	0	0
Region 2—Arizona, New Mexico, Oklahoma, Texas		
Cibola NWR, Blythe, California, Controlled Waterfowl Hunt:		
Application	0	0
Permit	5.00	10.00
Havasu NWR, Needles, California, Controlled Waterfowl Hunt:		
Application	0	0
Permit	5.00	10.00
Salt Plains NWR, Jet, Oklahoma, Controlled Deer Hunt:		
Application	0	0
Permit	15.00	20.00
Tishomingo NWR, Tishomingo Oklahoma, Controlled Deer Hunt:		
Application	0	0
Permit	15.00	20.00
Anahuac NWR, Anahuac, Texas, Controlled Waterfowl Hunt:		
Application	0	0
Permit	5.00	10.00
McFaddin NWR, Sabine Pass, Texas, Controlled Waterfowl Hunt:		
Application	0	0
Permit	5.00	10.00
Aransas NWR, Austwell, Texas, Controlled Deer Hunt:		
Application	0	0
Permit	5.00	20.00
San Bernard NWR, Brazoria, Texas, Controlled Waterfowl Hunt:		
Application	0	0
Permit	5.00	10.00
Hagerman NWR, Sherman, Texas, Controlled Deer Hunt:		
Application	0	0
Permit	15.00	20.00
Laguna Atascosa NWR, Rio Hondo, Texas, Controlled Deer Hunt:		
Application	0	0
Permit	15.00	20.00
Region 3—Michigan, Illinois		
Shiawassee NWR, Saginaw, Michigan, Controlled Deer Hunt:		
Application	0	0
Permit	0	10.00
Mark Twain, NWR, Quincy, Illinois, Controlled Waterfowl Hunt:		
Application	0	0
Permit	0	20.00
Region 4—Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, Mississippi		
Eufaula NWR, Eufaula, Alabama, Controlled Deer Hunt:		
Application	0	5.00

NATIONAL WILDLIFE REFUGE SYSTEM NEW AND INCREASED PUBLIC RECREATION ENTRANCE FEES—Continued

National Wildlife Refuge (NWR)	Fiscal year—	
	1993	1994
Permit	10.00	10.00
White River NWR, De Witt, Arkansas, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Felsenthal NWR, Crossett, Arkansas, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Lake Woodruff NWR, DeLeon Springs, Florida, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Lower Suwannee NWR, Chiefland, Florida, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Saint Vincent NWR, Apalachicola NWR, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Saint Marks NWR, Saint Marks, Florida, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Savannah Coastal NWR, Savannah, Georgia, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Piedmont NWR, Round Oak, Georgia, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Okefenokee NWR, Folkston, Georgia, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Okefenokee NWR, Folkston, Georgia, Developed Campsites:		
Application	0	0
Permit	3.00	4.00
Tensas River NWR, Tallulah, Louisiana, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Noxubee NWR, Brooksville, Mississippi, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Yazoo NWR, Hollandale, Mississippi, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Mattamuskeet NWR, Swanquarter, North Carolina, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Mackay Island NWR, Knotts Island, North Carolina, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Pee Dee NWR, Wadesboro, North Carolina, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Pocosin Lakes NWR, Creswell, North Carolina, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Hatchie NWR, Brownsville, Tennessee, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Reelfoot NWR, Union City, Tennessee, Controlled Deer Hunt:		
Application	0	5.00
Permit	10.00	10.00
Tennessee NWR, Paris, Tennessee, Controlled Dear Hunt:		
Application	0	5.00
Permit	10.00	10.00
Region 7—Alaska		
Kenai NWR, Soldotna, Alaska, Hidden Lake Developed Campground:		
Daily Rate	6.00	10.00
Kenai NWR, Soldotna, Alaska, Upper Skilak Developed Campground Daily Rates:		
Walk In Sites	0	6.00
Drive In Sites	0	10.00

Dated: September 21, 1993.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–24150 Filed 9–30–93; 8:45 am]

BILLING CODE 4310–55–M

federal register

Friday
October 1, 1993

Part V

Department of Education

34 CFR Parts 642 et al.
Training Program for Federal TRIO Programs, Upward Bound Program, and Student Support Services Program; Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 642, 645, and 646

RIN 1840–AB53

Training Program for Federal TRIO Programs, Upward Bound Program, and Student Support Services Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Training Program for Federal TRIO Programs, the Upward Bound Program, and the Student Support Services Program, each of which is authorized by title IV, part A, subpart 2, chapter 1 of the Higher Education Act of 1965, as amended (HEA). These final regulations are needed to conform the regulations to the changes made in the programs by the Higher Education Amendments of 1992. The Federal TRIO programs are designed to prepare disadvantaged persons for successful entry into, retention in, and completion of, postsecondary education, and to train the staff and personnel employed by the Federal TRIO programs.

These programs support the achievement of the National Education Goals. Specifically, Goals 2, 3, 4, and 5 call for increased high school completion rates, increased academic competency, increased achievement in science and mathematics, and for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 642.31, 645.4, and 646.4. Sections 642.31, 645.4, and 646.4 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Richard T. Sonnergren or May J. Weaver, U.S. Department of Education, 400 Maryland Avenue, SW., room 5065, FOB–6, Washington, DC 20202–5249. Telephone: (202) 708–4804. Deaf and hearing-impaired individuals may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These regulations implement the Higher Education Amendments of 1992, Public Law 102–325, enacted July 23, 1992, which require conforming changes in the regulations for three of the Federal TRIO programs. The amendments occur in 34 CFR Part 642, Training Program for Federal TRIO Programs; 34 CFR Part 645, Upward Bound Program; and 34 CFR Part 646, Student Support Services Program.

The conforming changes to 34 CFR part 642 include the following:

1. Reflects the new legislative title for the program—Training Program for Federal TRIO Programs.
2. Changes all references to the "Special Programs for Students from Disadvantaged Programs" to the "Federal TRIO Programs."
3. Updates the list of all other Department of Education regulations that apply to the Training Program for Federal TRIO Programs.
4. Removes the regulatory requirement on the number of applications an applicant can submit.
5. Incorporates the legislative provision that requires the Secretary to provide training for new directors and to offer training on (1) legislative and regulatory requirements; (2) student financial aid; and (3) the design and operation of model projects.

The conforming changes to 34 CFR part 645 include the following:

1. Adds combinations of eligible institutions and agencies as eligible applications.
2. Incorporates the new statutory provision for documentation of low-income status.
3. Updates the list of other Department of Education regulations that apply to the Upward Bound Program.
4. Incorporates the legislative provision that requires all Upward Bound Program projects to include instruction in mathematics, science, foreign language, composition, and literature in their core curriculum.
5. Adds mentoring programs as a service that may be provided.

The conforming changes to 34 CFR part 646 include the following:

1. Expands the program authority to reflect the revised program purposes in the Higher Education Amendments of 1992.
2. Adds combinations of institutions of higher education as eligible applicants under the statute.
3. Changes the term "physically handicapped" to the new term used in the statute—"individuals with disabilities."
4. Incorporates new statutory provision for documenting low-income status.
5. Includes the full list of other Department of Education regulations that apply to the program.
6. Adds mentoring programs as a permissible service.
7. Requires an assurance that Student Support Services participants will be offered sufficient financial assistance to meet their needs.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations.

However, these amendments merely incorporate congressionally mandated statutory changes into the regulations and do not establish substantive policy. Therefore, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment on the regulations is unnecessary and contrary to the public interest.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

Sections 642.31, 645.4, and 646.4 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Institutions of higher education; public and private nonprofit agencies and organizations; combinations of institutions, agencies, and organizations; and secondary schools are eligible to apply for grants under these regulations. The Department needs and uses the application data and information to make grants. Annual grantee reporting is estimated to average 34 hours per response for 450 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 642

Education, Education of disadvantaged, Education of handicapped, Grant programs—education, Training—personnel.

34 CFR Part 645

Education, Education of disadvantaged, Grant programs—education.

34 CFR Part 646

Education, Education of disadvantaged, Education of handicapped, Grant programs—education.

(Catalog of Federal Domestic Assistance Numbers: 84.103—Training Program for Federal TRIO Programs; 84.047—Upward Bound Program; and 84.042—Student Support Services Program)

Dated: September 23, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends parts 642, 645, and 646 of title 34 of the Code of Federal Regulations as follows:

1. The title of part 642 is revised to read as follows:

PART 642—TRAINING PROGRAM FOR FEDERAL TRIO PROGRAMS

2. The authority citation for part 642 is revised to read as follows:

Authority: 20 U.S.C. 1070a-11 and 1070a-17, unless otherwise noted.

3. The authority citations following §§ 642.2, 642.3, and 642.33 of the regulations are revised to read as follows:

(Authority: 20 U.S.C. 1070a-17)

4. The authority citations following §§ 642.4, 642.31, 642.34, 642.40, and 642.41 are revised to read as follows:

(Authority: 20 U.S.C. 1070a-11 and 1070a-17)

5. Section 642.1 is revised to read as follows:

§ 642.1 Training Program for Federal TRIO Programs.

The Training Program for Federal TRIO Programs—referred to in these regulations as the Training Program—provides Federal financial assistance to train the staff and leadership personnel employed in, or preparing for employment in, Federal TRIO Program projects.

(Authority: 20 U.S.C. 1070a-17)

6. Section 642.2 is amended by revising paragraph (b) to read as follows:

§ 642.2 Eligible applicants.

* * * * *

(b) Public and private nonprofit agencies and organizations.

7. Section 642.3 is amended by removing the words "Special Programs" in paragraphs (a) and (b), and adding, in their place, "Federal TRIO Programs".

8. Section 642.4 is amended by revising paragraph (a) to read as follows:

§ 642.4 Regulations that apply to the Training Program.

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

* * * * *

9. Section 642.5 is amended by removing the citation of authority following each definition in paragraph (b), removing the words "Special Programs" in the definition of the term "Leadership personnel" in paragraph (b) and adding, in their place, "Federal TRIO Programs", by removing the definition of the term "Special Programs", and by adding a new definition of the term "Federal Trio Programs" and adding an authority citation to read as follows:

§ 642.5 Definitions that apply to the Training Program.

* * * * *

(b) * * *

"Federal TRIO Programs" means the Upward Bound, Talent Search, Student Support Services, Educational Opportunity Centers, and Ronald E. McNair Postbaccalaureate Achievement Programs.

(Authority: 20 U.S.C. 1001 *et seq.*, 1070a-11, 1070–17, 1088, 1141, and 1144a)

§ 642.6 [Removed]

10. Section 642.6 is removed.

11. Section 642.10 is revised to read as follows:

§ 62.10 Activities the Secretary assists under the Training Program.

(a) A Training Program project trains the staff and leadership personnel of Federal TRIO Program projects to enable them to more effectively operate those projects.

(b) A Training Program project may include conferences, internships, seminars, workshops, and the publication of manuals designed to improve the operations of Federal TRIO Program projects.

(c) Each year, one or more Training Program projects must provide training for new project directors.

(d) Each year, one or more Training Program projects must offer training covering the following topics:

(1) The legislative and regulatory requirements for operating Federal TRIO Programs.

(2) Assisting students to obtain adequate student financial assistance from programs authorized under Title IV of the Act, as well as from other sources.

(3) The design and operation of model Federal TRIO Program projects.

(Authority: 20 U.S.C. 1070a-17)

12. Section 642.31 is amended by removing the words "Special Programs" in paragraph (f)(2)(i), and adding, in

their place, "Federal TRIO Programs", and by revising paragraph (f)(2)(iii) to read as follows:

§ 642.31 Selection criteria the Secretary uses.

* * * * *

(f) * * *

(2) * * *

(iii) The extent to which the proposed training addresses needs that are consistent with the topics required by statute and other topics chosen as priorities by the Secretary as authorized under § 642.34.

§ 642.32 [Amended]

13. Section 642.32 is amended by removing the words "Special Programs" in paragraph (c)(2)(ii) and adding, in their place, "Federal TRIO Programs", and by revising the authority citation to read as follows:

(Authority: 20 U.S.C. 1070a–11)

14. Section 642.34 is amended by adding new paragraphs (a)(20) and (a)(21), by removing the words "Special Programs" in paragraph (b) and adding, in their place, "Federal TRIO Programs", redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

§ 642.34 Priorities for funding.

(a) * * *

(20) Legislative and regulatory requirements for the operation of programs.

(21) The design and operation of model programs for projects funded under the Federal TRIO Programs.

(b) The Secretary annually funds training on the subjects listed in paragraphs (a)(6), (19), (20), and (21) of this section.

* * * * *

PART 645—UPWARD BOUND PROGRAM

15. The authority citation for part 645 is revised to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–13, unless otherwise noted.

16. The authority citations following §§ 645.2, 645.32, and 645.43 are revised to read as follows:

(Authority: 20 U.S.C. 1070a–11)

17. The authority citations following §§ 645.1, 645.10, 645.11, and 645.12 are revised to read as follows:

(Authority: 20 U.S.C. 1070a–13)

18. The authority citations following §§ 645.3, 645.4, 645.13, 645.14, 645.30, 645.31, 645.32, 645.40, 645.41, and 645.42 are revised to read as follows:

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

19. Section 645.2 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 645.2 Eligible applicants.

* * * * *

(c) A combination of the types of institutions, agencies, and organizations described in paragraphs (a) and (b) of this section.

* * * * *

20. Section 645.3 is amended by removing paragraph (a)(1)(vi), and revising paragraphs (a)(1)(iv) and (a)(1)(v) to read as follows:

§ 645.3 Eligible project participants: general.

(a) * * *

(1) * * *

(iv) Is a resident of Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands (Palau); or

(v) Is a resident of the Freely Associated States—the Federated States of Micronesia or the Republic of the Marshall Islands.

* * * * *

21. Section 645.4 is amended by revising paragraph (c) to read as follows:

§ 645.4 Eligible project participants: selection requirements.

* * * * *

(c)(1) In the case of a student who is 18 or younger, or is a dependent student, an institution shall document that the student is a low-income individual by obtaining and maintaining—

(i) A signed statement from the student's parent or legal guardian regarding family income;

(ii) Verification of family income from another governmental source;

(iii) A signed financial aid application; or

(iv) A signed United States or Puerto Rican income tax return.

(2) In the case of a student who is older than 18 and is not a dependent student, an institution shall document that the student is a low-income individual by obtaining and maintaining—

(i) A signed statement from the student regarding family income;

(ii) Verification of family income from another governmental source;

(iii) A signed financial aid application; or

(iv) A signed United States or Puerto Rican income tax return.

* * * * *

22. Section 645.5 is amended by revising paragraph (a) to read as follows:

§ 645.5 Regulations that apply to the Upward Bound Program.

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

* * * * *

23. Section 645.6 is amended by removing the citation of authority following each definition, by adding new definitions of "Family taxable income," and "Low-income individual" to paragraph (b) in alphabetical order, and adding an authority citation following the section to read as follows:

§ 645.6 Definitions that apply to the Upward Bound Program.

* * * * *

(b) * * *

Family taxable income means—

(1) With regard to an individual who is 18 or younger, or who is a dependent student, the taxable income of the individual's parents; or

(2) With regard to a student who is over 18 and is not a dependent student, the taxable income of the student and his or her spouse.

* * * * *

Low-income individual means an individual whose family taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual initially participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

* * * * *

(Authority: 20 U.S.C. 1001 *et seq.*, 1070a-11, 1070a-13, 1088, 1141, 1144a, and 3283(a))

24. Section 645.10 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively; adding a new paragraph (c); revising the introductory text of redesignated

paragraph (d), and redesignated paragraphs (d)(8) and (d)(9); adding a new paragraph (d)(10); and removing the reference to "(c)" in redesignated paragraph (e) and adding, in its place a reference to "(d)", to read as follows:

§ 645.10 Kinds of projects the Secretary assists under the Upward Bound Program.

* * * * *

(c) An Upward Bound project, including a Veterans Upward Bound project, that has received funding for at least two years must include as part of its core curriculum for the remainder of the project period of the grant, instruction in mathematics through pre-calculus, laboratory science, foreign language, composition, and literature.

(d) An Upward Bound project, including a Veterans Upward Bound project, may also provide services such as—

* * * * *

(8) On-campus residential programs;

(9) Mentoring programs involving elementary or secondary school teachers, faculty members at institutions of higher education, students, or any combination of these persons; and

(10) Programs and activities as described in paragraphs (d)(1) through (9) of this section that are specially designed for individuals with limited proficiency in English.

* * * * *

§ 645.12 [Amended]

25. Section 645.12 is amended by adding "and (d)" before the period at the end of paragraph (d).

§ 645.13 [Amended]

26. Section 645.13 is amended by adding "and (d)" after "§ 645.10(c)" in paragraph (b).

§ 645.31 [Amended]

27. Section 645.31 is amended by adding "and (d)" after "§ 645.10(c)" in paragraph (g)(3)(iv).

28. Section 645.43 is amended by revising paragraph (a) to read as follows:

§ 645.43 Other requirements of a grantee.

* * * * *

(a)(1) Engage a full-time project director.

(2) However, the Secretary may waive the full-time requirement—

(i) As specified in EDGAR, 34 CFR 75.511; or

(ii) If the requirement hinders coordination among Federal TRIO Programs and similar programs funded through other sources; and

* * * * *

PART 646—STUDENT SUPPORT SERVICES

29. The authority citation for part 646 is revised to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–14, unless otherwise noted.

30. The authority citations following §§ 646.3 646.5, 646.30, 646.31, 646.40, and 646.41 are revised to read as follows:

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

31. The authority citations for §§ 646.32 and 646.42 are revised to read as follows:

(Authority: 20 U.S.C. 1070a–11)

32. The authority citations for §§ 646.2, 646.10, and 646.20 are revised to read as follows:

(Authority: 20 U.S.C. 1070a–14)

33. Section 646.1 is revised to read as follows:

§ 646.1 Student Support Services.

The Student Support Services program provides grants for projects designed to—

(a) Increase college retention and graduation rates for eligible students;

(b) Increase the transfer rates of eligible students from 2-year to 4-year institutions; and

(c) Foster an institutional climate supportive of the success of low-income and first generation college students and individuals with disabilities.

(Authority: 20 U.S.C. 1070a–14)

§ 646.2 [Amended]

34. Section 646.2 is amended by adding the words "and combinations of institutions of higher education" after the word "education".

35. Section 646.3 is amended by removing paragraph (a)(5), by redesignating paragraph (a)(6) as (a)(5), by revising paragraph (a)(4), and by revising paragraph (d)(3) to read as follows:

§ 646.3 Eligible project participants: general.

* * * * *

(a) * * *

(4) Is a resident of Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands (Palau).

* * * * *

(d) * * *

(3) An individual with disabilities.

36. Section 646.4 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 646.4 Eligible project participants: selection requirements.

(a) Except as provided in paragraph (b) of this section—

(1) At least two-thirds of the eligible individuals an applicant proposes to serve under a Student Support Services Program project must be—

(i) Individuals with disabilities; or

(ii) Individuals from low-income families who are first generation college students.

(2) The remaining eligible individuals an applicant proposes to serve under a Student Support Services Program project must be—

(i) Individuals with disabilities;

(ii) Low-income individuals; or

(iii) Individuals who are first generation college students.

(b) At least one-third of the individuals with disabilities that an applicant proposes to serve under a Student Support Services Program project must also be low-income individuals.

(c)(1) In the case of a student who is 18 or younger, or is a dependent student, an institution shall document that the student is a low-income individual by obtaining and maintaining—

(i) A signed statement from the student's parent or legal guardian regarding family income;

(ii) Verification of family income from another governmental source;

(iii) A signed financial aid application; or

(iv) A signed United States or Puerto Rican income tax return.

(2) In the case of a student who is older than 18, and is not a dependent student, an institution shall document that the student is a low-income individual by obtaining and maintaining—

(i) A signed statement from the student regarding family income;

(ii) Verification of family income from another governmental source;

(iii) A signed financial aid application; or

(iv) A signed United States or Puerto Rican income tax return.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

37. Section 646.5 is amended by revising the heading and paragraph (a) to read as follows:

§ 646.5 Regulations that apply to the Student Support Services program.

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher

Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements of Drug-Free Workplace (Grants)).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

* * * * *

38. Section 646.6 is amended by revising the section heading, by removing the citation following the definition of "Institution of higher education" in paragraph (b), by adding definitions of "Family taxable income," "Individual with disabilities," and "Low-income individual" to paragraph (b) in alphabetical order, and by revising the authority citation following the section to read as follows.

§ 646.6 Definitions that apply to the Student Support Services program.

* * * * *

(b) * * *

Family taxable income means—

(1) With regard to an individual who is 18 or younger, or who is a dependent student, the taxable income of the individual's parents; or

(2) With regard to a student who is over 18 and is not a dependent student, the taxable income of the student and his or her spouse.

* * * * *

Individual with disabilities means an individual who has a diagnosed physical or mental impairment that substantially limits the individual's ability to participate fully in the educational experiences and opportunities offered.

* * * * *

Low-income individual means an individual whose family taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual initially participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

(Authority: 20 U.S.C. 1001 *et seq.*, 1070a-11, 1070–14, 1088, 1141, 1144a, 3283(a), and 42 U.S.C. 12102(2))

39. Section 646.10 is amended by revising the heading, removing the word "and" after the semicolon at the end of paragraph (a)(8), revising paragraph (a)(9), and adding a new paragraph (a)(10) to read as follows:

§ 646.10 Kinds of projects the Secretary assists under the Student Support Services program.

(a) * * *

(9) Mentoring programs involving faculty or upper class students, or a combination thereof; and

(10) Programs and activities as described in paragraphs (a)(1) through (9) of this section that are specially designed for students of limited proficiency in English.

* * * * *

§ 646.20 [Amended]

40. Section 646.20 is amended by removing the word "receive" and adding, in its place, the words "be offered".

41. Section 646.30 is amended by removing the word "three" in paragraph (b), and adding, in its place, the words "four to five".

§ 646.31 [Amended]

42. Section 646.31 is amended by removing the words "physically handicapped students" in paragraph (h)(2)(ii), and adding, in their place, the words "individuals with disabilities".

§ 646.32 [Amended]

43. Section 646.32 is amended by removing the word "three" in paragraph (a)(1), and adding, in its place, the words "four to five", and removing the word "awarded" in paragraph (c)(2), adding, in its place, the word "offered".

44. Section 646.42 is amended by revising paragraph (a) to read as follows:

§ 646.42 Other requirements of a grantee.

* * * * *

(a)(1) Engage a full-time project director.

(2) However, the Secretary may waive the full-time requirement—

(i) As specified in EDGAR, 34 CFR 75.511; or

(ii) If the requirement hinders coordination among Federal TRIO Programs and similar programs funded through other sources; and

* * * * *

[FR Doc. 93–23908 Filed 9–30–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Friday
October 1, 1993

Part VI

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107, et al.
Hazardous Materials Regulations; Editorial Corrections and Clarifications; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 174, 175, 176, 177, 178, 179, and 180

[Docket No. HM–189J, Amdt Nos. 107–29, 171–121, 172–130, 173–234, 174–74, 175–48, 176–34, 177–80, 178–99, 179–46, and 180–4]

RIN 2137–AC44

Hazardous Materials Regulations; Editorial Corrections and Clarifications

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors and makes minor regulatory changes to the Hazardous Materials Regulations (HMR). This action is necessary to reduce misunderstandings of the HMR. The intended effect is to promote accuracy of the HMR. These amendments are minor editorial changes which will not impose any new requirements on persons subject to the HMR.

EFFECTIVE DATES: October 1, 1993.

The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Office of the Federal Register as of October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Beth Romo, telephone (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 1992, under Dockets HM–181 and HM–189, RSPA issued editorial and technical corrections to the 1991 edition of Title 49, Code of Federal Regulations (49 CFR), parts 107 and 171–180. RSPA performs an annual review of the Hazardous Materials Regulations (HMR) to detect errors which may be causing confusion to users. Inaccuracies include typographical errors, incorrect references to other rules and regulations in the CFR, and misstatements of certain regulatory requirements. Additionally, in response to inquiries RSPA has received concerning the clarity of particular requirements specified in the HMR, changes are made which should reduce uncertainties.

Since these amendments do not impose new requirements, notice and public procedure are unnecessary. For the same reason, there is good cause to make these amendments effective without the customary 30-day delay following publication. This will allow the changes to appear in the next revision of 49 CFR.

The following is a section-by-section summary of the amendments:

Section-by-Section Review

Part 107

Section 107.117, paragraph (a), is revised to reflect the correct title of the Associate Administrator for Hazardous Materials Safety. Appendix B to subpart B and §§ 107.202(d), 107.327(a)(1)(iii), and 107.606(d) are revised to correct spelling and punctuation errors.

Section 107.315. Paragraphs (c) and (d) are revised to reflect an updated address for RSPA's accounting operations.

Part 171

The § 171.6(b)(2) Table, and the 171.7(a)(3) Table are revised to correct section references and spelling errors. The Matter Incorporated by Reference table in § 171.7 is updated to add "§ 172.102" (Special Provision B13) to the section reference for the entry "Aluminum Standards and Data", and to clarify that the edition of the International Maritime Dangerous Goods Code incorporated by reference is the English edition. In § 171.8, a section reference is updated for the definition of "Hazardous substance", the term "rail car" replaces "rail freight car", and a spelling error in the definition of "Research" is corrected.

Part 172

Section 172.101: The Hazardous Materials Table (The Table). The Table is amended as follows:

In Column (1), the "I" is removed for the entry "Substances which in contact with water emit flammable gases, solid n.o.s.", and an "I" is added for the entry "White asbestos".

Spelling, punctuation, and other minor editorial corrections to proper shipping names in Column (2) are made to the following entries: "Anhydrous, ammonia"; "Cyclonite and cyclotetramethylenetetranitramine mixtures, wetted or desensitized"; "Cyclotrimethylenetrinitramine, desensitized or Cyclonite, desensitized, or Hexogen, desensitized or RDX, desensitizede; Hexogen; RDX), desensitized."; "2,2-Dichlorodiethyl ether"; "Ethylene, acetylene and propylene in mixtures, refrigerated liquid containing at least 71.5 per cent ethylene with not more than 22.5 per cent acetylene and not more than 6 per cent propylene."; "HMX, see Cyclotetramethylene-tetranitramine, *etc.*"; "Lighters or Lighter refills", "5-Mercaptotetrazol-1-acetic acid"; "Mercury based pesticides, liquid, flammable, toxic, n.o.s. *flash point less than 23deg C.*"; "1-Methoxy-2-proponal"; "Methyl tert butyl ether"; "Methylacetylene and propadiene mixtures, stabilized"; "Organotin pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23deg C.*"; "Pentan-2,4-Dione"; "Permanganates, inorganic, n.o.s."; "Poisonous liquids, oxidizing, n.o.s. *Inhalation hazard, packing group I, Zone A*"; "Poisonous, solids, self heating, n.o.s."; "Poisonous, solids, which in contact with water emit flammable gases, n.o.s."; "Radioactive materials, low specific activity, n.o.s."; the first entry for "Rockets, line throwing"; "*Signals, ship distress, wateractivated, see* Contrivances, water-activated"; "Substances, explosive, very insensitive, n.o.s., or Substances, EVI, n.o.s."; "Tetraethyl dithiopyrophosphate and gases in solution or tetraethyl dithiopyrophosphate and gas mixtures"; "Tetraethyl pyrophosphate and compressed gas mixtures) *LC50 over 200 ppm but not greater than 5000 ppm*"; "Triazine pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23deg C.*"; "Trinitrotoluene and Trinitrobenzene mixtures or Trinitrotoluene or TNT and trinitrobenzene mixtures or TNT and hexanitrostilbene mixtures and Hexanitrostilbene mixtures"; and "Vehicles, self-propelled". The entry for "Cabazide" is removed because available data does not justify this material to be forbidden.

For the entry "Cotton, wet", a packing group "III" entry is added in Column (5). The spelling of the word "LIQUID" is corrected in Column (6) for the entry "Hydrogen cyanide, anhydrous, stabilized". Corrections to Special Provisions references are made for the entries "Bromine", "Dimethyl hydrazine, unsymmetrical", "Isobutylene", "Polychlorinated biphenyls", and "Propylene".

Corrections in packaging references are made for the following entries: "Carbon dioxide and oxygen mixtures"; "Hydroquinone, liquid"; and "Polyester resin kit". Both non-bulk and bulk packaging authorizations for "Carbon dioxide and oxygen mixtures" are corrected to reference packagings for compressed gases. In the December 20, 1991 revised final rule, the entry "Hydroquinone" was split into two entries based on liquid or solid state. However, the non-bulk packaging

authorization for "Hydroquinone, liquid" was not revised to reflect the split. The current bulk packaging authorization for "Polyester resin kit" is removed as this kit cannot be shipped in a bulk quantity. Section 173.420 is added to the non-bulk and bulk packaging authorizations in Columns (8B) and (8C), respectively, for the entry "Uranium hexafluoride, fissile (containing more than 1% U–235)". This section was inadvertently omitted when changes adopted in the Docket HM–181 final rule were incorporated into the HMR. In addition, for the entry "Uranium hexafluoride, *fissile excepted or non-fissile*" the Column (8C) packaging exception section is revised to correctly reference § 173.421–2, which contains provisions for multiple hazard limited quantities of radioactive materials.

Vessel stowage requirement "M4" is removed for the entries "Elevated temperature material, liquid, n.o.s." and "Flammable liquids, elevated temperature material, n.o.s.", in Column (10b).

Section 172.101, Appendices A and B. In Appendix A to § 172.101, in Column 1, a spelling error is corrected for the entry "K064", and in Column 2, corrections are made to the entries "Dibenz[a,i]pyrene", "O,O-Diethyl S-methyl dithiophosphate", "Methyl isocyanate", and "p-Toluidine". In Appendix B to § 172.101, duplicate entries for "PP * * * Mercury compounds, solid, n.o.s.", "PP * * * Pentachlorophenol", and "Thallium compounds (pesticides)" are removed.

Section 172.102. Special Provision 14 is intended to define motor fuel antiknock mixtures, but the current definition, adopted under the Docket HM–181 final rule, is confusing. Therefore, Special Provision 14 is amended to reflect the pre-HM–181 definition of motor fuel antiknock mixtures.

The October 1, 1992 revised final rule under Docket HM–181 added a new Special Provision B13 to provide certain packaging exceptions for liquid tars, asphalts, and bitumen. Paragraph c. of this Special Provision referenced design stress limits by citing § 178.65–5(b), which contains a reference to "Aluminum Standards and Data." However, because § 178.65–5 is a section within a cylinder specification, RSPA has received numerous inquiries as to why Special Provision B13, which addresses bulk packagings, would reference a cylinder specification section. RSPA, therefore, is revising Special Provision B13 to directly reference "Aluminum Standards and Data."

Special Provision N81 is redesignated as Special Provision 81 to show that both bulk and non-bulk non-specification packagings are allowed for polychlorinated biphenyls. Minor editorial corrections are made to Special Provisions 12, 28 and N37. Special Provision B35 is revised to clarify a provision for tank cars previously marked "HYDROCYANIC ACID".

Special Provision B31 is removed, because it duplicates a provision in § 173.249 for Bromine. In addition, Special Provisions B17, B19, B20, B21, B22, B24, B29, B36, B39, B58, B62, and B86 are removed because they are not assigned to any hazardous material in the § 172.101 Table.

Section 172.202. Paragraph (a)(2) is revised to clarify that a subsidiary hazard division number may be used as an alternative to indicating subsidiary hazard class number in a shipping description.

Section 172.203. In the third sentence of paragraph (k) introductory text, quotation marks are added before and after "contains" for clarity. In paragraph (k)(3), in the list of proper shipping names for which the inclusion of technical names is required, the entry for flammable tree or weed killing compounds is revised to clarify that "Compounds, weed killing liquid" is a proper shipping name. Also in the paragraph (k)(3) list, the entry for "Rodenticides, n.o.s." is removed because this proper shipping name no longer appears in the § 172.101 Table. In paragraphs (k)(4) (iii) and (iv), the last sentence of each paragraph is removed because the examples used in these sentences are not appropriate.

Sections 172.400a and 172.406. Minor grammatical corrections are made in §§ 172.400a(a)(6) and 172.406(a)(2). In § 172.406(e)(1), the phrase "Each non-bulk package" is corrected to read "Each package".

Section 172.525. A spelling error is corrected in paragraph (b).

Section 172.526. Paragraph (b) is revised to remove an obsolete reference.

Section 172.556. A typographical error is corrected in paragraph (b).

Part 173

Section 173.2. A section reference for forbidden explosives is corrected in the table.

Section 173.3. Punctuation is corrected in paragraph (c) introductory text.

Section 173.4. In paragraph (a), the introductory text is revised for clarity, in (a)(2) a punctuation error is corrected, and in paragraph (a)(11), in the list of identification numbers not permitted to be shipped under the small quantity exceptions, "9193" is removed because this identification number no longer is associated with any hazardous materials description.

Section 173.7. The paragraph (a) introductory text is revised to provide an updated reference to the procedures required for packagings offered by, for, or to the Department of Defense.

Section 173.10. In paragraphs (d) and (e), minor typographical errors are corrected.

Sections 173.21, 173.22, and 173.24a. In paragraphs (b) and (j) of § 173.21, in § 173.22(a)(3)(i), and in § 173.24a(b)(4)(i), section and paragraph references are corrected.

Section 173.31. In paragraph (c)(9), a spelling error is corrected.

Section 173.34. In paragraph (e)(16), the introductory text and paragraph (v) are revised to reflect new UN terminology for corrosive materials.

Section 173.25. In paragraph (a), the introductory phrase referencing paragraph (b) of the section is removed, because paragraph (b) is reserved.

Section 173.56. Paragraph (b)(2) introductory text and paragraph (b)(2)(i) are revised to clarify procedures for DOD classification and approval of new explosives. In addition, paragraph (b)(2)(i) is updated with the current name and symbol of the responsible activity within each service branch.

Section 173.57. An amendment to paragraph (a) introductory text corrects a reference to the material incorporated by reference section for the Explosive Test Manual.

Section 173.62. Paragraph (b) is revised to correctly reference Column 4.

Section 173.115. A parenthetical mark is added in paragraph (a) introductory text, and a reference in paragraph (a)(2) for testing the flammability of aerosols is revised for clarity.

Section 173.124. A typographical error is corrected in paragraph (b)(2).

Sections 173.127 and 173.128. In § 173.127, in paragraph (a), the word "oxidizer" is italicized, and in § 173.128(a), "organic peroxide" is corrected and italicized.

Section 173.132. The phrase in paragraph (b)(1) "administered which to" is corrected.

Section 173.133. In paragraph (b)(1)(ii), the formula is corrected.

Section 173.136. The wording "corrosive material" is italicized in paragraph (a).

Sections 173.151 and 173.159. In § 173.151(b)(2) and § 173.159(g)(1), errors in punctuation are corrected.

Section 173.225. In the paragraph (b)(8) Organic Peroxides Table, in Column (8), note 23 is moved from "Methyl ethyl ketone peroxide(s)" to "Methyl isobutyl ketone peroxide(s)".

Section 173.247. Measurements are corrected in paragraph (g) for elevated temperature material bulk packaging.

Section 173.301. Paragraph (g)(5) is revised to clarify that cylinders must be protected against damage, not injury.

Section 173.304. Punctuation is added in paragraph (d)(3)(i).

Section 173.306. Based on several petitions for rule change, paragraph (i) introductory text is revised to clarify that only one of the test methods must be applied, not all four test methods.

Section 173.315. In the paragraph (a) table, the "do" (or "ditto") in Column (4) for the entry "Nitrous oxide, refrigerated liquid", is no longer valid because Note 23 does not apply to this entry. The "do" is replaced with "DOT–51, MC–330, MC–331".

Section 173.318. A minor typographical correction "or frangible discs" is made in the first sentence of paragraph (b)(3)(ii).

Section 173.323. In paragraph (f), the wording "vapor pressure" is revised to read "vapor space" and the indicated temperatures in Fahrenheit and Celsius are reversed for consistency with HMR terminology.

Sections 173.417 and 173.433. The spelling of "percent" in Table 5, Footnote 2 of § 173.417(b)(2)(ii), and "known" in § 173.433(b)(4) are corrected.

Appendix B to Part 173. In paragraph 6., a section reference is corrected.

Appendix D to Part 173. The first heading is corrected.

Appendix E to Part 173. A typographical error is corrected in 2.c.(2)(A) and the 4. section heading is revised for consistency with other section headings.

Part 174

Section 174.1. A duplicate "to" is removed.

Section 174.25. In paragraph (a)(2)(ii), the U.S. customary unit equivalent to .25 cm is corrected.

Section 174.55. The terminology "car" is amended to read "transport vehicle or freight container".

Sections 174.82, 174.290, 174.430 and 174.700. Minor typographical and spelling errors are corrected.

Part 175

Section 175.320. Changes in hazard class terminology are made in the paragraph (a) table and paragraph (c) introductory text for clarity and consistency.

Part 176

Section 176.5. An obsolete introductory phrase is removed in paragraph (b) introductory text.

Section 176.83. A typographical error in paragraph (f)(4) is corrected to indicate the paragraph defines "a container space".

Section 176.100. A reference in the first sentence is revised.

Section 176.118. In paragraph (b), the word "grouping" is corrected to read "grounding".

Section 176.410. In paragraph (c)(2), the word "for" is corrected to read "from".

Part 177

Section 177.825. The responsibility for highway routing of hazardous materials, including Class 7 (radioactive) materials, has been delegated by the Secretary of Transportation to the Federal Highway Administration (FHWA). An interim final rule was issued by the FHWA (September 24, 1992; 57 FR 44129) to incorporate the routing requirements for Class 7 materials contained in the RSPA regulations at § 177.825. Therefore, in this document, § 177.825 is revised to reference routing and training requirements in the FHWA regulations at 49 CFR part 397 subpart D.

Section 177.834. Paragraph (j) is revised to correct a cite to the Segregation Table in § 177.848.

Sections 177.838 and 177.857. In paragraph (g) of § 177.838 and paragraph (d) of § 177.857, minor typographical errors are corrected.

Section 177.858. In paragraph (b)(1), the words "Further to" preceding "transport the cargo tank" are removed to provide clarity.

Part 178

Sections 178.39–9 and 178.39–14. Punctuation errors are corrected in paragraphs (a) and (b), respectively.

Section 178.46–12. Paragraph "(e)" is corrected to read "(c)".

Section 178.53–9. The word "sphere" is italicized.

Section 178.55–20. In paragraph (a) introductory text, the correct wording is "not less than".

Section 178.56–3. In the first sentence, "manufacturer" is corrected.

Section 178.56–11. In paragraph (a), the comma is removed after "1100 °F."

Section 178.60–24. In paragraph (a), in the sample report for acetylene shells, the entry pertaining to neckrings and footrings is restructured for clarity.

Sections 178.61–8. In paragraph (c)(2), the spelling of "spot" is corrected.

Section 178.61–20. Paragraph (b) is revised to indicate the past tense "necessitated".

Section 178.270–5. In paragraph (d), in the formula for metric units, "3_i" is corrected to read "e_i".

Section 178.270–11. In paragraph (d)(1), the minimum total pressure relief valve vent capacity is corrected to 12,000 standard cubic feet per hour (SCFH).

Section 178.337–1. In paragraph (f), the hyphen in "post-weld" is removed.

Section 178.337–16. Paragraph (b)(2) is revised to indicate the past tense "described".

Section 178.338–10. In paragraph (c), the phrase "a least one rear bumper" is corrected to read "at least one rear bumper".

Section 178.338–19. In paragraph (c), the spelling for "certificates" is corrected.

Section 178.345–14. In paragraph (b)(11), the verb "is" is corrected to read "are" to agree with the plural "thicknesses".

Section 178.352–2. An incorrect section reference is corrected in paragraph (a).

Section 178.352–6. The spacing of the word "RADIOACTIVE" in paragraph (a)(2) is corrected for consistency with the rest of the phrase.

Section 178.362–2. In paragraph (e)(5), the spelling for "chimes" is corrected.

Section 178.516. The word "Joints" is corrected to read "joints" in paragraph (b)(3)(i).

Section 178.518. A hyphen is added to the wording "sift-proof" in paragraph (a)(2).

Section 178.600. A period is added at the end of the sentence.

Section 178.603. In the current paragraph (a) table, three drops per bag are required for single-ply bags without a side seam or multi-ply bags; however, only two drop orientations are given. The requirement for three drops per bag is incorrect; therefore, Column 2 is revised to require two drops per bag.

Section 178.605. In paragraph (d)(1), a second parenthetical mark is added after "(15 psi)" to close the parenthetical phrase and a superfluous "and" is removed.

Part 179

Section 179.101–1. The wording in footnote 6 is corrected to read "See".

Section 179.105–4. Paragraph (a) introductory text is revised to add the 112J tank car to the list of specification tank cars requiring thermal protection. As adopted in the December 21, 1990 final rule under Docket HM–181, Specification 112J tank cars were included in this list; however, in the 1991 edition of 49 CFR, the 112J inadvertently was omitted.

Section 179.203–1. In paragraph (a), the reference to § 179.202 is removed.

Part 180

Section 180.405. The word "is" in the phrase "an outlet is equipped" is removed in the introductory text of paragraph (f)(2) because it is superfluous.

Section 180.407. In paragraph (f)(1)(i)(C), the spelling of the word "gauge" is corrected.

Rulemaking Analyses and Notices

Executive Order 12291

This final rule does not meet the criteria specified in § 1(b) of Executive Order 12291 and, therefore, is not a major rule. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation. This final rule does not require a Regulatory Impact Analysis, or a regulatory evaluation, or an environmental assessment or impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism") and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c), 1653(d), 1655, 1802, 1804, 1805, 1806, 1808–1811, 1815; 49 CFR 1.45 and 1.53 and App. A of 49 CFR part 1.

§ 107.117 [Amended]

2. In § 107.117, in paragraph (a), the wording "the Director, Associate Administrator for Hazardous Materials Safety," is revised to read "the Associate Administrator for Hazardous Materials Safety".

Appendix B to Part 107, Subpart B—[Amended]

3. In appendix B to subpart B of part 107, in the section entitled "Packages, Containers, Shipments", in paragraph (1), the wording "contracting background" is revised to read "contrasting background".

§ 107.202 [Amended]

4. In § 107.202, in paragraph (d), the comma following "*minimis*" is removed.

§ 107.315 [Amended]

5. In § 107.315, the following changes are made:

a. In the second sentence of paragraph (c) the wording "Salary and Expenses Branch (M–86.2), Accounting Services Division, Office of the Secretary, room 9112, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001 (Tel. No. 202–366–5760)." is revised to read "Financial Operations Division (AMZ–320), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25880, Oklahoma City, OK 73125.".

b. In the first sentence of paragraph (d) the wording "Salary and Expenses Branch (M–86.2), Accounting Services Division, Office of the Secretary, room 9112, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001." is revised to read "Financial Operations Division (AMZ–320), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25880, Oklahoma City, OK 73125.".

c. In the last sentence of paragraphs (c) and (d), the wording "at the same address." is revised to read "U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001." both places in appears.

§ 107.327 [Amended]

6. In § 107.327, in paragraph (a)(1)(iii), the word "writting" is revised to read "writing".

§ 107.606 [Amended]

7. In § 107.606, in paragraph (d), the word "is" is revised to read "his".

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

8. The authority citation for part 171 is revised to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, and 1818; 49 CFR part 1.

§ 171.6 [Amended]

9. In § 171.6, in the paragraph (b)(2) Table, for the entry "2137–0034", in

Column 3, the reference "172.7(a)(1)" is revised to read "173.7(a)(1)".

§ 171.7 [Amended]

10. In § 171.7, in the paragraph (a)(3) Table, the following changes are made:

a. For the entry "Aluminum Standards and Data", the wording "172.102;" is added in Column 2 to precede "178.65–5".

b. The entry, "International Maritime Dangerous Goods (IMDG) Code, 1990 Consolidated Edition, as amended by Amendment 26 thereto" is amended by adding the wording "(English edition)" immediately following the word "thereto".

c. For the entry "UN Recommendations on the Transport of Dangerous Goods, Sixth Revised Ediction (1989)." the wording "Ediction" is revised to read "Edition".

d. For the entry "UN Recommendations on the Transport of Dangerous Goods, Tests and Criteria, Second Edition, 1990." in Column 2, the wording "172.57" is revised to read "173.57".

§ 171.8 [Amended]

11. In § 171.8, the following changes are made:

a. For the definition "*Hazardous substance*", in the concluding text of the definition, the wording "(see 40 CFR 300.6)" is revised to read "(see 40 CFR 300.5)".

b. The definition for "*rail freight car*" is removed.

c. For the definition "*Research*", the wording "investigation of experimentation" is revised to read "investigation or experimentation".

12. In addition, in § 171.8, a new definition is added in appropriate alphabetical sequence to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Rail car means a car designed to carry freight or non-passenger personnel by rail, and includes a box car, flat car, gondola car, hopper car, tank car, and occupied caboose.

* * * * *

§ 171.9 [Amended]

13. In § 171.9, in paragraph (b)(4), the wording "or permitted to the act" is revised to read "or permitted to do the act".

§ 171.15 [Amended]

14. In § 171.15, the authority citation at the end of the section is removed.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

15. The authority citation for part 172 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

16. In § 172.101, in the Hazardous Materials Table, the following changes are made:

a. For the entry "Anhydrous, ammonia *see Ammonia, anhydrous, liquefied*", in Column (2), the comma between "Anhydrous" and "ammonia" is removed.

b. For the entry "Bromine *or* Bromine solutions", in Column (7), Special Provisions "B31," and "B73," are removed.

c. For the entry "Carbon dioxide and oxygen mixtures", in Column (8B) the wording "None" is revised to read "304"; and in Column (8C), the wording "244" is revised to read "314, 315".

d. For the entry "Cotton, wet", the wording "III" is added in Column (5).

e. For the entry "Cyclonite and cyclotetramethylenetetranitramine mixtures, wetted *or* desensitized *see* RDX and HMX mixtures, wetted *or* desensitized *etc.*ed.", in Column (2), "ed." is removed at the end of the description.

f. For the entry "Cyclotrimethylenetrinitramine, desensitized *or* Cyclonite, desensitized, *or* Hexogen, desensitized *or* RDX, desensitizede; Hexogen; RDX), desensitized.", the wording "RDX, desensitizede; Hexogen; RDX), desensitized." is revised to read "RDX desensitized."

g. For the entry "2,2–Dichlorodiethyl ether", in Column (2), the wording "2,2-" is revised to read "2,2'-".

h. For the entry "Dimethylhydrazine, unsymmetrical", in Column (7), Special Provision "A7," is removed.

i. For the entry "Elevated temperature material, liquid, n.o.s." , in Column (10b), the wording "M4" is removed.

j. For the entry "Ethylene, acetylene and propylene in mixtures, refrigerated liquid containing at least 71.5 per cent ethylene with not more than 22.5 per cent acetylene and not more than 6 per cent propylene.", in Column (2), the wording "per cent" is revised to read "percent" each place it appears.

k. For the entry "Flammable liquids, elevated temperature material, n.o.s.", in Column (10b), the wording "M4" is removed and the entry is moved to its proper alphabetical sequence.

l. For the entry "HMX, see Cyclotetramethylene-tetranitramine, etc." in Column (2), the hyphen in the wording "Cyclotetramethylene-tetranitramine" is removed to read "Cyclotetramethylenetetranitramine".

m. For the entry "Hydrogen cyanide, anhydrous, stabilized", in Column (6), the word "LIQID" is revised to read "LIQUID".

n. For the entry "Hydroquinone, liquid", in Column (8B), the reference "213" is revised to read "203".

o. For the entry "Isobutylene see also Petroleum gases, liquefied", in Column (7), Special Provision "19" is added.

p. For the entry "5–Mercaptotetrazol-1-acetic acidd", in Column (2), the word "acidd" is revised to read "acid".

q. For the entry "Mercury based pesticides, liquid, flammable, toxic, n.o.s. *flash point less than 23deg C.*", in Column (2), the wording "*23deg C.*" is revised to read "*23 degrees C.*".

r. For the entry "1–Methoxy-2-proponal", in Column (2), the wording "proponal" is revised to read "propanol".

s. For the entry "Methyl tert butyl ether", in Column (2), a hyphen is added between "tert" and "butyl" to read "tert-butyl".

t. For the entry "Methylacetylene and propadiene mixtures, stabilized", in Column (2), the word "Methylacetylene" is revised to read "Methyl acetylene" and the entry is moved to its correct alphabetical sequence following "Methyl acetate".

u. For the entry "Organotin pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23deg C.*", the wording "*23deg C.*" is revised to read "*23 degrees C.*".

v. For the entry "Pentan-2,4–Dione", in Column (2), the wording "Dione" is revised to read "dione".

w. For the entry "Permanganates, inorganic, n.o.s.", in the Column (2) description, the wording "*Safety.y*" is revised to read "*Safety*".

x. For the entry "Poisonous liquids, oxidizing, n.o.s. *Inhalation hazard, packing group I, Zone A*", the wording "*packing group I*" is revised to read "*Packing Group I*".

y. For the entry "Poisonous, solids, self heating, n.o.s.", the comma between "Poisonous" and "solids" is removed.

z. For the entry "Poisonous, solids, which in contact with water emit flammable gases, n.o.s.", the comma between "Poisonous" and "solids" is removed.

aa. For the entry "Polychlorinated biphenyls", in Column (7), Special Provision "N81" is revised to read "81".

bb. For the entry "Polyester resin kits", in Column (8C), the section reference "246" is revised to read "None".

cc. For the entry "Propylene see also Petroleum gases, liquefied", in Column (7), Special Provision "19" is added.

dd. For the first entry for "Rockets, line throwing", a hyphen is added between "line" and "throwing" to read "line-throwing".

ee. For the entry "*Signals, ship distress, wateractivated, see* Contrivances, water-activated, etc." the wording "*wateractivated*" is revised to read "*water-activated*".

ff. For the entry "Substances, explosive, very insensitive, n.o.s., *or*Substances, EVI, n.o.s.", the wording "*or*Substances" is amended by adding a space between "or" and "Substances".

gg. For the entry "Substances which in contact with water emit flammable gases, solid, n.o.s.", the "I" in Column (1) is removed.

hh. For the entry "Tetraethyl dithiopyrophosphate and gases in solution *or* tetraethyl dithiopyrophosphate and gas mixtures", in Column (2), the wording "gases in solution" is revised to read "gases, in solution" and the wording "gas mixtures" is revised to read "gas, in mixtures".

ii. For the entry "Tetraethyl pyrophosphate and compressed gas mixtures) *LC50 over 200 ppm but not greater than 5000 ppm*", in Column (2), the parenthetical mark in the wording "mixtures)" is removed.

jj. For the entry "Triazine pesticides, liquid, flammable, toxic, n.o.s., *flash point less than 23deg C.*" in Column (2), the wording "23deg C." is revised to read "*23 degrees C.*".

kk. For the entry "Trinitrotoluene and Trinitrobenzene mixtures *or* Trinitrotoluene or TNT and trinitrobenzene mixtures or TNT and hexanitrostilbene mixturesand Hexanitrostilbene mixtures", in Column (2), the wording "mixturesand Hexanitrostilbene" is removed.

ll. For the entry "Uranium hexafluoride, fissile (*containing more than 1% U–235*)" in Columns (8B) and (8C), the reference ", 420" is added in each column to follow "417".

mm. For the entry "Uranium hexafluoride, *fissile excepted or non-fissile*" in Column (8A), the reference "421" is revised to read "421–2" and in Columns (8B) and (8C), the reference "420," is added in each column to precede "425".

nn. For the entry "Vehicles, self-propelled", in Column (2), the wording in the description "*battery(see*" is revised to read "*battery (see*".

oo. For the entry "White asbestos", in Column (1), an "I" is added.

17. In addition, the Hazardous Materials Table is amended by removing or adding, in appropriate alphabetical sequence, the following entries to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	Packing group	Label(s) required if not excepted	Special provisions	(8) Packaging authorizations (173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or rail car (kg)	Cargo aircraft only (kg)	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE]												
	Cabazide	Forbidden.											
	Lighters or Lighter refills (cigarettes) containing flammable gas	2.1	UN1057		Flammable gas	N10	None	21,308	None	1	15	B	40
	Radioactive material, low specific activity LSA, n.o.s.	7	UN2912		Radioactive		421, 422, 424.	425	425			A	
	[ADD]												
	Lighters or Lighter refills (cigarettes) containing flammable gas	2.1	UN1057		Flammable gas	N10	None	21,308	None	1	15	B	40
	*	*		*	*		*		*		*		
	Radioactive material, low specific activity, n.o.s. or Radioactive material, LSA, n.o.s.	7	UN2912		Radioactive		421, 422, 424.	425	425			A	

§172.101, Appendix A [Amended]

18. In Appendix A to § 172.101, the following changes are made:

a. For the entry "Dibenz[a,i]pyrene", in Column 2, the wording "Bezo" is revised to read "Benzo".

b. For the entry "O,O-Diethyl S-methyl dithiophosphate", in Column 2, the wording "O'O≥-diethylS-methyl ester" is revised to read "O,O-diethyl S-methyl ester".

c. For the entry "Methyl isocyanate", in Column 2, the wording "isocynato-" is revised to read "isocyanato-".

d. For the entry "p-Tolùidine", in Column 2, the wording "Benzenaminew" is revised to read "Benzenamine".

e. For the entry "K064", in Column 1, the word "blowdoen" is revised to read "blowdown".

§172.101, Appendix B [Amended]

19. In Appendix B to § 172.101, in the table, the following changes are made:

a. The second entry for "PP * * * Mercury compounds, solid, n.o.s." is removed.

b. The second entry for "PP * * * Pentachlorophenol" is removed.

c. The second entry for "Thallium compounds (pesticides)" is removed.

20. In § 172.102, the following special provisions are added, revised, or removed as indicated:

a. In paragraph (c)(1), Special Provision 14 is revised and a new Special Provision 81 is added.

b. In paragraph (c)(3), Special Provision B13 is amended by revising the last sentence of paragraph c. and Special Provisions B17, B19, B20, B21, B22, B24, B29, B31, B36, B39, B58, B62, and B86 are removed.

c. In paragraph (c)(5), Special Provision N81 is removed. The additions and revisions read as follows:

§172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

14 Motor fuel antiknock mixtures are:

a. Mixtures of one or more organic lead mixtures (such as tetraethyl lead, triethylmethyl lead, diethyldimethyl lead, ethyltrimethyl lead, and tetramethyl lead) with one or more halogen compounds (such as ethylene dibromide and ethylene dichloride, hydrocarbon solvents or other equally efficient stabilizers); or

b. tetraethyl lead.

* * * * *

81 Polychlorinated biphenyl items, as defined in 40 CFR 761.3, for which specification packagings are impractical, may be packaged in non-specification packagings meeting the general packaging requirements of subparts A and B of part 173 of this subchapter. Alternatively, the item itself may be used as a packaging if it meets the general packaging requirements of subparts A and B of part 173 of this subchapter.

* * * * *

(3) * * *

Code/Special Provisions

* * * * *

B13 * * *

c. * * * However, the design stress limits may not exceed 25 percent of the stress, as specified in the Aluminum Association's "Aluminum Standards and Data" (7th Edition June 1982), for 0 temper at the maximum design temperature of the cargo tank.

* * * * *

§172.102 [Amended]

21. In addition, in § 172.102, the following changes are made:

a. In paragraph (c)(1), in Special Provision 12, in the second sentence, the wording "conform with" is revised to read "conform to".

b. In paragraph (c)(1), in Special Provision 28, the wording "dehydrated" is revised to read "dihydrated".

c. In paragraph (c)(3), in Special Provision B35, a second sentence is added to read "Tank cars marked "HYDROCYANIC ACID" prior to October 1, 1991 do not need to be remarked.".

d. In paragraph (c)(5), in Special Provision N37, the wording, "in a integrally-lined fiber drum" is revised to read "in an integrally-lined fiber drum".

§172.202 [Amended]

22. In § 172.202, in paragraph (a)(2), in the first sentence, the wording "or division" is added immediately following "subsidiary hazard class" and before "number".

§172.203 [Amended]

23. In § 172.203, the following changes are made:

a. In paragraph (k) introductory text, in the third sentence, quotation marks are added to immediately precede and follow the word "contains".

b. In paragraph (k)(3), for the entry "Compounds, tree or *weed killing, liquid, flammable*" the wording *"weed killing, liquid"* is revised to read "weed killing, liquid,"; and the entry "Rodenticides, n.o.s." is removed.

c. In paragraphs (k)(4)(iii) and (iv), the last sentence of each paragraph is removed.

§172.400a [Amended]

24. In § 172.400a, in paragraph (a)(6), the wording "is visible" is revised to read "are visible".

§172.406 [Amended]

25. In § 172.406, the following changes are made:

a. In paragraph (a)(2), the wording "duplicate labeling not required" is revised to read "duplicate labeling is not required".

b. In paragraph (e)(1), the wording "Each non-bulk package" is revised to read "Each package".

§172.525 [Amended]

26. In § 172.525, in paragraph (b), in the last sentence, the wording "bordest be black" is revised to read "border must be black".

27. In § 172.526, paragraph (b) is amended by revising the text preceding the placard to read as follows:

§172.526 Standard requirements for the RESIDUE placard.

* * * * *

(b) Except for size and color, the RESIDUE placard shall be as illustrated by the FLAMMABLE-RESIDUE placard:

* * * * *

§172.556 [Amended]

28. In § 172.556, in paragraph (b), in the second sentence, the wording "±z0.2 inches)" is revised to read "±0.2 inches)".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

29. The authority citation for part 173 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

§173.2 [Amended]

30. In the § 173.2 table, in the second entry "None", in Column 4, the wording "173.53" is revised to read "173.54".

§173.3 [Amended]

31. In § 173.3, in paragraph (c) introductory text, the period following the word "defective" is removed and replaced with a comma.

§173.4 [Amended]

32. In § 173.4, the following changes are made:

a. In paragraph (a) introductory text, the wording "and Class 7 materials, and Class 9 materials that also meet the definition" is revised to read "Class 9 materials, and Class 7 materials that also meet the definition".

b. In paragraph (a)(2) introductory text, the period following the word "devices" is removed and replaced with a comma.

c. In paragraph (a)(11), in the list of identification numbers, the last number "9193" is removed.

§ 173.7 [Amended]

33. In § 173.7, in paragraph (a) introductory text, the wording "pursuant to the 'Policies and Procedures for Hazardous Materials Packaging Certification, AFLCR 800–29/AFSCR 800–29/DARCOM–R 700–103/NAVMATINST 4030.11/DLAR 4145.37.'" is revised to read "in accordance with the procedures prescribed by 'Performance Oriented Packaging of Hazardous Material, DLAR 4145.41/AR 700–143/AFR 71–5/NAVSUPINST 4030.55/MCO 4030.40.'".

§ 173.10 [Amended]

34. In § 173.10, in paragraph (d), the wording "the shippe" is revised to read "the shipper."; and in paragraph (e), the wording "materials. (including" is revised to read "materials (including".

§ 173.21 [Amended]

35. In § 173.21, the following changes are made:

a. In paragraph (b), the reference "§ 173.51" is revised to read "§ 173.54".

b. In paragraph (j), the reference "§ 173.128(b)(4)(iii)" is revised to read "§ 173.128(a)(4)(ii)".

§ 173.22 [Amended]

36. In § 173.22, in paragraph (a)(3)(i), the wording "(see §§ 178.0–2 and 179.1" is revised to read "(see §§ 178.2 and 179.1".

§ 173.24a [Amended]

37. In § 173.24a, in paragraph (b)(4)(i), the wording "paragraph (b)(1) of this section" is revised to read "paragraph (d) of this section".

§ 173.25 [Amended]

38. In § 173.25, in paragraph (a) introductory text, the wording "Except as provided in paragraph (b) of this section," is removed and "authorized" is revised to read "Authorized".

§ 173.31 [Amended]

39. In § 173.31, in paragraph (c)(9), in the first sentence, the wording "the presure" is revised to read "the pressure".

§ 173.34 [Amended]

40. In § 173.34, the following changes are made:

a. In paragraph (e)(16) introductory text, the wording "'corrosive material'" is revised to read "Class 8 material".

b. In paragraph (e)(16)(v), the wording "corrosive liquid" is revised to read "Class 8 liquid".

§ 173.56 [Amended]

41. In § 173.56, the following changes are made:

a. In paragraph (b)(2) introductory text, the wording "approved by:" is revised to read "concurred in by:".

b. In paragraph (b)(2)(i), the wording "U.S. Army Materiel Command Field Safety Activity (AMXOS–SE)" is revised to read "U.S. Army Technical Center for Explosives Safety (SMCAC–EST)"; the wording "(SEA–665)" is revised to read "(SEA–9934)"; and the wording "Headquarters U.S. Air Force (HQUSAF; ISC/SEWV), in accordance with" is revised to read "Air Force Safety Agency (SEW), when approved by the Chairman, DOD Explosives Board, in accordance with".

§ 173.57 [Amended]

42. In § 173.57, in the first sentence of paragraph (a) introductory text, the wording "(see § 171.8 of this subchapter)" is revised to read "(see § 171.7 of this subchapter)".

§ 173.62 [Amended]

43. In § 173.62, in paragraph (b), in the second sentence, the wording "are listed in Column 6" is revised to read "is listed in Column 4".

§ 173.115 [Amended]

44. In § 173.115, the following changes are made:

a. In paragraph (a) introductory text, the wording "(14.7 psi) which—" is amended by adding a second parenthetical mark to read "(14.7 psi)) which—".

b. In paragraph (a)(2), in the last sentence, the wording "§ 173.306(i)(2), (3), and (4) of this part." is revised to read "§ 173.306(i) of this part.".

§ 173.124 [Amended]

45. In § 173.124, in paragraph (b)(2), in the last sentence, the wording "24=hour test" is revised to read "24-hour test".

§ 173.127 [Amended]

46. In § 173.127, in paragraph (a), in the first sentence, the wording "'oxidizer'" is revised to read "*oxidizer*".

§ 173.128 [Amended]

47. In § 173.128, in paragraph (a) introductory text, the wording "T3organic peroxide" is revised to read "*organic peroxide*".

§ 173.132 [Amended]

48. In § 173.132, in paragraph (b)(1), the wording "administered which to" is revised to read "administered to".

§ 173.133 [Amended]

49. In § 173.133, in the formula in paragraph (b)(1)(ii), the wording "P^{21}" is revised to read "P_i".

§ 173.136 [Amended]

50. In § 173.136, in the paragraph (a) introductory text, the wording "'corrosive material'" is revised to read "*corrosive material*".

§ 173.151 [Amended]

51. In § 173.151, in paragraph (b)(2), a period is added at the end of the sentence.

§ 173.159 [Amended]

52. In § 173.159, in paragraph (g)(1), in the first sentence, the period following the wording "of glass" is removed and replaced with a comma.

§ 173.225 [Amended]

53. In § 173.225, in paragraph (b) Organic Peroxides Table, for the third entry for "Methyl ethyl ketone peroxide(s)", in Column (8), ",23" is removed; and, for the entry "Methyl isobutyl ketone peroxide(s)", in Column (8), ",23" is added.

§ 173.247 [Amended]

54. In § 173.247, the following changes are made:

a. In paragraph (g)(1)(ii), in the first sentence, the wording "100 Kpa" is revised to read "100 kPa".

b. In paragraph (g)(1)(iii)(B), the wording "46 cm^2 (7.1 $in.^2$)" is revised to read "48 cm^2 (7.4 in^2)".

§ 173.301 [Amended]

55. In § 173.301, in paragraph (g)(5), the wording "avoid injury" is revised to read "avoid damage".

§ 173.304 [Amended]

56. In § 173.304, in paragraph (d)(3)(i), a period is added at the end of the last sentence preceding Note 1.

§ 173.306 [Amended]

57. In § 173.306, in paragraph (i) introductory text, the wording "the following test method must be applied:" is revised to read "one of the following test methods must be applied:".

§ 173.315 [Amended]

58. In § 173.315, in the paragraph (a) table, for the entry "Nitrous oxide, refrigerated liquid", in Column (4), the wording "do" is removed and replaced with "DOT–51, MC–330, MC–331.".

§ 173.318 [Amended]

59. In § 173.318, in paragraph (b)(3)(ii), in the first sentence, the wording "of frangible discs." is revised to read "or frangible discs.".

§ 173.323 [Amended]

60. In § 173.323, in paragraph (f), in the first sentence, the wording "to render the vapor pressure of the tank nonflammable up to 105 °F (41 °C)." is

revised to read "to render the vapor space of the tank nonflammable up to 41 °C (105 °F).".

§ 173.417 [Amended]

61. In § 173.417, in paragraph (b)(2)(ii), in Table 5, Footnote 2, the word "perent" is revised to read "percent".

§ 173.433 [Amended]

62. In § 173.433, in paragraph (b)(4), in the first sentence, the wording "subparagraph (3) of this paragraph" is revised to read "paragraph (b)(3) of this section"; and in the second sentence, the word "kmown" is revised to read "known".

Appendix B [Amended]

63. In appendix B to part 173, in paragraph 6., the wording "§ 178.603(d)" is revised to read "§ 178.603(e)".

Appendix D [Amended]

64. In appendix D to part 173, in the heading "I. Test method D–1—Leakage Test", the wording "I." is revised to read "1.".

Appendix E [Amended]

65. In appendix E to part 173, the following changes are made:

a. In 2.c.(2)(A), in the fifth sentence, the wording "about I cm^2" is revised to read "about 1 cm^2".

b. In the 4. section heading, the wording "DANGEROUS WHEN WET MATERIALS." is revised to read *"Dangerous When Wet Materials".*

PART 174—CARRIAGE BY RAIL

66. The authority citation for part 174 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e), 1.53, App. A to part 1.

§ 174.1 [Amended]

67. In § 174.1, the wording "to to be" is revised to read "to be".

§ 174.25 [Amended]

68. In § 174.25, in paragraph (a)(2)(ii), the wording "(0.98 inch)" is revised to read "(0.098 inch)".

§ 174.55 [Amended]

69. In § 174.55, in paragraph (c), the wording "in the car" is revised to read "in the transport vehicle or freight container".

§ 174.82 [Amended]

70. In § 174.82, in paragraph (a), the wording "Division 1.6 combustible liquids" is revised to read "Division 1.6, combustible liquids".

§ 174.290 [Amended]

71. In § 174.290, in the section heading, the wording "poisonous bv inhalation" is revised to read "poisonous by inhalation".

§ 174.430 [Amended]

72. In § 174.430, in the section heading and first sentence, the wording "(pyroforic liquid)" is revised to read "(pyrophoric liquid)" each place it appears.

§ 174.700 [Amended]

73. In § 174.700, in the paragraph (c) table, in footnote 1, the wording "undeveloped filmed" is revised to read "undeveloped film".

PART 175—CARRIAGE BY AIRCRAFT

74. The authority citation for part 175 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1807, 1808; 49 CFR part 1.

§ 175.320 [Amended]

75. In § 175.320, the following changes are made:

a. In the paragraph (a) table, for the entries "Fuel, aviation, turbine engine; methyl alcohol; or toluene"; "Gasoline"; and "Oil n.o.s.; petroleum oil or petroleum oil, n.o.s.", in Column (3), the wording "(oxidizing)" is revised to read "(oxidizer)" each place it appears.

b. In paragraph (c) introductory text, the wording "(flammable) and combustible liquid)" is revised to read "(flammable) and combustible liquid".

PART 176—CARRIAGE BY VESSEL

76. The authority citation for part 176 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1.53, App. A to part 1.

§ 176.5 [Amended]

77. In § 176.5, in paragraph (b) introductory text, the wording "With the exception of paragraph (c) of this section," is removed and the word "this" is revised to read "This".

§ 176.83 [Amended]

78. In § 176.83, in paragraph (f)(4), the wording "a 'container spaeans a distance" is revised to read "a 'container space' means a distance".

§ 176.100 [Amended]

79. In § 176.100, in the first sentence, the wording "33 CFR 126.9" is revised to read "33 CFR 126.19".

§ 176.118 [Amended]

80. In § 176.118, in paragraph (b), in the last sentence, the wording "satisfactory grouping" is revised to read "satisfactory grounding".

§ 176.410 [Amended]

81. In § 176.410, in paragraph (c)(2), the wording "away for the material" is revised to read "away from the material".

PART 177—CARRIAGE BY PUBLIC HIGHWAY

82. The authority citation for part 177 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805; 49 CFR part 1.

83. Section 177.825 is revised to read as follows:

§ 177.825 Routing and training requirements for Class 7 (radioactive) materials.

A carrier or any person operating a motor vehicle that contains a Class 7 (radioactive) material for which placarding is required must comply with routing and training requirements in 49 CFR part 397, subpart D.

§ 177.834 [Amended]

84. In § 177.834, in paragraph (j), the wording "by loading and storage chart, § 177.848" is revised to read "by the Segregation Table in § 177.848".

§ 177.838 [Amended]

85. In § 177.838, in paragraph (g), the following changes are made:

a. In the penultimate sentence, the wording "insider containers" is revised to read "inside containers" and the wording "(16 pounds." is revised to read "(16 pounds).".

b. In the last sentence, the word "MATERIAL" is removed.

§ 177.857 [Amended]

86. In § 177.857, in paragraph (d), in the last sentence, the comma in the wording "left, either" is removed.

§ 177.858 [Amended]

87. In § 177.858, in paragraph (b)(1), the wording "Further to transport the cargo tank" is revised to read "Transport the cargo tank".

PART 178—SPECIFICATIONS FOR PACKAGINGS

88. The authority citation for part 178 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1.

§ 178.39–9 [Amended]

89. In § 178.39–9, in paragraph (a), a period is added at the end of the second sentence after the word "percent".

§ 178.39–14 [Amended]

90. In § 178.39–14, in paragraph (b), at the end of the second sentence, after the word "pressure", the comma is removed and replaced with a period.

§ 178.46–12 [Amended]

91. In § 178.46–12, paragraph (e) is redesignated as paragraph (c).

§ 178.53–9 [Amended]

92. In § 178.53–9, in paragraph (b), the word "sphere" is revised to read "*sphere*".

§ 178.55–20 [Amended]

93. In § 178.55–20, in paragraph (a) introductory text, the wording "not less and" is revised to read "not less than".

§ 178.56–3 [Amended]

94. In § 178.56–3, in the first sentence, the word "manufcturer" is revised to read "manufacturer".

§ 178.56–11 [Amended]

95. In § 178.56–11, in paragraph (a), in the second sentence, the comma following the wording "1100 °F." is removed.

§ 178.60–24 [Amended]

96. In § 178.60–24, in paragraph (a), in the form, the wording "The _____ permitted in (neckrings, footrings, etc.)" is revised to read "The _____ (neckrings, footrings, etc.) permitted in".

§ 178.61–8 [Amended]

97. In § 178.61–8, in paragraph (c)(2), in the second sentence, the word "sport" is revised to read "spot".

§ 178.61–20 [Amended]

98. In § 178.61–20, in paragraph (b), in the last sentence, the wording "necessitate by" is revised to read "necessitated by".

§ 178.270–5 [Amended]

99. In § 178.270–5, in paragraph (d), in the formula for metric units, the wording "3_i" is revised to read "e_i".

§ 178.270–11 [Amended]

100. In § 178.270–11, in paragraph (d)(1), in the second sentence, the wording "value" is revised to read "valve", and the wording "(120,000 SCFH)" is revised to read "(12,000 SCFH)".

§ 178.337–1 [Amended]

101. In § 178.337–1, in paragraph (f), in the penultimate and last sentences, the wording "post-weld" is revised to read "postweld" both places it appears.

§ 178.337–16 [Amended]

102. In § 178.337–16, in paragraph (b)(2), in the first sentence, the word "describe" is revised to read "described".

§ 178.338–10 [Amended]

103. In § 178.338–10, in paragraph (c), in the first sentence, the wording "with a least one rear bumper" is revised to read "with at least one rear bumper".

§ 178.338–19 [Amended]

104. In § 178.338–19, in paragraph (c), in the last sentence, the wording "certificate or cetificates" is revised to read "certificate or certificates".

§ 178.345–14 [Amended]

105. In § 178.345–14, in paragraph (b)(11), the wording "minimum shell thicknesses is not" is revised to read "minimum shell thicknesses are not".

§ 178.352–2 [Amended]

106. In § 178.352–2, in paragraph (a), the reference "(see § 178.103–6)." is revised to read "(see § 178.352–6).".

§ 178.352–6 [Amended]

107. In § 178.352–6, in paragraph (a)(2), the wording "R A D I O A C T I V E" is revised to read "RADIOACTIVE".

§ 178.362–2 [Amended]

108. In § 178.362–2, in paragraph (e)(5), in the last sentence, the word "chines" is revised to read "chimes".

§ 178.516 [Amended]

109. In § 178.516, in the paragraph (b)(3)(i) introductory text, the word "Joints" is revised to read "joints".

§ 178.518 [Amended]

110. In § 178.518, in paragraph (a)(2), the wording "sift proof" is revised to read "sift-proof".

§ 178.600 [Amended]

111. In § 178.600, a period is added at the end of the sentence.

§ 178.603 [Amended]

112. In § 178.603, in the paragraph (a) table, for the last entry "Bags—single-ply without a side seam, or multi-ply", in Column 2, the wording "Three—(three drops per bag)." is revised to read "Three—(two drops per bag).".

§ 178.605 [Amended]

113. In § 178.605, in paragraph (d)(1), the wording "minus 100 kPa (15 psi) at 55 °C (131 °F) and multiplied by" is revised to read "minus 100 kPa (15 psi)) at 55 °C (131 °F), multiplied by".

PART 179—SPECIFICATIONS FOR TANK CARS

114. The authority citation for part 179 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

115. In part 179, in the table of contents for subpart F, the last two entries "179.500–9" and "179–500–10" which immediately follow the entry " § 179.500–18" are removed.

§ 179.101–1 [Amended]

116. In § 179.101–1, at the end of the paragraph (a) table, in footnote 6, the wording "Sec." is revised to read "See".

§ 179.105–4 [Amended]

117. In § 179.105–4, in paragraph (a) introductory text, the wording "112J," is added immediately following "111J," and immediately before "112T,".

§ 179.203–1 [Amended]

118. In § 179.203–1, in paragraph (a), the wording "179.200, 179.201, and 179.202." is revised to read "179.200 and 179.201.".

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

119. The authority citation for part 180 is revised to read as follows:

Authority: 49 App. U.S.C. 1803; 49 CFR part 1.

§ 180.405 [Amended]

120. In § 180.405, in paragraph (f)(2) introductory text, the word "is" following "outlet" is removed.

§ 180.407 [Amended]

121. In § 180.407, in paragraph (f)(1)(i)(C), in the second sentence, the word "guage" is revised to read "gauge".

Issued in Washington, DC on September 9, 1993 under authority delegated in 49 CFR part 1.

Rose A. McMurray,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 93–22597 Filed 9–30–93; 8:45 am]

BILLING CODE 4910–56–P

federal register

Friday
October 1, 1993

Part VII

Environmental Protection Agency

40 CFR Part 258
Solid Waste Disposal Facility Criteria; Delay of Compliance and Effective Dates; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–4782–4/EPA530–Z–93—012]

Solid Waste Disposal Facility Criteria; Delay of Compliance and Effective Dates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On October 9, 1991, EPA promulgated revised Federal criteria for Municipal Solid Waste Landfills (MSWLFs) under subtitle D of the Resource Conservation and Recovery Act (RCRA). Today's final rule amends these criteria by delaying the general date for compliance with the criteria until April 9, 1994 for certain small landfills and by delaying the effective date of subpart G, Financial Assurance, until April 9, 1995 for all MSWLFs. In addition, the MSWLF criteria are amended by removing the exemption from the ground-water monitoring requirements and delaying the date for compliance with all requirements of the MSWLF criteria for two years for owners and operators of MSWLF units in arid and remote areas that meet the qualifications of the small landfill exemption in the MSWLF criteria. Additionally, the date of final cover installation is extended for owners/operators of MSWLFs units that cease receipt of waste by their compliance date. Finally, the compliance date is delayed for certain MSWLFs in the mid-west receiving flood-related waste from a federally designated disaster area. Because states/Tribes may have earlier effective dates or other requirements in their own state/Tribal regulations, owners and operators of MSWLFs are encouraged to consult with their state/Tribe.

EFFECTIVE DATES: The amendments in this final rule are effective October 9, 1993, except for the amendments to §§ 258.70 and 258.74 in subpart G, which are effective April 9, 1995.

The effective date of subpart G of part 258 (§§ 258.70 through 258.74) which was added at 56 FR 51016 is delayed from April 9, 1994 until April 9, 1995. See "II. Background, A. Effective Dates" under **SUPPLEMENTARY INFORMATION** for further information about this effective date.

ADDRESSES: The public record for this rulemaking (docket Number F–93–XMLP–FFFFF) is located at the RCRA Docket Information Center, (OS–305), U.S. Environmental Protection Agency Headquarters, 401 M Street SW., Washington, DC 20460. The public docket is located at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 260–9327. Copies cost $0.15/page. Charges under $25.00 are waived.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424–9346, TDD (800) 553–7672 (hearing impaired); in the Washington, DC metropolitan area the number is (703) 920–9810, TDD (703) 486–3323.

For more detailed information on specific aspects of this final rule, contact David Hockey or Allen Geswein, Office of Solid Waste (OS–301), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–1099.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background
  A. Clarification of Effective Dates
  B. Overview of the Subtitle D Effective Dates as Promulgated on October 9, 1991
  C. Implementation of the MSWLF Criteria
  D. Summary of Proposed Rule
III. Response to Comments and Analysis of Issues
A. Delaying the General Effective Date
  1. A Six-Month Time Frame
  2. 100 Tons Per Day or Less Size Limitation
  3. Lateral Expansions
  4. State Submittal of a Permit Program Application
  5. National Priorities List
  6. Other Limitations Suggested by Commentors
B. Delaying the Financial Assurance Effective Date
C. Very Small Arid and Remote MSWLF Extension
  1. Commentor-Suggested Limitations to Qualify for the Two Year Extension
  2. Alternatives for Ground-Water Monitoring
D. Modification of the Closure Provisions for Owners/Operators Ceasing Receipt of Waste by Their Respective Effective Date
E. MSWLFs Receiving Flood Debris
F. Other Issues Pertaining to the July 28, 1993 Proposal
  1. Sewage Sludge Disposal
  2. Effects of the Extension on Source Reduction and Recycling
IV. Summary of This Rule
V. Economic and Regulatory Impacts
  A. Regulatory Impact Analysis
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act

I. Authority

EPA is promulgating these regulations under the authority of sections 2002 and 4010(c) of the Resource Conservation and Recovery Act of 1976, as amended. RCRA section 2002 provides the EPA Administrator with the authority to promulgate regulations as are necessary to carry out her functions under the Act. 42 U.S.C. 6912. Under section 4010(c) of RCRA, the EPA Administrator is required to promulgate revised criteria for facilities that may receive household hazardous waste (HHW) or small quantity generator (SQG) waste. The criteria shall be those necessary to protect human health and the environment. At the same time, in promulgating these revised criteria, the Administrator may take into account the practicable capabilities of facilities that may receive HHW or SQG waste. 42 U.S.C. 6949a(c). EPA has interpreted "practicable capability" to include both the costs which facilities will incur in complying with the revised criteria and the technical capability of facilities that must comply with the regulations. 56 FR 50978, 50983–84 (October 9, 1991); 53 FR 33314, 3325 (August 30, 1988). EPA has taken practicable capability of MSWLF owners and operators into account in modifying the effective date of the revised criteria as set forth in this **Federal Register** notice.

II. Background

A. Clarification of Effective Dates

By delaying the compliance dates of the MSWLF criteria in a number of ways, this rule relieves restrictions that part 258 would have imposed on those facilities that would have otherwise had to have complied with the criteria by the effective dates set forth in the rule published on October 9, 1991. 56 FR 50978. Because this rule relieves, rather than imposes, regulatory burdens, delaying the effective date of today's rule is not necessary in order to allow time for the regulatory community to comply. In addition, EPA believes that it has good cause to make today's rule effective in less than 30 days. If the rule's effective date were delayed until 30 days after today's publication, all owners and operators of MSWLFs that fall within the ambit of this rule would have to meet the deadline already established in part 258, which had a general effective date of October 9, 1993. 40 CFR 258.1 (e) and (j). Such a result would negate the entire effect of this rule, which is to provide some regulatory relief for certain owners/operators of MSWLFs that are finding it extremely difficult for a variety of reasons (including floods in the

Midwest) to comply with the original effective dates in part 258. Thus, the Agency believes that it has the authority to make today's rule effective in less than 30 days in accordance with section 553 of the Administrative Procedures Act. 5 U.S.C. 553(d) (1) and (3).

B. Overview of the Subtitle D Effective Dates as Promulgated on October 9, 1991

On October 9, 1991, EPA promulgated a rule under subtitle D of the Resource Conservation and Recovery Act and section 405 of the Clean Water Act pertaining to the disposal of solid waste and sewage sludge in MSWLFs (56 FR 50978 (October 9, 1991)). The regulations and effective dates of the criteria were originally promulgated as follows. The criteria applied to owners and operators of all MSWLF units that receive waste on or after October 9, 1993. Landfill owners and operators that stopped accepting waste before October 9, 1991 were not required to comply with the regulations. Those landfill owners and operators that stop accepting waste between October 9, 1991 and October 9, 1993 were exempt from all of the regulatory requirements except for the final cover (found in 40 CFR 258.60(a)), which had to be applied within six months of last receipt of waste. Owners and operators that continued to receive waste beyond the October 9, 1993 effective date were required to comply with the remainder of the landfill regulations (including location restrictions, operation, design, ground-water monitoring and corrective action, closure and post-closure, and financial assurance). Additionally, the regulations provided for a phase-in of two of the more costly requirements: the financial assurance requirements (effective April 9, 1994) and ground-water monitoring and corrective action requirements (effective October 9, 1994 through October 9, 1996). Finally, the regulations allowed for an exemption from the design, ground-water monitoring and corrective action provisions for very small arid and remote landfills that met the criteria of 258.1(f).

C. Implementation of the MSWLF Criteria

Section 4005(c)(1)(B) of RCRA, as amended, requires states to develop and implement permit programs or other systems of prior approval and conditions to ensure that the MSWLFs are complying with the MSWLF criteria. [The Agency intends to extend to Indian Tribes the same opportunity to apply for permit program approval as is available to states. Providing Tribes with the opportunity to apply for approval to adopt and implement MSWLF permit programs, while not a statutory requirement in RCRA section 4005(c)(1)(B), is consistent with EPA's Indian Policy. The Agency plans to propose the concept of Tribal permit program approval when a tentative notice of permit program adequacy is published for the first Indian Tribe seeking program approval.] EPA's implementation role is largely to review and determine whether these state/Tribal permit programs are adequate. EPA believes that for permit programs to be considered adequate, a state/Tribe must have the capability of issuing permits or some other form of prior approval for all MSWLFs in the state/Tribe, and must establish requirements adequate to ensure that owners and operators will comply with the federal landfill criteria. A state/Tribe also must be able to ensure compliance through monitoring and enforcement actions and must provide for public participation in their permitting and enforcement actions.

EPA-approved state/Tribal permit programs have the opportunity to exercise more flexibility and discretion in implementing the criteria according to local conditions and needs. Owners and operators of MSWLF units located within the jurisdiction of a state/Tribe with an approved program may benefit from this potential flexibility, which extends to many parts of the MSWLF regulations. For example, owners and operators of MSWLF units in unapproved states/Tribes must design their new units and lateral expansions of existing units with a composite liner in compliance with 40 CFR 258.40(b), whereas approved states/Tribes may allow an owner/operator to use an alternative design based on the performance standard described in 40 CFR 258.40(a). Because of the flexibility provided to an approved state permit program, and because state permit program approval is mandated by section 4005(c)(1)(B) of RCRA, EPA fully expects that most states will apply for and receive full approval of their MSWLF permit programs, thereby maintaining the lead role in implementing and enforcing the MSWLF Criteria promulgated under 40 CFR part 258.

States are currently in various stages of the program approval process. Some states have received full program approval, while several states have received "partial" program approval, whereby only some portions of the state permit program have been approved while the remainder of the program is awaiting approval pending completion of statutory and/or regulatory changes by the state. In situations where a state permit program is not approved, or where portions of a program are not approved (in the case of a partial approval), the MSWLF criteria (or unapproved portions of criteria) are implemented by the owner and operator, with no Federal permitting program or interaction. In such situations, where the MSWLF criteria are "self-implementing", each owner/operator must document compliance and maintain this documentation in the operating record.

D. Summary of Proposed Rule

When the municipal solid waste landfill criteria were developed, EPA included a number of features that serve to facilitate owners' and operators' ability to come into compliance by the promulgated effective dates. These features include phased-in effective dates, certain exemptions for very small arid and remote landfills, and numerous opportunities for flexibility in states/Tribes with EPA-approved permit programs. Despite these features, the Agency received a significant number of requests to extend the effective date of the MSWLF criteria. These requests came primarily from local governments that own/operate smaller landfills who related their problems with meeting the effective date, including: (1) inability to comply with unfunded federal requirements; (2) lack of flexibility in unapproved states; and (3) delays in gaining access to new waste management facilities. Therefore, on July 28, 1993, the Agency proposed to amend the municipal solid waste landfill criteria (58 FR 40568) to extend the effective date of the Criteria. The proposal was not intended to change the environmentally protective features of the MSWLF criteria, but would provide certain owners and operators with additional time to come into compliance with the MSWLF criteria requirements.

The July 28th notice proposed to amend the criteria in four areas. First, the Agency proposed to delay the effective date of the criteria until April 9, 1994 for certain small landfills that: dispose of 100 tons of waste per day or less; are located in a state that has submitted an application for permit program approval by October 9, 1993 or are located on Indian Lands; and are not currently on the National Priorities List. Second, EPA proposed to delay the effective date of Subpart G, Financial Assurance, until April 9, 1995 for all MSWLFs. Third, in response to a U.S. Court of Appeals decision, *Sierra Club v. United States Environmental Protection Agency*, 992 F.2d 337 (D.C.

Cir. 1993), the Agency proposed to remove the exemption from the groundwater monitoring requirements in 40 CFR 258.50–258.55, for owners and operators of MSWLF units in arid and remote areas that meet the qualifications of the small landfill exemption outlined in 40 CFR 258.1(f). Additionally, EPA proposed to extend the effective date for all requirements of the MSWLF criteria for a period of two years, until October 9, 1995, for all MSWLF units in arid and remote areas that qualify for the small landfill exemption under 258.1(f). Lastly, the Agency proposed to amend the final cover requirements by requiring owners/operators of MSWLF units that cease receipt of waste by their effective date to complete final cover installation by October 9, 1994 except for very small MSWLFs. Very small MSWLFs in arid and remote areas that qualify for the small landfill exemption (under 258.1(f)) and cease receipt of waste before their effective date of October 9, 1995 must complete final cover installation by October 9, 1996.

III. Response to Comments and Analysis of Issues

The 30-day comment period for the July 28th proposed rule ended on August 27, 1993. The Agency received over 300 comments on the proposal. This section summarizes and addresses the major comments as they relate to the four major amendments in the July 28, 1993 proposal. The Agency received a number of comments on the MSWLF criteria not directly related to the issue of delaying the effective date. The discussion that follows is limited to the major issues relevant to the July 28th proposal. A discussion of the remaining comments can be found in a background document available in the RCRA Docket Information Center.

A. Delaying the General Effective Date

In the July 28th proposal, EPA requested comment on a proposed six-month delay of the effective date (to April 9, 1994) for MSWLFs accepting 100 TPD or less of any combination of household, commercial, or industrial solid waste on an average annual basis that are located in either a state that has submitted an application for permit program approval by October 9, 1993 or on Indian lands and are not on the Superfund National Priorities List (NPL). The majority of commentors were generally in favor of the proposed delay. The major comments submitted on this portion of the proposal are summarized below.

1. A Six-Month Time Frame

The proposed rule provided for a one-time, six-month delay of the general effective date. Some commentors questioned the appropriateness of the Agency's choice of a six-month delay of the effective date. Proposals from commentors ranged from total opposition to any delay to enthusiastic support for a longer delay by as much as two years. Commentors who supported the extension cited many reasons, including the following: (1) inability to comply with unfunded federal requirements; (2) lack of flexibility in unapproved states; and (3) delays in gaining access to a new waste management facility. As for those who supported a longer delay by as much as two years, these commentors believed that six months was too short based on their specific situation. As stated in the proposal, the Agency chose a six-month delay to accommodate the parties most in need—owners and operators, such as small communities (including local governments that own/operate MSWLFs)—who have made good faith efforts to seek alternative disposal facilities and need some limited additional time to complete those efforts. 58 FR 40570–71. While six months may not be enough time for all owners and operators to complete all necessary actions, EPA does not want to further delay the implementation of the criteria promulgated almost two years ago. This additional time is not designed to solve the problems facing communities that recently started the siting process or who are many months or years away from operating a new facility. Lengthy delays could increase the potential for environmental problems (e.g., failure to close substandard landfills) and would penalize those who took the necessary steps to comply with the October 9, 1993 effective date. Therefore, the Agency did not find these arguments to delay the effective date beyond six months to be persuasive.

Other commentors suggested that EPA should delay the general effective date for more than six months to allow EPA more time to approve additional state permit programs. EPA has determined that, on the average, review and approval of a typical state permit program application can be completed within approximately six months. Based on current information from states, EPA believes that all or almost all states will submit an application for approval by October 9, 1993. This six-month extension will ensure in most cases that the federal criteria would not become effective before the state permit program was approved, thus allowing many owners and operators to avoid the situation of gearing up to meet federal standards and then, a few months later, changing to meet newly approved state standards. In addition, this additional time will allow a vast majority of MSWLF owners and operators to take advantage of the flexibility and the potential cost savings available when states are approved.

2. 100 Tons Per Day or Less Size Limitation

The proposed rule limited the six-month extension to smaller landfills that accept 100 tons per day or less of any combination of household, commercial, or industrial solid waste. The Agency received a number of comments on this restriction. Some commentors suggested an increased tonnage limit (up to 750 TPD), while others questioned the need to limit the extension based on the amount of waste accepted by the landfill and felt that the extension should be available to owners and operators regardless of the amount of waste accepted per day (i.e., a blanket extension). As stated in the proposal, the Agency believes that the 100 TPD or less cut-off is representative of the majority of smaller community landfills that have had the most difficulty coming into full compliance by the October 9, 1993 deadline, because financial conditions, legal challenges, and geography have created significant obstacles to compliance, often despite good-faith efforts to comply. For example, many of the smaller landfills intend to close, and their users will instead send their waste to a regional waste management facility where they can take advantage of economies of scale. The process of regionalization, including closure of their existing MSWLF and construction of a new transfer station, has taken more time than many small communities had originally anticipated. Additionally, the Agency is concerned that increasing the tonnage or allowing a "blanket" or unlimited extension, as suggested by some commentors, would not fulfill EPA's goal of granting relief to only those most in need—primarily small communities. By setting the limit at 100 TPD, the Agency targets relief to the greatest extent possible while ensuring that most waste, as of October 9, 1993, will be disposed in accordance with the requirements of 40 CFR part 258. As discussed in the proposal, setting the limit at 100 tons per day would provide potential relief to approximately 75 percent of the MSWLFs in the country which manage only about 15 percent of the total national waste stream.

One commentor argued that the Agency should have adhered to its own definition, in the October 9, 1991 rule, of a small landfill used for the small landfill exemption found at 258.1(f) (i.e., 20 tons per day). In developing the proposed size limitation, EPA found that landfills accepting no more than 100 tons per day of solid waste tend to be those experiencing the most severe budget and technical problems. The Agency did not set the waste acceptance limit for this extension at 20 tons per day, because the scope of the problem appeared to extend to somewhat larger landfills, primarily those serving communities with a population up to a range of 45,000 to 57,000 (i.e., landfills accepting approximately 100 tons per day). Additionally, a portion of the landfills accepting 20 TPD or less will qualify for the two year delay of all of the MSWLF criteria (see subsection D; Very Small Arid and Remote MSWLF Extension), if they meet the criteria of the small landfill exemption in 258.1(f). Therefore, the Agency is retaining the 100 TPD limit in the final rule. As in the proposal, it is important to note that the effective date for MSWLF units accepting greater than 100 TPD will continue to be October 9, 1993.

In the proposed rule, the Agency solicited comments on whether two calculations were necessary to determine whether an MSWLF unit qualified and continued to be eligible for the extension. First, to qualify for the extension, the MSWLF unit would have had to dispose of 100 tons per day or less of solid waste between October 9, 1991 and October 9, 1992. Second, the owner/operator of the MSWLF unit would not be allowed to dispose of more than an average of 100 TPD of solid waste each month between October 9, 1993 and April 9, 1994. The "historical" (e.g., October 9, 1991 through October 9, 1992) time frame was suggested mainly to assure that larger landfills would not alter the amount of waste they are presently accepting in order to take advantage of today's six-month extension, while the monthly average calculation was intended to ensure that the "small" landfills would remain so during the extension period. As discussed in this preamble, today's extension is intended for smaller landfills already in existence.

A few commentors generally supported the need for an historical time frame calculation to determine that the MSWLF qualifying for the extension was indeed a small landfill. However, numerous commentors, including many small landfill owners and operators, cited many reasons why they believed the proposed method of determining the historical time frame (i.e., based on the average collected during the year October 9, 1991 through October 9, 1992) was unnecessarily restrictive. For example, commentors felt the historical time frame did not consider that unusual circumstances (e.g., sudden additional incoming waste due to closure of a neighboring landfill during the target year) may have increased the quantity of waste to a landfill during the target period. Commentors also were concerned that a great deal of time and resources could be spent in determining whether or not a landfill, with no scales or past records, qualified for the extension. Commentors noted that recordkeeping at small landfills, usually staffed part-time, may be non-existent for the historical time period, may not be organized in a way that identifies the daily tonnage, nor allows such a time period to be readily identified. These commentors felt that such resources and time would be better spent upgrading the landfill or finding waste management alternatives. One commentor argued that their landfill did not begin receiving waste until after the historical time period and therefore has no records.

The Agency recognizes that some of these situations could prevent some otherwise deserving landfills from qualifying for the six-month extension. Today's rule is intended to grant needed relief to certain MSWLF owners and operators in a manner that does not disqualify truly deserving facilities and does not increase owner/operator record-keeping burden in order to qualify for the extension. In an effort to balance the need to limit the extension to only small landfills, while at the same time limiting the burden on those who qualify, today's final rule provides that the extension is for units that "disposed of 100 tons per day or less of solid waste during a representative period prior to October 9, 1993." The historical measurement of waste receipt should be based on the average acceptance of waste over a representative period prior to October 9, 1993, as determined by the owner/operator. In determining the historical measurement of waste, the Agency recommends that owners and operators determine the average receipt of waste during the period of October 9, 1991 through October 9, 1992. This period of time should provide the most current representative "snapshot" of waste receipt at a MSWLF unit. Waste receipt at MSWLF units after October 1992 may not be as representative due to changes in practices (either downsizing or upgrading) as a result of the impending October 9, 1993 effective date. However, in the instance that the owner/operator does not have records for this period, or believes that this period is not representative of their past receipt of waste, then the owner/operator may choose an alternative period (e.g., the most recent twelve consecutive month period not impacted by extraneous circumstances). The historical calculation method adopted for today's extension is implicitly the same as the historical measurement method MSWLF owners and operators use in determining if their MSWLF will meet the small landfill exemption (less than 20 TPD) of 258.1(f). Owners and operators therefore will have the flexibility to base their historical determination of average waste receipt on their available records while considering special circumstances.

It is the responsibility of the owner/operator to document an historical acceptance of waste of 100 TPD or less. The Agency will not require owners and operators to maintain records on the amount of waste the facility accepts, but if the owner/operator believes that the facility may be close to the 100 TPD limit, then it may be in the owner/operators' best interest to develop and maintain some indication on the amount of waste accepted given the possibility of citizen suits being filed under section 7002 of RCRA.

Commentors supported the proposed monthly calculation during the extension period to continue to qualify for the extension. Therefore, MSWLFs will continue to be required to accept 100 TPD or less based on a monthly average during the time period of October 9, 1993 until April 9, 1994 to qualify for an extension.

Finally, the proposed rule requested comment on methods of calculating the tons per day accepted by facilities. EPA suggested two methods: (1) divide the total annual amount of waste received by 365 days or (2) conduct a one-time measurement of a day's typical full trash-hauling vehicles, then estimate the weight from volume of trash-hauling vehicles by using a conversion factor (e.g., one ton equal to three cubic yards of waste) or using sales/acceptance receipts from trash haulers. Commentors generally agreed that both of these methods to calculate the acceptance of waste would suffice for the majority of their situations. Several commentors suggested the use of a conversion factor of one ton equal to five cubic yards of noncompacted waste. Rather than set strict calculation methods, the Agency believes that the approach should remain flexible whereby the owner/

operator use reasonable and defensible assumptions in calculating their tonnage.

3. Lateral Expansions

The proposed rule limited the extension to existing units and to lateral expansions of existing units to accommodate trench and area fills. A few commentors were concerned that landfills qualifying for the extension would laterally expand over a larger area than actually needed, thus greatly increasing the size of their existing unit by the new April 9, 1994 effective date. The commentors proposed that EPA limit the capacity of MSWLF unit lateral expansions to not exceed six-months of capacity for the entire MSWLF unit. The Agency feels that this type of limitation would create an unnecessary complication for owners and operators in implementation of this extension and that this issue already is addressed in the current definition of an existing unit. The definition of "existing MSWLF unit" in § 258.2, defines such a unit as one that is receiving solid waste as of the effective date of the landfill criteria with the caveat that waste placement in the unit be consistent with past operating practices or modified practices to ensure good management. The Agency has interpreted this to mean that an existing unit is defined by the areal extent of waste (sometimes referred to as the waste "footprint") placed as of the effective date of the criteria and that the spreading of waste over a large area to avoid the liner requirements is not acceptable (see 56 FR 51041, October 9, 1991).

A commentor suggested that EPA should only have granted an exemption to landfills that were undertaking vertical expansions, and not extend the exemption to lateral expansions. As noted earlier, the major difficulties in meeting the criteria deadline appear to fall mainly on smaller community landfills and the extension therefore is largely directed at such landfills. Many of these smaller landfills use trench and area fill practices. For example, in a trench fill operation, a small trench is excavated, filled, and covered in a relatively short period of time. As the old trench is filled, it is extended to accommodate additional waste. This extension is by definition a lateral expansion. Limiting the extension to vertical expansions would therefore disrupt these customary practices and limit the extension to considerably fewer landfills than EPA intended. Therefore, today's final rule continues to allow existing units and lateral expansions of existing units to receive the six-month extension.

4. State Submittal of a Permit Program Application

The proposed rule limited the six-month extension only to owners and operators of MSWLFs in states that have submitted an application for permit program approval by October 9, 1993 or are located on Indian Lands. Some commentors questioned the need for the state to have submitted an application in order for the owner/operator to qualify for the extension. The Agency continues to work toward its goal of approving all states and Tribes (to the extent they apply). Approval of State/Tribal permit programs is a high priority and the Agency does not want the extension to detract from this goal. EPA believes that the linkage of the extension to submission of an application will serve as impetus for states to submit their applications by October 9, 1993 and for advancing the Agency's goal of approving all states by April 9, 1994. In fact, the Agency now believes that every state except Iowa will submit an application by October 9, 1993.

In the proposed rule, the Agency indicated that when it published the final rule, it would include a list of states who have submitted an application by the date on which the final rule was signed. 58 FR 40572. Because most states have now submitted an application, for purposes of simplicity, the following is a list of those states who have not submitted an application as of the date of signature: Alaska, American Samoa, Arizona, Guam, Hawaii, Iowa, Maine, New Jersey, Northern Marianas, Ohio, Puerto Rico, Rhode Island, and the Virgin Islands. Because most of these states are expected to apply between the date of signature and October 9, 1993, owners and operators of MSWLF units located in these states are encouraged to contact their state to find out whether the State has submitted an application by October 9, 1993.

Due to the time and resources required to deal with the effects of the Great Flood of 1993, the state of Iowa has indicated that it will not be able to apply for approval of its permit program by October 9, 1993, although the state had originally planned to do so. In an effort not to penalize those small landfills in need of relief located in the state of Iowa, the final rule does not include the requirement that Iowa submit a permit program application by October 9, 1993 for owners and operators in that state to take advantage of the six-month delay. Owners and operators in Iowa, however, will be required to meet all other requirements to qualify for the six-month extension in today's final rule.

In the proposal, the Agency provided that owners and operators of MSWLFs located on Indian lands would be eligible for the six month extension even if the Tribe had not submitted an application for permit program approval by October 9, 1993. As discussed in the proposal, RCRA does not require Indian Tribes to develop a permit program for MSWLFs. Because many of the landfills on Indian lands could qualify for today's six-month extension by virtue of the fact that they accept less than 100 TPD and are not on the National Priorities List, the Agency proposed to allow MSWLF units on Indian lands to take advantage of the six-month extension, even if the Indian Tribe has not submitted an application for permit program approval by October 9, 1993. Commentors agreed with this provision as long as all other requirements for the extension are fulfilled. Therefore, today's final rule allows owners/operators located on Indian Lands to be granted the six-month extension as long as all of the other requirements of this rule are met.

No comments were received that suggested changes to the proposed definitions of "Indian land or Indian country" and "Indian Tribe or Tribe." Therefore, these definitions are retained in today's final rule. While the definition of Tribes in today's final rule does not explicitly include Alaska Native Villages, EPA believes that, to the extent these entities exercise substantial governmental duties and powers, they would be eligible to apply for permit program approval. For purposes of today's rule, as with Indian lands in other States, EPA is allowing landfills on Native Village Lands to be eligible for the six-month extension whether or not the Village has submitted an application for permit program approval.

Some commentors suggested that EPA delegate to states who have submitted a permit program application by October 9, 1993 more flexibility in implementation of the delay. Commentors suggested, for example, that such states should have the flexibility to: Determine the need for a delay on a site-by-site basis, to grant longer than a six-month extension, or to waive the 100 TPD limit. As discussed throughout this preamble, the Agency set the length of the extension and size criteria so as to target limited relief for those MSWLF units in greatest need—small landfills. Therefore, in order to maintain this focus, the Agency will continue to require that these criteria be used as the minimum national criteria.

However, other commentors were concerned that a delay of the criteria would undermine states' efforts in implementing the MSWLF criteria (e.g., oppose state's existing closure schedules for substandard landfills). As stated in the proposal, a state/Tribe, regardless of its permit program approval status, may impose more stringent effective dates and/or more stringent criteria for qualifying for an extension (e.g., maintain current closure schedules) if they so choose. Therefore, the extension should not have the negative effect predicted by these commentors.

5. National Priorities List

The proposed rule did not extend the six-month extension to MSWLFs currently on the Superfund National Priorities List as published in appendix B to 40 CFR part 300. Commentors agreed with this exclusion; therefore, the final rule retains this provision. Some commentors suggested that the extension be further restricted by disallowing any MSWLF that is on a state Superfund list or in violation of another state environmental regulation. As discussed in the previous section, states may always be more stringent (e.g., prevent MSWLFs on their state Superfund lists from gaining an extension) in their approach to the extension.

6. Other Limitations Suggested by Commentors

A few commentors requested that EPA limit the extension to prohibit MSWLFs that qualify from accepting non-hazardous industrial waste. Under the criteria as promulgated on October 9, 1991, MSWLFs may accept non-hazardous industrial waste to be co-disposed with household waste. The Agency did not limit today's extension in the manner suggested for the following reasons: (1) The prohibition of non-hazardous industrial waste would be difficult to implement and enforce; (2) this waste stream typically represents a small fraction of the entire waste sent to a MSWLF; (3) for some generators, the local MSWLF represents the only economical method of disposal of their non-hazardous industrial waste; and (4) this is a one-time extension for a short period of time (i.e., six months). Therefore, the final rule will allow MSWLFs qualifying for the extension to accept non-hazardous industrial waste for co-disposal with household waste.

Finally, some commentors suggested that in order to qualify for the extension, the MSWLF must be in compliance with all of the location restrictions of subpart B of the criteria by the effective date. EPA did not limit the extension based on a facility meeting the location restrictions because many of the restrictions (e.g., wetlands, fault areas, seismic zones) do not apply to existing units, the major target of the extension. In addition, under the criteria as promulgated, existing units that cannot meet the requirements for airports, floodplains, or unstable areas already have until October 9, 1996 to close (unchanged by today's rule). Limiting the extension for these facilities would not have much of an effect. Therefore, today's final rule does not place location restrictions on MSWLFs eligible for the extension.

B. Delaying the Financial Assurance Effective Date

The proposed rule provided for a one-year extension of the financial assurance requirements (from April 9, 1994 to April 9, 1995) for all MSWLFs, regardless of size. The majority of commentors supported the need to extend the financial assurance requirements. Commentors noted that the one-year delay provides time for the owners and operators to budget and to acquire the appropriate financial assurance mechanism for their MSWLFs. The Agency, in setting the original April 9, 1994 effective date for the financial assurance requirements, believed that this date would allow adequate time to promulgate a financial test for local governments and another test for corporations (see 56 FR 50978). However, the Agency currently estimates that neither financial test will be promulgated within the time frame anticipated. The Agency believes that local governments should have these financial tests available to them before the financial responsibility provisions become effective. The delay of one year provided in this rule should enable EPA to finish promulgation of these tests and should ensure that owners and operators will have the opportunity to evaluate their needs based on these financial tests. As a result, many local governments will be able to realize a significant decrease in the cost of compliance with the financial responsibility requirements, while assuring that the costs associated with closure, post-closure, and known corrective action at the MSWLFs will be met.

A few commentors suggested that EPA extend the effective date of the financial assurance requirements beyond the proposed one-year delay. The Agency anticipates that the one year extension will be sufficient time to complete the proposal and promulgation of the financial tests. EPA also believes that one year should provide adequate notice to affected parties so they may determine whether they satisfy the applicable financial test criteria for all of the obligations associated with their facilities or whether they need to obtain an alternate instrument for some or all of their obligations. The Agency notes that approved states/Tribes have the flexibility to develop alternative financial mechanisms that meet the criteria specified in § 258.74(1) for use by their owners and operators. This may include development of a state financial test. Therefore, today's final rule retains the one year extension for financial assurance.

C. Very Small Arid and Remote MSWLF Extension

1. Commentor-Suggested Limitations to Qualify for the Two-Year Extension

The October 9, 1991 Final Rule for the MSWLF Criteria included an exemption for owners and operators of certain small MSWLF units from the design (subpart D) and ground-water monitoring and corrective action (subpart E) requirements of the Criteria. See 40 CFR 258.1(f). To qualify for the exemption, the small landfill had to accept less than 20 tons per day, on an average annual basis, exhibit no evidence of ground-water contamination, and serve either:

(i) A community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility, or

(ii) A community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

In adopting this limited exemption, the Agency maintained that it had complied with the statutory standard to protect human health and the environment, taking into account the practicable capabilities of small landfill owners and operators. See discussion in 56 FR 50991.

In January 1992, the Sierra Club and the Natural Resources Defense Council (NRDC) filed a petition with the U.S. Court of Appeals, District of Columbia Circuit, for review of the subtitle D criteria. The Sierra Club and NRDC suit alleged, among other things, that EPA acted illegally when it exempted these small landfills from the ground-water monitoring requirements. On May 7, 1993, the United States Court of Appeals for the District of Columbia Circuit issued an opinion pertaining to

the Sierra Club and NRDC challenge to the small landfill exemption. *Sierra Club* v. *United States Environmental Protection Agency,* 992 F.2d 337 (DC Cir. 1993).

The Court held that under section 4010(c), the only factor EPA could consider in determining whether facilities must monitor their ground water was whether such monitoring was "necessary to detect contamination," not whether such monitoring is "practicable." The Court noted that while EPA could consider the practicable capabilities of facilities in determining the extent or kind of ground-water monitoring that a landfill owner/operator must conduct, EPA could not justify the complete exemption from ground-water monitoring requirements. Thus, the Court vacated the small landfill exemption as it pertains to ground-water monitoring, directing the Agency to "* * * revise its rule to require ground-water monitoring at all landfills." (The Court decision did not affect the small landfill exemption as it pertains to the design requirements.)

Therefore, today's final rule, as required by the Court, modifies the small landfill exemption whereby, owners and operators of MSWLF units that meet the qualifications outlined in § 258.1(f) are no longer exempt from ground-water monitoring requirements in 40 CFR 258.50–258.55.

The proposed rule, while removing the exemption from ground-water monitoring for these very small landfills, provided a two-year extension of the effective date for those landfills in order for them to rethink and act on their waste management options in light of the Court ruling. Some commentors proposed limiting the two-year extension to only the ground-water monitoring requirements of part 258. The Agency believes that many of those facilities that qualified for the small landfill exemption made a decision to remain open based on the costs of operation without ground-water monitoring. These landfills acted in good faith, and should therefore be allowed to reconsider their overall decision now that the costs have fundamentally changed. These facilities should be given a similar amount of time that other facilities have had to make such decisions. (All MSWLFs were originally given two years notice following promulgation of the criteria during which time they could decide whether to remain in operation when the criteria take effect.) Therefore, the final rule provides for an extension for all of the MSWLF criteria requirements, for a period of two years, for all MSWLF units that qualify for the small landfill exemption (§ 258.1(f)). (It is important to note that this extension is independent of, and not in addition to, the six-month extension for MSWLF units accepting less than 100 TPD.)

2. Alternatives for Ground-Water Monitoring

The U.S. Court of Appeals, in its decision, did not preclude the possibility that the Agency could establish separate ground-water monitoring standards for the small dry/remote landfills that take such factors as size, location, and climate into account. Therefore, in the proposal, EPA requested comments on alternative ground-water monitoring requirements for these facilities.

While the Agency received a number of comments supporting alternative ground-water monitoring requirements for these very small landfills, several commentors requested additional time to provide suggested alternatives. Therefore, the Agency will continue to maintain an open dialogue with all interested parties to discuss whether alternative ground-water monitoring requirements should be established and will continue to accept information on alternatives. Information and suggestions on alternative ground-water monitoring requirements can be sent to "Alternative Ground-Water Monitoring", Office of Solid Waste (OS–301), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460.

Commentors also suggested that the Agency set an effective date for the ground-water monitoring requirements for these very small landfills two years after the promulgation of regulations regarding alternative ground-water monitoring for these facilities. The point of today's action is to respond to the Court's mandate. At this time, the Agency is still investigating this issue and cannot be certain that practicable alternatives for detecting ground-water contamination will exist for MSWLF units that would qualify for the exemption under § 258.1(f). Therefore, today's final rule does not tie the effective date of ground-water monitoring for landfills that qualify for the small/arid and remote exemption to promulgation of alternative ground-water monitoring requirements.

D. Modification of Closure Provisions for Owners/Operators Ceasing Receipt of Waste by Their Respective Effective Date

The proposed rule modified the closure requirements for MSWLFs ceasing receipt of waste before the effective date by requiring these owners and operators to complete cover installation by October 9, 1994 rather than six months after last receipt of waste. Commentors agreed with the assessment of the problems associated with completion of closure activities within six months of last receipt of waste. Some commentors restated their view that the requirement to finish closure during the late fall/winter months of October through March would be most difficult and subject their facilities to delays, if not rendering it impossible to complete within the six month time frame.

A few commentors suggested that the Agency extend the completion date for closure activities beyond the proposed October 9, 1994 to accommodate their specific situation. EPA believes that the October 9, 1994 deadline provides sufficient time for owners and operators of closing landfills to complete cover installation. This would mean that owners/operators that are subject to the October 9, 1993 effective date would have at least one year to install a cover, while owners and operators of landfills subject to the April 9, 1994 effective date would have at least six months to install a cover. Both time frames should provide at least six months of moderate weather during which to plan and install a landfill cover.

Therefore, the final rule retains the requirement that owners and operators ceasing receipt of waste before their effective date (either October 9, 1993 or April 9, 1994) complete cover installation by October 9, 1994. Owners/operators of very small landfills that qualify for the extension in 258.1(f) who cease receipt of waste prior to the new effective date of October 9, 1995 must complete cover installation by October 9, 1996. As in the October 9, 1991 final rule, owners and operators failing to install a cover by these new dates will subject the MSWLF unit to all of the requirements of part 258.

E. MSWLFs Receiving Flood Debris

A tremendous volume of debris from the Great Flood of 1993 in the Midwest is expected to strain the capacity of certain MSWLFs in that region as well as interfere with their efforts to comply with the criteria. On July 28, 1993, EPA asked for comments in the proposal on how to accommodate landfills that will be affected by this flood-related debris, given the original October 9, 1993 effective date for the MSWLF criteria and the extensions proposed at that time. The comments received generally acknowledge the need to provide some relief to such landfills. While some commentors requested a special two-year or open-ended extension, others

indicated that six months would generally suffice, based on past experience in dealing with floods and on existing landfill capacity. Several commentors requested that states be delegated the authority to grant targeted relief to MSWLFs within their state that were in need.

After reviewing and considering comments, the Agency developed a regulatory scenario that meets the Agency's dual goals of granting relief to those MSWLF units affected by the flood of '93 while maintaining simplicity for the purpose of implementation. The final rule contains a two-stage approach for extending the effective date for such landfills, which is independent of the extensions discussed earlier in this preamble (e.g., for MSWLFs receiving less than 100 TPD).

First, existing MSWLF units and lateral expansions of existing MSWLF units may continue to receive waste up to April 9, 1994, without being subject to part 258 (except the final cover requirement), if the state determines that they are needed to receive flood-related waste from a Federally-designated disaster area resulting from the Great Flood of 1993. This provision responds to EPA's belief that in most cases, six months will be adequate to handle flood-related waste especially for historically smaller landfills that ordinarily would have qualified for the six-month extension for landfills receiving less than 100 TPD, but now exceed the tonnage limit due to acceptance of flood debris. As with today's six-month extension for MSWLF units accepting 100 TPD or less, the extension for MSWLF units accepting flood-related waste is limited only to existing units and lateral expansions of existing units; it is not intended for new units.

Second, existing MSWLF units and lateral expansions of existing MSWLF units that have received a six (6) month extension, may continue to receive waste without being subject to part 258 (except the final cover requirements), for an additional period of time up to six (6) months beyond April 9, 1994, if the state determines that the MSWLF unit is needed to receive flood-related waste from a Federally-designated disaster area resulting from the Great Flood of 1993. This second provision will allow those states that believe that their owners and operators may need to operate for an additional period of time after April 9, 1994, to continue to operate up to another six months without being subject to part 258, only on an as-needed basis determined by the state. EPA encourages states to limit the use of this additional six month extension only to situations where local hardships will occur if the site is not available for continued flood cleanup activities. EPA does not intend this flood-related extension to delay compliance any longer than is necessary to meet clean-up needs, especially for larger facilities that are not subject to the general six-month extension discussed earlier. In no case, however, may a state extend the effective date for these landfills beyond October 9, 1994.

Owners and operators of MSWLF units who receive an extension to receive flood waste and cease receipt of waste at the end of that extension, must complete cover installation within one year of the date on which the extension ended, but in no case shall the cover installation extend beyond October 9, 1995. Owners and operators of MSWLF units that continue to accept waste after their extension expires must comply with all of the part 258 requirements, including: (1) The ground-water monitoring requirements in accordance with the schedule in 258.50(c) or in accordance with an approved state/tribe schedule and (2) the financial assurance requirements by April 9, 1995.

F. Other Issues Pertaining to the July 28, 1993 Proposal

1. Sewage Sludge Disposal

Commentors agreed that EPA should not grant removal credits authority to a POTW unless the POTW sends its sewage sludge to a MSWLF unit that complies with the full panoply of the part 258 rule requirements. Hence, EPA will not grant removal credits authority to POTWs if they send their sludge to landfills using one of today's extensions (e.g., small landfills that choose to take advantage of the six-month extension, or very small landfills that qualify for the two-year extension), since such landfills will not be in full compliance with part 258.

2. Effects of the Extension on Source Reduction and Recycling

One commentor felt that an extension to the MSWLF criteria effective date would undercut recycling and source reduction due to continuation of "cheap" landfill tipping fees. EPA promotes an integrated waste management approach favoring source reduction and recycling as the preferred options. EPA does not believe that this rule will create significant negative effects on the Agency's goal of increasing cost-effective source reduction and recycling. This is a limited extension, in most cases lasting only for a six month time frame and as discussed earlier, affecting only 15 percent of all waste. In addition, many states have already closed or are in the process of closing their inadequate landfills that would fail to meet the MSWLF criteria requirements. The overall effect of the criteria continues to be supportive of both safer disposal and more incentives for alternatives to disposal.

IV. Summary of This Rule

Table I provides a summary of the changes to the effective dates of the MSWLF criteria as outlined in today's final rule.

TABLE I.—SUMMARY OF CHANGES TO THE EFFECTIVE DATES OF THE MSWLF CRITERIA

	MSWLF units accepting greater than 100 TPD	MSWLF units accepting less than 100 TPD; are not on the NPL; and are located in a state that has submitted an application for approval by 10/9/93	MSWLF units that meet the small landfill exemption in 40 CFR § 258.1(f)	MSWLF units receiving flood-related waste
General effective date[1]	October 9, 1993	April 9, 1994	October 9, 1995	Up to October 9, 1994 as determined by State in six month intervals.

TABLE I.—SUMMARY OF CHANGES TO THE EFFECTIVE DATES OF THE MSWLF CRITERIA—Continued

	MSWLF units accepting greater than 100 TPD	MSWLF units accepting less than 100 TPD; are not on the NPL; and are located in a state that has submitted an application for approval by 10/9/93	MSWLF units that meet the small landfill exemption in 40 CFR § 258.1(f)	MSWLF units receiving flood-related waste
This is the effective date for location, operation, design, and closure/post-closure.				
Date by which to close if cease receipt of waste by the general effective date.	October 9, 1994	October 9, 1994	October 9, 1996	Within one year of date determined by State; no later than October 9, 1995.
Effective date of groundwater monitoring and corrective action.	Prior to receipt of waste for new units; October 9, 1994 through October 9, 1996 for existing units and lateral expansions.	October 9, 1994 for new units; October 9, 1994 through October 9, 1996 for existing and lateral expansions.	October 9, 1995 for new units; October 9, 1996 for existing and lateral expansions.	October 9, 1994 for new units; October 9, 1994 through October 9, 1996 for existing and lateral expansions.
Effective date of financial assurance requirements.	April 9, 1995	April 9, 1995	October 9, 1995	April 9, 1995.

[1] If a MSWLF receives waste after this date the unit must comply with all of Part 258.

V. Economic and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a new regulation is a "major" rule and prepare a Regulatory Impact Analysis (RIA) in connection with a major rule. A "major" rule is defined as one that is likely to result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state/Tribal, and local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The amendments to the regulations outlined in this rule will, except for the provision requiring dry/remote very small landfills to perform ground-water monitoring, have the effect of reducing requirements imposed by the 40 CFR part 258 criteria. While the Agency estimates that increased costs to households for the ground-water monitoring requirements added as a result of the Court's decision may be significant for some of the very smallest communities, the Agency does not believe that this is a major rule for the purposes of determining whether to conduct an RIA. Moreover, under today's final rule, owners and operators of MSWLF units that meet the small landfill exemption of § 258.1 (f) are provided regulatory relief by a delayed effective date.

EPA has updated and revised the cost estimates reported in the preamble for the proposal for today's rule. A detailed explanation of unit costs and methodology can be found in a technical memorandum to the docket.

In estimating the national annualized costs attributable to the removal of the ground-water monitoring exemption for dry/small landfills, the Agency defined small landfills as those accepting less than 20 tons per day (TPD), and dry landfills as those located in areas receiving less than 25 inches of precipitation per year. (The Agency does not have complete data on the number of very small landfills that qualify for the exemption because they are remote; that is, because they experience three consecutive months with no surface transportation. However, the Agency believes that most of these landfills are captured in the assumptions used to develop the estimated number of small arid landfills.) EPA assumed a universe of 750 dry/small landfills will be operating in 1995 (approximately 517 1 TPD landfills and 232 10 TPD landfills). This estimate is derived from the municipal landfill survey of 1986, and is based upon the closure dates reported by landfills at that time. EPA assumed landfills which reported closure dates prior to 1995 will have closed and those communities have turned to larger landfills which would not be affected by today's rule. For landfills which reported closure dates after 1995, EPA estimated ground-water monitoring costs.

EPA developed national costs estimates using most of the assumptions used in the Regulatory Impact Analysis (RIA) developed for the revised Criteria. For the purposes of this analysis, EPA assumed that landfills would monitor ground water during the operating life and for a thirty year post-closure care period (the post-closure care period requirement may vary in an approved state). EPA estimated costs for two representative sizes under 20 TPD: A 10 TPD landfill and a 1 TPD landfill. The Agency assumed that for a 10 TPD landfill, five well clusters, with three wells each would be used. For a one TPD landfill, EPA assumed three well clusters with three wells each would be used. EPA used average unit capital costs for ground-water monitoring, assuming a well depth of 140 feet. The Agency recognizes that these average costs may underestimate costs to some individual landfills which, due to remoteness or site-specific characteristics (e.g., high depth to ground water), may have higher well construction costs than estimated. For example, the depth to ground water in some dry areas can be several hundred feet. Digging the wells deeper will likely result in additional costs of approximately $35 to $50 for each additional foot. This means that the difference in cost of a well cluster extending to 140 feet versus a well cluster extending to 300 feet would be approximately 25% more for the well construction costs, which would increase the initial hydrogeologic study and construction costs incurred in one year by approximately 8 percent for a 1 TPD landfill and 11 percent for a 10 TPD landfill. Additional well depths would likewise continue to increase costs. One commentor from Nevada indicated that the depth to ground water

can be over 1,000 feet. Clearly the costs of digging a well in this situation will be higher than estimated here.

Additionally, the costs of well construction in remote areas could be higher if an expense to transport equipment to the site is incurred. This may be a significant cost to communities which are very remote and have limited access.

EPA assumed it will cost less to comply with the ground-water monitoring requirements in today's rule for landfills located in states already requiring ground-water monitoring (39 states required ground-water monitoring in 1991).

EPA assumed that landfills with short remaining lives would distribute the costs of the ground-water monitoring over the life of the new replacement landfill.[1] This is a reasonable assumption for municipalities which control tipping fees for residents and have the ability to spread the costs of ground-water monitoring over a longer time period. It will not always be possible for private landfill owners to annualized these costs over post-closure years.

EPA estimates that the national annualized costs of requiring ground-water monitoring for all dry/small landfills is approximately $13 million per year (in 1992 dollars). This estimate represents potential costs resulting from the court decision to require ground-water monitoring for all dry/small landfills. EPA expects, however, that some dry/small landfills would have joined a regionalized waste management system prior to the implementation date, and thus will not incur these ground-water monitoring costs.

Costs to individual landfills will vary greatly. Landfills located in states which already require ground-water monitoring may not experience any additional costs. Landfills located in states with no ground-water requirements may incur the full cost of ground-water monitoring.

Size will affect landfill cost. EPA estimates that the annualized cost (for thirty years) for ground-water monitoring at a 10 TPD landfill, with a ten year operating life, would be approximately $32,000 or $32 per household per year. The annualized cost for ground-water monitoring at a 1 TPD landfill, with a ten year operating life, would be approximately $22,000 or $222 per household per year. Clearly, costs to the very small landfills (e.g., 1 TPD) may be high per household.

The Agency does not believe a significant number of MSWLFs will experience corrective action costs due to the Court's decision for several reasons. First, it is unlikely that continued operation of these small landfills will result in ground-water contamination that requires corrective action. Because these landfills generally are located in dry areas receiving less than 25 inches of precipitation per year, very little leachate will be available for release to the ground water. Additionally, many of these dry/small landfills are situated above aquifers that typically are located several hundred feet below the ground surface, thereby creating a significant natural barrier to threat of contamination. Second, even if these landfill owners and operators detected contamination that would trigger corrective action, the MSWLF criteria currently allow the Director of a state with an EPA-approved permit program to waive corrective action under the circumstances outlined in 40 CFR 258.57(e). Third, of the small landfills that would have qualified for the small landfill exemption, it is difficult to estimate the number of these landfills that will continue to operate now that they are required to perform ground-water monitoring. Many will choose to close because of these new requirements.

Thus, given these factors, it is difficult to estimate the national cost impact of corrective action on these small landfills. The Agency believes that few would contaminate ground water and be required to perform these clean-up activities. However, if a landfill did trigger corrective action in a state that required clean-up, the Agency estimates that the average total annualized cost (over 20 years) of corrective action for that landfill would range from approximately $160,000 to $350,000 per year. These costs assume pump and treat clean-up technology and a 40-year post-closure care period.

Again, most of the cost assumptions in this estimate are based on unit cost assumptions from the Regulatory Impact Analysis for the Revised Subtitle D Criteria found in docket number F–91–CMLF–FFFFF.

The Agency believes that the final rule does not meet the definition of a major regulation. Thus, the Agency is not conducting a Regulatory Impact Analysis at this time. Today's final rule has been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

The estimates of potential total annualized costs for specific landfills are discussed above in Section V–A. However, not all landfills will experience these costs. Many landfills are located in states that already require ground-water monitoring and/or corrective action and thus there would be little incremental cost to these landfills due to the court decision. In addition, EPA believes there will be a reduction in small landfills over time as these landfills close and communities regionalize.

The amendments to 40 CFR part 258, except for the provision requiring dry/remote small landfills accepting less than 20 TPD to perform ground-water monitoring, have the general effect of reducing the requirements of the part 258 criteria, thereby imposing no additional economic impact to small entities.

The provision requiring dry/remote landfills accepting less than 20 TPD to perform ground-water monitoring could have a significant economic impact on some of these small entities. Agency data indicate that economic impact will vary with size, with larger landfills experiencing a relatively moderate cost increase per household when compared to smaller landfills where economies of scale are not available. Agency data indicate that the average annualized costs of ground-water monitoring for a MSWLF unit accepting approximately 10 TPD operating for 10 years would cost about $30 per household when annualized over 30 years ($65 per household when annualized over only the 10 year operating life). For landfills accepting less than one TPD (the Agency estimates that over one-half of all MSWLF units that qualify for the

[1] For example, a landfill which is expected to close in five years would distribute the costs across the five years plus the twenty years a new replacement landfill would operate. This ability to average costs of existing landfills and new replacement landfills was assumed in the RIA. Because the cost analysis in the RIA indicates that, except in the most remote or unaccessible areas, costs per ton for using a larger regional landfill is less expensive than for small landfills, EPA assumed communities would use regional waste facilities upon closure of small landfills. Since requirements for large landfills are not being affected by today's very small landfill ground-water monitoring requirements, no costs of the replacement landfill are included in cost estimates presented today.

exemption are in this size category), the average annualized cost would be about $220 per household when annualized over 30 years ($450 per household if annualized over only the 10 year operating life).

The Agency believes that estimated costs of $220 per household for the very smallest communities are significant. In the RIA for the revised criteria, the Agency used a threshold of $100 per household to identify moderate impacts. For the RIA, the Agency also looked at a second threshold; the Agency considered incremental costs that were greater than one percent of median household income as being "significant." 1990 Census data indicates that median household income across the United States is $30,000. However, EPA recognizes that several communities have median household incomes below the national median. 1989 Census data indicate that 13.1 percent of all persons live below poverty level. Poverty level for a three person household is defined as $9,900 income per year. In communities where household incomes are below the national median, a $100 or higher cost per household could be close to one percent of household income and thus have a significant impact. Again, cost figures presented here are rough estimates using national unit costs; labor and equipment costs will vary per site and may be more expensive in rural, remote areas of the country. Also, the Agency assumed a specific ground-water monitoring system of 3 or 5 wells clusters depending on the size of the landfill. To the extent that landfills use different systems, costs will vary.

The Agency does not have a precise count of small landfills that will be affected by this rule. According to the 1986 landfill survey, many of the small landfills had plans to close by 1995. Others have closed as communities participate in regionalized waste management. Therefore, while EPA estimates, according to information from the 1986 survey, that there may be approximately 750 landfills that could be affected by today's rule, it is unclear how many actually are in this universe today.

While the Agency believes that the costs described above may have substantial impacts on some of the very smallest communities, the court decision leaves the Agency no choice but to promulgate these changes to ground-water monitoring requirements for dry/small landfills. However, as mentioned earlier, the Agency continues to solicit information on alternative ground-water monitoring procedures that could accommodate the practicable capability of small landfills through consideration of size, location, and climate, while ensuring that the program is adequate to detect contamination. It is the Agency's goal to identify alternative monitoring methods that would reduce the cost impacts described above.

C. Paperwork Reduction Act

The Agency has determined that there are no new reporting, notification, or recordkeeping provisions associated with today's final rule.

List of Subjects in 40 CFR Part 258

Corrective action, Ground-water monitoring, Household hazardous waste, Liner requirements, Liquids in landfills, State/Tribal permit program approval and adequacy, Security measures, Small quantity generators, Waste disposal, Water pollution control.

Dated: September 27, 1993.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority citation for part 258 is revised to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a), 6944(a) and 6949(c); 33 U.S.C. 1345 (d) and (e).

2. Section 258.1 is amended by revising paragraphs (d), (e), (f)(1) introductory text, (f)(3), and (j) to read as follows:

§ 258.1 Purpose, scope, and applicability.

* * * * *

(d)(1) MSWLF units that meet the conditions of 258.1(e)(2) and receive waste after October 9, 1991 but stop receiving waste before April 9, 1994, are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed by October 9, 1994. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1994 will be subject to all the requirements of this part 258, unless otherwise specified.

(2) MSWLF units that meet the conditions of § 258.1(e)(3) and receive waste after October 9, 1991 but stop receiving waste before the date designated by the state pursuant to 258.1(e)(3), are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed within one year after the date designated by the state pursuant to 258.1(e)(3). Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation within one year after the date designated by the state pursuant to 258.1(e)(3) will be subject to all the requirements of this part 258, unless otherwise specified.

(3) MSWLF units that meet the conditions of 258.1(f)(1) and receive waste after October 9, 1991 but stop receiving waste before October 9, 1995, are exempt from all the requirements of this part 258, except the final cover requirement specified in 258.60(a). The final cover must be installed by October 9, 1996. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1996 will be subject to all the requirements of this part 258, unless otherwise specified.

(4) MSWLF units that do not meet the conditions of 258.1 (e)(2), (e)(3), or (f) and receive waste after October 9, 1991 but stop receiving waste before October 9, 1993, are exempt from all the requirements this part 258, except the final cover requirement specified in 258.60(a). The final cover must be installed by October 9, 1994. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1994 will be subject to all the requirements of this part 258, unless otherwise specified.

(e)(1) The compliance date for all requirements of this part 258, unless otherwise specified, is October 9, 1993 for all MSWLF units that receive waste on or after October 9, 1993, except those units that qualify for an extension under (e)(2), (3), or (4) of this section.

(2) The compliance date for all requirements of this part 258, unless otherwise specified, is April 9, 1994 for an existing MSWLF unit or a lateral expansion of an existing MSWLF unit that meets the following conditions:

(i) The MSWLF unit disposed of 100 tons per day or less of solid waste during a representative period prior to October 9, 1993;

(ii) The unit does not dispose of more than an average of 100 TPD of solid waste each month between October 9, 1993 and April 9, 1994;

(iii) The MSWLF unit is located in a state that has submitted an application for permit program approval to EPA by October 9, 1993, is located in the state of Iowa, or is located on Indian Lands or Indian Country; and

(iv) The MSWLF unit is not on the National Priorities List (NPL) as found in Appendix B to 40 CFR part 300.

(3) The compliance date for all requirements of this part 258, unless otherwise specified, for an existing MSWLF unit or lateral expansion of an existing MSWLF unit receiving flood-related waste from federally-designated areas within the major disasters declared for the states of Iowa, Illinois, Minnesota, Wisconsin, Missouri, Nebraska, Kansas, North Dakota, and South Dakota by the President during the summer of 1993 pursuant to 42 U.S.C. 5121 *et seq.*, shall be designated by the state in which the MSWLF unit is located in accordance with the following:

(i) The MSWLF unit may continue to accept waste up to April 9, 1994 without being subject to part 258, if the state in which the MSWLF unit is located determines that the MSWLF unit is needed to receive flood-related waste from a federally-designated disaster area as specified in (e)(3) of this section.

(ii) The MSWLF unit that receives an extension under paragraph (e)(3)(i) of this section may continue to accept waste up to an additional six months beyond April 9, 1994 without being subject to part 258, if the state in which the MSWLF unit is located determines that the MSWLF unit is needed to receive flood-related waste from a federally-designated disaster area specified in (e)(3) of this section.

(iii) In no case shall a MSWLF unit receiving an extension under paragraph (e)(3) (i) or (ii) of this section accept waste beyond October 9, 1994 without being subject to part 258.

(4) The compliance date for all requirements of this part 258, unless otherwise specified, is October 9, 1995 for a MSWLF unit that meets the conditions for the exemption in paragraph (f)(1) of this section.

(f)(1) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that dispose of less than twenty (20) tons of municipal solid waste daily, based on an annual average, are exempt from subpart D of this part, so long as there is no evidence of ground-water contamination from the MSWLF unit, and the MSWLF unit serves:

* * * * *

(3) If the owner or operator of a new MSWLF unit, existing MSWLF unit, or lateral expansion has knowledge of ground-water contamination resulting from the unit that has asserted the exemption in paragraph (f)(1)(i) or (f)(1)(ii) of this section, the owner or operator must notify the state Director of such contamination and, thereafter, comply with subpart D of this part.

* * * * *

(j) Subpart G of this part is effective April 9, 1995, except for MSWLF units meeting the requirements of paragraph (f)(1) of this section, in which case the effective date of subpart G is October 9, 1995.

* * * * *

3. Section 258.2 is amended by revising the definitions of "Existing MSWLF unit" and "New MSWLF unit" and by adding definitions for "Indian lands" and "Indian tribe" to read as follows:

258.2 Definitions.

* * * * *

Existing MSWLF unit means any municipal solid waste landfill unit that is receiving solid waste as of the appropriate dates specified in § 258.1(e). Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.

* * * * *

Indian lands or *Indian country* means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of the State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

Indian Tribe or *Tribe* means any Indian tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers on Indian lands.

* * * * *

New MSWLF unit means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993, or prior to October 9, 1995 if the MSWLF unit meets the conditions of § 258.1(f)(1).

* * * * *

4. Section 258.50 is amended by revising paragraph (c) introductory text, by redesignating paragraphs (e), (f) and (g) as paragraphs (f), (g), and (h); and by adding paragraph (e) to read as follows:

258.50 Applicability.

* * * * *

(c) Owners and operators of MSWLF units, except those meeting the conditions of 258.1(f), must comply with the ground-water monitoring requirements of this part according to the following schedule unless an alternative schedule is specified under paragraph (d) of this section:

* * * * *

(e) Owners and operators of all MSWLF units that meet the conditions of 258.1(f)(1) must comply with the ground-water monitoring requirements of this part according to the following schedule:

(1) All MSWLF units less than two miles from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in 258.51 through 258.55 by October 9, 1995;

(2) All MSWLF units greater than two miles from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in 258.51 through 258.55 by October 9, 1996.

* * * * *

5. Section 258.70 is amended by revising paragraph (b) to read as follows:

§ 258.70 Applicability and effective date.

* * * * *

(b) The requirements of this section are effective April 9, 1995 except for MSWLF units meeting the conditions of 258.1(f)(1), in which case the effective date is October 9, 1995.

6. Section 258.74 is amended by revising paragraph (a)(5) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(a) * * *

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date the requirements of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of 258.58.

* * * * *

7. Section 258.74 is amended by revising the third sentence of paragraph (b)(1); by revising the second sentence of paragraph (c)(1); and by revising the second sentence of paragraph (d)(1) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(b) * * *

(1) * * * The bond must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

* * * * *

(c) * * *

(1) * * * The letter of credit must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

* * * * *

(d) * * *

(1) * * * The insurance must be effective before the initial receipt of waste or before the effective date of the requirements of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

* * * * *

[FR Doc. 93–24229 Filed 9–30–93; 8:45 am]
BILLING CODE 6560–50–P

federal register

Friday
October 1, 1993

Part VIII

Department of the Interior

Office of the Secretary

43 CFR Part 37
Cave Management; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 37

[WO-340-4333-02-24 1A; Circular No. 2651]

RIN 1004-AB59

Cave Management

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule implements the Federal Cave Resources Protection Act of 1988, which requires identification, protection, and maintenance, to the extent practical, of significant caves on lands administered by the Department of the Interior. The final rule establishes criteria to be considered in the identification of significant caves. It also integrates cave management into existing planning and management processes and protects cave resource information to prevent vandalism and disturbance of significant caves.

EFFECTIVE DATE: November 1, 1993.

ADDRESSES: Inquiries or suggestions should be sent to Director (270), Bureau of Land Management, room 302 L Street Bldg., 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Delmar Price, (303) 239-3739.

SUPPLEMENTARY INFORMATION: A proposed rule adding 43 CFR Part 37—Cave Management was published in the **Federal Register** on January 13, 1992 (57 FR 1344), for public review and comment. The proposed rule was designed to implement provisions in the Federal Cave Resources Protection Act of 1988 (the Act). There were 45 comments received on the proposed rule. All of the comments were from members of the caving community, except one from a trade association. All comments were carefully reviewed. Many of the respondents commented on issues and materials that are beyond the scope of the proposed rule. These comments will not be addressed in detail in this rule. Responses to the comments that are relevant to the subject matter covered in the proposed rule are summarized below. Many of the comments addressed issues in a similar way and are consolidated into comment categories for discussion purposes. Other comments are responded to individually. Following is a summary of comments and responses:

I. Significance

Most of the comments expressed concern that the regulations were too narrow and unnecessarily restricted the type and amount of caves that could be listed as significant. Several respondents pointed out that the term "significant caves" was included in the Act only to prevent Federal agencies from having to manage "every little hole in the ground" or to screen out caves containing "* * * no resources of any interest to anyone or any recognizable natural resource value." They expressed concern that the proposed rule instead focused the designation process on selecting only the "best of the best." This, they say, was not the intent of the Act.

After careful review of the comments, the Act, and the legislative history of the Act, it was concluded that there were several sections in the proposed rule that were overly restrictive, as pointed out in the comments. Appropriate changes were made as shown in the following paragraph by paragraph summary. It is clearly the intent of the Act that significant caves include all caves that have value for scientific, educational, and recreational purposes. There is nothing in the Act or the legislative history that indicates that a cave would have to have 'special value' to warrant designation. Although the word 'inventory' is not used in the Act, it is clear that the significant cave designation process is an inventory process for identifying caves that will require some form of management. The designation of a cave as significant does not require protection of the cave resources, according to Section 2(c) of the Act, which requires that "* * * Federal lands be managed in a manner which protects and maintains, to the extent practical, significant caves." Thus, the effect of the rule would not be analogous to the Endangered Species Act, and the presence of a significant cave would not automatically halt all other activities on the public lands involved. It is clear that Congress intended that the "extent practical" and the type and degree of protection be determined through the agency resource management planning processes (see Section 4(c)(1) of the Act), and not through the significant cave designation process. Accordingly, several changes were made in the final rule to reflect intent of the Act as discussed above and to respond to these public comments.

Paragraph 37.1—The word 'protecting' was changed to 'managing'. The word 'managing' more clearly defines the actions that will be taken to provide for the use and protection of caves and cave resources.

Paragraph 37.2—A sentence was added to clarify that the "type and amount of protection" will be determined through the agency resource management planning process and not through the significant cave designation process. This confirms that the significant cave designation process is an inventory process and does not, by virtue of the designation, imply specific protection commitments. This establishes the framework for broadening the criteria in the regulation to ensure that all caves that have value for scientific, educational, and recreational purposes will be designated as significant without arousing fear that designation of a cave as significant will preempt other land uses. Protective measures will not be taken without full public participation in the agency resource management planning processes.

Paragraph 37.4(f)—The word 'important' was removed from the definition of a 'significant cave' because it implies that a cave would have to be special to qualify for designation as a significant cave.

Paragraph 37.11(b)—The phrase "* * * and other affected resources * * *" was removed because there is no impact on other resources as a result of listing significant caves, and other resources therefore should not be a factor in the evaluation process.

Paragraph 37.11(c)—The phrase "* * * which are deemed by the authorized officer to be unusual, significant, or otherwise meriting special management" was removed because it implies that a cave would have to have special value to qualify for designation. This change was recommended by most of the comments.

Paragraph 37.11(c)(1), (3), (4), and (5)—Restrictive wording was removed or relaxed to broaden the criteria, as suggested by several comments, as follows:

(1) Biota—'cave dependent' is changed to 'seasonal or yearlong'; the phrase "* * * occur in large numbers or variety.* * *" was removed;

(2) Cultural—the definition is broadened to include traditional values;

(3) Geologic/Mineralogic/Paleontologic—

(i) In this paragraph, the word 'outstanding' is changed to 'that exhibit interesting formation processes.'

(iii) In this paragraph, the word 'important' is changed to 'useful educational and'

(4) Hydrologic—the word 'features' is amended to 'resources' because it is more descriptive;

(5) Recreational—the phrase 'by virtue of challenge' deleted because it can be interpreted too narrowly.

Paragraph 37.11(d) and (f)—Paragraph (d) was combined with paragraph (f) to form a new paragraph (f). Several of the respondents interpreted the language in proposed paragraph (f) to mean that the authorized officer would do the evaluation. The new language more clearly defines the role of the authorized officer as a decision maker. The new language also clearly states that a cave that meets one or more of the criteria will be listed as a significant cave. Many of the comments recommended this change.

New Paragraph 37.11(e)—This is a new paragraph that was added in response to several suggestions that other Department of the Interior agencies should streamline their listing process by following the lead taken by the National Park Service (see paragraph 37.11(d)). This new paragraph requires that when caves are wholly or in part the reason for designating special management areas, such as Areas of Critical Environmental Concern, all caves within the area shall be determined to be significant. In such areas, cave resources are well documented and decisions have already been made through agency resource planning processes to manage and protect cave resources.

New Paragraph 37.11(h)—This paragraph was added in response to many comments generally asking for more cave protection and less exclusivity in the rule. It makes it clear that, if a cave is designated as significant by any Federal agency but extends into lands managed by another agency or bureau of the Department of the Interior, it shall be designated as significant throughout its extent.

II. Confidentiality

Most of the comments expressed concern that the confidentiality provisions in the proposed rule were too broad. They stated that it was the intent of the Act that the confidentiality provisions apply only to cave 'location' and not to other cave information. They were concerned that the government would, under the confidentiality provisions of the proposed rule, withhold information that is vital to persons in the caving community. They also expressed concern that information submitted in nominations that did not lead to designation as significant caves would be made available to individuals who may damage the cave resources. Several of the respondents expressed concern that the confidentiality provisions in the draft regulations would inhibit exchange of information between the caving community and the Federal agencies.

Response: Several changes were made to respond to the comments on confidentiality as follows:

Paragraph 37.3—The word 'nature' was removed to narrow the scope of the confidential information to 'location' as suggested by several of the respondents.

Paragraph 37.12—The word 'location' was added to the paragraph title to indicate that the focus is on protecting 'location type' information as recommended by many of the respondents.

Paragraph 37.12(a) was amended to restrict the confidential information protected under the regulation to "* * * information that could be used to determine the location of a significant cave or cave under consideration for designation * * * *". This restricts the information protected to 'cave location,' but defines location broadly enough so that other information could be withheld if, in the opinion of the authorized officer, it would reveal the location of a cave. For example, a cave name that indicates the general location of a cave could be withheld.

In reference to this paragraph, several respondents expressed concern that nomination materials submitted for caves not listed as significant would not be protected under the confidentiality provisions of the proposed rule. Under provisions in this paragraph as modified, locational information for all caves will be protected until the designation decision is made. This protection will continue for caves listed as significant. When a decision is made not to list a cave as significant, the information submitted concerning that cave will be returned to the persons or organizations that submitted the nomination. Consequently, the responsibility for maintaining the confidentiality of unlisted caves will rest with the originator of the information and not with the Federal agency.

III. Interagency Cooperation and Public Participation

Many of the respondents expressed concern that the proposed rule did not adequately address the provisions in the Act to promote cooperation and exchange of information between governmental authorities and those who utilize caves located on Federal lands for scientific, educational, and recreational purposes. Several respondents expressed concern that people in the caving community would not be given adequate opportunity to participate in the designation and planning processes. One of the major concerns was that the perceived intent of the proposed rule to limit designations and to deny the caving community access to cave information would discourage information exchange between the caving community and the Federal agencies.

Response: The proposed rule provided for full participation of the public in the nomination of caves to be considered for listing as significant caves. It also provided for "* * * consultation with individuals and organizations interested in the management and use of cave resources * * *" during the evaluation process. In addition, several changes were made in the final rule to encourage greater cooperation and exchange of information between the public and the Federal agencies. As discussed above in sections I. and II., numerous changes have been made to modify language that would unnecessarily limit the number of caves listed as significant, and the confidentiality provisions have been changed to limit the protected information to "cave location." These changes, along with the specific changes listed below, should encourage greater cooperation and exchange of information between the caving community and Federal agencies.

Paragraph 37.2 was expanded to include a provision for public participation in the planning process for significant caves.

Paragraph 37.5—A statement was included to provide for public input into the reporting burden requirements of the regulation.

Paragraph 37.11(a) was changed to make it clear that "* * * those who utilize caves for scientific, educational, and recreational purposes * * *" may nominate caves for designation as significant caves.

IV. Scope of the Rule

Several of the respondents expressed concern that the proposed rule was too narrow in scope. They suggested that the rule be expanded to include provisions on restriction of use, volunteers, and advisory committees as provided in section 4(b) (2), (3), and (4) of the Act.

Response: The reasons for limiting the scope of the proposed rule were addressed in the preamble of the rule. These reasons are still valid. In summary, the provisions listed above were omitted from the draft regulation in the interest of minimizing duplication of regulations. All of the agencies in the Department of the

Interior have regulations governing the restriction of use, volunteers, and advisory committees. Each agency must review its own regulations and decide what, if any, changes must be made to accommodate the requirements in the Act.

V. Identity of Decisionmaker

Three of the respondents expressed concern about the capability of the authorized officer to make designation decisions. They also expressed concern that the word "any" in the definition of an authorized officer meant that anyone in the agency could be making designation and confidentiality decisions. One respondent questioned the need for having an authorized officer, noting that the Act required the Secretary to make the designation decision.

Response: It is common practice to delegate decisions on actions such as listing of significant caves and release of confidential information to line officers in the Field Offices of the various agencies of Interior. It would not be practical for the Secretary, or even Regional or State Directors of the various agencies, to make these kinds of decisions. The authorized officer, usually a line official such as an Area Manager, Park Superintendent, or Refuge Manager, will rely heavily on recommendations from knowledgeable persons in the public and informed staff members in making decisions. The word 'any' was changed to 'the' in the definition of "authorized officer" (see paragraph 37.4(a)) to remove the implication that 'anyone' can be an authorized officer.

VI. Significance Criteria

One respondent stated that the criteria for selection of significant caves is too broad and neglects to consider the impacts that such a designation would have on oil and gas production. The comment continued that the criteria must include economic impacts to mineral and natural resource development.

Response: The designation of a cave as significant does not preempt other multiple uses. As discussed in Section I, above, decisions on the type and degree of protection a cave will be given will be made through the agency's resource management planning process with full public participation.

VII. Appeal

Several respondents recommended that the proposed rule be revised to include provisions for appeal of the authorized officer's decisions.

Response: A decision to place a cave on the significant cave list is an inventory type decision (see Section I, above), and consequently is not an appealable decision. Likewise, it has been determined that it is not in the public interest to allow administrative appeals of decisions to reject a request for cave location information under the confidentiality provisions of the rule. New paragraphs 37.11(g) and 37.12(c) were added to reflect these conclusions. Also, the latter was added to be consistent with the Department of Agriculture regulations. A sentence was added to paragraph 37.11(a) to provide an opportunity to resubmit a previously rejected cave nomination providing that either new information or more documentation is available.

VIII. Responses to Paragraph-Specific Comments

Paragraph 37.4(b): Several respondents felt that the exclusion of 'vugs' as set forth in the "cave" definition could result in many caves not being designated as significant. In response to this comment the definition was amended to define more clearly what a cave is rather than what it is not. The word 'vug' and other words that described 'what a cave was not' were removed.

Other changes were made to clarify the definition. The word "individual" was changed to "person" to clarify that it has reference to a human being. The word "man-made" was changed to "excavated" to clarify the intent. The phrase "* * * or which is an integral part of the cave." was added to ensure that such features as air passages or openings which are too small for human entry are considered a part of the cave.

Paragraph 37.4(c): One respondent pointed out that the word "caver" was not used anywhere in the regulation, so that there was no need to retain the definition. This observation was correct and the definition was removed.

Paragraph 37.4(d): One respondent suggested that the word "naturally" be removed from the definition of cave resources because cave resources also include cultural materials. This removal was made.

Several respondents recommended that the "such as" list be consistent with the listing of resources in the criteria section (section 37.11(c)). This change was also made.

Paragraph 37.4(g): Several respondents suggested that the definition merely refer to the criteria in section 37.11(c) rather than list the criteria in the definition. This change was made.

One respondent proposed a new definition for "significant cave." This definition would have implied that specific management actions would have to be taken for significant caves. The Act does not require specific management actions to protect significant caves. Therefore, this proposal was not accepted.

Paragraph 37.4(h): Several respondents commented on the definition of a vug. Since the only reference to a vug was in the definition of a cave and this reference was removed, it is not necessary to retain the vug definition. It was removed.

New paragraph 37.5: This is a new paragraph that was added to comply with the requirements of the Paperwork Reduction Act and implementing regulations at 5 CFR 1320. It is not substantive; it merely codifies certain information about information to be collected under this rule and informs the public how comments on information collection may be submitted.

Paragraph 37.11: The heading of this paragraph was changed to conform with the title in the companion Department of Agriculture regulation.

Paragraph 37.11(a): As suggested in one comment, this provision was amended to make it clear that governmental agencies are eligible to nominate caves. Also, the term 'potentially significant' was removed, because any cave is eligible for nomination.

Several respondents commented on the need to use other media in addition to the **Federal Register** for the call for nominations. In response to these comments, the option was added to use other publications and media for public notices.

Several respondents expressed concern that they had no recourse if their cave nomination was not listed. A sentence was added at the end of this paragraph to provide opportunities to resubmit the nomination if better documentation or new information becomes available.

The phrase "* * * that could influence significance determinations * * *" was removed because it was not relevant.

Paragraph 37.11(b): Several respondents commented on the ambiguity between 'known' and 'nominated' caves. They also pointed out that it may be impossible to complete the nominations for all known caves during the initial phase. In response to these comments the sentence "All known and nominated caves on Federal lands will be evaluated during the initial listing process." was

removed. This eliminates the ambiguity referred to by the respondents and provides for flexibility in the implementation of the regulation. It is not essential that all known caves be evaluated in the initial analysis. Those that are missed in the initial evaluation will be picked up during the subsequent evaluation process.

One respondent suggested combining paragraphs 37.11(a) and (b). This would combine the nomination and evaluation process into one section. Since these are separate processes, it was decided to keep them separate.

A sentence was added at the end of paragraph (b) to specify that the nominations will be evaluated using the criteria in paragraph 37.11(c).

Paragraph 37.11(c): The words 'the Identification of' were deleted to make the title the same as the corresponding paragraph in the companion Department of Agriculture regulation.

Paragraph 37.11(c)(6): The word 'contemporary' was added to make it clear that evidence of the activities of historic or prehistoric humanity would not prevent a cave from being considered pristine.

Paragraphs 37.11(d) and (f): As mentioned previously, paragraphs (d) and (f) were combined into a new paragraph (f). The primary reason for making this change was to be consistent with the format in the companion Department of Agriculture regulation.

Several of the respondents requested documentation of the decision to list or not list a cave as significant. In response to this comment a sentence was added which requires a finding statement be signed and dated for every cave that is evaluated. A copy of this statement will be sent to the person or organization that submitted the nomination.

Paragraph 37.11(e): A title was added to this paragraph to make it consistent with the format in the other paragraphs in this part.

Paragraph 37.12(a): Most of the changes in this paragraph are discussed in Section II, above. Other changes were made to make the paragraph more understandable. A title was added to make this paragraph consistent with the format in other paragraphs in this part.

Paragraph 37.12(b): The changes in this paragraph were made to make it consistent with the language used in the Act and to make it clearer and more understandable.

Paragraph 37.12(b)(1): This paragraph was removed because a requirement equivalent to a "signed letter" (i.e., "written request") was added to the last sentence in paragraph 37.12(b) which introduces this paragraph. There is no need to repeat it in paragraph (1). Subsequent paragraphs are renumbered.

Paragraph 37.12(b)(4): The words 'A statement of' were added to clarify that a statement of purpose would be required.

Paragraph 37.12(b)(5): This paragraph was changed to make it clearer and easier to understand. The change also makes the paragraph identical to the same paragraph in the comparable Department of Agriculture regulation.

The principal author of this proposed rule is Delmar Price of the Colorado State Office, assisted by the staff of the BLM Division of Legislation and Regulatory Management, BLM.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the rule does not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is 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. The rule by itself will not have any effect on the economy, because it only establishes a system for identification of significant caves that will then be managed along with all of the other multiple uses of the public lands. Subsequent management decisions on identified caves on multiple use lands will include opportunity for public participation and consideration of economic effects. Management decisions on caves located within parks and other protected lands will not have any negative effect on industries that rely on raw materials from the land, and may have positive effects on the tourism and recreation industries. Such effects are not quantifiable, but are not likely to approach the $100 million threshold discussed above. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. To the extent that small entities are involved in cave-related activities, the rule should be an economic benefit in that it will lead to the protection of the resources in which they are interested. However, for the reasons stated above, the rule should not have any direct effect on small entities that use Federal land for other purposes.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule does not affect any property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirement(s) contained in part 37 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0165 (cave nominations) and 1004–0166 (confidential information).

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 43 CFR Part 37

Cave resources management, Fish and Wildlife Service, Indian Affairs Bureau, Land Management Bureau, National Park Service, Public lands, Reclamation Bureau, Recreation and recreation areas.

For the reasons stated in the preamble, and under the authorities stated below, Subtitle A of Title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: July 23, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

1. Part 37 is added to read as follows:

PART 37—CAVE MANAGEMENT

Subpart A—Cave Management—General

Sec.
37.1 Purpose.
37.2 Policy.
37.3 Authority.
37.4 Definitions.
37.5 Information collection.

Subpart B—Cave Designation

37.11 Nomination, evaluation, and designation of significant caves.
37.12 Confidentiality of cave location information.

Authority: 16 U.S.C. 4301–4309; 43 U.S.C. 1740.

Subpart A—Cave Management—General

§ 37.1 Purpose.

The purpose of this part is to provide the basis for identifying and managing significant caves on Federal lands administered by the Secretary of the Interior.

§ 37.2 Policy.

It is the policy of the Secretary that Federal lands be managed in a manner which, to the extent practical, protects and maintains significant caves and cave resources. The type and degree of protection will be determined through the agency resource management planning process with full public participation.

§ 37.3 Authority.

Section 4 of the Federal Cave Resources Protection Act of 1988 (102 Stat. 4546; 16 U.S.C. 4301) authorizes the Secretary to issue regulations providing for the identification of significant caves. Section 5 authorizes the Secretary to withhold information concerning the location of significant caves under certain circumstances.

§ 37.4 Definitions.

(a) *Authorized officer* means the agency employee delegated the authority to perform the duties described in this part.

(b) *Cave* means any naturally occurring void, cavity, recess, or system of interconnected passages beneath the surface of the earth or within a cliff or ledge, including any cave resource therein, and which is large enough to permit a person to enter, whether the entrance is excavated or naturally formed. Such term shall include any natural pit, sinkhole, or other feature that is an extension of a cave entrance or which is an integral part of the cave.

(c) *Cave resources* means any materials or substances occurring in caves on Federal lands, including, but not limited to, biotic, cultural, mineralogic, paleontologic, geologic, and hydrologic resources.

(d) *Federal lands*, as defined in the Federal Cave Resources Protection Act, means lands the fee title to which is owned by the United States and administered by the Secretary of the Interior.

(e) *Secretary* means the Secretary of the Interior.

(f) *Significant cave* means a cave located on Federal lands that has been determined to meet the criteria in § 37.11(c).

§ 37.5 Collection of information.

(a) The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0165 (cave nominations) and 1004–0166 (confidential information). The information provided for the cave nominations will be used to determine which caves will be listed as "significant" and the information in the requests to obtain confidential cave information will be used to decide whether to grant access to this information. Response to the call for cave nominations is voluntary. No action may be taken against a person for refusing to supply the information requested. Response to the information requirements for obtaining confidential cave information is required to obtain a benefit in accordance with Section 5 of the Federal Cave Resources Protection Act of 1988 (102 Stat. 4546; 16 U.S.C. 4301).

(b) The public reporting burden is estimated to average 3 hours per response for the cave nomination and one-half hour per response for the confidential cave information request. The estimated response time for both of the information burdens includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Bureau of Land Management Clearance Officer, WO–873, Mail Stop 401 LS, 1849 C Street NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project 1004–0165/6, Washington, D.C. 20503.

Subpart B—Cave Designation

§ 37.11 Nomination, evaluation, and designation of significant caves.

(a) *Nominations for initial and subsequent listings.* The authorized officer will give governmental agencies and the public, including those who utilize caves for scientific, educational, and recreational purposes, the opportunity to nominate potential significant caves. The authorized officer will give public notice, including a notice published in the **Federal Register**, calling for nominations for the initial listing, including procedures for preparing and submitting the nominations. Nominations for subsequent listings will be accepted from governmental agencies and the public by the agency that manages the land where the cave is located as new cave discoveries are made or as new information becomes available. Nominations not approved for designation during the listing process may be resubmitted if better documentation or new information becomes available.

(b) *Evaluation for initial and subsequent listings.* The evaluation of the nominations for significant caves will be carried out in consultation with individuals and organizations interested in the management and use of cave resources, within the limits imposed by the confidentiality provisions of § 37.12 of this part. Nominations will be evaluated using the criteria in § 37.11(c).

(c) *Criteria for significant caves.* A significant cave on Federal lands shall possess one or more of the following features, characteristics, or values.

(1) *Biota.* The cave provides seasonal or yearlong habitat for organisms or animals, or contains species or subspecies of flora or fauna that are native to caves, or are sensitive to disturbance, or are found on State or Federal sensitive, threatened, or endangered species lists.

(2) *Cultural.* The cave contains historic properties or archaeological resources (as described in 36 CFR 60.4 and 43 CFR 7.3) or other features that are included in or eligible for inclusion in the National Register of Historic Places because of their research importance for history or prehistory, historical associations, or other historical or traditional significance.

(3) *Geologic/Mineralogic/Paleontologic.* The cave possesses one or more of the following features:

(i) Geologic or mineralogic features that are fragile, or that exhibit interesting formation processes, or that are otherwise useful for study.

(ii) Deposits of sediments or features useful for evaluating past events.

(iii) Paleontologic resources with potential to contribute useful educational and scientific information.

(4) *Hydrologic.* The cave is a part of a hydrologic system or contains water

that is important to humans, biota, or development of cave resources.

(5) *Recreational.* The cave provides or could provide recreational opportunities or scenic values.

(6) *Educational or Scientific.* The cave offers opportunities for educational or scientific use; or, the cave is virtually in a pristine state, lacking evidence of contemporary human disturbance or impact; or, the length, volume, total depth, pit depth, height, or similar measurements are notable.

(d) *National Park Service policy.* The policy of the National Park Service, pursuant to its Organic Act of 1916 (16 U.S.C. 1, *et seq.*) and Management Policies (Chapter 4:20, Dec. 1988), is that all caves are afforded protection and will be managed in compliance with approved resource management plans. Accordingly, all caves on National Park Service-administered lands are deemed to fall within the definition of "significant cave."

(e) *Special management areas.* Within special management areas that are designated wholly or in part due to cave resources found therein, all caves within the so-designated special management area shall be determined to be significant.

(f) *Designation and documentation.* If the authorized officer determines that a cave nominated and evaluated under paragraphs (a) and (b) of this section meets one or more of the criteria in paragraph (c), the authorized officer will designate the cave as significant. The authorized officer will designate all caves identified in paragraphs (d) and (e) of this section to be significant. The authorized officer will notify the nominating party of the results of the evaluation and designation. Each agency Field Office will retain appropriate documentation for all significant caves located within its administrative boundaries. At a minimum, documentation shall include a statement of finding signed and dated by the authorized officer, and the information used to make the determination. This documentation will be retained as a permanent record in accordance with the confidentiality provision in § 37.12 of this part.

(g) *Decision final.* Decisions to designate or not designate a cave as significant are made at the sole discretion of the authorized officer and are not subject to further administrative review or appeal under 43 CFR part 4.

(h) If a cave is determined to be significant, its entire extent, including passages not mapped or discovered at the time of the determination, is deemed significant. This includes caves that extend from lands managed by any Federal agency into lands managed by one or more other bureaus or agencies of the Department of the Interior, as well as caves initially believed to be separate for which interconnecting passages are discovered after significance is determined.

§ 37.12 Confidentiality of cave location information.

(a) *Information disclosure.* No Department of the Interior employee shall disclose information that could be used to determine the location of any significant cave or cave under consideration for determination, unless the authorized officer determines that disclosure will further the purposes of the Act and will not create a substantial risk to cave resources of harm, theft, or destruction.

(b) *Requesting confidential information.* Notwithstanding paragraph (a) of this section, the authorized officer may make confidential cave information available to a Federal or State governmental agency, bona fide educational or research institute, or individual or organization assisting the land managing agency with cave management activities. To request confidential cave information, such entities shall make a written request to the authorized officer that includes the following:

(1) Name, address, and telephone number of the individual responsible for the security of the information received.

(2) A legal description of the area for which the information is sought.

(3) A statement of the purpose for which the information is sought, and

(4) Written assurances that the requesting party will maintain the confidentiality of the information and protect the cave and its resources.

(c) *Decision final.* Decisions to permit or deny access to confidential cave information are made at the sole discretion of the authorized officer and are not subject to further administrative review or appeal under 5 U.S.C. 552 or 43 CFR parts 2 or 4.

[FR Doc. 93-24265 Filed 9-30-93; 8:45 am]
BILLING CODE 4310-84-P

federal register

Friday
October 1, 1993

Part IX

The President

Proclamation 6598—Death of General James H. Doolittle

Proclamation 6599—To Amend the Generalized System of Preferences

Notice of September 30—Continuation of Haitian Emergency

Federal Register
Vol. 58, No. 189
Friday, October 1, 1993

Presidential Documents

Title 3—

The President

Proclamation 6598 of September 30, 1993

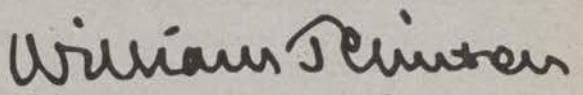
Death of General James H. Doolittle

By the President of the United States of America

A Proclamation

As a mark of respect for the memory of General James H. Doolittle, one of our Nation's foremost military heroes, I hereby order, by the authority vested in me as President of the United States of America by section 175 of title 36 of the United States Code, that on Friday, October 1, 1993, the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions. I also direct that the flag shall be flown at half-staff on the same day at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

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



[FR Doc. 93-24403
Filed 9-30-93; 11:11 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6599 of September 30, 1993

To Amend the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501 and 502 of the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2461 and 2462), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Russia as a beneficiary developing country for purposes of the Generalized System of Preferences ("GSP").

2. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule ("HTS") the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 501 and 604 of the Trade Act, do proclaim that:

(1) General note 3(c)(ii)(A) to the HTS, listing those countries whose products are eligible for benefits of the GSP, is modified by inserting "Russia" in alphabetical order in the enumeration of independent countries.

(2) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(3) The modifications to the HTS made by paragraph (1) of this proclamation shall be effective with respect to articles that are: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the **Federal Register**.

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

William J. Clinton

[FR Doc. 93-24404
Filed 9-30-93; 11:12 am]
Billing code 3195-01-M

Editorial note: For the President's message to Congress on this policy, see issue 39 of the *Weekly Compilation of Presidential Documents.*

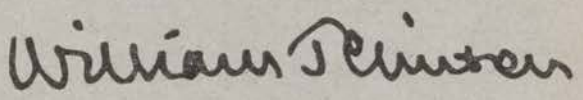
Presidential Documents

Notice of September 30, 1993

Continuation of Haitian Emergency

On June 30, 1993, I issued Executive Order No. 12853, implementing United Nations Security Council Resolution 841 with respect to Haiti. That order required the blocking of Haitian nationals providing material assistance to the *de facto* regime in Haiti, and prohibited certain transactions with Haiti. These measures were imposed by United Nations member states to help ensure the return to power of the democratically elected Government in Haiti. Executive Order No. 12853 further implements action taken by President Bush in Executive Order No. 12775 of October 4, 1991, which declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the grave events that had occurred in the Republic of Haiti to disrupt the legitimate exercise of power by the democratically elected government of that country. On October 28, 1991, by Executive Order No. 12779, President Bush took additional measures by prohibiting, with certain exceptions, trade between the United States and Haiti.

In the last 2 months, substantial progress has been made toward the restoration of democracy in Haiti. President Aristide, the democratically elected head of the Government of Haiti, and Lieutenant General Raoul Cedras of the *de facto* regime in Haiti entered into the July 3, 1993 Agreement of Governors Island, setting forth conditions for the restoration of democracy in Haiti. Pursuant to that Agreement, the United Nations Security Council (United Nations Security Council Resolution 861 of August 27, 1993) and the Organization of American States (Secretary General's announcement of August 27, 1993) have called upon member states to suspend, but not to terminate, sanctions against Haiti. Accordingly, on August 31, 1993, the United States prospectively suspended trade and financial sanctions against Haiti, while keeping certain assets of the Government of Haiti blocked. Because not all conditions have been met for the full restoration of democracy in Haiti, the situation in Haiti continues to be of considerable concern to the United States. Accordingly, I am continuing the national emergency with respect to Haiti in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)). This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
September 30, 1993.

[FR Doc. 93–24405
Filed 9–30–93; 11:13 am]
Billing code 3195–01–P

Editorial note: For the President's message to the Congress on the extension of the state of emergency, see issue 39 of the *Weekly Compilation of Presidential Documents.*

Reader Aids

Federal Register

Vol. 58, No. 189

Friday, October 1, 1993

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447
Code of Federal Regulations	
Index, finding aids & general information	523–5227
Printing schedules	523–3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230
Presidential Documents	
Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230
The United States Government Manual	
General information	523–5230
Other Services	
Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, and Federal Register finding aids.	202–275–1538, or 275–0920

FEDERAL REGISTER PAGES AND DATES, OCTOBER

51211–51564.....1

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List September 27, 1993

CFR ISSUANCES 1993
January—July 1993 Editions and Projected October, 1993 Editions

This list sets out the CFR issuances for the January—July 1993 editions and projects the publication plans for the **October, 1993** quarter. A projected schedule that will include the **January, 1994** quarter will appear in the first **Federal Register** issue of January.

For pricing information on available 1992—1993 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1—16—January 1
Titles 17—27—April 1
Titles 28—41—July 1
Titles 42—50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1993 editions:

Title	
CFR Index	1–199
	200–End
1–2	
	10 Parts:
3 (Compilation)	0–50
	51–199
4	200–399
	400–499
5 Parts:	500–End
1–699	
700–1199	**11**
1200–End	
	12 Parts:
6 [Reserved]	1–199
	200–219
7 Parts:	220–299
0–26	300–499
27–45	500–599
46–51	600–End
52	
53–209	**13**
210–299	
300–399	**14 Parts:**
400–699	1–59
700–899	60–139
900–999	140–199
1000–1059	200–1199
1060–1119	1200–End
1120–1199	
1200–1499	**15 Parts:**
1500–1899	0–299
1900–1939	300–799
1940–1949	800–End
1950–1999	
2000–End	**16 Parts:**
	0–149
8	150–999
	1000–End
9 Parts:	

Titles revised as of April 1, 1993:

Title	
17 Parts:	
1–199	**23**
200–239 (Revised as of June 1, 1993)	**24 Parts:**
240–End (Revised as of June 1, 1993)	0–199
	200–499
18 Parts:	500–699
1–149	700–1699
150–279	1700–End
280–399	
400–End	**25**
	26 Parts:
19 Parts:	1 (§§ 1.0-1–1.60)
1–199	1 (§§ 1.61–1.169)
200–End	1 (§§ 1.170–1.300)
	1 (§§ 1.301–1.400)
20 Parts:	1 (§§ 1.401–1.500)
1–399	1 (§§ 1.501–1.640)
400–499	1 (§§ 1.641–1.850)
500–End	1 (§§ 1.851–1.907)
	1 (§§ 1.908–1.1000)
21 Parts:	1 (§§ 1.1001–1.1400)
1–99	1 (§ 1.1401–End)
100–169	2–29
170–199	30–39
200–299	40–49
300–499	50–299
500–599	300–499
600–799	500–599 (Cover only)
800–1299	600–End
1300–End	
	27 Parts:
22 Parts:	1–199
1–299	200–End (Cover only)
300–End	

Projected July 1, 1993 editions:

Title	
28 Parts:	125–199
1–42	200–End
43–End	
	34 Parts:
29 Parts:	1–299*
0–99	300–399
100–499	400–End
500–899	
900–1899	**35**
1900–1910 (§§ 1901.1–1910.999)	**36 Parts:**
1910 (§§ 1910.1000–End)*	1–199
1911–1925*	200–End
1926	
1927–End*	**37**
30 Parts:	**38 Parts:**
1–199	0–17
200–699	18–End
700–End	
	39
31 Parts:	
0–199	**40 Parts:**
200–End	1–51*
	52*
32 Parts:	53–59*
1–190	60*
191–399	61–80*
400–629	81–85*
630–699 (Cover only)	86–99*
700–799	100–149*
800–End	150–189*
	190–259*
33 Parts:	260–299*
1–124	300–399*

400–424*
425–699*
700–789*
790–End*

41 Parts:
Chs. 1–100
Ch. 101
Chs. 102–200 (Cover only)
Ch. 201–End

Projected October 1, 1993 editions:

Title

42 Parts:
1–399
400–429
430–End

43 Parts:
1–999
1000–3999
4000–End

44

45 Parts:
1–199
200–499
500–1199
1200–End

46 Parts:
1–40
41–69
70–89
90–139
140–155
156–165
166–199
200–499
500–End

47 Parts:
0–19
20–39
40–69
70–79
80–End

48 Parts:
Ch. 1 (1–51)
Ch. 1 (52–99)
Ch. 2 (201–251)
Ch. 2 (252–299)
Chs. 3–6
Chs. 7–14
Chs. 15–28
Ch. 29–End

49 Parts:
1–99
100–177
178–199
200–399
400–999
1000–1199
1200–End

50 Parts:
1–199
200–599
600–End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 1993

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
October 1	October 18	November 1	November 15	November 30	December 30
October 4	October 19	November 3	November 18	December 3	January 3
October 5	October 20	November 4	November 19	December 6	January 3
October 6	October 21	November 5	November 22	December 6	January 4
October 7	October 22	November 8	November 22	December 6	January 5
October 8	October 25	November 8	November 22	December 7	January 6
October 12	October 27	November 12	November 26	December 13	January 10
October 13	October 28	November 12	November 29	December 13	January 11
October 14	October 29	November 15	November 29	December 13	January 12
October 15	November 1	November 15	November 29	December 14	January 13
October 18	November 2	November 17	December 2	December 17	January 17
October 19	November 3	November 18	December 3	December 17	January 17
October 20	November 4	November 19	December 6	December 20	January 18
October 21	November 5	November 22	December 6	December 20	January 19
October 22	November 8	November 22	December 6	December 20	January 20
October 25	November 9	November 24	December 9	December 27	January 24
October 26	November 10	November 26	December 10	December 27	January 24
October 27	November 12	November 26	December 13	December 27	January 25
October 28	November 12	November 29	December 13	December 27	January 26
October 29	November 15	November 29	December 13	December 28	January 27

Order Now!

The United States Government Manual 1993/94

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$30.00 per copy



Superintendent of Documents **Publications** Order Form

Order Processing Code:
*6395

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2250

☐ **YES,** please send me _____ copies of the **The United States Government Manual, 1993/94** S/N 069–000–00053–3 at $30.00 ($37.50 foreign) each.

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

Please choose method of payment:

❑ Check payable to the Superintendent of Documents

❑ GPO Deposit Account ☐☐☐☐☐☐☐–☐

❑ VISA ❑ MasterCard Account

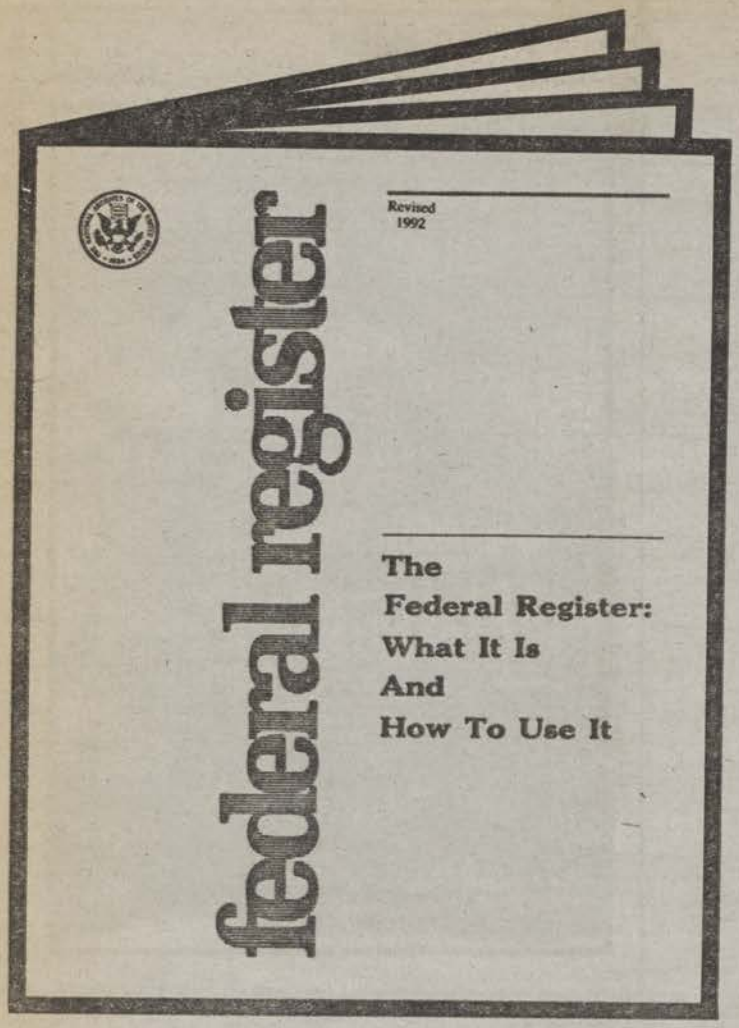
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing signature) (Rev 9/93)

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

Order processing code:
*6173

☐ **YES**, please send me the following:

Charge your order. It's Easy!
MasterCard VISA
To fax your orders (202)-512-2250

_____ copies of **The Federal Register-What it is and How To Use it,** at $7.00 per copy. Stock No. 069-000-00044-4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (Rev. 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954



Printed on recycled paper