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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.

MIAMI, FL

WHEN: April 18:
1st Session 9:00 am to 12 noon.
2nd Session 1:30 pm to 4:30 pm
WHERE: 51 Southwest First Avenue
Room 914
Miami, FL
RESERVATIONS: 1–800–347–1997

CHICAGO, IL

WHEN: April 25, at 9:00 am
WHERE: 219 S. Dearborn Street
Conference Room 1220
Chicago, IL
RESERVATIONS: 1–800–366–2998

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88-156]

9 CFR Part 11

Horse Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Horse Protection Regulations by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing all references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service (APHIS)." These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations. We are also replacing all references to "Area Veterinarian in Charge" with references to "Sector Supervisor" to reflect a change in responsibility within the APHIS organizational structure.

EFFECTIVE DATE: April 4, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, Room 565, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

SUPPLEMENTARY INFORMATION: The Horse Protection Act Regulations appear at part 11 of title 9 of the Code of Federal Regulations (9 CFR part 11). The regulations provide that the Deputy Administrator for Veterinary Services of the Animal and Plant Health Inspection Service (APHIS), is the official responsible for various decisions under the regulations. We are revising the regulations to indicate that the primary authority and responsibility for various decisions under the regulations belongs to the Administrator of APHIS. Accordingly, we are replacing all references to "Deputy Administrator" with the terms "Administrator," and are replacing all references to "Veterinary Services" with the term to "Animal and Plant Health Inspection Service (APHIS)." We also are making similar revisions in all other APHIS regulations which will be published in separate **Federal Register** documents.

With these changes, the terms "Deputy Administrator," "Veterinary Services," "Veterinary Services representative," and "Veterinary Services Show Veterinarian" will no longer be used in the regulations. Therefore, we are deleting the definitions of these terms, and are adding definitions of the terms, "Animal and Plant Health Inspection Service," "APHIS representative," and "APHIS Show Veterinarian." We are also revising the definition of "Administrator" to make it consistent with the definition of "Administrator" in other APHIS regulations.

Additionally, under the current APHIS organizational structure, certain responsibilities under the regulations that were previously assigned to Area Veterinarians in Charge are now assigned to Sector Supervisors. Therefore, we are revising the regulations to reflect that change in responsibility. With this change, the term "Area Veterinarian in Charge" will no longer appear in the text of the regulations. Therefore, we are deleting the definition of "Veterinarian in Charge," which was used to define the term "Area Veterinarian in Charge," and are adding a definition of "Sector Supervisor." We are also revising the address for requesting information from, or submitting information to, APHIS, to reflect the current office address.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made 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 12291. Finally, this action is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Humane animal handling, Soring of horses.

PART 11—HORSE PROTECTION REGULATIONS

Accordingly, we are amending 9 CFR part 11 as follows:

1. The authority citation for part 11 continues to read as follows:

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

2. In § 11.1, the definitions of "Deputy Administrator", "Veterinarian in Charge", "Veterinary Services", "Veterinary Services representative", and "Veterinary Services Show Veterinarian" are removed, and the definition of "Administrator" is revised, to read as follows:

§ 11.1 Definitions.

* * * * *

Administrator means the Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

* * * * *

3. In § 11.1, definitions of "Animal and Plant Health Inspection Service", "APHIS representative", "APHIS Show Veterinarian", and "Sector Supervisor" are added, in alphabetical order, to read as follows:

§ 11.1 Definitions.

* * * * *

Animal and Plant Health Inspection Service (APHIS) means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS representative means any employee of APHIS, or any officer or employee of any State agency who is authorized by the Administrator to perform inspections or any other functions authorized by the Act, including the inspection of the records of

any horse show, horse exhibition, horse sale or horse auction.

APHIS Show Veterinarian means the APHIS Doctor of Veterinary Medicine responsible for the immediate supervision and conduct of the Department's activities under the Act at any horse show, horse exhibition, horse sale or horse auction.

* * * * *

Sector Supervisor means the APHIS veterinarian who is assigned by the Administrator to supervise and perform official duties of APHIS under the Act in a specified State or States.[1]

* * * * *

§ 11.4 [Amended]

4. In § 11.4, remove the words "a Veterinary Services" and add, in their place, the words "an APHIS" in the following places: paragraph (a), third sentence; paragraphs (b); (c), first and second sentences; (d), the introductory text, first and third sentences; (d)(2); (d)(3); (e)(1); (e)(2), first sentence; (f); (g); and (h), the introductory text.

§ 11.7 [Amended]

5. In § 11.7(b), footnote 6 is revised to read as follows:

[6]Administrator, c/o Regulatory Enforcement and Animal Care, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

§ 11.24 [Amended]

6. In § 11.24, paragraphs (a) and (b), remove the words "Area Veterinarian in Charge", and add, in their place, the words "Sector Supervisor".

§§ 11.4, 11.5, 11.6, 11.20, 11.21, 11.22, 11.23, and 11.40 [Amended]

7. In addition to the amendments set forth above, in 9 CFR part 11, remove the words "Veterinary Services" and add, in their place, the word "APHIS" in the following places:

(a) Section 11.4, paragraphs (a), twice in the first sentence and once in the third sentence; (b) twice; (c), first sentence; (d), the introductory text, second sentence; (e), the introductory text; (e)(2), first and second sentences; (f) first sentence; (g); (h)(1) three places; (h)(2); (h)(3); and (i);

(b) Sections 11.5 (a)(1); (a)(2); (b)(1); and (b)(2);

(c) Section 11.6, the introductory text, twice in the first sentence and once in the second sentence; paragraphs (a); (b); (c) twice; and (d);

(d) Section 11.20(b)(1), first sentence;

(e) Section 11.21(b);

(f) Section 11.22(c);

(g) Section 11.23(a) in the first and second sentences; and (b) in the first and third sentences; and

(h) Section 11.40(a), the introductory text.

§§ 11.7, and 11.22 [Amended]

8. In addition to the amendments set forth above, in 9 CFR part 11, remove the word "Deputy" in the following places:

(a) Section 11.7(b), the introductory text; paragraphs (b)(2)(i); (b)(2)(ii); (b)(2)(iii); (b)(2)(iv) the third and fourth sentences; paragraph (c)(2); (f)(1) twice in the third sentence and once in the fourth sentence; and (g); and

(b) Section 11.22(d).

Done in Washington, DC, this 29th day of March 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-7930 Filed 4-3-91; 8:45 am]

BILLING CODE 3410-34-M

[1] Information as to the name and address of the Sector Supervisor for the State or States concerned can be obtained by writing to the Administrator, c/o Regulatory Enforcement and Animal Care, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

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9 CFR Part 78

[Docket No. 91-041]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Oklahoma from Class B to Class A. We have determined that Oklahoma now meets the standards for Class A status. This action relieves certain restrictions on the interstate movement of cattle from Oklahoma.

DATES: Interim rule effective March 29, 1991. Consideration will be given only to comments received on or before June 3, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 91-041. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6188.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella.*

The brucellosis regulations contained in 9 CFR part 78 (referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail maintaining (1) a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughter establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection—including herds adjacent to infected herds and herds from which infected animals have been sold or received, and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) minimum procedural standards for administering the program.

Before the publication of this interim rule, Oklahoma was classified as a Class B State because of its herd infection rate and its MCI reactor prevalence rate. However, after reviewing its brucellosis program records, we have concluded that the State of Oklahoma meets the standards for Class A status.

To attain and maintain Class A status, a State or area must (1) not exceed a cattle herd infection rate, due to field strain *Brucella abortus*, of 0.25 percent or 2.5 herds per 1,000 based on the number of reactors found within the State or area during any 12 consecutive months, except in States with 10,000 or fewer herds; (2) maintain a 12 consecutive months MCI reactor prevalence rate not to exceed one reactor per 1,000 cattle tested (0.10 percent); and (3) have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

Therefore, we are removing Oklahoma from the list of Class B States in § 78.41(c) and adding it to the list of Class A States in § 78.41(b). This action relieves certain restrictions on moving cattle interstate from Oklahoma.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause to publish this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Oklahoma.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

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

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Oklahoma from Class B to Class A reduces certain testing and other requirements governing the interstate movement of cattle from Oklahoma. However, cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The principal group affected would be the owners of noncertified herds in Oklahoma not known to be affected with brucellosis who seek to sell cattle.

There are an estimated 62,000 herds in Oklahoma that could potentially be affected by this rule change. We estimate that 99 percent of these herds are owned by small entities. During fiscal year 1990, Oklahoma tested 294,213 eligible cattle at livestock markets. We estimate that approximately 15 percent of this testing was done to qualify cattle for interstate movement for purposes other than slaughter. Testing costs approximately $3.50 per head. Since herd sizes vary, larger herds will accumulate more savings than smaller herds. Also, not all herd owners will choose to market their cattle in a way that accrues these costs savings. The overall effect of this rule on small entities should be to provide very small economic benefit.

Therefore, we believe that changing Oklahoma's brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small entities affected by this interim rule.

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

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111—114a–1, 114g, 115, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.41 [Amended]

2. Paragraph (b) of § 78.41 is amended by adding "Oklahoma," immediately after "New Mexico,".

3. Paragraph (c) of § 78.41 is amended by removing "Oklahoma,".

Done in Washington, DC, this 29th day of March 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–7931 Filed 4–3–91; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL–1]

Truth in Lending; Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation.

SUMMARY: The Board is publishing revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z and is a substitute for individual staff interpretations. The revisions address several issues, including renewals of home equity lines, credit card substitution, and renewable balloon payment mortgages.

DATES: Effective April 1, 1991, but compliance optional until October 1, 1991.

FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer and Community Affairs, at

(202) 452-3667 or (202) 452-2412: Jane Ahrens, Sharon Bowman, Michael Bylsma, Leonard Chanin, Adrienne Hurt, Kurt Schumacher, Mary Jane Seebach, John Wood. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: (1) *General.* The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) governs consumer credit transactions and is implemented by the Board's Regulation Z (12 CFR part 226). Effective October 13, 1981, an official staff commentary (TIL-1, Supp. I to 12 CFR part 226) was published to interpret the regulation. The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions and is updated periodically to address significant questions that arise. This update reflects material that was published for comment at 55 FR 49392 (November 28, 1990). Creditors are free to rely on the revised commentary as of April 1, 1991, although they need not follow the revisions until October 1, 1991. (2) *Revisions.* The following is a description of the revisions to the commentary:

Subpart A—General

Section 226.4 Finance Charge

4(a) Definition

In the proposal, comment 4(a)-2 would have been revised to say that a tax imposed on a creditor by a state is a finance charge if the creditor separately imposes the charge on the consumer in connection with a credit transaction (instead of absorbing the charge as a cost of doing business), even if the creditor is authorized by the state to pass the charge on to the consumer. A number of commenters opposed the proposed revision. Some commenters felt that the relationship between the proposed new language in comment 4(a)-2 and other comments dealing with the treatment of taxes was not clear. Others believed that the proposal characterized taxes as finance charges in inappropriate situations.

In response to comments, the position taken in the proposal has been changed; it is set forth as new comment 4(a)-6. New language in comment 4(a)-2 deals only with one situation in which a tax is not a finance charge, where the creditor absorbs the tax as a cost of doing business.

New comment 4(a)-6 differs from the proposal in several ways. First, the position taken in the proposal that a tax imposed solely on the creditor is a finance charge even if the state permits the creditor to pass the tax onto the consumer is changed. If applicable law is silent as to the permissibility of passing the tax on, the tax is a finance charge. If, however, applicable law directs or authorizes the pass-on, the tax is not a finance charge.

The new comment also clarifies that a tax does not constitute a finance charge in several other situations. For example, if the law imposes a tax on the parties jointly or on the credit transaction without indicating whether the creditor or the consumer is to pay the tax, the tax is not a finance charge. (This clarification harmonizes the new comment with comment 4(a)-3, addressing concerns expressed by some commenters.) Finally, the comment clarifies that if a tax is excluded from the finance charge by some other provision of Regulation Z or the commentary (for example, traditional sales taxes or mortgage recording taxes) the tax does not become a finance charge by virtue of this new comment.

Subpart B—Open-End Credit

Section 226.5a Credit and Charge Card Applications and Solicitations

5a(b) Required Disclosures

5a(b)(2) Fees for Issuance or Availability

Proposed comments 5a(b)(2)-1 and 5a(b)(2)-2 provided that certain membership fees and fees for enhancements should not be presented in the tabular format. Comment 5a(b)(2)-1 distinguishes between membership fees that result in the automatic issuance of card accounts as a benefit of membership, (which must be disclosed) and fees that merely result in eligibility for a card (which may but need not be disclosed). Commenters stated that when it is difficult to determine the nature of the membership fee, an issuer ensures compliance by being able to include the fee in the tabular format. Therefore, the proposed revision to comment 5a(b)(2)-1 is withdrawn. Because enhancement fees are not imposed for the issuance or availability of a card, comment 5a(b)(2)-2 is revised as proposed.

5a(c) Direct-mail Applications and Solicitations

Comment 5a(c)-1 is revised to correct a drafting error. Under § 226.5a(b)(1)(ii), for direct-mail applications and solicitations, an accurate variable annual percentage rate is one in effect within 60 days before mailing.

Comment 5a(c)-2 is revised to clarify the dual use of a single application form in direct mailings and public locations as "take-ones." The comment provides that if the issuer adheres to requirements relating to the accuracy of the credit terms in each case, creditors have the flexibility of including or omitting the disclosures referred to in § 226.5a(e)(1) (ii) and (iii) (the printing date, the statement that the credit terms are accurate as of that date and subject to change thereafter, the statement that the consumer should contact the issuer for updated information, and a toll-free telephone number or a mailing address).

5a(e) Applications and Solicitations Made Available to General Public

5a(e)(1) Disclosure of Required Credit Information

Comment 5a(e)(1)-2 is revised to make a technical correction. The comment clarifies that disclosures specified in § 226.5a(e)(1) (ii) and (iii) may appear either in or outside the table containing the credit term disclosures.

Section 226.5b Requirements for Home Equity Plans

Existing comments 5b-2 through 5b-5 are redesignated as comments 5b-3 through 5b-6, respectively. New comment 5b-2 is added to provide guidance on when changes to a home equity plan are governed by the change in terms rules in § 226.9(c), and when changes constitute a new plan requiring completely new disclosures. The comment has been changed from the proposal to clarify that § 226.9(c) applies when a plan is changed prior to or at maturity.

5b(d) Content of Disclosures

5b(d)(4) Possible Actions by Creditor

Paragraph 5b(d)(4)(iii)

A technical change is made to comment 5b(d)(4)(iii)-1 to provide guidance concerning the ability of a creditor to retain the right to freeze a line of credit if the maximum annual percentage rate is reached.

5b(d)(5) Payment Terms

Paragraph 5b(d)(5)(iii)

Comment 5b(d)(5)(iii)-4 is revised to clarify the disclosures required for reverse mortgages with shared appreciation features. While the proposal gave general guidance regarding reverse mortgages, the final comment provides greater specificity about the information that should be provided.

5b(d)(8) Fees Imposed by Third Parties to Open a Plan

Comment 5b(d)(8)–2 is revised to clarify that creditors need not include costs for property insurance in the total of third party fees if the creditor discloses that such insurance is required. The proposed amendment to require creditors to include another disclosure about property insurance in any itemization of third party fees provided in response to a consumer's request has not been adopted. Requiring creditors to repeat this information is unnecessary since consumers already will receive information under this section if property insurance is required.

5b(f) Limitations on Home Equity Plans

Paragraphs 5b(f)(3) (i) and (vi)

Comments 5b(f)(3)(i)–1 and 5b(f)(3)(vi)–1 are revised to provide additional guidance when a creditor provides in its initial agreement that further advances will be prohibited or the credit limit reduced when the maximum annual percentage rate is reached.

Section 226.6 Initial Disclosure Statement

6(e) Home Equity Plan Information

Comment 6(e)–4 is revised to clarify that when disclosures are the same for the draw and repayment phase, creditors need not explicitly state that the information applies to both phases, as long as this fact is clear.

Section 226.9 Subsequent Disclosure Requirements

9(c) Change in Terms

9(c)(1) Written Notice Required

Section 226.9(c)(1) requires creditors to provide a notice whenever any term required to be disclosed under § 226.6 is changed. Section 226.6(e)(7) requires creditors to give certain variable-rate and payment examples for home equity plans, unless the disclosures provided with the application were in a form the consumer could keep and included representative payment examples covering the payment option chosen by the consumer.

Comment 9(c)(1)–6 is revised to clarify that if the index is changed, the maximum annual percentage rate is increased, or a variable-rate feature is added to a fixed-rate plan, the creditor must give the maximum rate information required by § 226.5b(d)(12)(x) and the historical example required by § 226.5b(d)(12)(xi), unless these disclosures are unchanged from those given earlier. A parenthetical reference to § 226.30 is included to alert creditors to the fact that comment 30–11 limits a creditor's ability to increase the maximum rate on a home equity plan when renewing the plan. (Section 226.30 provides that the cap may be increased only when a plan is renewed at maturity—or before maturity, provided the new cap is effective only after the original maturity of the plan.) The comment also clarifies that if the minimum payment requirement is changed, the creditor must give the payment disclosures required by § 226.5b(d)(5)(iii) (and, in variable-rate plans, the disclosures required by § 226.5b (d)(12)(x) and (d)(12)(xi)) unless the disclosures given earlier contained representative examples covering the new minimum payment requirement. This comment only addresses changes specifically agreed to by the consumer. Therefore, as provided under § 226.5b(f)(3)(iv) (discussing beneficial changes), the requirements of the comment do not apply if a creditor offers the consumer the option of making lower payments.

Section 226.12 Special Credit Card Provisions

12(a) Issuance of Credit Cards

Card issuers are generally prohibited from issuing credit cards on an unsolicited basis but may do so as a renewal of, or substitute for, an accepted credit card. Comment 12(a)(2)–2 provides that card issuers may substitute one credit card for another even where the underlying credit card account relationship has changed in some way, including situations where credit features will be added or changed. This comment is revised to explain that a particular type of situation—that is, substituting a credit card on an existing account and at the same time adding another credit card account (such that the consumer is able to obtain future extensions of credit on both the original and the new account)—is not considered a permissible substitution for purposes of § 226.12(a). (There is, of course, no prohibition against doing this on a solicited basis.) An example is provided in the comment to illustrate the point. The language of the amendment differs from that of the proposal in order to allay a misunderstanding of some commenters. The interpretation does not preclude the unsolicited substitution of a card in connection with the conversion of a retail credit card program into a co-branded retail/bank card, nor does it preclude the unsolicited substitution of a card in connection with the transfer of future receivables to a successor card issuer as set forth in comment 12(a)(2)–3; in both of these cases only one account will be accessible for future extensions of credit.

Section 226.16 Advertising

16(d) Additional Requirements for Home Equity Plans

Comment 16(d)–4 is revised to clarify that a creditor may state, for example, "no closing costs" in cases where property insurance may be required as long as the creditor includes a disclosure that such insurance may be required.

Subpart C—Closed-End Credit

Section 226.17 General Disclosure Requirements

17(a) Form of Disclosures

Paragraph 17(a)(1)

Comment 17(a)(1)–5 is revised to indicate that a creditor may disclose in the segregated disclosures ("federal box") whether or not a secured credit transaction is assumable (even if the transaction is not a residential mortgage transaction).

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(1)

Comment 17(c)(1)–1 is revised to address questions raised by the addition of new comment 20(c)–3, which is added to reiterate that the general principle of § 226.17(c)(1), that disclosures reflect the terms of the legal obligation between the parties, also applies to the disclosures required under § 226.20(c) for certain variable-rate transactions. A few comments expressed concern that the existing language in comment 17(c)(1)–1, that disclosures should reflect the legal obligation "at the outset of the transactions," would not permit the disclosures under § 226.20(c) to accurately reflect subsequent modifications or amendments to the legal obligation. The revised comment, therefore, clarifies that the disclosures required under § 226.20(c) must be based on the legal obligation at the time disclosures are provided and "as of" the outset of the transaction in all other cases. This latter revision reflects the fact that early disclosures provided under subpart C are based on what the legal obligation is expected to be at consummation. A technical change also has been made to the first sentence of the comment (changing "should" to "shall") to provide for consistency with the language used in the regulation.

Comment 17(c)(1)–11 is revised to provide guidance on when a renewable

loan with a balloon payment (formerly referred to as a "renegotiable-rate mortgage") should be disclosed as a long-term variable-rate loan as opposed to a short-term balloon loan. The comment provides that disclosures must be based on the payment amortization (or the specified term of the obligation with renewals) when the creditor is either unconditionally obligated to renew the loan or obligated to renew subject only to conditions within the consumer's control. The comment provides examples of both conditions considered to be within the consumer's control and those outside the consumer's control. As a variety of these products is available on the market, no one product has been singled out as illustrative in the comment. The reference contained in the proposed comment to a creditor's obtaining a credit report is not included in the revised comment since it does not exemplify a condition on the obligation to renew a loan. The revised comment also provides that disclosures for a renewable balloon-payment instrument that will be renewed by a "refinancing" of the obligation (as that term is defined by § 226.20(a)) must be based on the term of the balloon-payment loan. In addition, the comment states that its provisions do not apply to construction loans subject to § 226.17(c)(6). Finally, the heading for comment 17(c)(1)–11 is revised to parallel that of comment 19(b)–5. The comment now being revised was originally published to address disclosure of a specific renegotiable-rate mortgage product which is no longer widely available. While the revisions have broadened the scope of the comment, renegotiable-rate mortgages are still included within the comment's coverage.

Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions

19(b) Certain Variable-Rate Transactions

Comment 19(b)–3 provides factors to determine whether or not a transaction involves an "intermediary agent or broker," which affects the timing rules for certain disclosures. The factors look to whether there is a relationship between the creditor and the broker in which the creditor has knowledge of and exercises control over the broker's actions. The third factor describing the amount of work completed by the broker is revised to recognize that a large amount of work performed by a broker may not necessarily evidence this sort of relationship. For example, for purposes of this factor, a broker's submission of a completed loan package to a creditor may not indicate a close relationship between the two if such a practice is customary in a particular area.

Comment 19(b)–5 is revised to parallel the revisions to comment 17(c)(1)–11 describing renewable balloon-payment mortgage instruments.

Section 226.20 Subsequent Disclosure Requirements

20(a) Refinancings

Comment 20(a)–3 is revised to reflect the name change for describing a renewable balloon-payment mortgage (formerly referred to as a "renegotiable-rate mortgage") in comments 17(c)(1)–11 and 19(b)–5.

20(c) Variable-Rate Adjustments

Comment 20(c)–3 is added to reiterate that the general requirement of § 226.17(c)(1), that disclosures reflect the terms of the legal obligation between the parties, applies to the disclosures required under § 226.20(c) for certain variable-rate transactions. This clarification arises from concerns raised recently that some creditors may not be adjusting their variable-rate loans consistent with the terms of the underlying legal obligation, resulting in inaccurate interest rate and payment adjustments. Under § 226.20(c), disclosures about the new interest rate and payment must be based on the index type and index value specified in the legal obligation.

Subpart D—Miscellaneous

Section 226.28 Effect on State Laws

28(a) Inconsistent Disclosure Requirements

Comment 28(a)–15 is added to reflect the Board's recent determination of the effect of the Truth in Lending Act and Regulation Z on certain provisions of the law of Wisconsin dealing with disclosures for home equity plans and the right of a creditor to accelerate the outstanding balance when a nonapplicant spouse terminates a plan. The notice of this determination was published at 55 FR 31815 (August 6, 1990).

Section 226.30 Limitation on Rates

Comment 30–1 is revised to reflect the name change for describing a renewable balloon-payment mortgage (formerly referred to as a "renegotiable-rate mortgage") in comments 17(c)(1)–11 and 19(b)–5.

List of Subjects in 12 CFR Part 226

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

(3) *Text of revisions.* Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board amends part 226 as follows:

PART 226—TRUTH IN LENDING

1. The authority citation for part 226 is revised to read as follows:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and 1637(c)(5); sec. 1204(c), Competitive Equality Banking Act, 12 U.S.C. 3806.

2. Supplement I to part 226 is amended as follows:

Subpart A—General

Section 226.4 Finance Charge

a. Comments to 4(a) are amended by adding a second bulleted paragraph after the first bulleted paragraph in comment 4(a)–2, and by adding new comment 4(a)–6 to read as follows:

4(a) Definition

* * * * *

2. *Costs of doing business.* * * *

• A tax imposed by a state or other governmental body on a creditor is not a finance charge if the creditor absorbs the tax as a cost of doing business and does not separately impose the tax on the consumer. (For additional discussion of the treatment of taxes, see other commentary to § 226.4(a).)

* * * * *

6. *Taxes.* A tax imposed by a state or other governmental body solely on a creditor is a finance charge if the creditor separately imposes the charge on the consumer. In contrast, a tax is not a finance charge (even if it is collected by the creditor) if applicable law imposes the tax:

• Solely on the consumer;

• On the creditor and the consumer jointly; or

• On the credit transaction, without indicating which party is liable for the tax.

A tax also is not a finance charge if applicable law imposes the tax solely on the creditor, but directs or authorizes the creditor to pass the tax on to the consumer. (For purposes of this section, if applicable law is silent as to such a pass-on, the law does not authorize the pass-on.) In addition, a tax is not a finance charge under this comment if it is excluded from the finance charge by any other provision of the regulation or commentary (for example, if it is imposed equally in cash and credit transactions.

Subpart B—Open-End Credit

Section 226.5a Credit and Charge Card Applications and Solicitations

b. Comment 5a(b)(2)–2 is revised to read as follows:

5a(b) Required Disclosures

* * * * *

5a(b)(2) Fees for issuance or availability

* * * * *

2. *Enhancements.* Fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services should not be disclosed in the table if the basic account may be opened without paying such fees.

* * * * *

c. Comments to 5a(c) are amended by revising the second sentence in comment 5a(c)–1, and by revising the third sentence and adding a sentence and parenthetical text after the third sentence in comment 5a(c)–2 to read as follows:

5a(c) Direct-Mail Applications and Solicitations

1. *Accuracy.* * * * (An accurate variable annual percentage rate is one in effect within 60 days before mailing.)

2. *Mailed publications.* * * * In addition, a card issuer may use a single application form as a "take-one" (in racks in public locations, for example) and for direct mailings, if the card issuer complies with the requirements of § 226.5a(c) even when the form is used as a "take-one"—that is, by presenting the required § 226.5a disclosures in a tabular format. When used in a direct mailing, the credit term disclosures must be accurate as of the mailing date whether or not the §§ 226.5a(e)(1) (ii) and (iii) disclosures are included; when used in a take-one, the disclosures must be accurate for as long as the take-one forms remain available to the public if the §§ 226.5a(e)(1) (ii) and (iii) disclosures are omitted. (If those disclosures are included in the take-one, the credit term disclosures need only be accurate as of the printing date.)

* * * * *

d. Comment 5a(e)(1)–2 is revised to read as follows:

5a(e) Applications and Solicitations Made Available to General Public

* * * * *

5a(e)(1) Disclosure of Required Credit Information

* * * * *

2. *Form of disclosures.* The disclosures specified in §§ 226.5a(e)(1) (ii) and (iii) may appear either in or outside the table containing the required credit disclosures.

Section 226.5b Requirements for Home Equity Plans

e. Comments 5b–2 through 5b–5 are redesignated as comments 5b–3 through 5b–6, respectively, and new comment 5b–2 is added to read as follows:

2. *Changes to home equity plans entered into on or after November 7, 1989.* Section 226.9(c) applies if, by written agreement under § 226.5b(f)(3)(iii), a creditor changes the terms of a home equity plan—entered into on or after November 7, 1989—at or before its scheduled expiration, for example, by renewing a plan on different terms. A new plan results, however, if the plan is renewed (with or without changes to the terms) after the scheduled expiration. The new plan is subject to all open-end credit rules, including §§ 226.5b, 226.6, and 226.15.

* * * * *

f. Comment 5b(d)(4)(iii)–1 is amended by revising the fourth sentence to read as follows:

5b(d) Content of disclosures

* * * * *

5b(d)(4) Possible Actions by Creditor

* * * * *

Paragraph 5b(d)(4)(iii)

1. *Disclosure of conditions.* * * * As an alternative to disclosing the conditions in this manner, the creditor may simply describe the conditions using the language in §§ 226.5b(f)(2), 226.5b(f)(3)(i) (regarding freezing the line when the maximum annual percentage rate is reached), and 226.5b(f)(3)(vi) or language that is substantially similar. * * *

* * * * *

g. Comment 5b(d)(5)(iii)–4 is amended by revising the fourth bulleted paragraph to read as follows:

5b(d)(5) Payment Terms

* * * * *

Paragraph 5b(d)(5)(iii)

* * * * *

4. *Reverse mortgages.* * * *

• Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. The creditor must disclose the appreciation feature, including describing how the creditor's share will be determined, any limitations, and when the feature may be exercised.

* * * * *

h. Comment 5b(d)(8)–2 is amended by revising the first sentence and by adding a new sentence after the fourth sentence to read as follows:

5b(d)(8) Fees Imposed by Third Parties to Open a Plan

* * * * *

2. *Itemization of third-party fees.* In all cases creditors must state the total of third-party fees as a single dollar amount or a range except that the total need not include costs for property insurance if the creditor discloses that such insurance is required. * * * Any itemization provided upon the consumer's request need not include a disclosure about property insurance.

* * * * *

i. Comment 5b(f)(3)(i)–1 is amended by revising the first sentence and by adding a new sentence after the first sentence to read as follows:

5b(f) Limitations on Home Equity Plans

* * * * *

Paragraph 5b(f)(3)(i)

1. *Changes provided for in agreement.* A creditor may provide in the initial agreement that further advances will be prohibited or the credit line reduced during any period in which the maximum annual percentage rate is reached. A creditor also may provide for other specific changes to take place upon the occurrence of specific events. * * *

* * * * *

j. Comment 5b(f)(3)(vi)–1 is amended by revising the first sentence and by adding a new sentence after the first sentence to read as follows:

Paragraph 5b(f)(3)(vi)

1. *Suspension of credit privileges or reduction of credit limit.* A creditor may prohibit additional extensions of credit or reduce the credit limit in the circumstances specified in this section of the regulation. In addition, as discussed under § 226.5b(f)(3)(i), a creditor may contractually reserve the right to take such actions when the maximum annual percentage rate is reached. * * *

* * * * *

Section 226.6 Initial Disclosure Statement

k. Comment 6(e)–4 is amended by revising the first sentence read as follows:

6(e) Home Equity Plan Information

* * * * *

4. *Disclosures for the repayment period.* * * * To the extent the corresponding annual percentage rate, the information in footnote 12, and any other required disclosures are the same for the draw and repayment phase, the creditor need not repeat such information, as long as it is clear that the information applies to both phases.

* * * * *

Section 226.9 Subsequent Disclosure Requirements

l. Comment 9(c)(1)–6 is revised to read as follows:

9(c) Change in Terms

9(c)(1) Written Notice Required

* * * * *

6. *Changes to home equity plans entered into on or after November 7, 1989.* Section 226.9(c) applies when, by written agreement under § 226.5b(f)(3)(iii), a creditor changes the terms of home equity plan—entered into on or before November 7, 1989—at or before its scheduled expiration, for example, by renewing a plan on terms different from those of the original plan. In disclosing the change:

• If the index is changed, the maximum annual percentage rate is increased (to the limited extent permitted by § 226.30), or a variable-rate feature is added to a fixed-rate plan, the creditor must include the disclosures required by § 226.5b (d)(12)(x) and (d)(12)(xi), unless these disclosures are unchanged from those given earlier.

• If the minimum payment required is changed, the creditor must include the disclosures required by § 226.5(d)(5)(iii) (and, in variable-rate plans, the disclosures required by section 226.5b (d)(12)(x) and (d)(12)(xi)) unless the disclosures given earlier contained representative examples covering the new minimim payment

requirement. (See the commentary to § 2265b (d)(5)(iii), (d)(12)(xi) for a discussion of representative examples.)

When the terms are changed pursuant to a written agreement as described in § 2265b(f)(3)(iii), the advance-notice requirement does not apply.

Section 226.12 Special Credit Card Provisions

m. Comment 12(a)(2)–2 is amended by revising the third bulleted paragraph to read as follows:

12(a) Issuance of Credit Cards

* * * * *

Paragraph 12(a)(2)

* * * * *

2. *Substitution—examples.* * * *

• Changed the credit or other features available on the account. For example, the original card could be used to make purchases and obtain cash advances at teller windows. The substitute card might be usable, in addiiton, for obtaining cash advances through automated teller machines. (If the substitute card constitutes an access device, as defined in Regulation E, then the Regulation E issuance rules would have to be followed.) The "substitution" of one card with another on an unsolicited basis is not permissible, however, where in conjunction with the substitution an additional credit card account is opened and the consumer is able to make new purchases or advances under both the original and the new account with the new card. For example, if a retail card issuer replaces its credit card with a combined retailer/bank card, each of the creditors maintains a separate account, and both accounts can be accessed for new transactions by use of the new credit card, the card cannot be provided to a consumer without solicitation.

Section 226.16 Advertising

n. Comment 16(d)–4 is amended by adding two sentences after the second sentence to read as follows:

16(d) Additional Requirements for Home Equity Plans

* * * * *

4. *Misleading terms prohibited.* * * * In the case of property insurance, however, a creditor may state, for example, "no closing costs" even if property insurance may be required, as long as the creditor also provides a statement that such insurance may be required. (See the commentary to this section regarding fees to open a plan.)

* * * * *

Subpart C—Closed-End Credit

Section 226.17 General Disclosure Requirements

o. Comment 17(a)(1)–5 is revised by adding a bulleted paragraph after the thirteenth bulleted paragraph to read as follows:

17(a) Form of Disclosures

Paragraph 17(a)(1)

* * * * *

5. *Directly related.* * * *

• A statement whether or not a subsequent purchaser of the property securing an obligation may be permitted to assume the remaining obligation on its original terms.

* * * * *

p. Comment 17(c)(1)–1 is amended by revising the first sentence and adding a sentence after the first sentence to read as follows:

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(1)

1. *Legal obligation.* The disclosures shall reflect the credit terms to which the parties are legally bound as of the outset of the transaction. In the case of disclosures required under section 226.20(c), the disclosures shall reflect the credit terms to which the parties are legally bound when the disclosures are provided. * * *

* * * * *

q. Comment 17(c)(1)–11 is amended by revising the heading, the first sentence and the first bulleted paragraph to read as follows:

11. *Examples of variable-rate transaction.* Variable-rate transactions include:

• Renewable balloon-payment instruments where the creditor is both unconditionally obligated to renew the balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control) and has the option of increasing the interest rate at the time of renewal. Disclosures must be based on the payment amortization (unless the specified term of the obligation with renewals is shorter) and on the rate in effect at the time of consummation of the transaction. (Examples of conditions within a consumer's control include requirements that a consumer be current in payments or continue to reside in the mortgaged property. In contrast, setting a limit on the rate at which the creditor would be obligated to renew or reserving the right to change the credit standards at the time of renewal are examples of conditions outside a consumer's control.) If, however, a creditor is not obligated to renew as described above, disclosures must be based on the term of the balloon-payment loan. Disclosures also must be based on the term of the balloon-payment loan in balloon-payment instruments in which the legal obligation provides that the loan will be renewed by a "refinancing" of the obligation, as that term is defined by § 226.20(a). If it cannot be determined from the legal obligation that the loan will be renewed by a "refinancing," disclosures must be based either on the term of the balloon-payment loan or on the payment amortization, depending on whether the creditor is unconditionally obligated to renew the loan as described above. (This discussion does not apply to construction loans subject to § 226.17(c)(6).) * * *

* * * * *

Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions

r. Comment 19(b)–3 is amended by revising the third bulleted paragraph and the last paragraph to read as follows:

19(b) Certain Variable-Rate Transactions

* * * * *

3. *Intermediary agent or broker.* * * *

• The amount of work (such as document preparation) the creditor expects to be done by the broker on an application based on the creditor's prior dealings with the broker and on the creditor's requirements for accepting applications, taking into consideration the customary practice of brokers in a particular area. The more work that the creditor expects the broker to do on an application, in excess of what is usually expected of a broker in that area, the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor.

An example of an "intermediary agent or broker" is a broker who, customarily within a brief period of time after receiving an application, inquires about the credit terms of several creditors with whom the broker does business and submits the application to one of them. The broker is responsible for only a small percentage of the applications received by that creditor. During the time the broker has the application, it might request a credit report and an appraisal (or even prepare an entire loan package if customary in that particular area).

* * * * *

s. Comment 19(b)–5 is amended by revising the first bulleted paragraph to read as follows:

5. *Example of variable-rate transactions.* * * *

• Renewable balloon-payment instruments where the creditor is both unconditionally obligated to renew the balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control) and has the option of increasing the interest rate at the time of renewal. (See comment 17(c)(1)–11 for a discussion of conditions within a consumer's control in connection with renewable balloon-payment loans.) * * *

* * * * *

t. At the end of the comments to § 226.19, under the heading "References," at the end of the paragraph designated "1981 changes," the phrase "ection 226.20—Subsequent Disclosure Requirements" is removed, and a new heading "*Section 226.20 Subsequent Disclosure Requirements*" is added, directly below that paragraph.

Section 226.20 Subsequent Disclosure Requirements

u. Comment 20(a)–3 is amended by revising the second sentence to read as follows:

20(a) Refinancings

* * * * *

3. *Variable-rate.* * * * For example, a renewable balloon-payment mortgage that was disclosed as a variable-rate transaction is not subject to new disclosure requirements when the variable-rate feature is invoked.

* * *

* * * * *

20(c) Variable-Rate Adjustments

* * * * *

v. Comment 20(c)–3 is added to read as follows:

3. *Basis of disclosures.* The disclosures required under this section shall reflect the terms of the parties legal obligation, as required under § 226.17(c)(1).

Subpart D—Miscellaneous

Section 226.28 Effect on State Laws

w. Comment 28(a)–15 is added to read as follows:

28(a) Inconsistent Disclosure Requirements

* * * * *

15. *Preemption determination—Wisconsin.* Effective October 1, 1991, the Board has determined that the following provisions in the state law of Wisconsin are preempted by the federal law:

• Section 422.308(1)—the disclosure of the annual percentage rate in cases where the amount of the annual percentage rate disclosed to consumers under the state law differs from the amount that would be disclosed under federal law, since in those cases the state law requires the use of the same term as the federal law to represent a different amount then the federal law.

• Section 766.565(5)—the provision permitting a creditor to include in an open-end home equity agreement authorization to declare the account balance due and payable upon receiving notice of termination from a non-obligor spouse, since such provision is inconsistent with the purpose of the federal law.

* * * * *

Section 226.30 Limitation on Rates

x. Comment 30–1 is amended by revising the parenthetical text at the end of the fourth bulleted paragraph to read as follows:

1. *Scope of coverage.* * * * (Contrast with the renewable balloon-payment mortgage instrument described in comment 17(c)(1)–11.)

Board of Governors of the Federal Reserve System, March 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–7888 Filed 4–3–91; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. 90N–0149]

Administrative Practices and Procedures; Promulgation of Regulations for the Efficient Enforcement of Law

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulation governing notice-and-comment (informal) rulemaking by removing from the regulation the requirement that the agency issue interpretative rules and rules of agency practice and procedure by informal rulemaking. As amended, the regulation provides that informal rulemaking procedures be followed to the extent required by the Administrative Procedure Act.

DATES: The final rule is effective May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Spencer, Division of Regulations Policy (HFC–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 31, 1990 (55 FR 31080), FDA published a proposed rule to amend § 10.40(d) (21 CFR 10.40(d)) of its regulation governing informal rulemaking to remove the requirement that the agency issue interpretative rules and rules of agency practice and procedure by informal rulemaking. FDA explained that the amendment would conform the regulation's requirements to those of the Administrative Procedure Act (APA) (5 U.S.C. 553), and would make the regulation more consistent with the agency's original intent in promulgating it (55 FR 31080). FDA also explained that, given the extent to which courts have expanded the concept of "rule" in 5 U.S.C. 551(4) since 1977, when the agency promulgated § 10.40(d), it is not feasible for FDA to follow informal rulemaking procedures for all agency pronouncements that a court might find to be interpretative rules or rules of agency practice and procedure (55 FR 31080).

The proposal provided 60 days for interested persons to comment. FDA received four comments on the proposal. (A fifth comment, received more than 2 months after the close of the comment period, opposed the proposed revision to § 10.40(d) on grounds consistent with those advanced by timely comments.) The agency's summaries of and responses to the comments follows:

1. Three comments opposed any change in current § 10.40(d). One or more of these comments argued that any benefits of the proposed amendment would be outweighed by the costs of litigation over whether a given FDA rule is interpretative or legislative, and by the loss of public participation in agency decisions and actions, as a result of which opportunities for arbitrariness and irrationality are likely to increase.

FDA disagrees with these comments. The APA does not require that interpretative rules or rules of agency practice and procedure be issued by informal rulemaking, and FDA does not believe that it should limit its discretion by retaining § 1040(d) in its current form. Each year, the agency and its operating units issue hundreds, if not thousands, of pronouncements that are not intended by FDA to be rules at all, but that courts today might find to be interpretative rules or rules of agency practice or procedure. To operate efficiently and to provide guidance to the public and to agency employees, FDA needs to be able to issue such pronouncements without always having to proceed by informal rulemaking. That need should not go unmet because of the risk of litigation to which the comments referred.

Interested persons have numerous other vehicles under remaining FDA regulations for making their views heard concerning agency issuances. Where FDA chooses not to follow informal rulemaking procedures, several procedures may apply. Interested persons may petition FDA to take or refrain from taking administrative action under 21 CFR 10.25. Such persons may file citizen petitions under 21 CFR 10.30, meet and correspond with the agency under 21 CFR 10.65, or obtain internal review of decisions of FDA employees under 21 CFR 10.75. Also, if appropriate, they may petition for a stay under 21 CFR 10.35 or for reconsideration under 21 CFR 10.33. Thus, the public may still participate in FDA decisions and actions, and opportunities for arbitrary or irrational decisionmaking should not increase.

2. One comment recommended that FDA amend § 10.40 to require informal rulemaking procedures before promulgating an interpretative rule of general applicability or a statement of policy which is likely to have substantial impact on the public unless the agency finds that it is impracticable, unnecessary, or contrary to the public

interest to use such procedures. Another comment recommended a similar approach, if some narrowing of the scope of current § 10.40(d) is deemed necessary.

FDA disagrees with the recommendation, because the agency wishes to expand rather than limit its discretion not to use informal rulemaking procedures when issuing interpretative rules and rules of agency practice or procedure (and statements of policy). The "substantial impact" standard suggested by the comment would serve to invite even further litigation over virtually every agency decision to issue such rules (and statements) without engaging in informal rulemaking. Moreover, the courts have largely rejected that standard for determining whether a rule is subject to informal rulemaking, see, e.g., *American Hospital Ass'n* v. *Bowen*, 834 F.2d 1037 (DC Cir. 1987); *Baylor University Medical Center* v. *Heckler*, 758 F.2d 1052 (5th Cir. 1985); *Alcaraz* v. *Block*, 746 F.2d 593 (9th Cir. 1984); *Levesque* v. *Block*, 723 F.2d 175 (1st Cir. 1983). FDA does not believe that it should adopt a standard that is no longer used by the courts. Finally, as noted above in the response to comment 1, interested persons may file with FDA petitions or other requests for various forms of relief from agency actions.

Although FDA is not amending § 10.40 as recommended by the comment, the agency is providing in § 10.40(d) of the final rule that, in its discretion, FDA may voluntarily follow informal rulemaking procedures for any agency pronouncement.

3. One comment recommended that FDA amend § 10.40 to require the agency to provide an opportunity for the public to submit post-promulgation comments on interpretative rules or statements of policy that are not likely to have substantial impact on the public. The comment pointed out that § 10.40(e) provides for such an opportunity where a legislative rule is promulgated without prior notice and an opportunity to comment.

FDA believes that the requirement proposed by the comment is unnecessary. As discussed above, the public can always communicate in ways other than comments; interested persons may petition or otherwise make a request to FDA for various forms of relief from agency actions. In addition, the recommended limitation on the agency's discretion could require FDA to analyze and, inevitably, respond to comments on many matters of limited public interest. The burden of such requirements would exceed the benefits in most cases.

Therefore, effective May 6, 1991, FDA is amending its regulation governing notice-and-comment (informal) rulemaking in § 10.40 by revising paragraph (b) introductory text and paragraph (d).

Economic Impact

FDA has examined the regulatory impact of this final rule and has determined that the rule is not a major rule as defined in Executive Order 12291. The Agency also has determined that the rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (Pub. L. 96–354).

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 10

Administrative practice and procedure, News media.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 10 is amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b–263n, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. 551–558, 701–706; 28 U.S.C. 2112.

2. Section 10.40 is amended by revising the introductory text of paragraph (b) and paragraph (d) to read as follows:

§ 10.40 Promulgation of regulations for the efficient enforcement of the law.

* * * * *

(b) Except as provided in paragraph (e) of this section, each regulation must be the subject of a notice of proposed rulemaking published in the **Federal Register.**

* * * * *

(d) The provisions for notice and comment in paragraphs (b) and (c) of this section apply only to the extent required by the Administrative Procedure Act (5 U.S.C. 551, 552, and 553). As a matter of discretion, however, the Commissioner may voluntarily follow those provisions in circumstances in which they are not required by the Administrative Procedure Act.

* * * * *

Dated: March 14, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91–7899 Filed 4–3–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

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

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule amendment.

SUMMARY: The National Defense Authorization Act for Fiscal Year 1991 and the Defense Appropriations Act for Fiscal Year 1991 established change to the CHAMPUS mental health program which became effective February 15, 1991. On February 15, 1991 (56 FR 6268) the Department of Defense published the implementing changes. Last week with the passage of the Supplemental Authorization Act, has caused the relevant changes to be postponed. Therefore, the Department of Defense hereby removes the changes made by the interim final rule and restores the earlier version of those rules. A proposed rule regarding mental health program changes will be published as a later date.

EFFECTIVE DATE: February 15, 1991.

ADDRESSES: Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Initiatives Branch, Mental Health Unit, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: Mary K. Wert, OCHAMPUS, telephone (303) 361–8336.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, the interim rule published on February 15, 1991 (56 FR 6268) is amended as follows:

PART 199—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301, Pub. L. 101–165, section 9100.

§ 199.2 [Amended]

2. Section 199.2(b) is amended by removing the definition "psychiatric emergency".

3. Section 199.4 is amended by removing the heading of paragraph (a)(10)(i); redesignating the current test of paragraph (a)(10)(i) as (a)(10); removing paragraph (a)(10)(ii); removing paragraphs (b)(4) (vii) through (xi); revising the paragraph heading for paragraph (b)(5)(ix) and removing paragraph (b)(5)(x); by revising the heading paragraph (g)(72); by removing paragraph (g)(73); and redesignating paragraph (g)(74) as (g)(73) as follows:

§ 199.4 Basic program benefits.

* * * * *

(b) * * *

(5) * * *

(ix) *Inpatient mental health services.*

* * * * *

(g) * * *

(72) *Impatient mental health services.*

* * * * *

Dated: March 29, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–7934 Filed 4–3–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

32 CFR Part 626

Biological Defense Safety Program—AR 385–69

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army announces an amendment to 32 CFR part 626 previously published in the **Federal Register**, 56 FR 3186, on January 28, 1991. This amendment changes DA Pam 385–BIO previously cited in 56 FR 3186 to DA Pam 385–69. This change establishes DA Pamphlet 385–69, The Biological Defense Safety Program (Technical Safety Requirements) as an official numbered publication of the Department of the Army.

EFFECTIVE DATE: April 4, 1991.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. William Wortley, HQDA(DACS-SP), Pentagon, Washington, DC 20310–0200, (703) 695–7291.

SUPPLEMENTARY INFORMATION: This amendment is necessary to correct certain portions of 32 CFR part 626, published in the **Federal Register**, 55 FR 3886, January 28, 1991.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 626

Biological, Defense, Occupational safety and health, Safety.

Accordingly, 32 CFR part 626 is amended as follows:

PART 626—BIOLOGICAL DEFENSE SAFETY PROGRAM

1. The authority for part 626 is revised to read as follows:

Authority: 10 U.S.C. 131, 50 U.S.C. 1512, 1514, Pub. L. 101–510, National Defense Authorization Act for 1991.

2. Section 626.4 is amended by revising paragraphs (g)(3) and (g)(4) to read as follows:

§ 626.4 Responsibilities.

* * * * *

(g) * * *

(3) Exercise supervision of subordinate organizations to ensure that an effective safety program, which complies with this regulation, DA Pam 385–69 and AR 385–10 is implemented and maintained.

(4) Ensure that biological defense safety programs comply with the provisions of this regulation and DA Pam 385–69.

* * * * *

3. Section 626.7 is amended by revising paragraph (i)(1) to read as follows:

§ 626.7 Administrative and work practice controls.

* * * * *

(i) * * *

(1) The preferred methods of decontamination of etiologic agents are autoclaving or chemical inactivation with appropriate biocidal solutions (see chap. 5, DA Pam 385–69).

* * * * *

4. Section 626.8 is amended by revising paragraph (b) to read as follows:

§ 626.8 Etiologic agent containment.

* * * * *

(b) Before beginning any etiologic agent operation, a determination will be made that the hazards associated with the operation are under positive control as defined in the applicable SOP, and that the operation is in compliance with the criteria of this regulation and DA Pam 385–69.

5. Section 626.15 is amended by revising paragraph (b) to read as follows:

§ 626.15 General.

* * * * *

(b) Pre-award surveys and annual inspections of contractors performing work requiring BL–3 or BL–4 will be conducted by safety and health professionals trained in BDP operational safety requirements. Pre-awarded surveys and annual inspections of BL–2 and BL–2 contractors will be conducted by safety and health professionals or contracting agency representatives who are trained in biological safety inspection techniques. The Safety Inspection Checklist in DA Pam 385–69 will be used.

* * * * *

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91–7905 Filed 4–3–91; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–91–03]

Special Local Regulations: International America's Cup Class World Championships; San Diego Bay and Mission Bay, California

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for the International America's Cup Class (IACC) World Championships. This event will be held

April 29, 1991 through May 12, 1991 in the waters of the Pacific Ocean adjacent to San Diego Bay and Mission Bay. These regulations are needed to provide for the safety of life, property, and navigation on the navigable waters of the United States during the event.

EFFECTIVE DATE: These regulations become effective on April 29, 1991 and terminate on May 12, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant Edward Sinclair, Eleventh Coast Guard District Aids to Navigation and Waterways Management Branch, 400 Oceangate, Long Beach, CA 90822–5399, telephone (213) 499–5410.

SUPPLEMENTARY INFORMATION: 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. There was not sufficient time to publish proposed rules in advance to provide for a delayed effective date. Although this rule is published without prior notice, public comment is nevertheless desirable to ensure that the regulations are workable and reasonable. Further, it is anticipated that similar regulations will be adopted during other regattas such as the upcoming 1992 America's Cup. Accordingly, persons wishing to comment may do so by submitting written comments to Lieutenant Edward Sinclair, Eleventh Coast Guard District Aids to Navigation and Waterways Management Branch, 400 Oceangate, Long Beach, CA 90822–5399. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulations may be changed.

Drafting Information

The drafters of this notice are Lieutenant Edward Sinclair, Eleventh Coast Guard District Aids to Navigation and Waterways Management Branch, project officer, and Lieutenant Commander Allen Lotz, Eleventh Coast Guard District Legal Office, project attorney.

Discussion of Proposed Regulations

These regulations provide for safe navigation on the waters of San Diego Bay, Mission Bay, and the IACC race venue during the regatta. The anticipated volume of spectator and participant traffic associated with the races is such that special operating regulations are deemed necessary to protect the life and property of all involved. In the past, vessel traffic in San Diego Bay associated with major yacht races caused significant traffic congestion. These regulations are intended to control the traffic in the harbors and at the race venue to protect persons and property from hazards associated with the anticipated high traffic density. To do this, a channel within San Diego Bay, within certain hours, has been designated for the sole and required use of IACC vessels. This channel is adjacent to the dredged main ship channel and bounded by the shoreline of North Island. Within this channel, speed limits and operating requirements have been established for orderly passage to and from the IACC shore facilities and race venue. This channel will pass through the Security Zone listed in § 165.1105 of title 33 of the Code of Federal Regulations adjacent to naval piers J through P on the western shore of North Island. The Navy has been notified of this conflict and has authorized passage for IACC vessels during scheduled times discussed in the regulations, barring any unforeseen security requirements. As necessary, special modifications to the regulations concerning this restricted area will be made and announced in Broadcst Notice to Mariners.

Speed limits and operating requirements are also established for other vessel traffic operating within the harbors during times when most IACC and spectator vessels are expected to transit the harbors. Sailing by vessels in the harbors during these times will not be allowed except for motorsailing with only the main sail set. The regulations also provide that, if deemed necessary by the Coast Guard Patrol Commander, one-way traffic will be implemented to ensure the safety of navigation. Additionally, several non-anchorage areas are established for the period of these regulations to promote smooth traffic flow and ensure access to docks and piers.

Regulations for the race venue are included in these Special Local Regulations to minimuze navigational dangers and ensure the safety of vessels participating in and viewing the races.

All vessels operating within the regulated areas are subject to citation for failure to comply.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT policies and procedures (44 FR 11034; February 26, 1979). The Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information under the Paperwork Reduction Act and 5 CFR part 1320 has been approved by a blanket OMB approval for 33 CFR part 100. Approval number 2115–0017.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism 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, they will have no significant environmental impact and are categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

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

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. A temporary § 100.35–T1101 is added to read as follows:

§ 100.35–T1101 Regulated navigation area: San Diego Bay, Mission Bay and IACC race venue, California.

(a) *Regulated Area.* These regulations pertain to the navigable waters of San Diego Bay, Mission Bay, and the International America's Cup Class (IACC) race venue. Within San Diego Bay there are several areas with specific regulations. The regulated areas are defined by the following:

(1) *San Diego Bay.* The water area seaward of the San Diego-Coronado Bay Bridge to the COLREGS Demarcation Line, less, Shelter Island Yacht Basin, Commercial Basin, West and East Basin, and Inter-Continental Marina.

(2) *America's Cup Channel.* The water area bounded by the following:

Zuniga Jetty Light "Z" (LLNR 1520)
32°–39'–59.5" N 117°–13'–36.2" W

32°–41'–44.1" N	117°–13'–51.6" W Buoy "14"
32°–42'–06.5" N	117°–13'–45.0" W Buoy "16"
32°–42'–22.5" N	117°–13'–34.2" W Buoy "16A"
32°–42'–47.4" N	117°–13'–02.0" W Buoy "18"
32°–43'–00.0" N	117°–12'–25.0" W Buoy "20"
32°–43'–03.0" N	117°–11'–39.8" W
32°–42'–31.4" N	117°–10'–43.5" W Buoy "22"
32°–41'–54.6" N	117°–09'–54.3" W Buoy "24"

Pier 18 San Diego-Coronado Bay Bridge
Pier 15 San Diego-Coronado Bay Bridge

32°–41'–40.5" N	117°–09'–49.0" W
32°–41'–52.3" N	117°–09'–56.5" W
32°–42'–21.6" N	117°–10'–48.0" W
32°–42'–44.5" N	117°–11'–14.0" W
32°–42'–52.0" N	117°–11'–24.5" W

thence along the shoreline to Zuniga Jetty Light "V" (LLNR 1540), and, along the submerged jetty to the point of origin.
Datum: NAD 83

(3) *San Diego Bay Non-Anchorage Areas.* The water areas bounded by the following:

(i) *NA–1*

32°–41'–17.8" N	117°–13'–56.7" W
32°–41'–17.4" N	117°–14'–01.0" W
32°–41'–32.0" N	117°–14'–03.8" W
32°–41'–34.5" N	117°–13'–58.5" W

Datum: NAD 83
(ii) *NA–2*

32°–41'–51.3" N	117°–13'–57.5" W
32°–41'–56.4" N	117°–14'–12.9" W
32°–42'–10.5" N	117°–14'–04.0" W

Entrance Range Front Light (LLNR 1500)

32°–42'–12.9" N	117°–13'–50.0" W

Datum: NAD 83
(iii) *NA–3*

32°–42'–41.0" N	117°–13'–22.0" W
32°–42'–52.8" N	117°–13'–24.6" W

Shelter Island Light "S" (LLNR 1640)

32°–42'–49.0" N	117°–13'–13.0" W

Datum: NAD 83
(iv) *NA–4*

32°–42'–55.2" N	117°–13'–04.0" W
32°–43'–05.7" N	117°–13'–04.0" W
32°–43'–19.7" N	117°–13'–00.0" W
32°–43'–24.5" N	117°–12'–51.8" W
32°–43'–08.1" N	117°–12'–58.0" W
32°–42'–58.1" N	117°–12'–54.1" W

Datum: NAD 83
(v) *NA–5*

32°–43'–00.8" N	117°–11'–23.0" W

south west corner of "B Street" Pier and the shoreline to the north west corner of "G Street" Pier to:

32°–42'–46.2" N	117°–10'–58.19" W

Datum: NAD 83

(4) *Mission Bay.* The water area seaward of the West Mission Bay Bridge to the COLREGS Demarcation Line, less, Mariners Basin and Quivira Basin.

(5) *IACC Race Venue.* The navigable waters of the United States seaward of the San Diego Bay COLREGS Demarcation Line between 32°–35.0' N and 32°–44.0' N, west of 117°–13'.3" W. (Datum: NAD 83)

(b) *Definitions*—(1) *Spectator vessels.* All vessels not registered with the race sponsor as participants or those not designated as official patrol vessels are considered spectator craft.

(2) *Participant.* Any vessel registered with a race syndicate, including tow boats, tenders and chase boats.

(3) *Official patrol vessels.* Official patrol vessels are all U.S. Coast Guard, U.S. Coast Guard Auxiliary, state and local law enforcement vessels and participant vessels so designated by the Patrol Commander and flying the official patrol vessel flag.

(4) *Regulatory Periods.* Specified times of the day when these special local regulations are in effect. The morning regulatory period is 10 a.m.—12 noon and the afternoon regulatory period is 3:30 p.m.—5:30 p.m. These regulatory periods are effective on the scheduled race days: April 29, 1991, May 1 and 2, 1991; May 4 through 8, 1991; and May 10 through 12, 1991; and as otherwise ordered by the Patrol Commander by Broadcast Notice to Mariners.

(5) *Patrol Commander.* A Patrol Commander has been designated by the Commander, Eleventh Coast Guard District. The Patrol Commander has the authority to control the movement of all vessels operating in the regulated areas and may suspend the regatta at any time it is deemed necessary for the protection of life and property.

(Note: The Patrol Commander may be contacted during the effective dates on VHF/FM Channel 16 (156.8 MHZ) or Channel 22 (157.1 MHZ) by calling "Coast Guard Patrol Commander" or "Coast Guard San Diego.")

(c) *Special Local Regulations*—(1) *San Diego Bay/America's Cup Channel.* (i) On the days these regulations are in effect and during the specified regulatory periods in sub-paragraph (b)(4), the following regulations will be enforced:

(A) All participants shall use the America's Cup Channel for entering and departing San Diego Bay and shall not exceed 10 knots.

(B) Participants shall not operate their vessels under sail within the America's Cup Channel or within San Diego Bay without the permission of the Patrol Commander. Participants will be under power or will be towed while transiting the America's Cup Channel.

(C) Spectator vessels shall not operate under sail alone within the regulated area and shall not exceed 10 knots. Motorsailing with only the main sail set is authorized. Tacking is not allowed.

(D) Spectator vessels shall not enter the America's Cup Channel during the regulatory period unless an emergency exists. Vessels shall immediately notify the Coast Guard on VHF/FM Channel 16 (156.8 MHZ) of any emergencies.

(E) Spectator vessels shall not loiter within the regulated area so as to disrupt the orderly flow of traffic.

(F) All vessels shall obey the orders given by official patrol vessels.

(G) The America's Cup Organizing Committee (ACOC) shall notify the Patrol Commander at least 24 hours in advance of any changes to the desired regulatory periods defined in sub-paragraph (b)(4) so proper notice can be given to the public via Broadcast Notice to Mariners.

(ii) Vessels shall not anchor in non-anchorage areas listed in paragraph (a)(3) during the effective dates of these special local regulations unless an emergency exists. Vessels will immediately notify the Coast Guard on VHF/FM Channel 16 (156.8 MHZ) of any emergencies.

(2) *Mission Bay.* On the days these regulations are in effect and during the specified regulatory periods in subparagraph (b)(4), the following regulations will be enforced:

(i) Vessels shall not exceed 5 mph.

(ii) Vessels shall not operate under sail alone within this regulated area. All vessels will be under power or will be towed while transiting this regulated area. Motorsailing with only the main sail set is authorized. Tacking is not allowed.

(iii) Vessels shall not anchor or loiter within this regulated area unless an emergency exists. Vessels shall immediately notify the Coast Guard on VHF/FM Channel 16 (156.8 MHZ) of any emergencies.

(iv) All vessels shall obey the orders given by official patrol vessels.

(v) The America's Cup Organizing Committee (ACOC) shall notify the Patrol Commander at least 24 hours in advance of any changes to the desired regulatory periods defined in subparagraph (b)(4) so proper notice can be given to the public via Broadcast Notice to Mariners.

(3) *IACC Race Venue.* On the days of racing stated in sub-paragraph (b)(4), the following regulations will be enforced at the venue from 10 a.m. to 5:30 p.m.:

(i) No spectator or participant vessel shall exceed 10 knots while proceeding to or from the race venue during the regulatory period.

(ii) Spectator vessels shall keep clear of any official patrol vessel or participant vessel and keep clear of the regulated area.

(iii) Spectator vessels shall remain outside the line of patrol vessels marking the course perimeter. Spectator vessels shall not enter the boundaries of the race area as defined by the line of official patrol vessels bordering the race course.

(iv) Official patrol vessels escorting the race fleet within the boundaries of

the course perimeter shall heed the orders of a Coast Guard Auxiliary vessel designated to lead them.

(v) All vessels not involved in this event are to remain clear of the venue for the safety of the competitors and fairness of the competition.

(vi) All vessels shall obey the orders given by official patrol vessels.

(vii) The America's Cup Organizing Committee (ACOC) shall notify the Patrol Commander at least 24 hours in advance of any changes to the desired regulatory period defined in sub-paragraph (c)(3) above so proper notice can be given to the public via Broadcast Notice to Mariners.

(4) *One-Way Traffic.* The Patrol Commander may implement one-way traffic patterns in the regulated areas of San Diego Bay and Mission Bay, during the effective dates of these regulations, if deemed necessary to ensure safe navigation. Notice of one-way traffic will be made by Broadcast Notice to Mariners. If implemented, vessel traffic will be required to transit the regulated areas in either a northerly direction, proceeding into port, or southerly direction, proceeding to sea, during the regulatory periods and abide by all other special local regulations associated with the regulated area.

(d) *Effective Dates.* These regulations will be effective April 29, 1991 through May 12, 1991.

Dated: March 28, 1991.

J. G. Schmidtman,

Captain, U.S. Coast Guard Acting Commander, Eleventh Coast Guard District.

[FR Doc. 91-7920 Filed 4-3-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD14-90-01]

Special Anchorage Area Regulations; Keehi Lagoon, Island of Oahu, Hawaii

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule enlarges the existing special anchorage area at Keehi Lagoon. The State of Hawaii plans to develop and expand Keehi Lagoon Marina, which will increase the small boat usage of this area. This rule will increase the special anchorage space available to small boaters in the Keehi Lagoon.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: LT. Michael Swegles, telephone (808) 541-2319 or FTS 551-2319.

SUPPLEMENTARY INFORMATION: On 4 December 1990, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (55 FR 50034). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are LT. Michael Swegles, project officer, Office of Aids to Navigation, and CDR M.J. Williams, Jr., project attorney, Fourteenth Coast Guard District Legal Office, Honolulu, Hawaii.

Discussion of Comments

No comments were received. This regulation is issued pursuant to 33 U.S.C. 471, 2030, 2035 and 2071 as set out in the authority citation for all of part 110.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have significant economic impact on a substantial number of small entities.

Environmental Impact

The Coast Guard has thoroughly reviewed the environmental impact of this final rule and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2, of Commandant Instruction (COMDTINST) M16475.1B. A Categorical Exclusion Determination statement was prepared and included as part of the rulemaking docket.

Federalism Assessment

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

List of Subjects in 33 CFR Part 110

Anchorage regulations.

Final Regulations

In consideration of the foregoing, part 110 of title 33, Code of Federal Regulations, is amended as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Sec. 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.128d is amended by revising the heading and paragraph (c) to read as follows:

§ 110.128d Island of Oahu, Hawaii. (Datum: OHD)

* * * * *

(c) *Keehi Lagoon.* The waters of Keehi Lagoon bounded by a line connecting the following points:

Latitude	*Longitude*
21°19'35.0" N	157°54'06.0" W
21°19'37.7" N	157°53'58.0" W
21°19'06.4" N	157°53'41.9" W
21°19'00.8" N	157°53'44.1" W
21°18'59.9" N	157°53'49.7" W
21°19'04.9" N	157°53'50.0" W

and thence to the point of beginning.

* * * * *

Dated: March 25, 1991.

W.C. Donnell,

Rear Admiral, U.S. Coast Guard Commander, 14th Coast Guard District.

[FR Doc. 91-7919 Filed 4-3-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Savannah Regulation 91-16]

Safety Zone Regulations; Savannah River, Savannah, GA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone on April 9, 10, 16 and 17, 1991 on the Savannah River. This zone encompasses the Savannah River from river mile 13.25 (approximately one quarter mile west of the Talmadge Memorial Bridge) to Savannah River mile 12.75 (approximately one quarter mile east of the Talmadge Memorial Bridge). The Captain of the Port has closed the Savannah River in this area due to the lowering of the center span of the old Talmadge Memorial Bridge onto a barge positioned in the channel below the bridge. No persons or vessels will be allowed to enter or operate within this zone, except as permitted by the Captain of the Port, Savannah, or his representative.

EFFECTIVE DATES: This regulation is effective as of 0600, Tuesday, April 9, 1991, and it is suspended at 2400, Wednesday, April 10, 1991 and is again

effective as of 0600, Tuesday, April 16, 1991 and it expires at 2400 on Wednesday, April 17, 1991, unless sooner terminated by the Captain of the Port, Savannah, GA.

FOR FURTHER INFORMATION CONTACT: LT. T.F. Mann (912) 944–4353. Normal working hours are between 0730 and 1600, Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent possible hazards to mariners.

Drafting Information

The drafters of this regulation are MSTC D. Walsh, project officer for the Captain of the Port, and LT. G. Tanos, project attorney, Seventh Coast Guard District Legal Officer.

Discussion of Regulation

This regulation is effective as of 0600, Tuesday, April 9, 1991, and it is suspended at 2400, Wednesday, April 10, 1991, and again becomes effective as of 0600, Tuesday, April 16, 1991, and it expires at 2400, Wednesday, April 17, 1991, unless sooner terminated by the Captain of the Port, Savannah, GA. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism

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

List of Subjects in 33 CFR Part 165

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

Regulation

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

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

Authority: 33 U.S.C. 1225 and 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 new § 165.T0703, is added to read as follows:

§ 165.T0703 Safety Zone: Savannah River, Georgia.

(a) *Location.* This zone encompasses the Savannah River from River mile 13.25 (approximately one quarter mile west of the Talmadge Memorial Bridge) to Savannah River mile 12.75 (approximately one quarter mile east of the Talmadge Memorial Bridge).

(b) *Effective dates.* This regulation is effective as of 0600, Tuesday, April 9, 1991, and is suspended at 2400, Wednesday, April 10, 1991, and as of 0600, Tuesday, April 16, 1991, and expires at 2400, Wednesday, April 17, 1991, unless sooner terminated by the Captain of the Port, Savannah, GA.

(1) This safety zone closes a portion of the Savannah River to all marine traffic, except as may be permitted by the Captain of the Port, Savannah, or his representative.

(2) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (912) 944–4353. Vessels assisting in the enforcement of the safety zone may be contacted on VHF–FM channels 13 or 16, or vessel operators may determine the restrictions in effect for the safety zone by coming alongside a vessel patrolling the perimeter of the safety zone.

(3) The Captain of the Port will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the safety zone and restrictions imposed.

Dated: March 22, 1991.

R. E. Ford,

Commander, U.S. Coast Guard Captain of the Port, Savannah, Georgia.

[FR Doc. 91–7921 Filed 4–3–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

Navigation Regulations

AGENCY: Corps of Engineers, Army Department, DOD.

ACTION: Final rule.

SUMMARY: This rule revises reporting requirements for waterborne commerce statistics, including passengers, tonnage, freight, and other data, into a single section (33 CFR 207.800) of the Navigation Regulations for the Army Corps of Engineers. It also authorizes increased penalties for not reporting, or for reporting inaccurate information. These changes are necessitated by the Water Resources Development Act of 1986.

EFFECTIVE DATE: May 6, 1991.

ADDRESSES: Comments received and other materials relevant to this rulemaking are located at the Waterborne Commerce Statistics Center, room 171, Prytania Street and Leake Avenue, Post Office Box 61280, New Orleans, Louisiana 70161–1280. This record or rulemaking may be inspected at the Center between the hours of 7:30 a.m. and 4 p.m., Monday through Friday. Please call ahead to arrange for a review of these materials and to avoid any conflicts with inspections by other interested parties. A reasonable fee may be charged by the Center for copying services.

FOR FURTHER INFORMATION CONTACT: David L. Penick, Chief of Waterborne Commerce Statistics, at the above address, or by telephone at (504) 862–1404.

SUPPLEMENTARY INFORMATION:

Legal Authority

The legal authority for the collection, compilation, and publication of waterborne commerce statistics by the Army Corps of Engineers is the River and Harbor Act of September 22, 1922 (42 Stat. 1043), as amended, and codified in 33 U.S.C. 555. This Congressional directive provides:

"Owners, agents, masters and clerks of vessels and other craft plying upon the navigable waters of the United States, and all individuals and corporations engaged in transporting their own goods upon the navigable waters of the United States, shall furnish such statements relative to vessels, passengers, freight and tonnage as may be required by the Secretary of the Army: *Provided,* That this provision shall not apply to those rafting logs except upon a direct request upon the owner to furnish specific information.

"Every person or persons offending against the provisions of this section shall, for each and every offense, be liable to a fine of not more than $5,000, or imprisonment not exceeding two months, to be enforced in any district court in the United States within whose territorial jurisdiction such offense may have been committed. In addition, the Secretary may assess a civil penalty of up to $2,500, per violation, against any person or entity that fails to provide timely, accurate statements required to be submitted pursuant to this section by the Secretary."

Information regarding vessel, tonnage, commodity, origin, and destination has been collected by the Corps of Engineers from vessel operating companies since 1922.

Background and Discussion

The waterways and ports of the United States handle approximately one billion tons of domestic cargo, five hundred million tons of imported cargo, and four hundred million tons of exported cargo annually. The effective and efficient movement of this cargo is critical to the economy of the local region and the United States as a whole.

It is a primary mission of the Army Corps of Engineers, where economically justified, to assure that navigation projects are properly maintained and ready to facilitate commodity and vessel movements by new project construction or improvements to existing projects. Thus, accurate and reliable data in the form of waterborne commerce statistics are essential to our mission. These statistics provide the requisite information for accurate cost-benefit analyses to determine new project feasibility and to establish funding priorities for the operation and maintenance of existing projects.

Information Collected

The Army Corps of Engineers maintains two types of data bases regarding commodity and vessel movements on the waterways and channels of the United States. These are known as Waterborne Commerce Statistics (WCS) and the Lock Performance Monitoring System (LPMS). Each data base, the WCS and the LPMS, provide the Corps and others with the essential information needed for understanding the complex relationships between the physical system, and the vessels or commodities moving on that system.

The LPMS applies to navigation system management and collects, monitors, and analyzes data regarding the use and operation of Federally owned and operated locks and canals. It requires general data about the number of vessels, barges, and tows which move through each lock chamber or canal and about the operation time required for passage of these vessels or tows. It also collects general data about cargos by estimated tonnage and category of commodity. This information is then used for the sizing and scheduling of replacements, the timing of rehabilitation or maintenance actions, and the setting of operation procedures and closures for locks and canals.

Additional general information may also be collected, such as on traffic delays, which might affect the availability of the lock chamber or canal and their operating procedures. The master, captain, or pilot of vessels are required to provide the data identified on ENG Forms 3102b, 3102c, or 3102d, and to provide other data required by the lockmaster or canal operator. Failure to provide this data may result in denial of passage through the lock or canal and in a fine or imprisonment.

The WCS applies to the number, use, and movement of commercial vessels on the navigable waters of the United States, and collects, monitors, and analyzes detailed data regarding such activities. This information is collected on ENG Form 3925 or ENG Form 3925b and is reported monthly for each company vessel or fleet, that operate or are available for operation. This is used for tracking a specific vessel from its point of origin to its ultimate destination, and also indicates times of active and inactive usage. It further provides information on commodity movement on the water from its point of loading to its point of unloading.

On occasion, additional data may be required on ENG Form 3102d to yield a simple check on vessel routing and to verify other statistical information. Also, ENG Forms 3931 and 3932 are used for annual inventory of vessels available for domestic commerce and their characteristics.

Data Utilization

The WCS and the LPMS data bases are the sole government sources for information in the United States on domestic waterborne commerce and lock or canal operation. The Army Corps of Engineers is the agency charged with collection of this data due to its responsibility for the planning, design, construction, rehabilitation, operation, and maintenance of the inland waterway system, the Great Lakes, and the channels of the coastal ports.

The aggregate data collected under these programs are published in the annual publications, Waterborne Commerce of the United States, Parts 1–5, Lock Performance Monitoring System Quarterly Reports, and Waterborne Transportation Lines of the United States. Each data base and publication provide essential information for an understanding of the utilization of our Nation's navigation systems and the fleet using these systems. The data bases provide essential information to those with responsibilities over the physical system or to those involved in shipping or moving commodities on the Nation's waterways.

Comments Received

In response to the **Federal Register** publication of the proposed rule on April 10, 1990 (55 FR 13,448–13,451), we did not receive any letters of response within the comment period. Therefore, no public comments are incorporated into the final rule. However, a letter dated May 9, 1990, was received on May 16, 1990 which has been made an informal part of the record. The letter requested that an actual dollar value per vessel be established by the Army Corps of Engineers for cargos handled by the Nation's ports. It was suggested that such information could be used by the Corps as an alternate method of allocation of operation and maintenance funds for such facilities. In addition to being untimely for this rule, the suggestion is also impractical for the following reasons. First, there is no statutory authority to collect and employ such data. Second, the proposed rule of April 10, 1990, did not include a proposal for public or industry comment on the collection and use of value specific cargo data. Accordingly, the adoption of such a requirement in this final rule is improper. Further, the adoption of the proposed requirement could unduly tax the resources of the Corps and private industry which would have to collect or provide the information. Finally, the value of such data probably cannot be offset by its potential for abuse. Under all of these circumstances, the suggested information does not appear to be of benefit to the Government, nor to the public interest.

Data Release Policy

The Army Corps of Engineers' policy on the release of waterborne commercial statistics can be found in 33 CFR 209.320 and will be followed throughout the collection and publication process of the data bases. Data released by the Corps to state and local government agencies, private companies, and the general public will conform with the Paperwork Reduction Act (44 U.S.C. 3507), the Trade Secrets Act (18 U.S.C. 1905), and the Water Resources Development Act of 1986 (Pub. L. 99–662), which amended the River and Harbor Act of 1922 (33 U.S.C. 555).

Enforcement Policy

Notice is given that the Army Corps of Engineers will vigorously monitor and enforce these regulations.

Administrative Procedures

Implementation of 33 U.S.C. 555 requires that the Army Corps of Engineers adopt an administrative procedure for contesting a proposed civil penalty order. We have adopted Class I Administrative Penalty Provisions under the Clean Water Act

(33 U.S.C. 1319(g)(1) which does provide such a procedure. Those provisions were published as a final rule in 54 FR 50708–50712 on December 8, 1989.

Because it is reasonable to maintain an agency-wide and uniform procedure for the notice and assessment of civil penalties, those regulations are referenced to the maximum extent possible. This was done to avoid unnecessary detail on these procedures in this regulation. The specific provisions required by the Clean Water Act regarding public notification, comment period, and state coordination are explicitly excluded from use in the proceedings under this regulation.

The proceeding will be initiated by the Chief of the Waterborne Commerce Statistics Center who will issue a proposed civil penalty order. This order will describe the violation, the amount of the proposed penalty, and the applicable provisions of 33 CFR part 326. Requests for a hearing will be sent by the recipient to the Director, Water Resources Support Center. The nature of any administrative hearing or proceeding may be either oral or on the record. However, it is anticipated that most of the proceedings will be based upon the written record of the parties. In some cases, an oral hearing may be more appropriate and required.

A final decision on the order will be issued by the Director of the Water Resources Support Center.

Classification

The Assistant Secretary of the Army for Civil Works has reviewed this action and has certified that it is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small businesses or other entities. Further, the Department of the Army has determined that this regulation will not affect the use or value of private property and, therefore, does not require a Takings Implication Assessment under Executive Order 12630. This regulation also has been determined not to be a major rule under Executive Order 12291, and a Regulatory Impact Analysis (RIA) Statement has not been prepared since the final rule does not result in significant adverse economic effects identified in the Executive Order as a grounds for a finding of major action. The collection of information contained in this regulation has been cleared by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and assigned control numbers 0710–0006 and 0710–0008.

List of Subjects in 33 CFR Part 207

Navigation regulations.

For the reasons set out in the preamble, title 33, chapter II of the Code of Federal Regulations is amended as follows.

PART 207—[AMENDED]

1. The authority citation for part 207 is revised to read as follows:

Authority: Secs. 4 and 7 of 28 Stat. 362; 40 Stat. 266; 42 Stat. 1043; and 33 U.S.C. 1, 554, and 555 (as amended by Sec. 919 of the Water Resources Development Act of 1986).

§§ 207.9, 207.20, 207.50, 207.100, 207.160, 207.180, 207.249, 207.275, 207.300, 207.420, 207.460, 207.470, 207.590, 207.640, 207.680, 207.718, 207.750 [Amended]

§ 207.390 [Removed]

2. The following sections or paragraphs are removed, and the removed section or paragraph numbers are designated as being reserved: Sections 207.9(k), 207.20(m), 207.50(m), 207.100(q), 207.160(c), 207.180(c), 207.180(d)(13), 207.249(a), 207.275(q), 207.300(t), 207.390, 207.420(b)(17), 207.460(a)(15), 207.470(o), 207.590(m)(7), 207.640(a)(19), 207.680(c), 207.718(u), 207.750(a)(2), and 207.750(b)(7).

3. Section 207.800 is added to read as follows:

§ 207.800 Collection of navigation statistics.

(a) *Definitions.* For the purpose of this regulation the following terms are defined:

(1) *Navigable waters of the United States* means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. (See 33 CFR part 329 for a more complete definition of this term.)

(2) *Offenses and Violations* mean:

(i) Failure to submit a required report.

(ii) Failure to provide a timely, accurate, and complete report.

(iii) Failure to submit monthly listings of idle vessels or vessels in transit.

(iv) Failure to submit a report required by the lockmaster or canal operator.

(3) *Leased* or *chartered vessel* means a vessel that is leased or chartered when the owner relinquishes control of the vessel through a contractual agreement with a second party for a specified period of time and/or for a specified remuneration from the lessee. Commercial movements on an affreightment basis are not considered a lease or charter of a particular vessel.

(4) *Person* or *entity* means an individual, corporation, partnership, or company.

(5) *Timely* means vessel and commodity movement data must be received by the Waterborne Commerce Statistics Center within 30 days after the close of the month in which the vessel movement or nonmovement takes place.

(6) *Commercial vessel* means a vessel used in transporting by water, either merchandise or passengers for compensation or hire, or in the course of business of the owner, lessee, or operator of the vessel.

(7) *Reporting situation* means a vessel movement by an operator that is required to be reported. Typical examples are listed in the instructions on the various ENG Forms. Five typical movements that are required to be reported by vessel operating companies include the following examples: Company A is the barge owner, and the barge transports corn from Minneapolis, MN to New Orleans, LA, with fleeting at Cairo, IL.

(i) *Lease/Charter:* If Company A leases or charters the barge to Company B, then Company B is responsible for reporting the movements of the barge until the lease/charter expires.

(ii) *Interline Movement:* A barge is towed from Minneapolis to Cairo by Company A, and from Cairo to New Orleans by Company B. Since Company A is the barge owner, and the barge is not leased. Company A reports the entire movement of the barge with an origin of Minneapolis and a destination of New Orleans.

(iii) *Vessel Swap/Trade:* Company A swaps barge with Company B to allow Company B to meet a delivery commitment to New Orleans. Since Company A has not leased/chartered the barge, Company A is responsible for filing the report. Company B is responsible for filing the report on the barge which is traded to Company A. The swap or trade will not affect the primary responsibility for reporting the individual vessel movements.

(iv) *Re-Consignment:* Barge is reconsigned to Mobile, AL. Company A reports the movements as originating in Minneapolis and terminating in Mobile. The point from which barge is reconsigned is not reported, only points of loading and unloading.

(v) *Fleeting:* Barge is deposited at a New Orleans fleeting area by Company A and towed by Company B from fleeting area to New Orleans area dock for unloading. Company A, as barge owner, reports entire movements from Minneapolis to the unloading dock in

New Orleans. Company B does not report any barge movement.

(b) Implementation of the waterborne commerce statistics provisions of the River and Harbor Act of 1922, as amended by the Water Resources Development Act of 1986 (Pub. L. 99–662), mandates the following.

(1) Filing Requirements. Except as provided in paragraph (b)(2) of this section, the person or entity receiving remuneration for the movement of vessels or for the transportation of goods or passengers on the navigable waters is responsible for assuring that the activity report of commercial vessels is timely filed.

(i) For vessels under lease/charter agreements, the lessee or charterer of any commercial vessel engaged in commercial transportation will be responsible for the filing of said reports until the lease/charter expires.

(ii) The vessel owner, or his designated agent, is always the responsible party for ensuring that all commercial activity of the vessel is timely reported.

(2) The following Vessel Information Reports are to be filed with the Army Corps of Engineers, at the address specified on the ENG Form, and are to include:

(i) Monthly Reports. These reports shall be made on ENG Forms furnished upon written request of the vessel operating companies to the Army Corps of Engineers. The forms are available at the following address: U.S. Army Corps of Engineers, Waterborne Commerce Statistics Center, Post Office Box 61280, New Orleans, Louisiana 70161–1280.

(A) All movements of domestic waterborne commercial vessels shall be reported, including but not limited to: Dry cargo ship and tanker moves, loaded and empty barge moves, towboat moves, with or without barges in tow, fishing vessels, movements of crew boats and supply boats to offshore locations, tugboat moves and movements of newly constructed vessels from the shipyard to the point of delivery.

(B) Vessels idle during the month must also be reported.

(C) Notwithstanding the above requirements, the following waterborne vessel movements need not be reported:

(*1*) Movements of recreational vessels.

(*2*) Movements of fire, police, and patrol vessels.

(*3*) Movements of vessels exclusively engaged in construction (e.g., piledrivers and crane barges). **Note:** however, that movements of supplies, materials, and crews to or from the construction site must be timely reported.

(*4*) Movements of dredges to or from the dredging site. However, vessel movements of dredged material from the dredging site to the disposal site must be reported.

(*5*) Specific movements granted exemption in writing by the Waterborne Commerce Statistics Center.

(D) ENG Forms 3925 and 3925b shall be completed and filed by vessel operating companies each month for all voyages or vessel movements completed during the month. Vessels that did not complete a move during the month shall be reported as idle or in transit.

(E) The vessel operating company may request a waiver from the Army Corps of Engineers, and upon written approval by the Waterborne Commerce Center, the company may be allowed to provide the requisite information of the above paragraph (D), on computer printouts, magnetic tape, diskettes, or alternate medium approved by the Center.

(F) Harbor Maintenance Tax information is required on ENG Form 3925 for cargo movements into or out of ports that are subject to the provisions of section 1402 of the Water Resources Development Act of 1986 (Pub. L. 99–662).

(*1*) The name of the shipper of the commodity, and the shipper's Internal Revenue Service number or Social Security number, must be reported on the form.

(*2*) If a specific exemption applies to the shipper, the shipper should list the appropriate exemption code. The specific exemption codes are listed in the directions for ENG Form 3925.

(*3*) Refer to 19 CFR part 24 for detailed information on exemptions and ports subject to the Harbor Maintenance Tax.

(ii) Annual Reports. Annually an inventory of vessels available for commercial carriage of domestic commerce and vessel characteristics must be filed on ENG Forms 3931 and 3932.

(iii) Transaction Reports. The sale, charter, or lease of vessels to other companies must also be reported to assure that proper decisions are made regarding each company's duty for reporting vessel movements during the year. In the absence of notification of the transaction, the former company of record remains responsible until proper notice is received by the Corps.

(iv) Reports to Lockmasters and Canal Operators. Masters of self-propelled non-recreational vessels which pass through locks and canals operated by the Army Corps of Engineers will provide the data specified on ENG Forms 3102b, 3102c, and/or 3102d to the lockmaster, canal operator, or his designated representative in the manner and detail dictated.

(c) Penalties for Noncompliance. The following penalties for noncompliance can be assessed for offenses and violations.

(1) Criminal Penalties. Every person or persons violating the provisions of this regulation shall, for each and every offenses, be liable to a fine of not more than $5,000, or imprisonment not exceeding two months, to be enforced in any district court in the United States within whose territorial jurisdiction such offense may have been committed.

(2) Civil Penalties. In addition, any person or entity that fails to provide timely, accurate, and complete statements or reports required to be submitted by this regulation may also be assessed a civil penalty of up to $2,500 per violation under 33 U.S.C. 555, as amended.

(3) Denial of Passage. In addition to these fines, penalties, and imprisonments, the lockmaster or canal operator can refuse to allow vessel passage.

(d) Enforcement Policy. Every means at the disposal of the Army Corps of Engineers will be utilized to monitor and enforce these regulations.

(1) To identify vessel operating companies that should be reporting waterborne commerce data, The Corps will make use of, but is not limited to, the following sources.

(i) Data on purchase and sale of vessels.

(ii) U.S. Coast Guard vessel documentation and reports.

(iii) Data collected at Locks, Canals, and other facilities operated by the Corps.

(iv) Data provided by terminals on ENG Form 3926.

(v) Data provided by the other Federal agencies including the Internal Revenue Service, Customs Service, Maritime Administration, Department of Transportation, and Department of Commerce.

(vi) Data provided by ports, local facilities, and State or local governments.

(vii) Data from trade journals and publications.

(viii) Site visits and inspections.

(2) Notice of Violation. Once a reporting violation is determined to have occurred, the Chief of the Waterborne Commerce Statistics Center will notify

the responsible party and allow 30 days for the reports to be filed after the fact. If the reports are not filed within this 30-day notice period, then appropriate civil or criminal actions will be undertaken by the Army Corps of Engineers, including the proposal of civil or criminal penalties for noncompliance. Typical cases for criminal or civil action include, but are not limited to, those violations which are willful, repeated, or have a substantial impact in the opinion of the Chief of the Waterborne Commerce Statistics Center.

(3) Administrative Assessment of Civil Penalties. Civil penalties may be assessed in the following manner.

(i) Authorization. If the Chief of the Waterborne Commerce Statistics Center finds that a person or entity has failed to comply with any of the provisions specified herein, he is authorized to assess a civil penalty in accordance with the Class I penalty provisions of 33 CFR part 326. Provided, however, that the procedures in 33 CFR part 326 specifically implementing the Clean Water Act (33 U.S.C. 1319(g)(4)), public notice, comment period, and state coordination, shall not apply.

(ii) Initiation. The Chief of the Waterborne Commerce Statistics Center will prepare and process a proposed civil penalty order which shall state the amount of the penalty to be assessed, describe by reasonable specificity the nature of the violation, and indicate the applicable provisions of 33 CFR part 326.

(iii) Hearing Requests. Recipients of a proposed civil penalty order may file a written request for a hearing or other proceeding. This request shall be as specified in 33 CFR part 326 and shall be addressed to the Director of the Water Resources Support Center, Casey Building, Fort Belvoir, Virginia 22060-5586, who will provide the requesting person or entity with a reasonable opportunity to present evidence regarding the issuance, modification, or revocation of the proposed order. Thereafter, the Director of the Water Resources Center shall issue a final order.

(4) Additional Remedies. Appropriate cases may also be referred to the local U.S. Attorney for prosecution, penalty collection, injunctive, and other relief by the Chief of the Waterborne Commerce Statistics Center.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-7750 Filed 4-3-91; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-3919-1]

Regulation of Fuels and Fuel Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: By this action, the Environmental Protection Agency revises the fuels and fuel additives regulations (40 CFR 80) by deleting outdated portions pertaining to controls on retailers of gasoline. The requirement that certain gasoline retail outlets offer at least one grade of unleaded gasoline of not less than 87 octane (R+M)/2 method (with certain reductions for high altitude areas) is deleted. This aspect of the unleaded gasoline requirements is no longer necessary. Unleaded gasolines with a wide variety of octane values comprise over 90% of the market, and are readily available throughout the country. Additionally, this rule corrects an erroneous footnote in appendix B, and deletes certain other sections of part 80 dealing with the availability of unleaded gasoline.

EFFECTIVE DATE: This action will be effective on June 3, 1991, unless adverse or critical comments are received by May 6, 1991.

ADDRESSES: Copies of the information relative to this application are available for inspection in Public Docket A-89-21 at the EPA Air Docket, room M1500, First Floor, Waterside Mall, 401 M Street SW., Washington DC 20460. The docket may be inspected between the hours of 8:30 a.m. and noon and 1:30 and 3:30 p.m. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Marilyn W. McCall, Environmental Protection Specialist, Field Operations and Support Division (EN-397F) U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2635.

SUPPLEMENTARY INFORMATION:

Background

Section 211(c)(1) of the Clean Air Act, 42 U.S.C. 7545(c)(1), provides EPA with the authority to regulate any automotive fuel or fuel additive which endangers public health or impairs the performance of any emission control device.

Under this statutory provision, regulations were promulgated on January 10, 1973 providing for the general availability of unleaded gasoline. These regulations required, after July 1, 1974, that at least one grade of unleaded gasoline of not less than 91 Research Octane Number (RON) be offered for sale at each retail outlet at which 200,000 or more gallons of gasoline were sold during any calendar quarter after 1971. This was necessary in order to protect new emission control systems, primarily the catalytic converter, from damage by lead emissions. EPA later amended the regulations to express the octane designation as 87 (R+M)/2 method or AKI (antiknock index). Additional regulations were promulgated on December 12, 1974 requiring that unleaded gasoline be offered for sale at any retail outlet where 150,000 or more gallons of gasoline were sold during any calendar quarter after 1971. These regulations included most of the sparsely populated counties in the country.

The regulations were incorporated in 40 CFR 80 and appear in § 80.2 "Definitions," § 80.22 "Controls applicable to gasoline retailers and wholesale purchaser-consumers," and appendix C—"List of Counties with Population Densities less than 50 Persons Per Square Mile (Excluding Cities with Populations Equal to or Greater than 50,000 Persons)." It is EPA's opinion that some aspects of those sections of the regulations are no longer necessary. At the time regulations were promulgated, unleaded gasoline was not widely available. Now, however, unleaded gasoline is offered for sale at virtually every retail outlet and comprises over 90% of the total gasoline sales in this country, with a wide variety of octane values. Consequently, EPA believes that there is no longer a need to specify which retail outlets must offer unleaded gasoline with an octane value of at least 87 (R+M)/2.

Changes to Regulations

This notice revises 40 CFR part 80 by deleting § 80.22(b) and (c), appendix C, and the definition in § 80.2(d) (octane number (R+M)/2 method).

This action also corrects a typographical error in a reference to a footnote in appendix B, 6. Procedure, 6.1.1. The asterisk in 6.1.1 should be changed to a "1", and the asterisked footnote is deleted.

The Agency has determined that this action is not a "major" rule as defined in Executive Order (E.O.) 12291. Therefore, a regulatory impact analysis is not required.

This rulemaking does not include any new information collection

requirements. The Paperwork Reduction Act is not applicable to this rule as these changes to the regulations at 40 CFR 80 will not impose any reporting requirements on affected parties.

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, I certify that the regulatory revision promulgated in this notice will not have a significant impact on a substantial number of small entities.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. There is no adverse environmental impact due to these changes. These revisions will delete verbiage from the regulations which, due to market conditions in the gasoline retail outlet industry, is out of date and no longer necessary. EPA finds that these reasons constitute good cause under 5 U.S.C. 553(b) for a determination that the issuance of a notice of Proposed Rulemaking is unnecessary. This action will be effective on June 3, 1991 unless adverse or critical comments are received by May 6, 1991.

If such comments are received, this action will be withdrawn before the effective date by publishing a **Federal Register** notice. If withdrawn, this action will be included in a Notice of Proposed Rulemaking and a comment period will be established. If no such comments are received, the public is advised that this action will be effective on June 3, 1991.

Authority for the actions promulgated in this notice is granted to EPA by section 114, 211, and 301 of the Clean Air Act (42 U.S.C. 7414, 7545, and 7601).

List of Subjects in 40 CFR Part 80

Gasoline.

Dated: March 26, 1991.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended to read as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545, and 7601(a).

§ 80.2 [Amended]

2. Section 80.2 is amended by removing and reserving paragraph (d).

§ 80.22 [Amended]

3. Section 80.22 is amended by removing and reserving paragraphs (b) and (c).

4. Appendix B, Method 1 is amended by removing the asterisked footnote and by revising 6.1.1 to read as follows:

Appendix B—Test Methods for Lead in Gasoline

Method 1—Standard Method Test for Lead in Gasoline by Atomic Absorption Spectrometry.

* * * * *

6.1.1 Add 0.10 ml (100 μl) of iodine/ toluene solution and allow the mixture to react about 1 minute.[3]

* * * * *

3 See footnote 1 of section 5.1.2.

Appendix C [Removed]

5. Appendix C is removed and reserved.

[FR Doc. 91-7824 Filed 4-3-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

RIN 0905-AD06

Nursing Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule revises existing regulations governing the Nursing Student Loan (NSL) program to conform those regulations with amendments made to sections 835–842 of the Public Health Service (PHS) Act (the Act) by the Nursing Shortage Reduction and Education Extension Act of 1988. This rule also revises the regulations to conform with amendments made to the Act by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, the Drug Abuse Treatment Technical Corrections Act of 1989, the Compact of Free Association Act of 1985, and makes other changes which are ministerial or clarifying in nature.

EFFECTIVE DATE: These regulations are effective April 4, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Baggett, Chief, Student and Institutional Support Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–34, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–4776.

SUPPLEMENTARY INFORMATION: The NSL program is governed by sections 835–842 of the PHS Act. Section 835 of the Act authorizes the Secretary to enter into an agreement with any public or private nonprofit school of nursing to operate a student loan fund for the purpose of making loans to eligible students. The loan fund consists of at least 1 institutional dollar for every 9 Federal dollars. The institution is responsible for determining eligible recipients, making loans, and collecting loan repayments from borrowers. Regulations governing the NSL program are codified at 42 CFR part 57, subpart D.

The Nursing Shortage Reduction and Education Extension Act of 1988 (title VII of Pub. L. 100–607), enacted on November 4, 1988, made several amendments to sections 835–842 of the PHS Act. Other amendments which affect the NSL program have been made in recent years by the Department of the Interior and Related Agencies Act for Fiscal Year 1990 (Pub. L. 101–121), the Drug Abuse Treatment Technical Corrections Act of 1989 (Pub. L. 101–93), and the Compact of Free Association Act of 1985 (Pub. L. 99–239). The amendments to part 57, subpart D, set out below are a literal reflection of the amendments made by those Acts. In addition, a few technical changes are included that (1) bring the regulations into line with current Department regulatory policies, and (2) provide current Office of Management and Budget approval numbers in those sections which contain information collection requirements.

The amendments are described below according to the sections of the NSL regulations which they affect.

Section 57.302 "Definitions"

1. The Department is adding to this section the following established regulatory and statutory terms, listed alphabetically, in accordance with Public Law 100–607:

(a) The definition of "community health center" as set out in section 330(a) of the PHS Act, and in regulations at 42 CFR 51c.102(c);

(b) The definition of "Indian Health Service health center" as set out in part 1, chapter 4, section 4B(4)(c) of the Indian Health Service Manual;

(c) The definition of "migrant health center" as set out in section 329(a) of the PHS Act, and in regulations at 42 CFR 56.102(g);

(d) The definition of "Native Hawaiian health center" as set out in section 8 of Public Law 100–579, the

Native Hawaiian Health Care Act of 1988 (42 U.S.C. 11707); and

(e) The definition of "rural health clinic" as set out in section 1861(aa)(2) of the Social Security Act, and in regulations at 42 CFR 491.2.

2. In accordance with Public Law 100–607 and the Drug Abuse Treatment Technical Corrections Act of 1989, Public Law 101–93, the Department is adding the definitions of "nursing facility" as set out in section 1919(a) of the Social Security Act (SSA), "skilled nursing facility," as set out in section 1861(j) of the SSA, and "intermediate care facility," as set out in section 1905(c) of the SSA.

3. The Department is amending the definition of "State" by inserting after the "Trust Territory of the Pacific Islands" "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia", in accordance with the Compact of Free Association Act of 1985. This change is being made to update, for purposes of this loan program, those entities that are viewed as States.

4. The Department is also amending the definition of "National of the United States" to add the title of the Act and the United States Code citation where this term is defined.

Section 57.303 "Application by School"

The Department is revising the footnote at the end of the section to provide a current room number in the address where schools may request applications and instructions for applying for Federal capital contributions.

Section 57.306 "Eligibility and Selection of Nursing Student Loan Applicants"

The Department is removing the exceptional financial need criterion as an eligibility requirement under paragraph (a)(1)(v). However, paragraph (b)(1) of this section has been amended to include persons of exceptional financial need in the category of students to whom a school must give preference. This change was made necessary by Public Law 100–607.

The Department is also removing an outdated Department of Education reference citation in paragraph (b)(2)(i) by removing the phrase "and published under 34 CFR 674.13." The need analysis methodologies are now authorized under part F of title IV of the Higher Education Act of 1965, as amended.

The Department is revising paragraph (a)(1)(i) to include those entities, as reflected in the revised definition of "State," in which an applicant may be determined eligible to apply for a loan, in accordance with the Compact of Free Association Act of 1985.

Section 57.307 "Maximum Amount of Nursing Student Loans"

In accordance with Public Law 100–607, the Department is amending this section by increasing the maximum amount of nursing student loans for each of the final 2 academic years of the program from $2,500 to $4,000 and by increasing the aggregate loan amount from $10,000 to $13,000.

Section 57.308 "Nursing Student Loan Promissory Note"

In accordance with Public Law 100–607, the Department is amending paragraph (a)(1) of this section by reducing the maximum interest rate charged on nursing student loans from 6 percent to 5 percent.

Section 57.310 "Repayment and Collection of Nursing Student Loans

In accordance with Public Law 100–607, the Department is amending paragraph (a)(1) of this section to expand the deferment provision from "5" to "10" years for periods during which the borrower is pursuing a full-time or half-time course of study at a collegiate school of nursing leading to a baccalaureate degree in nursing or an equivalent degree, or a graduate degree in nursing, or is otherwise pursuing advanced professional training in nursing (or training to be a nurse anesthetist). All periods of deferment are excluded from the 10-year repayment period.

Section 57.312 "Repayment of Loans for Service in a Shortage Area"

The Department is revising paragraph (a)(3) of this section by amending the loan repayment for service provision to specify that the Secretary may enter into an agreement to pay a portion of a borrower's educational loans if a borrower serves as a nurse for a period of not less than 2 years in an Indian Health Service health center, a Native Hawaiian health center, a public hospital, a migrant health center, a community health center, a nursing facility, a rural health clinic, or a health facility determined by the Secretary to have a critical shortage of nurses, and that in entering into such agreement the Secretary must give priority to applicants with the greatest financial need and to applicants agreeing to serve in an eligible health facility located in a geographic area with a shortage of and need for nurses (new paragraph (b)). These changes were made necessary by Public Law 100–607.

The Department is also adding a new paragraph (b)(3) to provide that in addition to the priorities set by Public Law 100–607, should specific needs warrant, the Secretary may establish additional preferences for entering into loan repayment agreements, which will be announced from time to time in the **Federal Register.**

On June 25, 1990, a notice was published in the **Federal Register** (55 FR 25890) which announced the availability of $970,000 in fiscal Year 1990 funds for entering into agreements under this provision and invited applications from individuals who plan to begin employment no later than September 30, 1990, in eligible facilities. For further information on Nurse Training Educational Loan Repayment, contact Mr. Mario A. Manecci, Division of Health Services Scholarships, Bureau of Health Care Delivery and Assistance, Health Resources Services Administration, room 7–18, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–1650.

Section 57.314 "Repayment of Loans Made After November 17, 1971, for Failure to Complete a Program of Study"

In accordance with Public Law 100–607, the Department is amending this section to remove the criterion that an individual must come from a low-income or disadvantaged family to be eligible for loan repayment when the borrower fails to complete the nursing studies. It should be noted, however, that there are no Federal funds currently available to repay loans under this provision.

Section 57.316 "Nondiscrimination"

The Department is revising the heading and format listing of the Code of Federal Regulations (CFR) citations in this section to reflect current standard departmental policy language. The revised heading is entitled, "*What additional Department regulations apply to schools?*" Additionally, a new CFR citation is being added to the regulations, in accordance with Public Law 101–121, section 319, the Department of the Interior and Related Agencies Appropriations Act for Fiscal year 1990, enacted on October 23, 1989, and a Notice and Interim-Final Rules, published in the **Federal Register** on February 26, 1990 (55 FR 6736), to bring this grant program into compliance with governmentwide requirements established under 45 CFR part 93 for this Department.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the requirements in these regulations are minimal in comparison to the overall resources of nursing schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of nursing schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Justification for Omitting Notice of Proposed Rulemaking

Since these amendments are technical and ministerial in nature, the Secretary has determined pursuant to 5 U.S.C. 553 and departmental policy, that it is unnecessary and impractical to follow proposed rulemaking procedures or to delay the effective date of these regulations.

Paperwork Reduction Act

The Nursing Student Loan regulations contain information collections which have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned control numbers 0915–0044, 0915–0046, 0915–0047, 0915–0074, and 0915–0094. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Nursing Student Loan (NSL) Program.

Description: Information sufficient to assure payment and reduce default, and school applications.

Description of Respondents: Individuals and households (students), nonprofit institutions (schools).

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section No.	Annual No. of respondents	Frequency of response	Total annual response	Average burden per response	Annual burden hours	OMB Nos. (0915-)
57.303 (Reporting)	550	1	550	30 min	275 hrs	(0044).
57.306(a)(2) (Reporting)	3,000	1	3,000	15 min	750 hrs	(0047).
57.306(b)(2)(ii) (Recordkeeping)	550	1	550	18 min	165 hrs	(0047).
57.308 (Recordkeeping)	550	36.3	20,000	1 min	333 hrs	(0074).
(Recordkeeping)	(1)	(1)	(1)	(1)	(1)	(0047).
57.310(a)(1) (Reporting)	1,000	1	1,000	10 min	167 hrs	(0044).
57.310(b)(1)(i) (Reporting)	650	33	21,600	10 min	3,600 hrs	(0094).
(Recordkeeping)	650	33	21,600	1 min	360 hrs	(0094).
57.310(b)(1)(ii) (Reporting)	800	9	7,200	29 min	3,480 hrs	(0094).
(Recordkeeping)	800	9	7,200	1 min	120 hrs	(0094).
57.310(b)(1)(iii) (Reporting)	800	7	6,150	10 min	1,025 hrs	(0094).
57.310(b)(1)(iv) (Reporting)	800	1	800	5 min	67 hrs	(0094).
57.310(b)(1)(vi) (Reporting)	800	28	22,800	10 min	3,800 hrs	(0094).
57.310(b)(1)(x) (Reporting)	800	18	14,900	36 min	8,940 hrs	(0094).
57.311(a) (Reporting)	60	1	60	30 min	30 hrs	(0047).
57.311(b) (Recordkeeping)	84	1	84	1 min	1.5 hrs	(0047).
57.312(a)(3) (Reporting)	(2)	(2)	(2)	(2)	(2)	(0047).
57.313(a) (Reporting)	1,100	2	2,100	10 min	367 hrs	(0044).
57.315(a) (Reporting)						
6 months	550	1	550	3 hrs	1,650 hrs	(0046).
3 months	250	2	500	1 hr	500 hrs	(Est. cleared).
57.315(a) (1) & (4) (Reporting and Recordkeeping).	800	1	800	5 hrs	4,000 hrs	(0044).
(Reporting and Recordkeeping)	(1)	(1)	(1)	(1)	(1)	(0047).
57.315(a) (2) & (3) (Recordkeeping)	1,360	1	1,360	2.5 hrs	3,400 hrs	(0047).
57.316a(d) (Reporting)	9	1	9	3 hrs	27 hrs	(0047).

[1] Regulation clearance only.
[2] Inactive provision—no current burden.

This final rule (technical amendments) does not impose additional information collections and do not require OMB review.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, subpart D of 42 CFR part 57 is amended to read as follows:

Dated: November 21, 1990.

James O. Mason,

Assistant Secretary for Health.

Approved: February 21, 1991.

Louis W. Sullivan,

Secretary.

(Catalog of Federal Domestic Assistance, No. 13.364, Nursing Student Loan Program)

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Subpart D—Nursing Student Loans

1. The authority for subpart D is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 67 Stat. 631 (42 U.S.C. 216); secs. 835–842, Public Health Service Act, 78 Stat. 913–916, 99 Stat. 397–400, and as amended by 102 Stat. 3160–3162 (42 U.S.C. 297a–i).

2. Section 57.302 is amended by adding alphabetically the definitions for "community health center", "Indian Health Service health center", "migrant health center", "Native Hawaiian health center", "nursing facility", and "rural health clinic"; and by revising the definitions of "National of the United States" and "State" to read as follows:

§ 57.302 Definitions.

* * * * *

Community health center means an entity as defined under section 330(a) of the Public Health Service Act, and in regulations at 42 CFR 51c.102(c).

* * * * *

Indian Health Service health center means a health care facility (whether operated directly by the Indian Health Service or operated by a tribal contractor or grantee under the Indian Self-Determination Act), which is physically separated from a hospital, and which provides one or more clinical treatment services, such as physician, dentist or nursing services, available at least 40 hours a week for outpatient care to persons of Indian or Alaska Native descent.

* * * * *

Migrant health center means an entity as defined under section 329(a) of the Public Health Service Act, and in regulations at 42 CFR 56.102(g).

National of the United States means: (1) A citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States, as defined in the Immigration and Nationality Act, at 8 U.S.C. 1101(a)(22).

Native Hawaiian health center means an entity (as defined in section 8 of Public Law 100–579)—

(a) Which is organized under the laws of the State of Hawaii,

(b) Which provides or arranges for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable,

(c) Which is a public or private nonprofit entity, and

(d) In which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

Nursing facility means a facility as defined in section 1919(a) of the Social Security Act (SSA) (for fiscal year (FY) 1991 and subsequent fiscal years), except for FYs 1989 and 1990, the term means a "skilled nursing facility," as such term is defined in section 1861(j) of the SSA, and an "intermediate care facility," as such term is defined in section 1905(c) of such Act.

* * * * *

Rural health clinic means an entity as defined under section 1861(aa)(2) of the Social Security Act, and in regulations at 42 CFR 491.2.

* * * * *

State means a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

3. Section 57.303 is amended by revising the room number in footnote 1 for paragraph (a) to read "8–34"; and by adding a parenthetical phrase at the end of the section text to read as follows:

§ 57.303 Application by school.

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0044)

4. Section 57.306 is amended by removing paragraph (a)(1)(v); by removing the phrase "and published under 34 CFR 674.13" in paragraph (b)(2)(i); and by revising paragraphs (a)(1) (i), (iii), and (iv), paragraph (b)(1), and the parenthetical phrase at the end of the section text to read as follows:

§ 57.306 Eligibility and selection of nursing student loan applicants.

(a) * * *

(1) * * *

(i) Citizens, nationals, or lawful permanent residents of the United States, permanent residents of the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, or American Samoa, or lawful permanent residents of the Commonwealth of Puerto Rico, the Virgin Islands or Guam;

* * * * *

(iii) In need of the amount of the loan to pursue the course of study at the school; and

(iv) Capable, in the opinion of the school, of maintaining good standing in the course of study.

* * * * *

(b) * * *

(1) In selecting nursing student loan applicants the school will give preference to licensed practical nurses, and to persons with exceptional financial need. For purposes of this preference, a student will be considered to demonstrate exceptional financial need if the school determines that the student's resources, as described in paragraph (b)(2)(i) of this section, do not exceed one-half of the costs of attendance at the school. Summer earnings, educational loans, veterans (G.I.) benefits, earnings during the school year, and Aid to Families with Dependent Children (AFDC) will not be considered as resources in determining whether an applicant meets these criteria for exceptional financial need, but will be considered in determining the amount of funds a student may receive.

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0047)

5. Section 57.307 is revised to read as follows:

§ 57.307 Maximum amount of nursing student loans.

The total of the nursing student loans made from the fund to any student for an academic year may not exceed $2,500, except that for each of the final 2 academic years of the program, the total must not exceed $4,000. The maximum amount loaned during a 12-month period to any student enrolled in a school which provides a course of study longer than the 9-month academic year may be proportionately increased. The total of all nursing student loans to any student must not exceed $13,000.

6. Section 57.308 is amended by revising paragraph (a)(1) and the parenthetical phrase at the end of the section text to read as follows:

§ 57.308 Nursing student loan promissory note.

(a) * * *

(1) Each promissory note must state that the loan will bear interest on the unpaid balance computed only for periods during which repayment of the loan is required, at the rate of 5 percent per year.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0915–0047 and 0915–0074)

7. Section 57.310 is amended by revising paragraph (a)(1), footnote 2, and the parenthetical phrase at the end of the section text to read as follows:

§ 57.310 Repayment and collection of nursing student loans.

(a) * * *

(1) The following periods will be excluded from the 10-year repayment period: (i) All periods up to a total of 3 years of active duty performed by the borrower as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration Corps or

the U.S. Public Health Service Commissioned Corps; (ii) all periods up to a total of 3 years of service as a volunteer under the Peace Corps Act; and (iii) all periods up to a total of 10 years during which the borrower is pursuing a full-time or half-time course of study at a school leading to a baccalaureate degree in nursing or an equivalent degree, or to a graduate degree in nursing, or is otherwise pursuing advanced professional training in nursing (or training to be a nurse anesthetist). For purposes of this paragraph, "otherwise pursuing advanced professional training in nursing" shall include full-time or half-time training, beyond the first diploma or degree in nursing received by the particular borrower, of at least 1 academic year which will advance the borrower's knowledge of and strengthen his or her skills in the provision of nursing services.[2]

* * * * *

(Approved by the Office of Management and Budget under control numbers 0915–0044 and 0915–0094)

8. Section 57.311 is amended by adding a parenthetical phrase at the end of the section text to read as follows:

§ 57.311 Cancellation of nursing student loans for disability or death.

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0047)

9. Section 57.312 is amended by removing footnote [3] and the footnote reference in the section heading; by redesignating paragraph (b) as paragraph (c); by revising paragraph (a)(3) and the parenthetical phrase at the end of the section text; and by adding a new paragraph (b) to read as follows:

§ 57.312 Repayment of loans for service in a shortage area.

(a) * * *

(3) enters into an agreement with the Secretary to serve as a full-time registered nurse for a period of not less than 2 years in an Indian Health Service health center, a Native Hawaiian health center, a public hospital, a migrant health center, a community health center, a nursing facility, a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses, will have a portion of these loans repaid by the Secretary in accordance with paragraph (c) of this section. Prior to entering an agreement for repayment of loans, other than nursing student loans, the Secretary will require that satisfactory evidence be provided of the existence and reasonableness of the education loans (i.e., a copy of the written loan agreement establishing the loan).

(b) When entering into agreements under paragraph (a) of this section, the Secretary shall give priority to:

(1) Applicants with the greatest financial need; and

(2) Applicants that, with respect to health facilities described in paragraph (a)(3) of this section, agree to serve in such facilities located in geographic areas with a shortage of and need for nurses, as determined by the Secretary.

(3) In addition to the priorities under paragraphs (b) (1) and (2) of this section, should specific needs warrant, the Secretary may establish additional preferences which will be announced from time to time in the **Federal Register.**

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0047)

10. Section 57.313 is amended by removing the room number in the address listed at the end of paragraph (b) and by adding in lieu thereof the room number "8–34"; and by adding a parenthetical phrase at the end of the section text to read as follows:

§ 57.313 Loan cancellation for full-time employment as a registered nurse.

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0044)

11. Section 57.314 is amended by removing paragraphs (c) and (d); by redesignating paragraphs (e) and (f) as paragraphs (c) and (d), respectively; by redesignating footnote 4 and footnote 3; and by removing the following phrase at the end of paragraph (b) "under paragraph (c) of this section" and adding in lieu thereof the phrase "in the **Federal Register;**".

12. Section 57.315 is amended by revising the parenthetical phrase at the end of the section text to read as follows:

§ 57.315 Records, reports, inspection, and audit.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0915–0044, 0915–0046, and 0915–0047)

13. The heading and text of § 57.316 are revised to read as follows:

§ 57.316 What additional Department regulations apply to schools?

Participating schools are advised that in addition to complying with the terms and conditions of these regulations, several other regulations apply under this subpart. These include, but are not limited to:

45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964

45 CFR part 83—Regulation for the administration and enforcement of sections 799A and 845 of the Public Health Service Act [4]

45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR part 91—Nondiscrimination on the basis of age in Health and Human Services programs or activities receiving Federal financial assistance

45 CFR part 93—New Restrictions on Lobbying

14. Section 57.316a is amended by revising the parenthetical phrase at the end of the section text to read as follows:

§ 57.316a Performance standard.

* * * * *

(Approved by the Office of Management and Budget under control number 0915–0047)

[FR Doc. 91–7839 Filed 4–3–91; 8:45 am]

BILLING CODE 4160–15

[2] Individuals who received nursing student loans prior to July 1, 1969, remain subject to the repayment provisions of 42 CFR § 57.314(a)(3)(1976) as adopted on February 4, 1974. These provisions can be found at 39 FR 16473 (May 9, 1974), and a copy can be obtained by writing the Division of Student Assistance, Bureau of Health Professions, 5600 Fishers Lane, Parklawn Building, room 8–34, Rockville, Maryland 20857.

[4] Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94–484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94–63.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–241]

Organization and Delegation of Powers and Duties

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation has delegated to the Commandant, United States Coast Guard, the authority contained in 46 U.S.C. 2110 to establish, collect, and enforce the fees and charges required by this section. The Code of Federal

Regulations does not reflect this delegation, and therefore a change is necessary.

EFFECTIVE DATE: April 4, 1991.

FOR FURTHER INFORMATION CONTACT: Carlton Perry, Office of Navigation Safety and Waterways Services (G-NAB), (202) 267-0979, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593.

Mr. Steve Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C-50, (202) 366-9307, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation has delegated to the Commandant, United States Coast Guard, authority under 46 U.S.C. 2110 to establish, collect and enforce the fees and charges required by that section. The Code of Federal Regulations does not reflect this delegation, and, therefore, a change is necessary.

Since this amendment relates to Departmental management, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the Federal Register. Therefore, this final rule is effective upon publication in the Federal Register.

In accordance with the Secretary's authority, the following change is made.

List of Subjects in 49 CFR Part 1

Authority delegations, (Government agencies).
Organization and functions (Government agencies).

In consideration of the foregoing, part I of title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322.

2. Section 1.46 is amended by adding a new paragraph (uu) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(uu) Carry out the functions and exercise the authority vested in the Secretary by 46 U.S.C. 2110 to establish, collect, and enforce the fees and charges required by that section.

Issued on: March 28, 1991.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 91-7918 Filed 4-3-91; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. FE-88-03; Notice 4]

RIN 2127-AD 56

Light Truck Average Fuel Economy Standards; Model Years 1993-1994

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice establishes the average fuel economy standards for light trucks manufactured in model years (MY) 1993 and 1994. Issuance of the standards is required by Title V of the Motor Vehicle Information and Cost Savings Act. For MY 1993, the combined standard for all light trucks manufactured by a manufacturer is 20.4 mpg, an increase of 0.2 mpg over the MY 1992 standard. For MY 1994, the combined standard is 20.5 mpg. The agency is not setting optional separate two-wheel drive and four-wheel drive standards.

DATES: The amendment is effective May 6, 1991. The standards apply to the 1993 and 1994 model years. Petitions for reconsideration must be submitted within 30 days of publication.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-0846).

SUPPLEMENTARY INFORMATION:

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I. Background

Issuance of light truck fuel economy standards is required by section 502(b) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002(b)). That section requires the Secretary of Transportation to set light truck fuel economy standards at the maximum feasible average fuel economy level for each model year after 1978. In determining the maximum feasible average fuel economy level, the Secretary is required under section 502(e) of the Act to consider four factors: Technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. See 15 U.S.C. 2002(e). Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA (41 FR 25015, June 22, 1976)). Prior to the MY 1992-94 rulemaking, the light truck standards set most recently by the agency had been 20.0 mpg for MY 1990 and 20.2 mpg for MY 1991.

On January 6, 1989, NHTSA published in the **Federal Register** a Request for Comments seeking data on manufacturers' light truck fuel economy capabilities for model years (MY) 1992-94 (54 FR 436). All of the domestic light truck manufacturers responded, as did several foreign manufacturers.

After analyzing the responses to the Request for Comments and reviewing other available data, NHTSA published a notice of proposed rulemaking (NPRM) proposing ranges of standards for light truck average fuel economy standards for MY 1992-94. 55 FR 3608 (February 2, 1990). For MY 1992, the proposed range was between 20.2 mpg and 21.0 mpg. For MY 1993, the proposed range was between 20.2 mpg and 21.5 mpg. The proposed range for MY 1994 was between 20.2 mpg and 22.0 mpg. These ranges were based on the agency's tentative evaluation of manufacturer capabilities. In a final rule published April 4, 1990 (55 FR 12487), NHTSA set the combined standard for MY 1992 at 20.2 mpg.

In prior light truck CAFE rulemakings, the agency had provided manufacturers with the option of dividing their light trucks into two fleets, a two-wheel drive (2WD) fleet and a four-wheel drive (4WD) fleet and meeting a separate standard for each fleet. However, as explained in the final rule for MY 1992, the agency decided to discontinue setting these separate alternative standards beginning with MY 1992.

In response to the February 2, 1990 NPRM, the agency received comments from General Motors, Ford, Chrysler, Nissan, the U.S. Department of Energy, the Natural Resources Defense Council, the Western Interstate Energy Board, the Energy Conservation Coalition and the National Automobile Dealers Association. The issues raised by the commenters are discussed below.

II. Summary of Decision for Model Years 1993–94

Based on its analysis, the agency is establishing a combined average fuel economy standard for MY 1993 at 20.4 mpg, and a combined average fuel economy standard for my MY 1994 at 20.5 mpg. Alternative separate standards for 2WD and 4WD light trucks are not being established.

III. Manufacturer Capabilities for MY 1993–94

As part of its consideration of technological feasibility and economic practicability, the agency has evaluated manufacturers' fuel economy capabilities for MY 1993–94. In making this evaluation, the agency has analyzed manufacturers' current projections and underlying product plans and has considered what, if any, additional actions the manufacturers could take to improve their fuel economy. A more detailed discussion of these issues is contained in the agency's Final Regulatory Impact Analysis (FRIA), a public version of which has been placed in the docket for this rulemaking. There is also a nonpublic version which includes some information, including the details of manufacturers' future product plans, that has been determined by the agency to be confidential business information, release of which could cause competitive harm. The public version of the FRIA omits the confidential information.

A. Manufacturer Projections

General Motors: As discussed in the NPRM, General Motors (GM) projected in March 1989 that it could achieve a combined CAFE level of 20.7 mpg in MY 1993 and 20.8 mpg in MY 1994. In its March 1990 comments on the NPRM, GM repeated its projection of 20.7 mpg for MY 1993, while lowering its projection for MY 1994 to 20.7 mpg. GM attributes this slight decrease in its MY 1994 projection to adjustments to projected powertrain and model mixes, and to minor adjustments of estimated MY 1994 fuel economy for certain models.

The 20.7 mpg figure represents an improvement over the level of 19.7 mpg projected by GM for MY 1990 in a mid-model year report submitted in August 1990. The improvement projected by GM after MY 1990 is attributable to several factors, including increased penetration of certain engine technologies and aerodynamic improvements, a slight weight decrease and a shift toward more efficient models, for a net improvement by MY 1992 over MY 1990 of 1.0 mpg.

Although the CAFE impacts of these changes carry over into MY 1993–94, they are offset by volume adjustments, corrected projections on new models, a projected shift to heavier or less efficient options, and new weight estimates for safety and environmentally-related hardware, for a net projected increase of zero. For MY 1994, GM's adjustments are essentially the same as for MY 1993.

However, in making its projections for MY 1993–94, GM noted that the actual level it achieved could be lower due to various uncertainties such as fuel prices, consumer demand for increased power and performance, new safety requirements and increasing competition in the light truck market. GM also stated that certain program risks (subject to a claim of confidentiality) could cause a decline in GM's projected MY 1993–94 CAFE to 20.4 mpg. GM recommended that the MY 1993–94 standards be set at or near the low end of the proposed range.

Ford

Ford projected in March 1989 that it could achieve CAFE levels of 20.6 mpg combined in MY 1993 and 20.4 mpg combined for MY 1994. By comparison, in a mid-model year report submitted in July 1990, Ford projected a MY 1990 combined light truck CAFE of 20.0 mpg. In its March 1990 comments on the NPRM, Ford raised its projections for MY 1993–94. At that time, Ford projected a CAFE of 20.9 mpg in MY 1993, and 20.8 mpg for MY 1994. These most recent projections were said to be subject to several risks, discussed below, which could result of achieving a lower level of CAFE.

In its comments on the NPRM, Ford projected a MY 1992 CAFE of 20.5 mpg. The 0.4 mpg net increase between MY 1992 and MY 1993 is due to several minor improvements and other fleet changes that result in a 0.5 mpg increase, and to product changes that result in a decrease of 0.1 mpg. For MY 1994, Ford projected that stricter emissions standards would decrease its CAFE by 0.4 mpg, but that this would be offset in part by minor improvements and a shift toward more efficient models, for a net decrease of 0.1 mpg, to 20.8 mpg for MY 1994. The projected CAFE figures do not include the risks and opportunities raised by Ford which are discussed in section C below.

In its response to the NPRM, Ford also emphasized the potential effect on CAFE of factors beyond its control, including unforeseen but normal technological shortfalls from the technological changes listed in its comments, the potential for increased import market share and concomitant loss of domestic share in the compact truck market, segment, and the pending safety requirements for light trucks. In addition, Ford indicated that continued low fuel prices could further increase the market demand for full-size light trucks, larger engines and increased optional equipment, causing a decline in its CAFE. Ford recommended that the light truck CAFE standard be set at 20.2 mpg in MY 1993 and no higher than 20.5 mpg for MY 1994.

Chrysler

Chrysler projected in March 1989 that it could achieve a CAFE level of 21.0 in MY 1992, 20.9 mpg in MY 1993 and 20.8 mpg in MY 1994. By comparison, Chrysler's July 1990 mid-model year report for MY 1990 indicated a MY 1990 CAFE of 21.7 mpg. As noted in the final rule for MY 1992, the decline from MY 1990 to MY 1992 is a result of product changes and revised fuel economy estimates for certain models. In its February 1990 response to the NPRM, Chrysler projected its MY 1992 CAFE at 21.2 mpg, its MY 1993 CAFE at 20.9 mpg, and its MY 1994 CAFE at 21.4. These increases over the March 1989 projections are due to adjustments in Chrysler's fuel economy program, amounting to a 0.4 mpg increase each model year, offset by factors such as production revisions and volume adjustments amounting to a 0.2 mpg decrease in MY 1992, and a 0.4 mpg decrease in MY 1993–94. However, the March 1990 projection for MY 1994 also includes a 0.6 mpg increase attributed to product changes which have since been cancelled.

In its response to the NPRM, Chrysler suggested that the CAFE standards for MY 1993–94 remain at the same level as MY 1991 (20.2 mpg), despite Chrysler's projections that it would exceed these levels by a considerable margin. Chrysler's view on the appropriate CAFE standards was based upon several uncertainties that underlie its fuel economy projections for these model years. These include the impact of revisions to the Clean Air Act, market shifts to larger trucks, and the price of gasoline. Chrysler also pointed to the U.S. economy as a factor which could negatively impact its CAFE if economic conditions worsen to the point that they necessitate the delay or postponement of certain plans.

Other Manufacturers

Volkswagen (VW) currently offers only one light truck model, the Vanagon compact bus. Volkswagen's combined light truck CAFE for MY 1990 is

estimated at 20.8 mpg. VW indicated in its response to the January 1989 questionnaire that it has no significant improvements planned to increase fuel economy by MY 1993–94. The company's product plans are indefinite, but may involve a larger engine, or a front wheel drive model.

Range Rover projected its light truck CAFE for MY 1989 at 15.3 mpg, in April 1989. At the time, the company did not expect any significant fuel economy improvement. However, the company has projected its 1990 and 1991 CAFEs at 16.3 mpg, 1.0 mpg higher than its MY 1989 projection.

Other foreign light truck manufacturers only compete in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above those of GM and Ford, the manufacturers whose fuel economy capabilities determine the MY 1993–94 standards.

B. Possible Additional Actions to Improve MY 1993–94 CAFE

There are additional actions which the agency analyzed that could be implemented by manufacturers to improve their CAFEs above the levels which they currently project for MY 1993–94. These actions may be divided into three categories: further technological changes to their product plans, increased marketing efforts, and product restrictions or mix shifts.

1. Further Technological Changes. The ability to improve CAFE by further technological changes to product plans is dependent on the availability of fuel efficiency enhancing technologies which manufacturers are able to apply within the available leadtime.

The agency's FRIA discusses the fuel efficiency enhancing technologies which are expected to be available by MY 1993–4. NHTSA recognizes that the leadtime necessary to implement significant improvements in engines, transmissions, aerodynamics and rolling resistance is typically about three years. Also, as the agency discussed in establishing the final rule for MY 1990–91, once a new design is established and tested as feasible for production, the leadtime necessary to design, tool, and test components such as new body sheet-metal subsystems for mass production is typically 30 to 36 months. Other potential major changes may take longer. Leadtimes for new vehicles are usually at least three years.

Given leadtime constraints, the agency does not believe that manufacturers can achieve significant improvements in their projected MY 1993–94 CAFE levels by additional technological actions. Some improvements are, of course, possible due to slight increases in the extent of installation of more fuel efficient technology or changes in model mix. However, such changes are likely to be market driven, and are not likely to provide a substantial increase for any manufacturer.

2. Increased Marketing Efforts. As discussed in the NPRM, NHTSA believes that the ability to improve light truck CAFE by marketing efforts is relatively small. Light trucks are often purchased for their work-performing capabilities. This is particularly true for the larger, less fuel-efficient light trucks. Since the smaller light trucks cannot meet the needs of all light truck users, the manufacturers' ability to use marketing efforts to encourage consumers to purchase smaller light trucks instead of larger light trucks is limited.

As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient vehicles less expensive or less fuel-efficient vehicles more expensive. Moreover, the ability of a manufacturer to increase sales of fuel-efficient light trucks depends in part on increasing its market share at the expense of competitors or pulling ahead its own sales from the future. The ability of domestic manufacturers to make such sales increases is also affected by the strong competition in that market from Japanese manufacturers. While the Japanese manufacturers currently have an overall combined market share of about 30 percent of light trucks, their share for the smaller, more fuel-efficient light trucks is about 45 percent.

A problem with pulling ahead sales is that the manufacturers' CAFE levels for subsequent years are reduced. For example, if a manufacturer improves its MY 1993 CAFE by pulling ahead sales of fuel-efficient light trucks from MY 1994, its MY 1994 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales attributable to marketing efforts. For this reason, a manufacturer cannot continually improve its CAFE simply by pulling ahead sales.

Given these considerations, NHTSA concludes that the domestic manufacturers cannot significantly improve their MY 1993–94 CAFE levels through increased marketing efforts.

3. Product Restrictions and Possible Mix Shifts. As an alternative to technological improvements, manufacturers could improve their CAFE by restricting their product offerings (e.g., limiting or deleting production of particular larger light truck models and larger displacement engines). Such product restrictions could have adverse economic impacts of the industry and the economy as a whole.

The FRIA presents a scenario as an example in which GM, Ford and Chrysler (since Chrysler's projected capability for MY 1993 is below the range of up to 21.5 mpg proposed in the NPRM for MY 1993) are assumed to restrict production of sufficient numbers of their least fuel-efficient light truck models to obtain a 0.5 mpg improvement in CAFE beyond their projected capabilities for MY 1993. Under this scenario, GM could suffer a sales loss of up to 175,000 light trucks for MY 1993, while Ford could experience a sales loss of more than 159,000 light trucks, and Chrysler a sales loss of more than 89,000 light trucks in MY 1993. The potential job losses under this scenario in manufacturing and supplier industries could total 28,000 to 85,000 for MY 1993.

These numbers are quite probably overstated, since, as GM has stated in past light truck rulemakings, and Ford has stated in its comments on this rule, product restrictions of the type envisioned above would likely be considered only after attempting marketing efforts and restricting the availability of particular engines and axle ratios. Ford and GM both submitted analyses of the sales and employment impact of setting the standard at 0.5 mpg beyond their respective capabilities. Both manufacturers' analyses show impacts much smaller than those projected above. However, the scenario is illustrative of the types of impacts that could result from standards that exceed manufacturers' true capabilities. In addition to the adverse impacts on the automotive industry, a wide range of businesses could be seriously affected to the extent that they could not obtain the light trucks they need for business use.

Although the current Mid-East crisis has, in the short run, somewhat tilted consumer demand toward smaller and more fuel efficient light trucks, it is unclear whether this shift can be maintained, since work-performing capability and load capacity are the primary factors that determine consumers' long-term choices when purchasing light trucks.

The U.S. Department of Energy (DOE) commented that NHTSA's method of analysis yields estimates of economic impacts that are so much larger than those that would actually occur, that it may not be meaningful to consider them. Although not advocating the payment of fines as an alternative to compliance, DOE suggested that the fines paid in such a circumstance would be a better

context in which to evaluate the maximum negative impacts of a standard 0.5 mpg above the manufacturers' capability.

NHTSA's response to this comment is discussed in detail in the final rule for MY 1992. NHTSA does not dispute DOE's analysis for the case where manufacturers choose to pay penalties rather than comply with a standard beyond their capability. However, NHTSA's analysis focuses on the maximum impacts that would occur if manufacturers chose to comply with the standard through product restrictions, or were forced to so comply because marketing or other measures were unsuccessful. Moreover, the agency believes the statute directs it to consider the maximum fuel economy level that manufacturers can achieve, rather than the impact of penalties paid if the standards are not achieved.

Ford's comments expressed concern that establishing a CAFE standard beyond its capability could result in a substantial loss of sales, adverse employment effect, and economic hardship. The company is also concerned about the potential impact of product restrictions, and indicated that market research data show that the vehicles most likely to be restricted are used for a combination of commercial as well as personal uses.

In its comments, GM also expressed concern about the impact of product restrictions on consumer choice and industry employment.

NHTSA concludes based on these considerations that significant product restrictions should not be considered as part of manufacturers' capabilities to improve MY 1993–94 CAFE levels.

C. Manufacturer-Specific CAFE Capabilities

As discussed later in this notice, NHTSA is directed to take "industrywide considerations" into account in setting fuel economy standards. In carrying out this direction, the agency focuses on the least capable manufacturer with substantial shares of light truck sales. For MY 1993, the agency has determined that Ford is the least capable manufacturer with a substantial share of sales. For MY 1994, GM is the least capable manufacturer. During MY 1990, Ford had a 26 percent share of combined light truck sales. By comparison, GM had a 32 percent share, and Chrysler a 22 percent share. VW does not have a substantial share of industry sales. Its MY 1990 market share was 0.17 percent. Similarly, Range Rover's sales accounted for 0.13 percent of the light truck market in MY 1990.

GM Ford and Chrysler's MY 1993–94 CAFE projections are subject to a number of uncertainties which are discussed above. NHTSA has fully considered these uncertainties in determining manufacturer-specific capabilities.

Ford: As noted above, in March 1989, Ford projected a MY 1993 CAFE of 19.8 mpg, and a MY 1994 CAFE of 20.0 mpg. In its March 1990 comments, Ford projected a CAFE of 20.9 mpg for MY 1993, and 20.8 mpg for MY 1994, subject to risks and opportunities which Ford believes could lead to a decrease of about 0.5 mpg in MY 1993, and 0.7 mpg in MY 1994. Many of the technical risks and opportunities are each quite small. Ford believes that its fuel economy testing program may not yield the anticipated benefits, resulting in a 0.2 mpg decrease for both MY 1993 and MY 1994. This is offset, however, by minor technological improvements in both years which would raise Ford's CAFE by 0.2 mpg. Ford also anticipates that new safety requirements which become effective in MY 1993 and MY 1994 could decrease CAFE by 0.1 mpg in MY 1993 and 0.2 mpg in MY 1994 due to increased weight. Ford also includes a risk that planned fuel economy improvements may not achieve the projected levels, resulting in a 0.2 mpg decrease for both model years, and a 0.3 mpg decrease for both model years based on potential market risks. Finally, Ford's base projection includes a 0.4 mpg penalty in MY 1994 to account for more stringent emissions standards.

Ford concludes that these factors could result in adjusted CAFEs of 20.4 mpg for MY 1993 and 20.2 mpg for MY 1994. (The MY 1994 figure reflects a correction for a 0.1 mpg error in Ford's fleet description.) The agency agrees that Ford's fuel economy data vehicle testing program may not yield the entire benefit that Ford anticipates, and that Ford's baseline should be reduced by 0.2 mpg in both MY 1993 and MY 1994 to reflect this risk. NHTSA's analysis indicates that the minor technological improvements planned by Ford would be likely to result in a potential net gain of nearly 0.2 mpg in both model years. The agency also agrees with Ford's assessment of the CAFE penalties for new safety requirements in these model years. Further, NHTSA does not wish to discourage the voluntary installation of safety features such as automatic occupant restraints by disallowing Ford's projected penalty for increased safety features. NHTSA believes that Ford's assessment of potential market risks is overly pessimistic, and that all the events which comprise that risk are unlikely to occur simultaneously. Thus, NHTSA has added 0.1 mpg to Ford's capability for each year. In addition, the agency believes that certain technological improvements which Ford discounted from its baseline due to potential emissions penalties should be reinstated. This would amount to a negligible improvement for MY 1993, but would increase Ford's CAFE by 0.1 mpg in MY 1994. Finally, as discussed below in Section IV, the agency does not believe that the recent Clean Air Act amendments are likely to result in significant light truck fuel economy impacts. The agency notes that no other manufacturer claimed a specific emissions penalty in its MY 1994 CAFE projection. Moreover, the phase-in schedule in the Clean Air Act was delayed by one year from that in the draft legislation under consideration when Ford made its estimate. Thus, in its analysis and comparison with other manufacturers' projections, NHTSA has not included this 0.4 mpg MY 1994 penalty deducted by Ford.

Taking these factors into account, NHTSA believes that Ford is capable of a CAFE of 20.6 mpg in MY 1993 and 20.9 mpg in MY 1994.

General Motors: As noted above, in March, 1989, GM projected a MY 1993 CAFE of 20.7 mpg, and a MY 1994 CAFE of 20.8. In its March 1990 comments on the NPRM, GM revised its projection to 20.7 mpg for both MY 1993 and 1994 due to minor technical and mix adjustments. However, GM also indicated several uncertainties that combined could lower its projection by as much as 0.4 mpg for each year, for an adjusted CAFE of 20.3 mpg for both years. These risks were tied primarily to mix shifts toward less efficient vehicles.

As with Ford's projection, NHTSA believes that GM's market risk estimate is likely overstated. For example, as noted in the MY 1992 final rule, GM's CAFE can be increased if GM would drop the low-volume offering of the fuel-inefficient 7.4 litre C10 pickup. Taking this consideration into account when analyzing GM's market risk, the agency believes that a reasonable adjustment for GM's market risk during MY's 1993 and 1994 is 0.1 mpg for each year. This decrease is offset because NHTSA believes that GM omitted from its baseline certain technological improvements for which it projects increasing market share during MY 1993–94, and which could produce a CAFE improvement of about 0.1 mpg in both model years. NHTSA concludes that GM is capable of a CAFE for MY 1993 and 1994 of 20.7 mpg.

As discussed at length in the MY 1992 final rule, the U.S. Department of Energy

(DOE) commented that the upper end of the CAFE ranges proposed in the NPRM were achievable and represented the maximum feasible level. DOE's analysis was based on a linear interpolation between a base CAFE for each domestic manufacturer for MY 1987 and DOE's analysis of the manufacturers' capabilities for MY 1995. This methodology assumes both that DOE's MY 1995 projection is actually achievable and that each manufacturer has the capability to improve each year by the same fixed amount (about 0.4 mpg per model year). NHTSA questions both assumptions. Based on the manufacturers' submissions, GM will improve about 1.0 mpg between MY 1990 and MY 1994, but a large part of this is due to an unfavorable model mix in MY 1990 due to a short model year for compact pickups and utility vehicles. Ford will improve by 0.6 mpg and Chrysler will decline by 0.3 mpg between MY's 1990 and 1994.

The agency does not believe that DOE's extrapolation of CAFE values is a meaningful method to determine individual manufacturer capabilities for specific years, nor is it as accurate as an examination of product plans in establishing short term capabilities for individual manufacturers. As explained in the MY final rule, NHTSA has provided DOE with comments on the draft report on which the MY 1995 projection is based, and does not believe that all issues have been resolved between DOE and NHTSA.

IV. Other Federal Standards

In determining the maximum feasible fuel economy level, the agency must take into consideration the potential effects of other Federal standards. The following section discusses other government regulations, both in process and recently completed, that may have an impact on fuel economy capability for MY 1993–94.

1. Safety Standards

As discussed in the FRIA, NHTSA has evaluated several safety rulemakings for their potential impacts on light truck fuel economy in MY 1993–94. This final rule does not address the impact of regulations that take effect in MY 1992. The CAFE impact of those regulations and issues raised by commenters concerning those regulations were addressed in the final rule for MY 1992.

The safety regulations evaluated by the agency for this rulemaking which are anticipated to become effective during MY 1993–94 include revisions to FMVSS Nos. 208; *Occupants crash protection,* 108; *Lamps, reflective devices and associated equipment,* 214; *Side door strength,* and 216; *Roof crush resistance-passenger cars.* In addition, the agency has evaluated proposed revisions to 49 CFR part 523, addressing vehicle classification for safety standards.

FMVSS No. 208. The agency published an NPRM on January 9, 1990 (55 FR 747) proposing to require automatic restraints on light trucks with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. The proposal would phase-in the requirements, so that each manufacturer would be required to equip 20 percent of its light trucks manufactured between September 1, 1993 and August 31, 1994 with automatic restraints. From September 1, 1994 through August 31, 1995, 50 percent of each manufacturer's light trucks would have to be so equipped, and from September 1, 1995 on, all light trucks would be required to have automatic restraints. Thus, this proposal would have no direct impact on MY 1993 light trucks, and would affect only 20 percent of MY 1994 light trucks.

NHTSA has estimated the range of potential weight impacts (including secondary weight) from this proposed requirement to be between 5–36 pounds. Assuming manufacturers made changes to maintain constant acceleration performance despite the weight increases, fuel economy would be reduced about 0.05–0.10 mpg. However, since the requirement would only affect 20 percent of the MY 1994 fleet, the negative CAFE effect would be only 0.01–0.02.

In its response to the NPRM, Ford indicated the addition of driver-only passive restraints would add 20 to 50 pounds per affected vehicle, and that the addition of a passenger airbag would add 25 pounds, not including structural support. GM projected in its comments that airbags would add 17 to 24 pounds per affected vehicle. Chrysler noted that it did not include the impact of automatic restraints in its CAFE projections. No other comments were received on the potential impacts of automatic restraints on light truck CAFE.

Although NHTSA has not yet issued a final rule requiring automatic restraints for light trucks, the agency has included the weight impacts outlined by the manufacturers in assessing MY 1993–94 fuel economy capabilities. Even if the agency decides not to require automatic restraints for light trucks in the proposed time frames, it does not want this MY 1993–94 CAFE rulemaking to discourage the voluntary installation of these systems in light trucks.

FMVSS 214. On December 22, 1989, the agency published an NPRM (54 FR 52826), proposing to extend the existing requirements of Standard No. 214 to trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less, effective September 1, 1992.

NHTSA has estimated that the proposal, if adopted, could result in an average weight increase of 18–20 pounds per vehicle not including possible secondary weight, or 31–35 pounds including possible secondary weight. If the requirement takes effect as proposed, it could reduce MY 1993 and MY 1994 fuel economy levels by about 0.1 mpg.

Chrysler indicated in its comments that its projections included the effects of side door beams for MY 1993 and beyond. However, Chrysler did not provide a specific estimate of the fuel economy impacts of the proposed revisions to Standard No. 214. GM indicated that the side impact proposal would result in a 12–24 pound weight increase due to redesigned doors and glass. Ford stated that the proposal would result in a weight increase of 20 to 35 pounds per vehicle, depending on vehicle size and door configuration.

The weight impact estimates provided by the manufacturers are generally consistent with NHTSA's estimates. Since NHTSA has not altered the manufacturers' weight estimates, the potential impacts of this standard are included in the agency's fuel economy capability assessments.

FMVSS 108. Changes to the agency's lighting standard permit the use of smaller sealed beam headlamps, replaceable light source headlamps and lower mounting height. All of these changes should give manufacturers greater design freedom to achieve lower aerodynamic drag and some weight reductions, which could have positive impacts on CAFE. However, the agency does not have any data to estimate the reduction in drag that may be economically achievable for light trucks as a result of these changes. These positive effects may be counterbalanced by possible slow consumer acceptance of light truck styling for certain models which have been influenced by aerodynamic considerations. However, Ford indicated in its comments on the fuel economy NPRM that the changes to Standard 108 may permit more aerodynamic front end designs, and provide some opportunity for weight reduction.

On May 31, 1990, the agency published a NPRM (55 FR 22039) to require that new light trucks be equipped with Center High Mounted Stop Lamps (CHMSLs). The proposed

effective date would be September 1, 1992, affecting MY 1993 and later light trucks. NHTSA estimates that this requirement would result in a weight increase of about one pound and that it would have a negligible impact on CAFE.

In its comments on the MY 1992–94 fuel economy NPRM, Ford estimated that CHMSLs would result in a two pound weight increase. This increase is included in Ford's fuel economy projections. GM did not mention FMVSS No. 108 in its response. Chrysler indicated that it has included CHMSLs in its projections, but it did not provide a specific estimate of the potential impact.

FMVSS 216. On November 2, 1989 (54 FR 46275), NHTSA published an NPRM proposing to extend the roof crush protection requirements of Standard No. 216 to light trucks and multipurpose passenger vehicles with GVWRs of 10,000 pounds or less, with a proposed effective date of September 1, 1991.

GM, Ford, and Chrysler all indicated in their comments that they had considered the fuel economy impacts of the proposal in their fuel economy projections. Since most light trucks already comply with the proposed requirements, and only modest weight increases are anticipated for those vehicles not meeting the proposal, the agency believes that this rulemaking will have a negligible impact on automakers' MY 1993–94 fuel economy capabilities.

Vehicle classification. NHTSA proposed to establish a new vehicle classification system for determining the applicability of the Federal Motor Vehicle Safety Standards on October 17, 1988. (53 FR 40463). The proposed rule would not affect the classification of vehicles for fuel economy standards. The agency is not proposing to alter the definitions of "passenger automobile" or "light truck" as they appear in 49 CFR part 523. However, vehicles that are defined as light trucks for the purpose of fuel economy standards would be the type of vehicle most affected by the proposed classification changes. Vehicles classified as light trucks for fuel economy standards include many vehicles currently classified as trucks or MPVs for the purpose of safety standards. However, as the agency proposed to amend its safety regulations in such a way as to ensure that re-classification, by itself, causes no change in the applicability of safety standards, adoption of the proposed classification rule would have no impact on manufacturers' fuel economy capabilities for MY 1993–94.

2. Noise Standards

The agency is not aware of any plans on the part of EPA to promulgate noise regulations during the MY 1993–94 time period, and therefore does not anticipate any attendant fuel economy impacts.

3. Emission Standards

The Clean Air Act Amendments of 1990 impose new, more stringent emission standards on light trucks beginning in MY 1994. The amendments require that 40 percent of all light duty trucks up to 6,000 lbs GVWR meet more stringent standards for nonmethane hydrocarbons (NMHC), total hydrocarbons (HC), nitrogen oxides (NOx) and carbon monoxide (CO) in MY 1994. The remaining 60 percent of light duty trucks up to 6,000 lbs GVWR and those over 6,000 lbs GVWR would not be required to comply with the existing light duty standards until MY 1995 or 1996.

The Act includes new standards for CO emissions at low temperatures, with the requirements for light trucks beginning in MY 1994. The Act phases in CO requirements, requiring 40 percent of vehicles to comply in MY 1994. It also requires EPA to promulgate stricter evaporative HC emissions standards.

The revised Clean Air Act also requires light trucks to be equipped with onboard refueling vapor recovery systems. Such requirements must be effective in the fourth model year after the standards are promulgated, and EPA would be required to promulgate the standards within one year from enactment of the amendments. Thus, if the standards for onboard vapor recovery were issued during MY 1991, they would not take effect until MY 1995.

In their comments on the NPRM, manufacturers provided little definitive information on the CAFE impacts of the amendments since the future status of the amendments was unclear at that time. Chrysler indicated that it did "not know the task of meeting these standards, nor what effect there will be on fuel economy." GM assumed that stricter emissions standards could have a negative effect on fuel economy, and indicated that if the final Federal requirements were similar to the 1993 California standards, the fuel economy of each of its engines could be expected to decrease between 0 and 4½ percent. In addition, GM indicated that the more stringent HC standards could limit the application of some manual transmissions. Ford estimated that the proposed legislation would reduce its MY 1994 CAFE by 0.4 mpg, and included this penalty in its MY 1994 projection of 20.8 mpg. None of the other manufacturers included any emissions penalty in their CAFE projections.

EPA has indicated that, as a general rule, recent developments in emission control technology in the light duty fleet have allowed for decreases in emissions without losses in fuel economy. As an example, the use of computer controls to maintain the engine air-fuel ratio within a narrow range has made the use of three-way catalytic converters feasible. The use of these converters has in turn enabled manufacturers to optimize fuel economy while independently meeting emissions standards. Additionally, manufacturers are increasing the use of multipoint fuel injection on light trucks. This will provide a slight increase in fuel economy if it is not used to increase performance. EPA expects that the entire light truck fleet will be equipped with multipoint fuel injection by the mid-1990s.

The more stringent standards mandated by the Clean Air Amendments will likely be achieved by a combination of engine recalibration, catalyst reformulation, better air-fuel mixture control and reformulated gasoline. Most of these changes will not affect fuel economy. Others are likely to provide some improvement in in-use fuel economy, and may provide some benefit during fuel economy testing the CAFE.

Although it appears that manufacturers can meet the emissions standards for the mid-1990s without suffering any significant fleet-wide fuel economy penalty, it is possible that there may be some initial, short-lived fuel economy losses. The limited emissions control engineering resources of the auto manufacturers must be utilized to meet stricter standards for both light trucks and passenger cars during these model years. Given the task of meeting more stringent standards on a wide variety of light truck powertrains, it is possible that some of the initial technologies and calibrations used to meet these standards may not be optimized. Consequently, some small loss of fuel economy is possible. Given the uncertainty in the development process, this effect cannot be precisely quantified. However, the agency has given consideration to these factors in setting the light truck CAFE standards in this final rule.

Diesel fuel quality. EPA published a final rule on August 21, 1990 (55 FR 34120) requiring a reduction in the permissible level of sulphur in diesel fuel, and a cap on aromatics at current levels for diesel fuel. The rule becomes effective October 1, 1993. The effect of this requirement will be to lower the

particulate emissions from diesel engines operating on the fuel. By making it easier for diesel-powered vehicles to comply with emissions standards, this requirement potentially could improve the performance, and therefore marketability, of diesel-powered vehicles in the U.S., giving manufacturers an additional means to improve light truck CAFE.

Hydrocarbon emissions. On September 8, 1986, EPA published an advance notice of proposed rulemaking (ANPRM) concerning more stringent HC exhaust emissions for light-duty trucks. In December 1986, both GM and Ford commented that more stringent HC standards could have a negative impact on CAFE. This rulemaking has been superseded by the Clean Air legislation. Therefore, no potential impacts of this specific proposal were considered in determining the MY 1993–94 light truck CAFE standards.

Evaporative emissions. On January 19, 1990, EPA issued an NPRM proposing modifications to test procedures for control of evaporative emissions from running losses (55 FR 1914). This proposal would affect light duty vehicles fueled by gasoline or methanol, but it is expected to have no impact on fuel economy values as measured on the EPA test cycle. The Clean Air Act Amendments of 1990 require light trucks to be equipped with onboard vapor recovery systems in the fourth model year after standards are promulgated by EPA, in consultation with the Secretary of Transportation on the safety aspects of compliance. As mentioned above, NHTSA is not considering any impact of these systems on light truck fuel economy capabilities until MY 1995.

California Air Emissions Standards. The California Air Resources Board (CARB) in 1986 adopted more stringent NOx standards for compact trucks sold in the state. The regulation phases in compliance, with 50 percent of light trucks weighing up to 3750 pounds loaded vehicle weight subject to the standard in 1989, and 85 percent of vehicles in this class required to meet the standard for MY 1990–93. Beginning in MY 1994, all compact light trucks are subject to the standard. Both Ford and GM claimed in the MY 1990–91 rulemaking that this standard will have a small negative effect on their fuel economy capability. However, in that rulemaking, NHTSA concluded that by MY 1991, manufacturers should be able to eliminate or substantially reduce the projected penalty. California's standards for nonmethane hydrocarbons begin to become more stringent in MY 1993. In its response to the NPRM, GM indicated that the more stringent California HC standards scheduled to take effect in MY 1993 would result in a fuel economy loss from 0 to 1.5 percent depending on the characteristics of each engine. Ford also indicated that the California standards would have a negative effect on fuel economy, although Ford did not distinguish between the impact of the California standards and the Federal Clean Air legislation in assessing that effect. As discussed above, NHTSA has considered the potential for reductions in light truck fuel economy capability due to new emissions requirements in setting the MY 1993–94 standards.

Chlorofluorocarbons. In response to the NPRM, GM indicated that manufacturers must develop substitutes for chlorofluorocarbons (CFCs) used in automotive air conditioning designs. Vermont has banned the registration of new vehicles using CFCs as a refrigerant beginning in MY 1993. GM indicated that replacing CFCs will result in a weight increase of around seven pounds per vehicle, and considerably more if sheet metal changes are necessary to accommodate new air conditioning systems. However, since NHTSA has not altered manufacturer's weight projections for this final rule, the potential impacts of this change are included in the agency's fuel economy capability assessments.

4. EPA Test Procedures

Gear shift indicator lights. During the MY 1990–91 fuel economy rulemaking, EPA issued a letter to manufacturers proposing to eliminate one of the two methods currently authorized to determine the fuel economy benefits of shift indicator lights. These dashboard lights are designed to inform drivers about the optimal speed, from a fuel economy standpoint, for shifting gears. EPA proposes to eliminate the driver usage rate survey, the method preferred by GM as a "more representative credit for actual shift indicator light usage than the on-road survey," and allow only an on-road shift light survey. At this point, EPA has not made a decision on this issue. No manufacturers raised the issue of shift indicator lights in their comments in response to NHTSA's request for comments on manufacturers' MY 1992–94 light truck fuel economy capabilities. In its comments on the MY 1992–94 fuel economy NPRM, GM stated that its light truck CAFE could be adversely affected if EPA were to eliminate the driver usage rate survey. However, since EPA has not made a decision on the issue, NHTSA has not made any adjustment to fuel economy capabilities to consider this factor.

5. Other Standards

Asbestos. On January 29, 1986, EPA proposed to prohibit the "manufacture, importation, and processing of asbestos in certain products," and the phasing out of asbestos in all other products. The implication of this rulemaking for motor vehicles would be to eliminate the use of asbestos in brake linings, clutch facings, automatic transmissions and gaskets.

On July 12, 1989, EPA published a final rule (54 FR 29460) phasing in a prohibition of asbestos in almost all products. Asbestos brake linings are banned for use by orignial equipment manufacturers effective MY 1994. Asbestos clutch facings, automatic transmission components and virtually all asbestos gaskets are banned as of August 25, 1993. In its comments on the MY 1990–91 light truck fuel economy rulemaking, GM indicated that the phase out would increase vehicle weight approximately 5 pounds and reduce CAFE. However, GM provided no substantiation for its estimates. In response to NHTSA's request for comments on MY 1992–94 manufacturers' CAFE capabilities, no manufacturer indicated that this rule would have any potential impact on MY 1992 light truck fuel economy. However, in its comments on the fuel economy NPRM, GM indicated that while most necessary changes had been implemented, and therefore are included in the company's CAFE projections, certain changes had not yet been made. Specifically, the company anticipates a seven pound increase on the S/T models beginning in MY 1992. The effects are included in the agency's assessment of GM's fuel economy capability.

V. The Need of the Nation to Conserve Energy

The United States imported 15 percent of its oil needs in 1955. The import share had reached 35.8 percent by 1975, the year the Energy Policy and Conservation Act was passed, and peaked at 46.5 percent in 1977, at a cost of $62 billion (stated in 1982 dollars). While the import share of total petroleum supply declined after that year, the cost continued to rise to a 1980 peak of $87 billion (1982 dollars).

While the import share of petroleum supply declined through 1985, it has been increasing since that time. In 1985, the import share was 27.3 percent at a cost of $45 billion (1982 dollars). For 1988, net imports were 38.1 percent of total supply. For 1989, net imports were 41.6 percent of total supply. For January-August 1990, net imports reached 45.7 percent of total supply. Due to sharply

lower petroleum prices, however, the value of imports declined from 1985 to 1989, from $45 billion to $39 billion (1982 dollars), but will undoubtedly be higher for 1990 because of the rapid increases in oil prices since the Iraqi invasion of Kuwait. Imports from OPEC also declined through 1985 but have been rising since that time. For the first 7 months of 1990, OPEC imports accounted for about 54 percent of total import supply, up from about 47 percent for 1989, and 51 percent for 1988.

The nation's dependence on petroleum net imports since 1975 is summarized in the following table:

Year	Net imports as percent of U.S. petroleum products supplied	
	From OPEC	From all countries
1975 average	22.0	35.8
1977 average	33.6	46.5
* * * * *		
1985 average	11.6	27.3
1988 average	20.3	38.1
1989 average	23.8	41.6
1990 average (first 6 mos.)	26.5	45.2

The current energy situation and emerging trends point to the continued importance of oil conservation. The United States now imports a higher percentage of its oil needs than it did during 1975, the year EPCA was passed, and the percentage of its oil supplied by OPEC is also somewhat higher than that of 1975. Oil continues to account for over 40 percent of U.S. energy use, and 97 percent of the energy consumed in the transportation sector. While the U.S. is the second-largest oil producer, it contains only three percent of the world's proved oil reserves. Moreover, proven reserves in the U.S. have declined from a peak of 39 billion barrels in 1970 to 27 billion barrels in 1988.

According to the Energy Information Administration's (EIA) 1990 Annual Energy Outlook, domestic production for its "base case" projection is expected to decline from 10.5 MMB/D in 1987 to 9.0 MMB/D in 1995, and 8.7 MMB/D in 2000. Net imports are projected to increase from 6.6 MMB/D in 1987 to 9.1 MMB/D in 1995 and 10.0 MMB/D in 2000. Thus, as a percentage of total U.S. petroleum use, EIA expects imports to rise to 50.3 percent of total supply in 1995 (exceeding the previous 1977 high of 46.4 percent) and 53.5 percent in 2000.

In its comment to the docket for NHTSA's 1990 passenger car CAFE rulemaking, the Department of Energy (DOE) emphasized several points about transportation's role in U.S. oil use and the importance of rising fuel efficiency. DOE noted that the 11 MMB/D used by the transportation sector in 1986 is almost 80% of total U.S. use of oil and over 90% of the critical light product use. Thus, DOE wanted NHTSA to consider the fact that any significant moderation in growing oil demand will require large transportation efficiency improvements. DOE also emphasized that the 1987 EIA oil demand forecasts assume that average new car efficiency will continue to improve, which DOE said does not seem likely given fuel economy trends (at least to the levels assumed by EIA), and that even with these projected increases in fuel efficiency, U.S. oil demand is projected to increase over 1.5 MMB/D by 2000.

The level of petroleum imports is only one aspect of the total energy conservation picture. Under EPCA and NEPA, for example, national security, energy independence, resource conservation, and environmental protection must all be considered. The importance of these issues is emphasized by the current conflict in the Persian Gulf, as well as by the prospect of the U.S.S.R. becoming an oil importer.

In March 1987, the Department of Energy submitted a report to the President entitled "Energy Security." NHTSA believes that the following quotation from that report represents a useful summary of the national security and energy independence aspects of the current energy situation:

> Although dependence on insecure oil supplies is * * * projected to grow, energy security depends in part on the ability of importing nations to respond to oil supply disruptions; and this is improving. The decontrol of oil prices in the United States, as well as similar moves in other countries, has made economies more adaptable to changing situations. Furthermore, the large strategic oil reserves that have been established in the United States (and to a lesser extent, in other major oil-importing nations) will make it possible to respond far more effectively to any future disruptions than has been the case in the past.
>
> The current world energy situation and the outlook for the future include both opportunities and risks. The oil price drop of 1986 showed how consumers can be helped by a more competitive oil market. If adequate supplies of oil and other energy resources continue to be available at reasonable prices, this will provide a boost to a world economy. At the same time, the projected increase in reliance on relatively few oil suppliers implies certain risks for the United States and the free world. These risks can be summarized as follows: If a small group of leading oil producers can dominate the world's energy markets, this could result in artificially high prices (or just sharp upward and downward price swings), which would necessitate difficult economic adjustments and cause hardships to all consumers.
>
> Revolutions, regional wars, or aggression from outside powers could disrupt a large volume of oil supplies from the Persian Gulf, inflicting severe damage on the economies of the United States and allied nations. Oil price increases precipitated by the 1978–79 Iranian revolution contributed to the largest recession since the 1930's. Similar or larger events in the future could have far-reaching economic, geopolitical, or even military implications.

The continuing validity of the above quotation is verified by the recent events surrounding the Iraqi invasion of Kuwait in August 1990. Although there has been no noticeable oil supply disruption since the invasion, due in part to increased exports from other OPEC members to make up for the embargoed oil exports from Iraq and Kuwait, the market price of crude oil had an initial dramatic increase, and remains very unstable. This, coupled with the 5-cent per gallon increase in the Federal gasoline tax in December 1990, accentuates the need of the nation to conserve energy and the importance of improved vehicle fuel efficiency, both from an energy security and from an economic viewpoint.

The agency recognizes that the energy situation is affected in the near term by the current uncertainty about the outcome and length of time to resolve the situation in the Middle East. NHTSA believes it important to note that the fuel economy standards included in this final rule will not have near term effects. They will not affect light truck fuel economy until the beginning of MY 1993, and then only gradually as these trucks replace older trucks. The long term energy policy of the nation is being addressed by the National Energy Strategy (NES), which is being developed by the Department of Energy, with the cooperation of other government agencies, including the Department of Transportation.

This overall strategy will reflect careful examination of the need for energy conservation, and its impact on the components of the nation's economy, including the transportation sector. This examination includes overall transportation energy consumption, and not just increases in the fuel efficiency of the new vehicle fleet. Vehicle fleet turnover and vehicle miles of travel are critical determinants of energy consumption and must be considered in any analysis of policies affecting energy use by light duty vehicles. There are a number of conservation and energy efficiency measures being analyzed that will produce near-term energy savings that do not impose significant economic costs on the automotive industry or the

public. The NES is due to be completed early this year.

With regard to this rulemaking, light truck registrations more than doubled between 1973 and 1989, and light truck sales are projected to increase 21 percent over the 1987–2000 period, compared to 14 percent for passenger cars. The light truck fleet's share of total oil consumption increased steadily from 6.4 percent in 1973 to 8.9 percent in 1980 to 12.1 percent in 1986 and to 12.5 percent in 1989. This increase in the light truck fleet's share of fuel consumption took place even as the average fuel economy of the on-road fleet of light trucks increased from an estimated 10.5 mpg in 1973 to 13.8 mpg in 1989. Clearly, light truck fuel economy will be an increasingly important determinant of the nation's level of petroleum consumption.

Information provided to NHTSA by the Department of Energy indicates that light trucks are used for a longer period of time (14.9 years versus 10.9 years) than passenger cars. Federal Highway Administration data indicate light trucks are driven farther annually (12,062 miles versus 10,382 miles) than passenger cars.

All of these factors result in the conclusion that improved light truck fuel economy contributes to the nation's efforts at conserving fuel. Light trucks meeting the standards proposed by this notice would be more fuel-efficient than the average vehicle in the current light truck fleet in service, thus making a positive contribution to petroleum conservation.

VI. Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 502(b) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): Technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. As with earlier CAFE rulemakings, NHTSA has considered and weighed all four statutory factors of section 502(e) in reaching its decision.

A. Interpretation of "Feasible"

Based on definitions and judicial interpretations of similar language in other statutes, the agency has in the past interpreted "feasible" to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy level must: (1) Be capable of being done and (2) be at the highest level that is capable of being done, taking account of what manufacturers are able to do in light of technological feasibility, economic practicability, how other Federal motor vehicle standards affect average fuel economy, and the need of the nation to conserve energy.

B. Industrywide Considerations

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industrywide basis. Legislative history may be used as an indication of Congressional intent in resolving ambiguities in statutory language. The agency believes that the below-quoted language provides guidance on the meaning of "maximum feasible average fuel economy level."

The Conference Report to the 1975 Act (S. Rep. No. 94–516, 94th Cong., 1st Sess. 154–5 (1975)) states:

> "Such determination [of maximum feasible average fuel economy level] should take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer * * *."

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industrywide considerations into account in determining the maximum feasible average fuel economy level.

NHTSA has consistently taken the position that it has a responsibility to set light truck standards at a level that can be achieved by manufacturers whose vehicles constitute a substantial share of the market. See 49 FR 41251, October 22, 1984. The agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler. 45 FR 20871, 20876; March 31, 1980. However, as the agency noted in deciding not to set the MY 1983–85 light truck standards above Ford's level of capability, Chrysler had only 10–15 percent of the light truck domestic sales, while Ford had about 35 percent. 45 FR 81593, 81599; December 11, 1980.

C. Petroleum Consumption

The precise magnitude of energy savings associated with alternative light truck fuel economy standards is uncertain. The FRIA provides calculations for the hypothetical lifetime fuel consumption of the MY 1993–94 domestic light truck fleets assuming those same fleets could and would achieve alternative CAFE levels. For example, the maximum difference in fuel consumption between the manufacturers' (GM, Chrysler and Ford's) current capabilities for MY 1993 and a 21.0 mpg CAFE standard would be 395 million gallons over the lifetime of the model year's fleet.

However, it is possible that manufacturers may be able to achieve particular higher CAFE levels only by restricting the sales of their large light trucks. If this occurred, consumers might tend to keep their older, less-fuel efficient light trucks in service longer. Also, to the extent that a particular manufacturer might find it necessary to restrict sales of its large light trucks, consumers may be able to transfer their purchases of those same types of vehicles to another manufacturer which may have less difficulty meeting the CAFE standard. Thus, the agency believes that the actual impacts, if any, on energy consumption of alternative higher fuel economy standards, would be less than the theoretical calculations comparing different levels of industrywide CAFE.

D. The MY 1993–94 Standards

Based on its analysis described above and on manufacturers' projections, the agency concludes that the major domestic manufacturers can achieve the combined fuel economy levels listed in the following table:

Manufacturer	Approximate market share (MY 1989) (in %)	Combined CAFE (in Mpg's)	
		MY 1993	MY 1994
Chrysler	21	20.9	20.8
GM	34	20.7	20.7
Ford	26	20.6	20.9

As indicated above, foreign manufacturers other than Volkswagen and Range Rover compete in only the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above those of GM, Ford and Chrysler, which offer full ranges of light truck models.

As discussed in the MY 1992 final rule, beginning with MY 1992, NHTSA has decided not to promulgate separate 2WD and 4WD standards as an alternative to the combined standard.

The setting of maximum feasible fuel economy standards, based upon consideration of the four required factors, is not a mere mathematical exercise but requires agency judgment. Based on the preceding analysis and discussion, the agency concludes that Ford is the least capable manufacturer with a substantial share of sales for MY 1993, and that GM is the least capable manufacturer with a substantial share of sales for MY 1994. The agency has also concluded that 20.4 mpg is the maximum feasible combined standard for MY 1993, and 20.5 mpg is the maximum feasible combined standard for MY 1994.

As discussed above in section IV, the federal Clean Air legislation will result in more stringent vehicle emission standards. However, as stated by EPA, recent developments in emission control technology have allowed for decreases in emissions with no loss in fuel economy. The more stringent standards resulting from the legislation can probably be achieved by a combination of engine recalibration, catalyst reformulation, better air-fuel mixture control, and reformulated gasoline, without any resulting fleet-wide fuel economy penalty. Given the task of meeting more stringent standards on a wide variety of powertrains, it is possible that some of the technologies and calibrations may not be fully optimized in the first year or two of implementation. While this possible initial fuel economy loss cannot be precisely quantified, the agency has considered it and allowed some margin for its existence in setting the light truck CAFE standards for MY 1994.

NHTSA believes there are serious questions whether a standard set at a level above Ford's capability for MY 1993, or GM's capability for MY 1994 would be consistent with the requirement that standards be set taking industrywide considerations into account, given those companies' market shares.

Notwithstanding the projected product plans that the manufacturers have provided the agency and that are discussed above, there is the potential for some change in each manufacturer's CAFE. The above analysis has not covered the potential of mix shifts because of the possible adverse financial consequences to manufacturers and national employment of any large change in CAFE that is created by forced mix shifts. Nevertheless, the market may dictate changes in the light truck mix in response to fuel prices and availability. Low fuel prices and plentiful supply may result in an increased demand for power and performance, while a substantial increase in fuel prices could increase demand for more fuel-efficient models. The immediate marketplace reaction to the Iraqi invasion of Kuwait was for the sales proportion of *compact* light trucks to increase by about 4 percentage points in August and September 1990 over the July share.

The precise effects on petroleum conservation of a higher standard are uncertain. The maximum theoretical additional energy savings associated with a standard set at a higher level can be determined by comparing hypothetical situations where GM, Chrysler, and Ford would have combined average fuel economy levels of 21.0 mpg. Since most other manufacturers in the industry project MY 1993 CAFE above that of these manufacturers' capabilities, a standard set at 21.0 mpg would not be expected to affect the petroleum consumption of trucks manufactured by that part of the industry. The maximum difference in total gasoline consumption between these two hypothetical situations over the lifetime of the MY 1993 fleet would be 395 million gallons. The maximum yearly impact on U.S. gasoline consumption would be 46 million gallons, or roughly three hundredths of one percent of total transportation gasoline consumption.

The agency believes, however, that any gasoline savings associated with a higher standard would actually be less than indicated by this projection. While such a standard would provide added incentive for GM to achieve its maximum fuel economy capability, it is not clear in light of earning possible carryforward/carryback credits that they might not achieve this increase anyway. Ford and GM could not likely improve their CAFE levels other than by restricting sales of larger light trucks and engines. To the extent that would-be purchasers of such vehicles and engines transferred their purchases to Chrysler without that company otherwise changing its product plans, there could be little or no effect on overall petroleum consumption.

Higher standards than 20.4 mpg for MY 1993 and 20.5 mpg for MY 1994 could result in serious economic difficulties for Ford in MY 1993 or GM in MY 1994. Given leadtime constraints, NHTSA believes that the primary potential fuel-efficiency enhancing actions that Ford or any other manufacturer would consider in response to a higher standard would consist of marketing actions. For the reasons discussed earlier in this notice, however, the agency does not believe that marketing actions can be relied upon to significantly improve fuel economy. If such marketing actions were unsuccessful in whole or in part, the least capable manufacturer would likely have to engage in product restrictions, including limiting the sales of larger engines and/or vehicles to improve its fuel economy. Such product restrictions could result in adverse economic consequences for that manufacturer, its employees and the economy as a whole and limit consumer choice, especially with regard to the load carrying needs of light truck purchasers.

Given Ford's 26 percent share and GM's 34 percent share of the light truck market in MY 1989, the capabilities of these manufacturers have a significant effect on the level of the industry's capability and, therefore, on the level of the standards. The agency believes that the 20.4 mpg standard for MY 1993 and the 20.5 mpg standard for MY 1994 balance the potentially serious adverse

economic consequences associated with market and technological risks against potential fuel economy improvements. The agency concludes, in view of the statutory requirement to consider specified factors, that the relatively small and uncertain energy savings associated with setting a standard above Ford's capability for MY 1993 or above GM's capability for MY 1994 would not justify the potential economic harm to those companies and the economy as a whole.

As explained in the final rule for MY 1992, in addition to the comments discussed above, the agency received comments from Nissan, the Natural Resources Defense Council (NRDC), the Energy Conservation Coalition (ECC), the Western Interstate Energy Board (WINB) and the National Automobile Dealers Association (NADA).

The ECC, in comments endorsed by NRDC, argued that in setting the CAFE standards, NHTSA should double the 3 percent annual rate of increase provided by the high end of the proposed ranges. This would result in a MY 1992 CAFE of 22.2 mpg, and a MY 1994 CAFE of 25 mpg. The ECC also stated it is essential to set standards now for model years after 1994 to provide manufacturers with adequate leadtime to achieve higher fuel economy levels. The comments claimed these increases would be cost-effective, and listed a number of potential technological improvements available to manufacturers. Finally, ECC provided statistics on the potential fuel savings achievable through higher CAFE standards for light trucks, and emphasized the U.S. transportation sector's role as a source of greenhouse gas emissions.

ECC does not explain the basis for its suggested levels. The commenter did not demonstrate why these levels would be feasible. As explained above, the agency has determined that the maximum feasible levels for MY 1993–94 are 20.4 mpg and 20.5 mpg, respectively. NHTSA also notes that much of the technology listed in ECC's comments has already been extensively incorporated in the light truck fleet. The agency has included an analysis of carbon dioxide emissions associated with this CAFE standard in the Environmental Assessment prepared by the agency for this rulemaking and available from the Docket Section. Finally, the agency notes that the fuel economy levels and time frames for their implementation advocated by ECC exceed the scope of the NPRM.

NRDC, while endorsing the ECC comments, also expressed concern that the NPRM did not discuss NHTSA's decision to undertake a programmatic Environmental Impact Statement (EIS) to examine effects of the CAFE program. NRDC believes the agency's handling of fuel economy issues violates the National Environmental Policy Act, and that the agency has not adequately analyzed the relationship between fuel efficiency and carbon dioxide emissions. In response, NHTSA notes that it has provided an analysis of fuel economy and carbon dioxide emissions in its Environmental Assessment for this rulemaking, and is continuing its work toward the publication of a programmatic EIS for the CAFE program. To that end, the agency issued a notice of intent to prepare a programmatic EIS (54 FR 37702, September 12, 1989), and conducted a public scoping meeting on December 13, 1990.

WINB supports higher fuel economy standards than those proposed, although it does not provide specific levels. The comments note that the growing role of light duty trucks is a primary cause of the stagnation in the fleetwide CAFE of all light duty vehicles. WINB argues that the agency has not considered the economic implications of failing to increase light truck CAFE, and that domestic jobs will be lost as rising fuel prices shift demand toward more efficient, imported light trucks.

NHTSA believes that it has taken into account the economic implications of not setting higher standards. This issue is discussed in detail in the FRIA available from the Docket. The agency disagrees with WINB's assumption that significantly higher fuel prices are likely during the period affected by this rulemaking, and therefore disagrees that there will be a significantly increased demand for more fuel-efficient vehicles. See the FRIA for a more detailed discussion of future fuel prices. Despite the recent trend toward higher oil prices, the agency does not believe it can reliably assume that this trend will continue into the time frame addressed by this rulemaking. If the agency is wrong about energy prices and prices do increase, manufacturers will have a consumer-driven incentive to produce more fuel efficient light trucks. Such action would not introduce the economic risk inherent with manufacturers' attempts to shift the market through product restrictions or market incentives. This outcome would benefit the nation in terms of energy conservation and reduce the manufacturers' risks in meeting the standards.

The agency also disagrees that domestic jobs will be lost as a result of its decision. In response to apparent consumer demands, import manufacturers are now introducing larger, more powerful and less efficient light trucks. This trend gives no indication of reversing in the near future. Finally, the agency notes that promulgation of standards beyond the range proposed in the NPRM exceeds the scope of this rulemaking.

NADA recommended that the agency establish CAFE standards no higher than 20.2 mpg. This is the maximum feasible level in NADA's opinion, because of new regulatory constraints and the need to accommodate a wide range of consumer needs for utility and durability. NADA stated that NHTSA appears to have underestimated the potential impact of safety and emissions standards for MY 1992–94, although no specific data were provided.

NHTSA notes that emissions impacts stemming from the Clean Air Act amendments are discussed above, and were considered in setting the MY 1994 standards. The agency also believes that its analysis has adequately accounted for the CAFE impacts of safety requirements affecting the MY 1993–94 fleet.

In its comments, Nissan projected that it would be in compliance with the upper end of the ranges proposed in the NPRM, and was thus not opposed to their adoption.

In its March 1989 response to NHTSA's request for comments, Volkswagen suggested as an alternative to establishing a combined standard within its capability that the agency consider alternate special consideration for limited product line truck manufacturers. In establishing the MY 1980–81 light truck CAFE standards, the agency did establish a separate standard in light of International Harvester's (IH) limited product line. See 43 FR 11995, March 23, 1978. The agency noted that IH had unique problems given its limited sales volume, restricted product line, the fact that its engines were derivatives of medium duty truck (above 10,000 pounds GVWR) engines, and the fact that it did not have experience with state-of-the-art emission control technology which the other manufacturers had obtained in the passenger automobile market. The agency emphasized, however, that the separate class was being established for only two model years' duration, concluding that IH should be able to achieve levels of fuel efficiency in line with other manufacturers within that

time period either through purchasing engines from outside sources or by making improvements to current engines.

The agency does not believe that Volkswagen's situation is similar to that of IH. While IH's difficulties were related to being newly subject to the fuel economy program, Volkswagen's potential CAFE difficulties are not. Under the Cost Savings Act, manufacturers are required to meet average fuel economy standards which are set based on industrywide considerations. For MY 1990, Volkswagen is projected to be well above the CAFE standard. Thus, NHTSA believes it is not appropriate to set a separate standard to accommodate Volkswagen's limited product line status.

Impact Analyses

A. Economic Impacts

The agency has considered the economic implications of the fuel economy standards established by this rule and determined that the rule is major within the meaning of Executive Order 12291 and significant within the meaning of the Department's regulatory procedures. The agency's detailed analysis of the economic effects is set forth in a Final Regulatory Impact Analysis (FRIA), copies of which are available from the Docket Section. The contents of that analysis are generally described above.

B. Environmental Impacts

The agency has analyzed the environmental impacts of the MY 1993–94 light truck average fuel economy standards in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* On the basis of that analysis, we now conclude that this rulemaking will not have a significant effect upon the quality of the human environment. Copies of the Environmental Assessment are available from the Docket Section. NHTSA is also developing a programmatic Environmental Impact Statement which will address the environmental impacts of the CAFE program. *See* 54 FR 37702 (September 12, 1989) and 55 FR 48137 (November 19, 1990).

C. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking would have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Few, if any, light truck manufacturers subject to the proposed rule would be classified as "small businesses" under the Regulatory Flexibility Act. In the case of other small businesses, small organizations, and small governmental units which purchase light trucks, this rule will not affect the availability of fuel efficient light trucks or have a significant effect on the overall cost of purchasing and operating light trucks.

D. Impact on Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule would have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. Department of Energy Review

In accordance with section 502(i) of the Cost Savings Act, the agency submitted this rule to the Department of Energy for review. The Department made no unaccommodated comments.

List of Subjects in 49 CFR Part 533

Energy conservation, Gasoline, Imports, Motor vehicles.

PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR part 533 is amended as follows:

1. The authority citation for part 533 continues to read as follows:

Authority: 49 U.S.C. 1657; 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. Table III in § 533.5(a) is revised to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE III

Model year	Combined Standard	
	Captive Imports	Others
1992....	20.2	20.2
1993....	20.4	20.4
1994....	20.5	20.5

* * * * *

Issued on March 29, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–7849 Filed 4–3–91; 8:45 am]

BILLING CODE 4910–59–M

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition to Delay Effective Date of a Rule Concerning Service Brake Application and Release Time Requirements

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

ACTION: Denial of rulemaking petition to delay effective date of a rule.

SUMMARY: On May 3, 1989, NHTSA issued a final rule amending Federal Motor Vehicle Safety Standard No. 121, Air Brake Systems, to revise service brake application and release timing requirements. The amendments require mandatory compliance effective May 3, 1991. On August 27, 1990, the Truck Trailer Manufacturers Association (TTMA) petitioned NHTSA to delay the effective date of changes to Standard No. 121 adopted in the May 3, 1989 final rule until one year after a final rule is issued in another rulemaking concerning the standard. NHTSA is denying the TTMA request because: (1) The benefits of the May 3, 1989 final rule are too important to delay the rule's mandatory compliance deadline until the conclusion of other rulemaking, (2) the petitioner did not provide any evidence to indicate that the May 3, 1989 final rule will create any significant burdens, (3) NHTSA does not believe that the May 3, 1989 rule will have a major impact on the design and construction of the air brakes of the motor vehicle fleet, and (4) NHTSA will consider the design changes required by the May 3, 1989, final rule in determining the leadtime for any additional air brake requirements adopted as a result of other rulemakings.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–5274).

SUPPLEMENTARY INFORMATION: On May 3, 1989, NHTSA issued a final rule amending Federal Motor Vehicle Safety Standard No. 121, Air Brake Systems, to revise service brake application and release timing requirements. The amendment modified the test rig used to test the pneumatic timing of trailers to simulate better the performance of actual trailers. It also revised the standard's maximum application and maximum release timing requirements for trailers. As a general matter, the shorter the pneumatic application time, the shorter the vehicle's stopping distance. Pneumatic release timing also

affects braking performance. If a vehicle's wheels lock as the driver is attempting to stop, the vehicle will skid. If the driver is to regain control of the vehicle, immediate release of the brakes is necessary. For combination vehicles, pneumatic release timing can affect stability. If a towing vehicle's brakes release more slowly than the trailer's, destabilizing forces may increase at the kingpin. Finally, the amendment established new requirements to address the timing of the interface (gladhand) between towing vehicles and trailers. The purpose of the gladhand timing requirements is to ensure that the air delivery from towing vehicles to towed vehicles is fast enough to apply the brakes of all vehicles in the combination at approximately the same time, thereby avoiding a reduction in combination stability (e.g., trailer bumping) caused by a slow gladhand. The amendments were effective June 2, 1989, and require mandatory compliance effective May 3, 1991. Between those dates, manufacturers have three options for meeting maximum application and maximum release timing requirements for trailer brake chamber timing. They may (1) meet the existing requirements, using the existing test rig, (2) meet the new requirements, using the new test rig, or (3) meet requirements approximately equivalent to the existing requirements, using the new test rig. Effective May 3, 1991, the manufacturers must meet the new requirements, using the new rig.

On August 27, 1990, the Truck Trailer Manufacturers Association (TTMA) submitted a petition for rulemaking requesting that NHTSA delay the mandatory compliance date for the above amendments to Standard No. 121. TTMA stated that three notices of proposed rulemaking pertaining to brake application and release timing were issued following publication of the final rule discussed above. According to TTMA, these were Docket No. 85–07, Notice 4; Docket No. 85–07, Notice 5; and Docket 90–3, Notice 1. TTMA petitioned that the mandatory compliance date of the amendments adopted by the final rule on May 3, 1989 (discussed above) be delayed until one year after a final rule "pertaining to Docket No. 90–3" is issued. TTMA asserted that this would "limit re-engineering of the service brake system to one time." TTMA further asserted that a delay would also help operators because "[t]hey will not have to be trained to maintain a brake system that might only be in existence for a short interim period of time." TTMA recommended that "all NHTSA final and proposed rules which revise the brake system or measure the performance of the brake system be provided an identical effective date."

NHTSA has reviewed the **Federal Register** notices cited by TTMA. The first notice is a supplemental notice of proposed rulemaking (SNPRM) (Docket No. 85–07, Notice 4, published on May 3, 1989 (54 FR 18912)) proposing two requirements concerning pneumatic timing. NHTSA proposed to require for towing vehicles that actuation at the interface (gladhand) between towing vehicle and trailers be at least as fast as actuation at the towing vehicles brake chambers. The purpose of this requirement would be to improve combination stability by ensuring that the brakes of a tractor, or other towing vehicle, do not actuate well before the brakes of a trailer being towed. NHTSA proposed requirements also for towing trailers to ensure that the relay booster valves used on these trailers do not upset brake balance between vehicles in a combination. NHTSA has not issued a final rule in this rulemaking.

The second notice is a notice (Docket No. 85–07, Notice 5, published on July 21, 1989 (54 FR 30571)) reopening the period for public comment on the SNPRM discussed above, in response to requests from industry groups for additional time to comment. The notice proposed no additional requirements.

The third notice is a notice of proposed rulemaking (NPRM) (Docket No. 90–3, Notice 1, published on February 8, 1990 (55 FR 4453)) which proposes to amend Standard No. 121 to revise the requirements for performance of trailer pneumatic brake systems in the event of pneumatic system failure. The proposal, if adopted as a final rule, would require several features to reduce the consequences of pneumatic system failure. In particular, NHTSA proposed to require a low pressure warning system that would indicate whether the pressure in any of the trailer's service brake reservoirs is below 60 p.s.i. In addition, the proposal, if adopted as a final rule, would also delete the current requirement in Standard No. 121 for a separate reservoir capable of releasing the parking brakes.

NHTSA has decided to deny the TTMA request to delay the mandatory compliance date beyond May 3, 1991. The reasons for this decision are set forth below.

NHTSA has concluded that the public safety benefits of the pneumatic timing requirements established by the May 3, 1989 final rule are too important to be delayed beyond the May 3, 1991 mandatory compliance deadline. As explained more fully in the preamble of the May 3, 1989 final rule, pneumatic timing is very important for safety because it affects vehicle stopping distance and stability. NHTSA was aware, when it issued the final rule, that the SNPRM published the same day could require additional modification to vehicle braking systems. Then, as now, NHTSA considered the benefits of the May 3, 1989 final rule too important to delay the rule's mandatory compliance deadline until the conclusion of the rulemaking concerning the SNPRM. NHTSA has concluded that the revised maximum application requirements in the May 3, 1989 final rule will reduce vehicle stopping distance and that the revised maximum release timing requirements in that rule will reduce the likelihood of vehicle skidding during stops. NHTSA also has concluded that the gladhand timing requirements in the May 3, 1989 final rule will increase stability by having brakes of towing and towed vehicles apply at approximately the same time.

Further, the petitioner did not provide any evidence to indicate that the May 3, 1989 final rule will create any significant burdens. NHTSA does not believe that the May 3, 1989 rule will have a major impact on the design and construction of the air brakes of the motor vehicle fleet. Although certain trailer models could require some minor changes, other models would require no change at all. In addition, petitioner made no showing, only a bare assertion, that the May 3, 1991 compliance date will create any significant burden for vehicle operators. The agency notes that it has not received any objections to the mandatory compliance date from vehicle operators.

In response to petitioner's concerns, however, NHTSA will take into account the design changes required of manufacturers by the May 3, 1989 final rule in determining the leadtime for any additional air brake requirements that result from consideration of Docket No. 90–3, Notice 1. NHTSA will, as always, consider the impact of the scope and timing of its regulations on all affected parties.

As explained above, NHTSA is denying the petition of TTMA for a delay in the mandatory compliance date of May 3, 1991 for amendments to Standard No. 121 published on May 3, 1989. There is not a reasonable possibility that the order requested by the petition would be issued at the conclusion of a rulemaking proceeding. Therefore, compliance with those requirements remains mandatory as of May 3, 1991.

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

Issued on March 29, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-7850 Filed 4-3-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901199-1021]

Groundfish of the Bering Sea and Aleutian Islands

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

ACTION: Notice of prohibition of retention of Atka mackerel in the Bering Sea and Aleutian Islands.

SUMMARY: The Director, Alaska Region, NMFS (Director), has determined that the 1991 total allowable catch (TAC) for Atka mackerel in the Bering Sea and Aleutian Islands area (BSAI) has been taken. The Secretary of Commerce (Secretary), therefore, prohibits retention of Atka mackerel in the BSAI. This action is necessary to prevent the TAC for Atka mackerel in the BSAI from being exceeded before the end of the fishing year. The intent of this action is to promote optimum use of groundfish while conserving Atka mackerel stocks.

DATES: Effective from 12 (noon) Alaska local time, March 29, 1991, through December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone in the BSAI under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and was implemented by regulations appearing at 50 CFR Parts 611.93 and 675.

The amount of a species or species group apportioned to a fishery is the TAC, as defined in § 675.20(a)(2). When the Director determines that the TAC of any target species category has been achieved prior to the end of a fishing year, § 675.20(a)(9) provides that the Secretary will publish a notice in the **Federal Register** requiring that species or species group to be treated in the same manner as a prohibited species (as described in § 675.20(c)) for the remainder of the fishing year.

The 1991 TAC specification for Atka mackerel in the BSAI is 20,400 metric tons (mt) (56 FR 6290, February 15, 1991). Pursuant to § 675.20(a)(9), the Director has determined that the TAC will be reached as of March 29, 1991, and is prohibiting further retention of Atka mackerel. Further catches of Atka mackerel in the BSAI must be treated in the same manner as prohibited species, as described in § 675.20(c), for the remainder of the year.

Classification

This action is taken under § 675.20 and is in compliance with Executive Order 12291.

Immediate effectiveness of this notice is necessary to prevent excessive harvest of groundfish that will occur if the TAC of Atka mackerel is exceeded. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: March 29, 1991.

Richard H. Schaefer,

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

[FR Doc. 91-7851 Filed 3-29-91; 4:50 pm]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 901184-0284]

Groundfish of the Gulf of Alaska

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

ACTION: Correction of notice of closure.

SUMMARY: This document corrects an error concerning the effective date of a notice of closure that prohibits further retention of pollock in the combined Western-Central Regulatory Areas of the Gulf of Alaska which was published in the **Federal Register** on March 7, 1991 (56 FR 9635).

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, NMFS, 907-586-7229 or Mark R. Millikin (301-427-2341).

SUPPLEMENTARY INFORMATION: In FR Doc. 91-5322, published on March 7, 1991, at 56 FR 9635, the description in the "**SUMMARY**" section on page 9635, lines 13 and 14 should read: "as of 12 noon, Alaska local time (A.l.t.), March 1, 1991, through December 31, 1991, unless superseded. Also, the "**DATES**" section on page 9635 should read as follows: "Effective from 12 (noon) A.l.t. March 1, 1991, through December 31, 1991, unless superseded."

Dated: March 29, 1991.

Richard H. Schaefer,

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

[FR Doc. 91-7852 Filed 3-29-91; 4:50 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 65
Thursday, April 4, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

1992 Wheat Program

AGENCY: Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR part 1413 to set forth the acreage reduction percentage for the 1992 crop of wheat. This action is required by section 107B of the Agricultural Act of 1949, as amended (the 1949 Act).

DATES: Comments must be received on or before May 10, 1991, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Bruce R. Weber, Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3741–S, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Craig Jagger, Agricultural Economist, Commodity Analysis Division USDA–ASCS, room 3740–S, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7923.

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512–1 and Executive Order 12291 and has been classified as "major." It has been determined that an annual effect on the economy of $100 million or more may result from implementation of the provisions of this proposed rule.

The paperwork requirements imposed by this rule will not become effective until they have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. Such approval has been requested and is under consideration.

It has been determined that the Regulatory Flexibility Act is applicable to this proposed rule since the Commodity Credit Corporation is required by section 107B(o) of the 1949 Act to request comments with respect to the subject matter of this rule. It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The titles and numbers of the Federal Assistance Program to which this rule applies are: Wheat Production Stabilization—10.058, as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The information collection requirements contained in these regulations will be submitted to the Office of Management and Budget for approval under the provisions of 44 U.S.C. chapter 35.

Public reporting burden for these collections is estimated to vary from 15 minutes to 45 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

In accordance with section 107B of the 1949 Act, an acreage reduction program is required to be implemented for the 1992 wheat crop if it is determined that the total supply of wheat would otherwise be excessive.

Land diversion payments also may be made to producers if needed to adjust the total national acreage of wheat to desirable goals. A paid land diversion program is not considered because, given the allowed ARP percentages, it is not needed.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction to the acreage base for the farm. In making such a determination, the number of acres placed into the agricultural resources conservation program established under subtitle D of title XII of the Food Security Act of 1985, as amended, must be taken into consideration.

Producers who knowingly produce wheat in excess of the permitted acreage for the farm plus any wheat acreage planted in accordance with the flexibility provisions are ineligible for loans and purchases and all payments with respect to that crop on the farm.

If an ARP program for the 1992 crop is in effect, the program must be announced no later than June 1, 1991. Adjustments in the announced program may be made if it is determined that there has been a significant change in the total supply of wheat since the program was first announced. These adjustments must be made no later than July 31, 1991.

In accordance with section 107B of the 1949 Act, not less than 60 days before the program is announced for a crop of wheat, proposals for public comment on various program options for the crop of wheat are required to be set forth. Each option must be accompanied by an analysis that includes the estimated planted acreage, production, domestic and export use, ending stocks, season average producer price, program participation rate, and cost to the Federal Government that would likely result from each option.

In determining the 1982 wheat ARP, the Secretary will choose a specific ARP reduction percentage from within a range established by the estimated ending stocks-to-use ratio for the 1991 wheat marketing year. If it is estimated that the 1991 ending stocks-to-use ratio in percentage terms (S/U) will be—

(i) More than 40 percent, the ARP shall not be less than 10 percent nor more than 20 percent; or

(ii) Equal to or less than 40 percent, the ARP may not be more than 0 to 15 percent.

The S/U for the 1991 marketing year is estimated to be below 40 percent. Based on this estimate, the 1992 ARP may be not more than 15 percent.

In addition, section 1104 of the Agricultural Reconciliation Act of 1990 provides that the acreage reduction factor for the 1992 crop of wheat may not be less than 6 percent. This provision does not apply if the beginning stocks of soybeans for the 1991 marketing year are less than 325 million bushels or if the estimated S/U for the 1992 crop is less than 34 percent.

The March, 1991 estimate of soybean stocks on September 1, 1991, is 350 million bushels. The estimated S/U for the 1992 wheat crop under a 5-percent ARP is 35.2 percent. Thus, under current supply and use estimates for soybeans and wheat the minimum 6-percent ARP provision is applicable and a 5-percent ARP cannot be announced.

However, a small change in the estimated supply or use of soybeans would make a 5-percent ARP possible. Thus, the 5-percent ARP level is analyzed although it would not be allowed under current supply and use estimates. Differences in estimated impacts between a 5-percent and a 6-percent ARP would be relatively small.

The 1992 ARP options considered are:

Option 1. 5-percent ARP
Option 2. 10-percent ARP
Option 3. 15-percent ARP

The estimated impacts of the ARP options are shown in Table 1.

TABLE 1.—ESTIMATED IMPACTS OF 1992 ARP OPTIONS

Item	Option 1	Option 2	Option 3
ARP (%)	5	10	15
Participation (%)	88	86	84
Planted Acres (Mil. acr.)	72.9	70.0	67.1
Production (Mil. bu.)	2,340	2,260	2,175
Domestic Use (Mil. bu.)	1,130	1,115	1,100
Exports (Mil. bu.)	2,250	1,225	1,200
Ending stocks (Mil. bu.)	837	797	752
Season Average Producer Price ($/bu.)	2.70	2.78	2.86
Deficiency Payments ($ mil.)	2,580	2,229	1,914

Accordingly, comments are requested as to whether the 1992 acreage reduction percentage should be 5, 10, or 15 percent or a percentage within the range of 5 to 15 percent. The final determination of this percentage will be set forth at 7 CFR part 1413.

List of Subjects in 7 CFR Part 1413

Acreage reduction program, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—[AMENDED]

1. The authority citation for 7 CFR part 1413 is revised to read as follows:

Authority: 7 U.S.C. 1308; 1308a; 1309; 1441–2; 1444–2; 1444f; 1445b–3a; 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 which was proposed to be added on February 28, 1991 (56 FR 8287) is amended by adding paragraph (e) to read as follows:

§ 1413.54 Acreage reduction program provisions.

* * * * *

(e) The acreage reduction program for the:

(1) 1991 crop of wheat is 15 percent with no paid diversion; and

(2) 1992 crop of wheat shall be within the range of 5 to 15 percent, as determined and announced by CCC with no paid diversion.

Signed this March 29, 1991 at Washington, DC.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–7924 Filed 4–3–91; 8:45 am]

BILLING CODE 3410–05–M

RAILROAD RETIREMENT BOARD

20 CFR Part 367

RIN 3220–AA89

Recovery of Debts Owed to the Railroad Retirement Board From Other Government Agencies

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations to provide for the administration of its authority under 31 U.S.C. 3716 to recover debts owed to the Board by installment collections from any payments due the debtor from other government agencies.

DATES: Comments must be submitted on or before May 6, 1991.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 (312) 751–4513 (FTS 386–4513).

SUPPLEMENTARY INFORMATION: The purpose of this rule is to provide guidelines for the administration of the Board's authority under 31 U.S.C. 3716 for recovering debts owed to the Board by offsetting the debt against any payments being made to the debtor (or moneys being held for the debtor) by other government agencies. Section 10 of the Debt Collection Act of 1982 (Pub. L. 97–365 (31 U.S.C. 3716)) permits an agency to recover debts due it from payments being made by other United States government agencies. However, before agencies may use this recovery procedure a regulation setting forth this authority based on the best interests of the United States, the likelihood of collecting the claim by administrative offset, and for collecting the debt after the six year period for bringing a civil action has expired must be adopted.

Section 10(a) of the Railroad Retirement Act and section 2(d) of the Railroad Unemployment Insurance Act provide that debts arising under those two statutes are to be recovered, unless recovery of the debts is waived. The program of administrative offset authorized by this regulation would supplement the already existing programs of administrative offset from tax refunds (see part 366) and from other benefits paid by the Board (see 20 CFR 255.8 and 350.6).

This rule is not a major rule as defined under section 1(b) of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. There are no information collections, within the meaning of the Paperwork Reduction Act of 1980, required by this regulation.

List of Subjects in 20 CFR Part 367

Administrative practice and procedure, Debt collection.

1. For the reasons set forth in the preamble, title 20, chapter II, of the Code of Federal Regulations is proposed to be amended by adding a new part 367 as follows:

PART 367—RECOVERY OF DEBTS OWED TO THE UNITED STATES GOVERNMENT BY ADMINISTRATIVE OFFSET

Sec.

367.1 Purpose and scope.
367.2 Past-due legally enforceable debt.
367.3 Board responsibilities.
367.4 Notification to another agency.
367.5 Notification to debtor.
367.6 Consideration of evidence.
367.7 Change in notification to another government agency.
367.8 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

Authority: 45 U.S.C. 231f(b)(5); 31 U.S.C. 3716.

§ 367.1 Purpose and scope.

The regulations in this part establish procedures to implement section 10 of the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. 3716. Among other things, this statute authorizes the Board to collect a claim arising under an agency program by means of administrative offset, except that no claim may be collected by such means if outstanding for more than 10 years after the Board's right to collection of the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the government who were charged with the responsibility to discover and collect such debts. This subpart specifies the agency procedures that will be followed by the Board for an administrative offset.

§ 367.2 Past-due legally enforceable debt.

A past-due legally enforceable debt which may be referred to another governmental agency for administrative offset is a debt:

(a) Which resulted from erroneous benefit or annuity payments made under the Railroad Unemployment Insurance Act or the Railroad Retirement Act or any other statute administered by the Board;

(b) Which is an obligation of a debtor who is a natural person;

(c) Which, except in the case of a judgment debt, has been delinquent at least three months but not more than ten years at the time the offset is made;

(d) Which is at least $25.00;

(e) With respect to which the individual's rights described in part 260 or part 320 of this chapter or the applicable law regarding reconsideration, waiver, and appeal, have been exhausted;

(f) With respect to which either;

(1) The Board's records do not contain evidence that the person owing the debt (or his or her spouse) has filed for bankruptcy under title 11 of the United States Code; or

(2) The Board can clearly establish at the time of the referral that the automatic stay under section 362 of the Bankruptcy Code has been lifted or is no longer in effect with respect to the person owing the debt or his or her spouse, and the debt was not discharged in the bankruptcy proceeding;

(g) Which cannot currently be collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(h) Which cannot currently be collected by administrative offset under § 255.6 or § 340.6 of this chapter against amounts payable to the debtor under any statute administered by the Board;

(i) With respect to which the Board has notified, or has made a reasonable attempt to notify, the individual that the debt is past due, and that unless the debtor repays the debt within 60 days, the debt will be referred to any other agency of the United States government for offset against any money owed that person by that agency; and

(j) With respect to which the Board has given the debtor at least 60 days from the date of the notification required in paragraph (i) of this section to present evidence that all or part of the debt is not past due or legally enforceable, has considered evidence, if any, presented by such individual, and has determined that the amount of such debt is past due and legally enforceable.

§ 367.3 Board responsibilities.

(a) The Board may delegate to an employee or employees the responsibility for collecting any claims owed the Board by means of administrative offset.

(b) Before collecting a claim by means of administrative offset, the Board must ensure that administrative offset is feasible, allowable and appropriate, and must notify the debtor of the Board's policies for collecting a claim by means of administrative offset.

(c) Whether collection by administrative offset is feasible is a determination to be made by the Board on a case-by-case basis, in the exercise of sound discretion. The Board shall consider not only whether administrative offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, the Board may give due consideration to the debtor's financial condition, and is not required to use offset in every instance in which there is an available source of funds. The Board may also consider whether offset would substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(d) Before advising the debtor that the delinquent debt will be subject to administrative offset, the agency official responsible for administering the program under which the debt arose shall review the claim and determine that the debt is valid and overdue.

(e) Administrative offset shall be considered by the Board only after attempting to collect a claim under the statutes administered by the Board except that no claim under this Act that has been outstanding for more than 10 years after the Government's right to collect the debt first accrued may be collected by means of administrative offset, unless facts material to the right to collect the debt were not know and could not reasonably have been known by the official of the agency who was charged with the responsibility to discover and collect such debts.

§ 367.4 Notification to another agency.

When the Board refers a debt under this part to another agency for collection by means of administrative offset, the Board shall provide a written certification to the other agency stating that the debtor owes the debt (including the amount) and that the provisions of this part have been fully complied with.

§ 367.5 Notification to debtor.

The notification provided by the Board to the debtor will inform the debtor how he or she may present evidence to the Board that all or part of the debt is not past due or legally enforceable.

§ 367.6 Consideration of evidence.

Evidence submitted by the debtor will be considered only by officials or employees of the Board, and a

determination that all or a portion of such debt is past-due and legally enforceable will be made only by such officials or employees.

§ 367.7 Change in notification to another government agency.

If, after submitting notification of liability for a debt to another agency, the Board:

(a) Determines that an error has been made with respect to the information contained in the notification;

(b) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to the other agency for offset; or

(c) Receives notification that the individual owing the debt has filed for bankruptcy under title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged; the Board will promptly notify the other agency. If the amount of a debt is reduced after referral by the Board and offset by the other agency, the Board will refund to the debtor any excess amount and will promptly notify the other agency of any refund made by the Board.

§ 367.8 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) The Board may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect debts owed to the Board by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a) of this section, the Board shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) The Board has complied with all applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The Board has complied with the requirements of the applicable provisions of the Federal Claims Collection Standards, the Railroad Retirement Act and the Railroad Unemployment Insurance Act including any required hearing or review.

(c) When the Board decides to request administrative offset under paragraph (a) of this section, it should make the request as soon as practical after completion of the applicable due process procedures in order that the Office of Personnel Management may identify and flag the debtor's account in anticipation of the time when the debtor becomes eligible and requests to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor will be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) In accordance with procedures established by the Office of Personnel Management, the Board may request an offset from the Civil Service Retirement and Disability Fund prior to completion of due process procedures.

(e) If the Board collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the Board shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

By Authority of the Board.

Dated: March 27, 1991.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-7912 Filed 4-3-91; 8:45 am]

BILLING CODE 7905-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1602

Proposed Modifications to Recordkeeping and Reporting Provisions; Cancellation of Public Hearing

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed rule: cancellation of hearing.

SUMMARY: Notice is hereby given that the Commission is cancelling the public hearing on the above proposed modifications of its recordkeeping and reporting provisions under title VII and the ADA. (56 FR 9185, March 5, 1991). No requests to give oral testimony at the hearing were received from the public within the twenty-day time period specified in the hearing notice of March 5, 1991. Therefore, it will not be necessary to hold the hearing.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Acting Assistant Legal Counsel or Grace C. Karmiol, General Attorney at (202) 663-4669 (voice) or (202) 663-7026 (TDD), Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC 20507.

Signed this day at Washington, DC.

Dated: March 29, 1991.

For the Commission.

Evan J. Kemp, Jr.,

Chairman.

[FR Doc. 91-7933 Filed 4-3-91; 8:45 am]

BILLING CODE 6570-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

(FRL-3917-9)

Change in Open Meeting of the Negotiated Rulemaking Advisory Committee; Clean Fuels Rules and Guidelines

AGENCY: Environmental Protection Agency.

ACTION: FACA committee meetings—negotiated rulemaking. Committee on Clean Fuels and Guidelines.

SUMMARY: EPA is announcing a change in the scheduled April 12th meeting (56 FR 12879; March 28, 1991) of the full Advisory Committee to negotiate a rule for reformulated gasoline and labeling of oxygenated gasoline as well as for developing guidelines for oxygenated fuel credit trading programs for inclusion in State implementation plans. The workgroup sessions have proved so fruitful, that the Committee decided to have the Anti-Dumping and the Credits, Averaging, and Enforcement Workgroups meet that day instead of holding the previously announced full committee meeting.

DATES: The Anti-Dumping and the Credits, Averaging, and Enforcement Workgroups will meet from 9am until completion.

ADDRESSES: The April 12 meeting will still be held at the Holiday Inn Crown Plaza Hotel Crystal City, 300 Army-Navy Drive, Crystal City, Arlington, Virginia (703) 892-4100.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the rule should call Carol Menninga of EPA's Motor Vehicle Emission Laboratory, Office of Mobile Sources (313) 668-4575, with respect to issues concerning reformulated fuels, and Alfonse Mannato of EPA's Field Operations and Support Division, Office of Mobile Sources (202) 382-2667, with respect to issues concerning oxygenated fuels.

Persons needing further information on administrative matters such as committee arrangements or procedures should contact Chris Kirtz of EPA's Regulatory Negotiation Project at (202) 382–7565, or one of the Committee's independent facilitators, Philip J. Harter at (202) 887–1033 or Alana S. Knaster at (818) 702–9526.

Dated: April 1, 1991.

Paul Lapsley,

Director, Regulatory Management Division, Office of Policy, Planning, and Evaluation.

[FR Doc. 91–7925 Filed 4–3–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 91–66; FCC 91–76]

Private Land Mobile Radio Services; Secondary Fixed Operations in the 450–470 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making that proposes amending Part 90 of the Rules to simplify frequency coordination procedures for, and expand the use of, frequencies in the 450–470 MHz band when used for secondary fixed purposes. These proposed rule changes will result in reduced coordination time with less expense to the applicant.

DATES: Comments must be submitted on or before May 24, 1991, and replies to comments on or before June 10, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making (Notice), PR Docket No. 91–66, adopted March 14, 1991, and released April 1, 1991. The full text of the Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M St. NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, telephone (202) 452–1422.

Summary of Notice of Proposed Rule Making

1. This proceeding was initiated by separate petitions for rule making filed by the Special Industrial Radio Service Association (SIRSA Petition), and jointly by the American Association of State Highway and Transportation Officials, the Associated Public-Safety Communications Officers, and the Forestry Conservation Communications Association (Joint Petition).

2. Both petitions address the interservice frequency coordination requirements for the frequencies in the 450–470 MHz band as listed in Section 90.261 of the Commission's Rules, 47 CFR 90.261. These frequencies are available to applicants for fixed use on a secondary basis to mobile operations. Because the frequencies available for fixed use in one radio service are the same as those available for mobile use in another service, frequency coordination from more than one coordinator is required.

3. This Notice proposes to revise Section 90.261 to specify that, with certain exceptions, all private land mobile frequencies in the 450–470 MHz band, including those now available to only the Business Radio Service, shall be available to all Part 90 radio services for secondary fixed use. The Notice also proposes to amend the coordination requirements specified in § 90.175 to indicate that frequencies for secondary fixed operations used pursuant to § 90.261 shall require coordination only by the coordinator of the radio service in which the applicant is eligible.

Initial Regulatory Flexibility Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C 604, an initial regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be viewed at the Commission's offices or obtained from its copy contractor.

Paperwork Reduction Act Statement

5. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed upon the public.

List of Subjects in 47 CFR Part 90

Private land mobile radio services, 450–470 MHz fixed operation, Radio.

Amendatory Text

It is proposed to amend 47 CFR part 90 as follows:

PART 90—[AMENDED]

1. The authority citation for part 90 continues to read as follows:

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

§§ 90.17, 90.19, 90.21, 90.23, 90.25, 90.53, 90.63, 90.65, 90.67, 90.73, 90.75, 90.79, 90.81, 90.89, 90.91, 90.93, 90.95 [Amended]

2. 47 CFR 90.17(c)(10), 90.19(e)(15), 90.21(c)(6), 90.23(c)(7), 90.25(c)(13), 90.53(b)(12), 90.63(d)(14), 90.65(c)(27), 90.67(c)(17), 90.73(d)(18), 90.75(c)(26), 90.79(d)(12), 90.81(d)(3), 90.89(c)(9), 90.91(c)(9), 90.93(c)(3), and 90.95(d)(7) are revised to read as follows:

* * * * *

( )( ) The requirements for secondary fixed use of frequencies in this band are set forth in § 90.261.

* * * * *

3. 47 CFR 90.71 is amended by adding the entry 450–470 MHz to the Relay Press Radio Service Frequency Table in § 90.71(b) and adding paragraph (c)(10) to read as follows:

§ 90.71 Relay Press Radio Service.

* * * * *

(b) * * *

RELAY PRESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of stations(s)	Limitations
*	*	*
450–470	Fixed	10
*	*	*

(c) * * *

(10) The requirements for secondary fixed use of frequencies in this band are set forth in § 90.261.

4. 47 CFR 90.75 is amended by adding the entry 450–470 MHz to the Business Radio Service Frequency Table in paragraph (b) to read as follows, and by removing limitation 26 on the entries for the frequencies 460.650 thru 460.875, 461.025 thru 462.175, 463.200 thru 464.475, 464.525, 464.575 thru 464.975, 465.650 thru 465.875, 466.025 thru 467.175, 468.200 thru 469.475, 469.525, and 469.575 thru 469.975 MHz in the Business Radio Service Frequency Table in § 90.75(b).

§ 90.75 Business Radio Service.

* * * * *

(b) * * *

BUSINESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station	Limitations
* * * * *		
450–470	Fixed	26
* * * * *		

§ 90.173 [Amended]

5. 47 CFR 90.173 is amended by removing the words "or 90.261 of the rules" at the end of the sentence in paragraph (j).

6. 47 CFR 90.175 is amended by adding a sentence at the end of the introductory paragraph to read as follows:

§ 90.175 Frequency coordination requirements.

* * * Frequencies in the 450–470 MHz band, when used for secondary fixed operations as described in § 90.261, require coordination only by the certified coordinator of the radio service in which the applicant is eligible.

* * * * *

7. 47 CFR 90.261 is revised to read as follows:

§ 90.261 Assignment and use of the frequencies in the band 450–470 MHz for fixed operations.

(a) Except for the frequencies listed in paragraph (b) of this section, frequencies in the 450–470 MHz band as listed in the tables of frequencies for the radio services in this part may be assigned to eligibles for fixed use on a secondary basis to land mobile operations. Stations located 140 km (87 mi) or more from the center of any urbanized area of 600,000 or more population are limited to a transmitter output power of 75 watts. Stations less than 140 km (87 mi) from the centers of these areas are limited to a transmitter output power of 20 watts. Urbanized areas of 600,000 or more population are defined in the U.S. Census of Population 1970, Vol. 1, Table 20, pages 1–74. The centers of the urbanized areas are determined from the Appendix, page 226, of the U.S. Department of Commerce publication, "Airline Distance Between Cities in the United States." All fixed systems are limited to one frequency pair with 5 MHz spacing and must employ directional antennas with a front-to-back ratio of 15 dB, except that omnidirectional antennas having unity gain may be employed for stations communicating with a minimum of three receiving locations encompassed in a sector of at least 160° in azimuth. Stations authorized fixed operation prior to (effective date of the rules), may continue to operate under the conditions of their initial authorization.

(c) * * *

(b) Secondary fixed operations pursuant to paragraph (a) of this section will not be authorized on the following frequencies:

Frequencies (MHz)

451.800/465.800
452.525
452.550
452.575
452.600
452.925/457.925
452.950/457.959
453.025/458.025
453.075/458.075
453.125/458.125
453.175/458.175
454.000/459.000
460.650/465.650
460.675/465.675
460.700/465.700
460.725/465.725
460.750/465.750
460.775/467.775
460.800/465.800
460.825/465.825
460.850/465.850
460.875/465.875
460.900/465.900
460.925/465.925
460.950/465.950
460.975/465.975
461.000/466.000
462.750
462.775
462.800
462.825
462.850
462.875
462.900
462.925
462.950/467.950
462.975/467.975
463.000/468.000
463.025/468.025
463.050/468.050
463.075/468.075
463.100/468.100
463.125/468.125
463.150/468.150
463.175/468.175
464.500/469.500
464.550/469.550

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91–7953 Filed 4–3–91; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 56, No. 65
Thursday, April 4, 1991

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 CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

SUMMARY: The Administrative Conference's Committee on Administration is considering a draft recommendation and consultant report dealing with "Regulatory Cooperation with Counterpart Agencies Abroad: The FAA's Airworthiness Experience." The draft report, prepared by Professor George Bermann of Columbia University—Columbia School of Law, may provide the basis for Conference recommendations. Professor Bermann's study looks at how U.S. agency officials deal with, and implement standards developed in cooperation with, other countries' regulatory agencies and international bodies. This case study examines the Federal Aviation Administration's participation in the Europeans' efforts to set standards for airworthiness certification for civil aircraft. It is at present in preliminary form, and is being reviewed by the FAA. In addition, the author hopes to fill out the report's analytical framework with added examples of specific interactions. The proposal will be discussed at the Committee's April 15th meeting, described below.

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Committee on Administration of the Administrative Conference of the United States. The draft recommendation and consultant report are available on request from the Conference.

DATE: April 15, 1991, 2 p.m.

LOCATION: Administrative Conference Library, 2120 L Street NW., suite 500.

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

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

PUBLIC PARTICIPATION: Same as above.

Dated: March 27, 1991.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 91–7901 Filed 4–3–91; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 29, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250 (202) 447–2118.

Extension

• National Agricultural Statistics Service, List Sampling Frame Survey, On occasion, Farms; 200,000 responses; 16,667 hours, Larry Gambrell (202) 382–8757.

• Animal and Plant Health Inspection Service, U.S. Origin Health Certificates, VS 17–50 and VS 17–140, On occasion, Farms; Businesses or other for-profit; Federal agencies or employees; 42,107 responses; 21,029 hours, Robert D. Whiting (301) 436–8590.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 91–7929 Filed 4–3–91; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 91–037]

Availability of Environmental Assessments and Findings of No Significant Impact for Eradication of Common Crupina in Idaho, Oregon, and Washington

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared and is making available environmental documentation concerning the eradication of common crupina in Idaho, Oregon, and Washington. The documentation consists of three separate environmental assessments and findings of no significant impact, as well as Agency records of decision. The preparation of the three environmental assessments was necessary to evaluate the effects of proposed programs to eradicate common crupina and to determine whether the proposed programs would produce significant impacts upon the environment. The analysis of the alternatives in the environmental assessments resulted in findings of no significant impact.

ADDRESSES: Copies of all three environmental assessments, findings of no significant impact, and the records of decision are available from Plant Protection and Quarantine, APHIS, USDA, at the following addresses: Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 9580 Micron Avenue suite I, Sacramento, CA 95827; 2514 Warren Avenue, Twin Falls, ID 83301; 511 NW. Broadway, room 657,

Portland, OR, 97209–3409; and N. 222 Havana, Spokane County Agriculture Building, Spokane, WA 99202.

FOR FURTHER INFORMATION CONTACT: Thomas G. Flanigan, Operations Officer, Plant Protection and Quarantine, APHIS, USDA, room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8247.

SUPPLEMENTARY INFORMATION:

Background

Noxious weeds deprive landowners of economic opportunities, threaten the preservation of native plant communities, and affect the wildlife and fish that depend on these habitats.

Common crupina (*Crupina vulgaris Cass.*), a noxious weed, was discovered near Grangeville, Idaho, in 1968. Reproduced by seed, common crupina pioneers overgrazed south-slope rangelands and eventually forms pure stands. It has the ability to survive in harsh environments by genetic adaptation. Native plants are physically damaged by intensive grazing. Since noxious weeds are not preferred by livestock, they have a competitive advantage and often replace native plants.

In the Pacific Northwest, 63,500 acres are infested, including 55,000 acres of rangelands in north central Idaho; 8,000 acres in Umatilla County, Oregon; and 480 acres in Chelan County, Washington.

Common crupina poses a threat to croplands, rangelands, and watersheds, native plant populations, export-marketed agricultural commodities, and widlife. In 1988 the Animal and Plant Health Inspection Service (APHIS), in cooperation with the Idaho Department of Agriculture and the University of Idaho, completed a 10-year eradication and feasibility study and eradication trial. Based on the research and operational trial, APHIS and the Departments of Agriculture of the States of Idaho, Oregon, and Washington have concluded that eradication is technically feasible.

Landowners and State agencies have attempted to deal with this invasion, however, coordinated action is needed to minimize the threat. Before the infestation expands to new areas, a Federal decision is required to address the problem.

Alternatives

The environmental assessments (EA's) were developed with the assistance of considerable public input. A review of comments from more than 37 organizations and individuals contacted during scoping interviews helped identify a reasonable range of alternatives for the eradication of common crupina. The alternatives are: Integrated Pest Management (IPM), IPM without herbicides, and no Federal action. All three EA's identify the IPM alternative as the preferred alternative for the eradication of common crupina. The IPM alternative includes manual, mechanical, biological, thermal, and cultural methods, as well as the use of the chemical herbicides picloram, dicamba, 2–4, D, and glyphosate.

Major Issues

The major issues discussed in the EA's are environmental impacts, consequences, and mitigation measures. Included in the EA's are analyses of the toxicological and environmental fate properties of the clinical herbicides. The EA's also analyze the potential environmental impacts of each alternative on human health and safety, threatened and endangered species, other wildlife species, aquatic species, water resources, soil and geology, vegetation, climate and air quality, range, and land use. The EA's address economic considerations as well.

Record of Decision

The IPM alternative has been chosen to eradicate common crupina because it will allow program operations the flexibility to adapt to the various treatment sites that are expected to be encountered, including water and other wildlife habitats, recreational sites, and other sensitive areas. No significant adverse environmental impacts, including impacts to human health, are expected from the use of the IPM alternative. Threatened or endangered (listed) species will not be affected, and our analyses have not disclosed any other unique or sensitive resources that will be significantly impacted when operational procedures are conducted according to the guidelines. Impacts to all other resources will be minor-to-moderate and short-term.

The EA's and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC this 1st day of April 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–7932 Filed 4–3–91; 8:45 am]

BILLING CODE 3410–34–M

Federal Crop Insurance Corporation

[Docket No. 0010–S/RCD–90–4]

Request for Comments on Projected Market Prices

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice to extend comment period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice to advise all interested parties that it is extending the comment period on Notice RCD–90–4, published in the Federal Register on Tuesday, February 19, 1991, at 56 FR 6620. The original end of the comment period was March 15, 1991. FCIC has determined to extend the comment period until April 19, 1991, in order to provide additional time for those interested parties who have expressed a desire for such extension.

Notice No. RCD–90–4, published at 56 FR 6620, solicits comments and suggestions on the methodology used to establish a "projected market price" that will permit crop insurance agents to calculate and quote coverage levels, and premiums, in terms of dollars per acre, not to exceed maximum imposed by law.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

Written comments in response to this extended notice should be identified at the top of the first page with the number "RCD–90–4" and should be sent not later than April 19, 1991, to Peter F. Cole at the above address.

All written comments received pursuant to this notice will be available for public inspection and copying in room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

Done in Washington, DC, on April 1, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 91–7961 Filed 4–3–91; 8:45 am]

BILLING CODE 3410–08–M

[Docket No. 0011-S/AMC-91-1]

Request for Comments on Criteria and Methodology for Reinsured Companies Rating System

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice to extend comment period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice to advise all interested parties that it is extending the comment period on Notice AMC–91–1, published in the **Federal Register** on Friday, February 15, 1991, at 56 FR 6368. The original end of the comment period was March 15, 1991. FCIC has determined to extend the comment period until April 19, 1991, in order to provide additional time for those interested parties who have expressed a desire for such extension.

Notice No. AMC–91–1, published at 56 FR 6368, solicits comments and suggestions for establishing criteria and methodology that may be used to measure a company's ability to meet successfully its sales and service responsibilities.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

Written comments in response to this extended notice should be identified at the top of the first page with the number "AMC–91–1" and should be sent not later than April 19, 1991, to Peter F. Cole at the above address.

All written comments received pursuant to this notice will be available for public inspection and copying in room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

Done in Washington, DC on April 1, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 91–7963 Filed 4–3–91; 8:45 am]

BILLING CODE 3410–08–M

Federal Crop Insurance Corporation

[Docket No. 0012-S/A&US-91-2]

Request for Comments on Ratemaking Methodology

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice to extend comment period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice to advise all interested parties that it is extending the comment period on Notice AMC–91–2, published in the **Federal Register** on Friday, February 15, 1991, at 56 FR 6367. The original end of the comment period was March 15, 1991. FCIC has determined to extend the comment period until April 19, 1991, in order to provide additional time for those interested parties who have expressed a desire for such extension.

Notice No. AMC–91–2, published at 56 FR 6367, solicits comments and suggestions for improvement regarding the present methodology with respect to ratemaking for crop insurance purposes.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

Written comments in response to this extended notice should be identified at the top of the first page with the number "AMC–91–2" and should be sent not later than April 19, 1991, to Peter F. Cole at the above address.

All written comments received pursuant to this notice will be available for public inspection and copying in room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

Done in Washington, DC on April 1, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 91–7962 Filed 4–3–91; 8:45 am]

BILLING CODE 3410–08–M

Forest Service

Road Access to Chugach Alaska Corporation Lands Near Bering River Alaska, Chugach National Forest Anchorage, AK; Environmental Impact Statement, Revised Notice of Intent

Chugach Forest Products, Inc. of Anchorage, Alaska, has suspended its proposal for road access from salt water to Chugach Alaska Corporation Lands in the Bering River area.

The Notice of Intent, published in the **Federal Register** of Monday, July 16, 1990, is hereby rescinded (45 FR 54386).

For further information contact: Peggy Fox, Planning Staff Officer, Chugach National Forest, 201 E. 9th Avenue, suite 206, Anchorage, Alaska 99501; 907–271–2557.

Dated: March 27, 1991.

Bruce Van Zee,

Forest Supervisor.

[FR Doc. 91–7902 Filed 4–3–91; 8:45 am]

BILLING CODE 3410–11–M

Scientific Advisory Board, Mount St. Helens National Volcanic Monument, Gifford Pinchot National Forest, Clark County, Vancouver, WA; Meeting

The Mount St. Helens Scientific Advisory Board will meet at 8:30 a.m., June 18, 1991, in the Rose Tree Restaurant Conference Room, 225 Spirit Lake Highway, Castle Rock, Washington 98611, to receive information on and discuss the following:

1. Coldwater/Johnston Complex and Road Access status.
2. Annual Report on the protection of natural processes and features.
3. Castle Lake status report.
4. Open discussion of topics of interest to the Advisory Board and public comments.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack K. Winjum, Chairperson, c/o Gifford Pinchot National Forest, 6926 E. Fourth Plain Blvd., Vancouver, Washington 98668, 206–696–7570. Written statements may be filed with the Board before or after the meeting.

Dated: March 26, 1991.

Charles Marsh,

Acting Regional Forester.

[FR Doc. 91–7903 Filed 4–3–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of informaton under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Questionnaire for Building Permit Official.

Form Number(s): SOC–903.

Agency Approval Number: 0607–0125.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 209 hours.

Number of Respondents: 835.
Avg. Hours Per Response: 15 minutes.
Needs and Uses: The Bureau of the Census uses the Questionnaire for Building Permit Official in conjunction with the Survey of Housing Starts, Sales, and Completions (OMB number 0607–0110). Data collected in the Survey of Housing Starts are used to produce statistics on residential construction and are needed by economic policymakers to monitor this sector of the economy. Census field interviewers use the Questionnaire for Building Permit Official to obtain information on the operating procedures of a sample of the building permit issuing offices in the United States in order to locate, classify, list, and sample building permits for residential construction. This information is used to carry out the sampling for the Survey of Housing Starts and to verify and update the geographic coverage of permit offices.
Affected Public: State or local governments.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed informaton collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 29, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–7889 Filed 4–3–91; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Survey of Housing Starts, Sales, and Completions.
Form Number(s): SOC–900, 900.1, 900A, 900A.1.
Agency Approval Number: 0607–0110.
Type of Request: Revision of a currently approved collection.
Burden: 4,807 hours.
Number of Respondents: 6,800.
Avg Hours Per Response: 12 minutes.
Needs and Uses: The Survey of Housing Starts, Sales, and Completions, also known as the Survey of Construction (SOC), is used by the Bureau of the Census to collect information on construction characteristics from a sample of home builders, real estate agents, and new home owners. The data gathered are used to publish estimates of the number of new residential housing units started, under construction, completed, and the number of new homes sold and for sale. Statistics from the SOC are used by government agencies and private companies to monitor and evaluate this sector of the economy.
Affected Public: Individuals or households, businesses or other for-profit organizations, small businesses or organizations.
Frequency: Monthly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 29, 1991.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 91–7890 Filed 4–3–91; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Survey of Income and Program Participation 1990 Panel Wave 6.
Form Number(s): SIPP–10600, 10605(L).
Agency Approval Number: 0607–0670.
Type of Request: Revision of a currently approved collection.
Burden: 22,575 hours.
Number of Respondents: 45,150.
Avg Hours per Response: 30 minutes.
Needs and Uses: The Survey of Income and Program Participation (SIPP) provides information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. The survey is molded around a central core of labor force and income questions that remain fixed throughout the life of a panel. The core survey is periodically supplemented with questions, referred to as topical modules, designed to answer specific needs. OMB approved the 1990 SIPP Panel Core on 8/10/89. Census will request approval for Waves 2–8 during the 32-month life of the 1990 panel. The topical modules for the 1990 panel Wave 6 are the following: (1) Spells Outside of the Work Force, (2) Child Support Agreements, (3) Support for Nonhousehold Members, (4) Functional Limitations and Disability, and (5) Utilization of Health Care Services. Wave 6 interviews will be conducted from October of 1991 through January of 1992.
Affected Public: Individuals or households.
Frequency: Once during the life of the panel.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 29, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–7891 Filed 4–3–91; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Survey of Income and Program Participation 1990 Panel Wave 3.

Form Number(s): SIPP–11300, 11305(L).

Agency Approval Number: 0607–0702.

Type of Request: Revision of a currently approved collection.

Burden: 14,700 hours.

Number of Respondents: 29,400.

Avg Hours per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) provides information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. The survey is molded around a central core of labor force and income questions that remain fixed throughout the life of a panel. The core survey is periodically supplemented with questions, referred to as topical modules, designed to answer specific needs. OMB approved the 1991 SIPP Panel Core on 8/21/90. Census will request approval for Waves 2–8 during the 32-month life of the 1991 panel. The topical modules for the 1991 panel Wave 3 are the following: (1) Work Schedule, (2) Child Care, (3) Child Support Agreements, (4) Support for Nonhousehold Members, (5) Functional Limitations and Disability, and (6) Utilization of Health Care Services. Wave 3 interviews will be conducted from October of 1991 through January of 1992.

Affected Public: Individuals or households.

Frequency: Once during the life of the panel.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 29, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–7892 Filed 4–3–91; 8:45 am]

BILLING CODE 3510–07–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Southwest Region Logbook Family of Forms.

Form Number: No form numbers assigned; OMB–0648–0214.

Type of Request: Revision of a currently approved collection.

Burden: 192 respondents; 2,480 reporting hours; average hours per response—.41 hours.

Needs and Uses: Data on catch, effort, and marketing transactions are needed for stock assessments and evaluation of the impacts of regulatory measures under fishery management plans.

Affected Public: Individuals or households, businesses or other for-profit, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ronald Minsk, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–7893 Filed 4–3–91; 8:45 am]

BILLING CODE 3510–CW–M

Foreign-Trade Zones Board

[Order No. 517]

Removal of Condition #3 FTZ Board Orders 379, 406, 407, 414, 415 and 420

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, FTZ Board Order Nos. 379, 406, 407, 414, 415 and 420, adopted during 1988–89, contain a condition (Condition #3) which states "the U.S. Customs Service shall inform the Foreign-Trade Zones Board on or before July 1, 1991, that a satisfactory control system has been implemented so that the revenue can be fully protected; otherwise, the authority under this grant shall expire on that date";

Whereas, the U.S. Customs Service recently developed a satisfactory control system and has requested that the condition be rescinded; and,

Whereas, the Board finds that Condition #3 is no longer necessary;

Now, Therefore, the Board hereby orders:

That Condition #3 in Board Orders 379, 406, 407, 414, 415 and 420 as described above is hereby rescinded.

Signed at Washington, DC, this 27th day of March, 1991.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–7894 Filed 4–3–91; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 28–87]

Foreign-Trade Zone 22—Chicago, Illinois; Withdrawal of Application for Expansion

Notice is hereby given of the withdrawal of the application submitted by the Illinois International Port District, grantee of FTZ 22, requesting authority to expand the zone to include two sites in the Joliet/Will County, Illinois. The application was filed on October 26, 1987 (52 FR 43378, 11/12/87).

The withdrawal is requested by the applicant because of changed circumstances.

The case has been withdrawn without prejudice, and FTZ Board Docket 28–87 is closed.

Dated: March 28, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–7895 Filed 4–3–91; 8:45 am]

BILLING CODE 3510–05–M

[Docket 16–91]

Foreign-Trade Zone 124—Gramercy, LA; Application for Subzone, Star Enterprise-Refinery and Terminals, Ascension and St. James Parishes, Louisiana

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Louisiana Port Commission, grantee of FTZ 124, requesting special-purpose subzone status for the oil refinery and storage facilities of Star Enterprise (a joint venture involving Texaco Refining and Marketing (East) Inc., and Saudi

Refining, Inc.), located in St. James and Ascension Parishes (Convent area), Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 21, 1991.

The Convent refinery complex (Site 1, 3,940 acres) involves a 225,000-barrel-per-day refinery, storage and docking facilities in Ascension and St. James Parishes, on the east bank of the Mississippi River at River Mile Point 168, north of Convent, Louisiana. The company's LPG underground storage facility (Site 2, 28 acres) is located in Ascension Parish, some 2 miles southeast of Sorrento, Louisiana (5 miles from the refinery).

The refinery facilities employ 500 persons and is used to produce gasoline, fuel oil, and jet fuels. All of the crude oil and secondary feedstocks are sourced abroad. Some 3.5 percent of the finished products are exported.

Zone procedures would exempt the refinery facilities from Customs duty payments on the foreign products used in its exports. On domestic sales, the company is seeking to avoid duties on fuel used in the refinery and to defer duties until products leave the refinery. The application also indicates the company plans to choose the zero duty rate that applies to certain end products, such as sulphur and MEP (a methane/ethane/propane/hydrogen mix). (The duty on crude oil ranges from 5.25 to 10.5 cents/barrel.) Foreign merchandise would also be exempt from state and local *ad valorem* taxes. The application indicates that the savings would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the applicaton and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel R. Mish, District Director, U.S. Customs Service, South Central Region, suite 244, 423 Canal Street, New Orleans, LA 70130–2341; and Colonel Richard V. Gorski, District Engineer, U.S. Army Engineer District New Orleans, P.O. Box 60267, New Orleans, LA 70160–0267.

Comments concerning the proposed zone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before May 13, 1991.

A copy of the application is available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, 432 World Trade Center, 2 Canal Street, New Orleans, LA 70130.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 4213, Washington, DC 20230.

Dated: March 28, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–7896 Filed 4–3–91; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 15–91]

Foreign-Trade Zone 40—Cleveland, OH; Application for Subzone, Joseph & Feiss Company Apparel Plant, Cleveland, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Cleveland-Cuyahoga County Port Authority, grantee of FTZ 40, requesting special-purpose subzone status for the men's tailored apparel manufacturing facility of The Joseph & Feiss Company (JFC) (subsidiary of Hugo Boss A.G., Germany) located in Cleveland, Ohio. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 19, 1991.

The JFC plant (7 acres, 1,300 employees) is located at 2149 West 53rd Street, some 2.5 miles west of downtown Cleveland in Cuyahoga County, Ohio. The facility is used to produce men's tailored clothing for both domestic consumption and export. JFC's product line includes Hugo Boss, Cricketeer, Geoffrey Beene, Country Britches, and Baracuta. The proposal calls for the use of zone procedures in the cutting and processing of foreign wool and wool-blend material used in the production of men's suits. Foreign fabric accounts for some 40–50 percent of the total amount of fabric consumed annually at the plant, and this level of foreign sourcing would continue.

The foreign material is primarily worsted fabric received from European and Asian countries that are signatories to the Multi-Fiber Arrangement. The foreign material would be covered by appropriate visas, and the proposal is submitted with the understanding that a procedure will be adopted by Customs that would have the foreign material charged against appropriate quotas upon admission to the plant. The application indicates that "privileged foreign status" (19 CFR 146.65) would be selected at time of entry for admission.

Zone procedures would be used during the preliminary stages of production from fabric examination through cutting. After the cutting stage is completed, the cut panels will be formally entered and Customs duty payments paid. Subzone status would exempt JFC from Customs duty payments on the foreign fabric used in the production of suits for export. On its domestic sales, it would be able to defer duty payments on foreign fabric (36.1%). Duty exemption would be sought on scrap fabric, based on an approximate 17 percent rate of waste. The applicatio· indicates that the savings from zone procedures will help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 55 Erieview Plaza, Cleveland, Ohio 44114; and Major David P. Plank, District Engineer, U.S. Army Engineer District Buffalo, 1776 Niagara Street, Buffalo, New York 14207.

Comments concerning the proposed foreign-trade subzone are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before May 21, 1991.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 666 Euclid Avenue, room 668, Cleveland, Ohio 44114.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 4213, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: March 28, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–7897 Filed 4–3–91; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 17-91]

Foreign-Trade Zone 116—Port Arthur, TX; Application for Subzone, Star Enterprise-Refinery and Terminals, Jefferson and Hardin Counties, Texas

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone of Southeast Texas, Inc., grantee of FTZ 116, requesting special-purpose subzone status for the oil refinery complex and related storage facilities of Star Enterprise (a joint venture involving Texaco Refining and Marketing (East), Inc., and Saudi Refining, Inc.) located in Jefferson and Hardin Counties (Port Arthur area), Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 21, 1991.

Subzone status is being proposed for the following Port Arthur area facilities, totalling 3,758 acres: Site 1 (3,036 acres)—Port Arthur refinery complex (250,000 barrels per day), Jefferson County, adjacent to the City of Port Arthur; Site 2 (402 acres)—crude storage and asphalt production facility, Jefferson County, adjacent to the City of Port Neches; Site 3 (126 acres)—terminal and docking facility, Jefferson County, 2 miles south of Port Arthur; Site 4 (34 acres)—LPG underground storage facility, Hardin County, 1 mile northwest of the City of Sour Lake; Site 5 (63 acres)—Seventh St. storage facility, Jefferson County, south of Port Arthur; and, Site 6 (97 acres)—National Station storage facility, Jefferson County, adjacent to Site 1.

The refinery facilities employ 1,450 persons and is used to produce gasoline, fuel oil, jet fuels, middle distillates, lube oil, and asphalts. Approximately 80 percent of the refinery inputs are sourced abroad, including crude oil, secondary feedstocks, catfeeds and naptha. The Port Arthur area terminals and storage facilities operate as an integral part of the refinery.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company is seeking to avoid duties on fuel used in the refinery and to defer duties until products leave the refinery. The application also indicates the company plans to choose the zero duty rate that applies to certain end products, such as petroleum coke, sulfur, and MEP (a methane/ethane/propane/hydrogen mix). (The duty on crude oil ranges from 5.25 to 10.5 cents/barrel.) Foreign merchandise would also be exampt from state and local *ad valorem* taxes. The application indicates that the savings would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Regional Director, Inspection and Control, U.S. Customs Service, Southwest Region, suite 500, San Felipe Street, Houston, TX 77057–3012; and Colonel Brink P. Miller, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, TX 77553.

Comments concerning the proposed zone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before May 13, 1991.

A copy of the appliclation is available for public inspection at each of the following locations:

Office of the District Director, U.S. Customs Service, 4550 75th St., Port Arthur, TX 77642, Attn.: Patricia McCauley

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 4213, Washington, DC 20230

Dated: March 28, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–7898 Filed 4–3–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[Docket No. 910 377–1077]

Information Relating to Bowhead Whales; U.S. Implementation of Bowhead Whale Strike Quota for 1991

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

ACTION: Notice of information and request for public comment.

SUMMARY: Information is published by NOAA for use in the development of the U.S. position before the International Whaling Commission (IWC) on the aboriginal/subsistence take of bowhead whales and in the domestic allocation of the existing IWC quota for bowhead whales to U.S. natives. By this notice, NOAA is soliciting public comment on the proposed allocation of the IWC bowhead whale catch limit in 1991.

DATES: Comments must be submitted on or before May 6, 1991.

ADDRESSES: Written comments may be mailed to the Office of International Affairs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. A list of documents reviewed for this action may be obtained on request, and the documents examined during business hours (9 a.m. to 5 p.m.) at this address.

FOR FURTHER INFORMATION CONTACT: Becky Rootes, (301) 427–2276.

SUPPLEMENTARY INFORMATION: NOAA is responsible for implementation and enforcement of the Marine Mammal Protection Act (16 U.S.C. 1361–1407), the Endangered Species Act (16 U.S.C. 1531–1543) and the Whaling Convention Act 16 U.S.C. 916–916*l*). In addition, it provides staff to the U.S. Commissioner to the IWC and to the IWC Interagency Committee. Consistent with these responsibilities, the Agency develops positions for implementation of the aboriginal/subsistence harvest of bowhead whales under Paragraph 13, of the Schedule to the International Convention on the Regulation of Whaling, December 2, 1946, 62 Stat. 1716, T.I.A.S. No. 1849 (entered into force, November 10, 1948). In order to provide for review and comment by the public of the data upon which the U.S. positions are based, the following information is provided: (1) The IWC catch level available for the U.S. aboriginal/subsistence bowhead whale harvest for 1991; (2) a summary of available bowhead scientific information including estimates of current population level and annual recruitment rates; (3) a summary of information on the nature and extent of aboriginal/subsistence need; (4) the level of aboriginal/subsistence harvest limits which could be implemented domestically; and (5) notice of the availability of those documents reviewed by NOAA and relied on by the Administrator of NOAA in making his finding on the allocation of the catch quota. By this notice, NOAA is soliciting public comment on the proposed domestic implementation of the IWC bowhead whale catch limit for 1991.

1. Catch Level

At the 40th Annual Meeting of the IWC, Auckland, New Zealand, May 30–June 3, 1988, the following catch limit was established for aboriginal/subsistence whaling: "the taking of bowhead whales from the Bering-Chukchi-Beaufort Seas stock by

aborigines is permitted, but only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines and further provided that: . . . For each of the years 1989, 1990, and 1991, the total number of whales landed shall not exceed 44 and the total number of whales landed shall not exceed 41, except that in 1988, 1989, and 1990, any unused strikes up to a maximum of 3 shall be transferred to the following year." (Schedule to the Convention, Paragraph 13(b)(1)(i).)

2. Scientific Information

The IWC Scientific Committee agreed at the 1988 IWC meeting on an estimate of 7,800 (with a 95 percent confidence interval of 5,700 to 10,600) as the current size of the bowhead whale population. Based on simulation analysis conducted by scientists at the 1988 IWC meeting, estimates were made of the number of animals that can be removed which will keep the population at its current level. This is known as the replacement yield (RY) which defines the number of whales annually recruited into the population that balances the number of deaths that occur. RY values of 43 to 196 animals were estimated for the range of population estimates of 5,700 and 10,000. The view of the IWC Scientific Committee was that estimates of RY would be most appropriate for the population size of 7,800 resulting in a RY of 56 to 192 bowheads.

3. Aboriginal/Subsistence Need

The Department of the Interior (DOI) conducted the last major analysis of the nature and extent of aboriginal/subsistence need for bowhead whales and whaling in 1983 and the IWC adopted this method for quantifying need in 1986. The Department of the Interior contracted a new study on the quantification of subsistence and cultural need for bowhead whales in 1987 which was presented at the 1988 meeting. The new study presented the cultural and subsistence need of the nine Alaska Eskimo whaling villages to take 41 landed bowhead whales. This quantification of need used the same method of calculation accepted by the IWC in 1986. This method derives the mean annual number of bowhead whales landed per capita during a specified historical period and multiplies this mean by the current Eskimo population of nine Alaska Eskimo whaling villages. The result of this calculation is the total number of bowhead whales the nine Eskimo whaling villages need to land each year in order to meet their cultural and subsistence need.

When the IWC adopted this method of quantifying need, members of the IWC Aboriginal Subsistence Subcommittee noted that the quantification was based on a large but incomplete series of data on historical bowhead landings. It was also noted that the quantification used an inconsistent data base period. The Department of the Interior Study was initiated to correct these deficiencies. To complete the series of data on historical bowhead whale landings to the extent possible, the study undertook a comprehensive review of available published and unpublished sources of bowhead landings. Remaining gaps are unlikely to be significantly reduced with further searches for historic data on bowhead landings. The data resulting from this study also permitted the use of a consistent historical base period for the calculation of need. In the prior analysis, the base periods varied from 1940 to 1970 and 1950 to 1970. The base period now begins in 1910, the year following the cessation of commercial whaling in the Arctic, and ends in 1969, prior to the period of unusually high bowhead harvests in the unique economic circumstances of the 1970s. Therefore, applying the additional landed bowhead data and the longer period to the accepted method of quantifying need, results in a current cultural and subsistence need of 41 landed whales.

4. Domestic Harvest Range

The IWC management scheme for aboriginal/subsistence whaling provides (in Schedule paragraph 13(a)(2)): "For stocks below the maximum sustainable yield (MSY) level but above a certain minimum level, aboriginal/subsistence catches shall be permitted so long as they are set at levels which allow whale stocks to move to the MSY level." Given the above stated estimates of 56–192 whales recruited into the population annually, the aboriginal/subsistence catch can be permitted so long as it is set at a level that allows the whale stock to move to the MSY level.

The catch limit for bowhead whales for 1991, established by the IWC, is 44 strikes or 41 landed with up to 3 unused strikes from 1990 available in 1991. The 1990 quota of 47 strikes was not met. Only 44 strikes were used in 1990 which allows 3 strikes to be transferred forward to 1991. The number under consideration for the 1991 catch limit is 47 strikes or 41 landed.

5. Documents Reviewed

A list of the documents reviewed for this action may be obtained on request from the address above. The documents are available for public inspection during the 30-day public comment period at the same address.

Authority: 16 U.S.C. 1361–1407, 1531–43, 916.

Dated: March 29, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91–7879 Filed 4–3–91; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Hypersonic Technologies will meet from 8 a.m. to 5 p.m. on 30 April 1991 at the Space Systems Division, Los Angeles AFB, CA, on 1 May 1991 at the NASP National Program Office, Seal Beach, CA, and on 2 May 1991 at Rockwell International, Downey, CA, Marquardt Company, Van Nuys, CA, and Wiley Company, Ontario, CA.

The purpose of these meetings is to gather information in support of the SAB study on hypersonic technologies.

The meetings will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–7904 Filed 4–3–91; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before May 6, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer,

Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: March 29, 1991.

Wallace R. McPherson, Jr.,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: New.
Title: Performance Report for the School, College, and University Partnerships (SCUP) Program.
Frequency: One-time.
Affected Public: State or local governments; Non-profit institutions.
Reporting Burden:
Responses: 15.
Burden Hours: 180.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: State Educational agencies that have participated in the (School, College, and University Partnership (SCUP) Program are to submit these reports to the Department. The Department uses the information to assess the accomplishments of project goals and effective program management.

Office of Postsecondary Education

Type of Review: Extension.
Title: Application for Designation as an Eligible Institution.
Frequency: Annually
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 1100
Burden Hours: 8800.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by Institutions of Higher Education to apply for funds under the Designation as an eligible institution Program, of the Higher Education Act. The Department uses this information to make grant awards.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Application for Training Program for Educators—Innovative Alcohol Abuse Education Grant Program.
Frequency: Annually.
Affected Public: State or local governments; Businesses or other—for profit; Non-profit institutions.
Reporting Burden:
Responses: 35
Burden Hours: 1050.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State Educational Agencies that have participated in the Innovative Alcohol Abuse Education Grant program. The Department uses the information to make grant awards.

Office of Educational Research and Improvement

Type of Review: New.
Title: High School and Beyond Sophomore Cohort: Fourth (1992) Follow Up.
Frequency: One-time.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 13,709.
Burden Hours: 10,293.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This data collection is part of the Longitudinal Study of the High School Sophomore class of 1980. The study shall collect data on participation in higher education, including enrollment, persistence, and attainment.

Office of Planning, Budget and Evaluation

Type of Review: New.
Title: Descriptive Evaluations of the Transition Program for Refugee Children and the Emergency Immigrant Education Program.
Frequency: One-time.
Affected Public: State or local governments.
Reporting Burden:
Responses: 200.
Burden Hours: 305.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This study will gather data about programs that serve immigrant students either under the Emergency Immigrant Education Program or other Federal, State, or local programs. The Department will use this information to assess the accomplishments of the programs and for program management

Office of Special Education and Rehabilitative Service

Type of Review: Revision.
Title: Written Request for Assistance or Application for Client Assistance Program.
Frequency: Triennial
Affected Public: State or local governments:
Reporting Burden:
Responses: 57.
Burden Hours: 9.1.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours. 0.
Abstract: This form is used by State Educational Agencies to request funding under the Client Assistant Program (CAP). The Department uses the information to make grant awards.

[FR Doc. 91–7873 Filed 4–3–91; 8:45 am]
BILLING CODE 4000–01–M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as

required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance wtih the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by May 10, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with the attached proposed information collection request prior to submission on this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden and (6) Abstract. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 29, 1991.

Wallace R. McPherson, Jr.,

Acting Director, Office of Information, Resources Management.

Office of Educational Research and Improvement

Type of review: Expedited.

Title: ERIC User Questionnaire.

Abstract: This survey will determine whether outreach efforts are creating a greater awareness of ERIC and whether these efforts need to be modifed or improved. The Department will use this information to make management decisions to improve the ERIC system and to expand its activities to better reach teachers, administrators and parents.

Additional information: An expedited review is requested because this survey must reach educators before the end of the school year.

Frequency: One time.

Affected public: Individuals or households; State or local governments; Non-profit institutions.

Reporting Burden:

Responses: 3600.

Burden hours: 1188.

Recordkeeping burden:

Recordkeepers: 0.

Burden hours: 0.

BILLING CODE 4000–01–M

Dear ERIC User:

As an education practitioner or policy maker, practical and timely education information and resources are important to you.

The Department of Education, Office of Educational Research and Improvement, operates the Educational Resources Information Center (ERIC) -- a national education information network. Your views are important to us. We want to know which products and services are useful to you and how we can improve the ERIC System to better meet your education information needs. If you have never heard of ERIC, we need to know that too.

Please take some time to complete the enclosed brief user survey. Your input will provide valuable information allowing ERIC to bring you practical, timely education information and resources. You will be providing the information anonymously; data collected will not be duplicated, used, or disclosed for any purpose other than to evaluate the ERIC System.

Thank you for your help. If you have other questions about ERIC and what it can do for you and your institution, don't hesitate to call our toll-free number -- 1-800-USE-ERIC.

Sincerely,

Robert Stonehill
Director, Educational Resources Information Center (ERIC)
Office of Educational Research and Improvement
U.S. Department of Education

RS/rm

Code #_____ OMB_____
Expiration Date:_____

ERIC User Questionnaire

1. What is your position? (Please check all that apply)

[ ] Librarian
[ ] Researcher
[ ] Graduate student
[ ] Undergraduate student
[ ] College/Univ. professor
[ ] Classroom teacher - How long have you been teaching? _____
[ ] Other, please specify _____

[ ] Parent
[ ] Journalist
[ ] Counselor
[ ] School administrator

2. Have you ever heard of ERIC?

[ ] Yes [ ] No (Please answer questions 5-8 only)

3. Where did you first hear about ERIC? How long ago? _____

[ ] Journal/Newsletter
[ ] Conference
[ ] Courses or inservice training
[ ] Library
[ ] Colleague
[ ] Newspaper
[ ] Online education service (e.g. DIALOG)
[ ] Other, please specify _____

4. Have you ever used ERIC? [ ] Yes [ ] No (Please answer questions 5-8 only)

ERIC comprises the following services. Please rate all that you have used.

	VERY HELPFUL	SOMEWHAT HELPFUL	NOT HELPFUL	NEVER USED
ERIC online database search service	[ ]	[ ]	[ ]	[ ]
ERIC CD-ROM search service	[ ]	[ ]	[ ]	[ ]
ERIC documents on microfiche	[ ]	[ ]	[ ]	[ ]
Current Index to Journals in Education (*CIJE*)	[ ]	[ ]	[ ]	[ ]
Resources in Education (*RIE*)	[ ]	[ ]	[ ]	[ ]
Thesaurus of ERIC Descriptors	[ ]	[ ]	[ ]	[ ]
ERIC Document Reproduction Service	[ ]	[ ]	[ ]	[ ]
ERIC Clearinghouses	[ ]	[ ]	[ ]	[ ]
ACCESS ERIC	[ ]	[ ]	[ ]	[ ]
Other, please specify _____	[ ]	[ ]	[ ]	[ ]

Comments:_____

Completion of information on this form is voluntary. This information shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the ERIC System.

Public reporting burden for this collection of information is estimated to average .33 hours per response, including the 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 this information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850-NEW, Washington, D.C. 20503.

5. **If you don't use ERIC services and products, why not?**

[ ] I'm not familiar with ERIC
[ ] I'm not sure of its ability to meet my needs
[ ] ERIC is not available in my geographic area
[ ] I have encountered searching problems (please comment)
[ ] I prefer other education information resources (please comment)
[ ] It is not convenient

Comments: _____

_____

_____

_____

6. **What are your present education information needs? (Please rank the following in order of importance to you; 1 = most important, 6 = least important)**

[ ] Research project/paper
[ ] Quick information for problem solving
[ ] Brief synopses of education research
[ ] Practical ideas for classroom teaching
[ ] Education resources information
[ ] Information for parents
[ ] Other, please specify _____

7. **Which of the following education services/products would be useful? (Check all that apply)**

[ ] Toll-free number for education information
[ ] Training materials on "How To Use ERIC"
[ ] Short summaries of current research and classroom practices
[ ] In-depth information on current education issues
[ ] Annotated bibliographies of "hot topics" in education
[ ] Education pamphlets for parents of school-age children
[ ] Ready database searches on current education topics
[ ] Catalog of current publications
[ ] On-line full-text documents
[ ] Newsletter on new database technology

8. **Would you like to receive a flyer describing the ERIC System?**

[ ] Yes (Please include your name and address with your completed survey)
[ ] No

Please continue only if you have used ERIC products.

9. **What information have you obtained most often from the ERIC database?**

[ ] Unpublished documents
[ ] Curriculum materials
[ ] Conference papers
[ ] Journal articles
[ ] Literature reviews
[ ] Other, please specify _____

10. Have you ever used RIE? [ ] Yes [ ] No **CIJE?** [ ] Yes [ ] No

If so, please evaluate the following: RIE CIJE

	RIE			CIJE		
	Excellent	Good	Poor	Excellent	Good	Poor
Comprehensive coverage	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Selectivity of documents	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Usefulness of descriptors	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Clarity of abstracts	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Speed of processing	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

11. How do you feel ERIC can improve its services and products? Please rate each item, using the number scale below.

MUST DO		WOULD BE NICE		NOT NECESSARY	NO OPINION
1	2	3	4	5	6

__ Add new technology, e.g. full-text delivery on CD-ROM
__ Faster searching procedures
__ Update database more frequently
__ Survey more journals for relevant articles
__ Improve full-text availability of journal articles
__ Provide faster turnaround time for microfiche and hard copies
__ Develop alternatives to microfiche (please comment)
__ Provide products that can be used on your own PC
__ Improve quality of paper copies
__ Lower the cost of documents
__ Provide training and training materials to library staff . . . to professors . . .
__ Provide more toll-free numbers
__ Other, please specify _____

Comments: _____

12. For what activity has ERIC been the most useful to you? (Check only one)

[ ] Research paper
[ ] Curriculum development
[ ] Instructional techniques
[ ] Administrative decisions
[ ] Other, please specify _____

13. Is there information that is lacking in ERIC (e.g., books, newspaper articles, program descriptions, basic statistics)?

[ ] Yes, please specify _____ [ ] No

14. Is ERIC accessible to you when you need education information?

[ ] Yes [ ] No, why not?

Comments: _____

15. If you could have ERIC in your local school, what would you prefer?

[ ] N/A; We already have ERIC in the form of _____
[ ] Hard copy (*Thesaurus*, *CIJE*, *RIE*)
[ ] Online
[ ] CD-ROM (Compact Disc/Read-Only Memory)

16. Have you ever used the ERIC Clearinghouses?

[ ] Yes
[ ] No

17. Please rate the Clearinghouse products or services you have received:

	EXCELLENT	GOOD	POOR	NEVER USED
Two-page summary of research (Digest)	[ ]	[ ]	[ ]	[ ]
Books (Monographs, Trends & Issues)	[ ]	[ ]	[ ]	[ ]
ERIC database searches	[ ]	[ ]	[ ]	[ ]
Referrals (How useful was the referral?)	[ ]	[ ]	[ ]	[ ]
Subject specific information	[ ]	[ ]	[ ]	[ ]
Solicitation of documents	[ ]	[ ]	[ ]	[ ]
Other, please specify _____	[ ]	[ ]	[ ]	[ ]

18. Have you authored a document or journal article that is in the ERIC database? [ ] Yes [ ] No
If so, please evaluate the following:

	EXCELLENT	GOOD	POOR
Citation accuracy	[ ]	[ ]	[ ]
Abstracting clarity	[ ]	[ ]	[ ]
Processing Speed	[ ]	[ ]	[ ]

Comments: _____

19. Can you suggest ways we can expand our ERIC services to classroom teachers and school administrators?

_____

20. Can you suggest ways ERIC services may be useful to parents?

_____

21. Does the ERIC System meet your expectations as an education information provider?

[ ] Yes
[ ] No

Please explain: _____

Thank you very much for your help. Please return the questionnaire in the enclosed envelope.

[FR Doc. 91-7874 Filed 4-3-91; 8:45 am]
BILLING CODE 4000-01-C

DEPARTMENT OF ENERGY

Energy Information Administration

Form EIA-822A-D, Proposed Surveys for Oxygenate Producers, Refinery Oxygenate Blending and Storage, Terminal Oxygenate Blending and Storage, and Oxygenate Importers

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed one-time surveys of oxygenate producers, blenders, storers, and importers and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Public Law No. 96-511, 44 U.S.C. subsections 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this notice is to inform interested parties of Forms EIA-822A-D, "Oxygenate Producers Survey," "Refinery Oxygenate Blending and Storage Survey," "Terminal Oxygenate Blending and Storage Survey," and "Oxygenate Importers Survey," and to solicit comments on these proposed forms. These collections are designed to determine the universe of oxygenate producers, blenders, storers, and importers and to collect data on oxygenates which can be used to produce certified motor gasoline that meets the Clean Air Act of 1990 requirements.

DATES: Written comments must be submitted on or before May 6, 1991. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to: Ms. Susan Harris (EI-421), Energy Information Administration, U.S. Department of Energy, Mail Stop: 2H-058, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586-8384, FAX. (202) 586-5846.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORMS AND INSTRUCTIONS: Requests for additional information of copies of the form(s) and instructions should be directed to Ms. Harris at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93-275) and the Department of Energy Organization Act (Pub. L. No. 95-91), the EIA is obliged to carry out a central, comprehensive, and unified energy data and information program. Under this program, EIA will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand, and technology, as well as, related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The EIA is obliged to publish and otherwise make available to the public, high-quality statistical data that reflect current and regional petroleum supply activity.

The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*) (CAA), has been further amended by Public Law No. 100-549, enacted on November 15, 1990. Section 219 of the 1990 amendment adds subsection (k) to section 211 of the CAA. Subsection (k) provides in 6(b) thereunder, that Environmental Protection Agency Administrator, after consultation with the Secretary of Energy, will determine if there is sufficient domestic capacity to produce certified motor gasoline to meet the CAA requirements and act in accordance with that determination as the law allows.

To help the EIA Administrator meet these responsibilities, as well as internal Department of Energy requirements that are dependent on accurate data, the EIA conducts statistical surveys that encompass each significant primary petroleum supply activity in the United States.

II. Current Actions

This is a proposed one-time, new collection to develop a frame of oxygenate producers, blenders, storers and importers for use in later EIA information collections.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed surveys. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average 1 hour per response. How many hours, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form(s)?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form(s) be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s) and the means of collection.

The EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the proposed collection.

Comments submitted in response to this notice will be summarized and/or included in the requested for Office of Management and Budget approval of the forms and will become a matter of public record.

Statutory Authority: Sections 5(a), 5(b), 13(b), and 52 of Public Law No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. subsection 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, March 29, 1991.

Douglas R. Hale,

Acting Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91-7946 Filed 4-3-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-219-000, et al.]

Public Service Company of Colorado, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Colorado

[Docket No. ER91-219-000]

March 27, 1991.

Take notice that on March 19, 1991, Public Service Company of Colorado (PSO) tendered for filing an amendment to the tariff filing contained in Docket No. ER90-219-000, the Consolidated Facility Arrangements Contract No. 87-LAO-337 in this docket.

Comment date: April 25, 1991 in accordance with Standard Paragraph E at the end of this notice.

2. Seminole Fertilizer, Inc. and Bartow Cogeneration Partners, L.P.

[Docket No. QF85-521-000]

March 27, 1991.

On March 21, 1991, Seminole Fertilizer, Inc., and Bartow Cogeneration Partners, L.P. tendered for filing an amendment to its filing in this docket.

The amendment includes changes to the facility configuration and corrections or addition to certain other information in the original filing.

Comment date: April 25, 1991 in accordance with Standard Paragraph E at the end of this notice.

3. L'Energia, Limited Partnership Inc.

[Docket No. QF87-249-003]

March 27, 1991.

On March 8, 1991, L'Energia, Limited Partnership, c/o Bio Development Corp., 3 Executive Park Drive, Bedford, New Hampshire 03102, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The original certification was issued on May 22, 1987 (39 FERC ¶ 62,206). The instant recertification is requested due to changes in the facility's design and configuration, ownership and installation date.

The topping-cycle cogeneration facility will be located in the City of Lowell, Massachusetts, and will include a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used in a food processing plant for pasta drying. The average net electric power production capacity of the facility is approximately 82 MW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin in the spring of 1991.

Comment date: May 6, 1991 in accordance with Standard Paragraph E at the end of this notice.

4. Tampa Electric Company

[Docket No. ER91-241-001]

March 27, 1991.

Take notice that on March 20, 1991, Tampa Electric Company (Tampa Electric) tendered for filing revised rates establishing a ceiling on the revenue that Tampa Electric may collect from its sale to the Florida Municipal Power Agency (FMPA) of capacity and energy from the Phillips Plant, under a contract assigned to Tampa Electric by the Sebring Utilities Commission (Sebring). Tampa Electric states that the filing is in compliance with the February 28, 1991 letter of the Director, Division of Applications, in the above-referenced docket.

Copies of the compliance filing have been served on FMPA, Sebring, and the Florida Public Service Commission.

Comment date: April 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER91-323-000]

March 27, 1991.

Take notice that on March 18, 1991, Southern Company Services, Inc. (SCSI) acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (Southern Companies) tendered for filing a notice of cancellation of Rate Schedules pursuant to the Settlement Agreement in this docket.

Comment date: April 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Delaware Resource Management, Inc.

[Docket Nos. EC91-8-000 and EL91-21-000]

March 27, 1991.

Take notice that on March 21, 1991, Delaware Resource Management, Inc. (DRM) submitted for filing a "Petition for Order Pursuant to section 203 of the Federal Power Act and Request for Declaratory Order" with regard to certain related matters as follows:

(1) Requesting the Commission authorize pursuant to section 203 of the Federal Power Act (the "FPA"), 16 U.S.C. 824b, the sale and leaseback financing of DRMI's Delaware County, Pennsylvania Resource Recovery Facility (the "Facility"), a municipal solid waste-fueled qualifying small power production facility under the Public Utility Regulatory Policies Act of 1978 ("PURPA");

(2) Requesting the Commission to disclaim jurisdiction under the FPA over the beneficial owner of the Facility (the "Owner Participant") and the trustee for such beneficial owner (the "Owner Trustee") as a consequence of their participation in the proposed Facility sale and leaseback financing;

(3) Determining that if either the Owner Participant or the Owner Trustee takes over the operation of the Facility in the exercise of remedies against DRMI following a DRMI default under the sale and leaseback transaction, it will not solely as a consequence thereof become a "public utility" or an "electric utility" subject to the Commission's jurisdiction under the FPA, provided the Facility continues to satisfy all the requirements, including the ownership requirements, required for a "qualifying facility" under PURPA;

(4) Confirming the continued applicability of DRMI's Initial Rate Schedules FERC Nos. 1 and 2 to sales by DRMI of electricity generated by the Facility, respectively, to Atlantic Electric Company and Philadelphia Electric Company, after the proposed sale and leaseback transaction is consummated; and

(5) Determining that the change in ownership of the Facility effected by the sale and leaseback financing will not result in a loss of the Facility's qualifying facility status under PURPA.

Comment date: April 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Gulf Power Company

[Docket No. FA89-11-000]

March 27, 1991.

Take notice that on February 11, 1991, Gulf Power Company (Gulf Power) tendered for filing its refund report in this docket.

Comment date: April 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp Electric Operations

[Docket No. ER91-329-000]

March 27, 1991.

Take notice that PacifiCorp Electric Operations ("PacifiCorp"), on March 22, 1991, tendered for filing in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, a Long-Term Power Sales Agreement ("Agreement")

between PacifiCorp and The Arizona Power Pool Association ("APPA") dated March 4, 1991.

Under terms of the Agreement, PacifiCorp will sell and APPA will purchase long-term firm capacity and energy.

PacifiCorp requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of May 1, 1991 be assigned to the Agreement, this date corresponding to commencement of service under the Agreement.

Copies of this filing were supplied to APPA, Arizona Electric Power Cooperative, Inc., City of Mesa, Arizona, Electrical District No. 2 of Pinal County, Arizona, the Public Utility Commission of Oregon and the Utah Public Service Commision.

Comment date: April 12, 1991, in accordance with Standard Paragraph E end of this notice.

9. Montaup Electric Company

[Docket No. ER90-247-004]

March 27, 1991.

Take notice that on March 14, 1991, Montaup Electric Company (Montaup) tendered for filing its compliance refund report in this docket.

Comment date: April 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Nantahala Power and Light Company

[Docket Nos. ER91-166-000 and ER91-173-000]

March 27, 1991.

Take notice that on March 14, 1991, Nantahala Power and Light Company (Nantahala) submitted additional information regarding the Interconnection Agreement between Nantahala and the Tennessee Valley Authority and the Sevice Agreement between Nantahala and Duke Power Company in the above-referenced dockets.

Comment date: April 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Iowa Public Service Company

[Docket No. ES91-19-000]

March 27, 1991.

Take notice that on March 22, 1991, Iowa Public Service Company filed its application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act seeking authorization to issue $124 million of short-term unsecured promissory notes to commercial banks and its parent or affiliated companies and commercial paper dealers on or before March 31, 1993 with a final maturity date no later than March 31, 1994.

Comment date: April 11, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. James R. Leva

[Docket No. ID-1606-002]

March 27, 1991.

Take notice that on March 22, 1991, James R. Leva tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

President and Director, JCP&L.

Director, Powder Mill Bank.

Comment date: April 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Robert L. Wise

[Docket No. ID-1917-001]

March 27, 1991.

Take notice that on March 22, 1991, Robert L. Wise tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

President, Penelec.

Director, USBANCORP, Inc. and U.S. National Bank in Johnstown.

Comment date: April 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Fred D. Hafer

[Docket No. ID-1820-001]

March 27, 1991.

Take notice that on March 22, 1991, Fred D. Hafer tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

President, Met-Ed.

Director, Meridian Bancorp, Inc./ Meridian Bank.

Comment date: April 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

15. Willis S. White, Jr., et al.

[Docket Nos. ID-1598-003, ID-1779-003, ID-2307-001, ID-1780-001, ID-2529-000, and ID-2530-000]

March 27, 1991.

Take notice that on March 22, 1991, Willis S. White, Jr. tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, The Bank of New York Company, Inc.

Director, The Bank of New York.

Comment date: April 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

16. Stanley C. Van Ness

[Docket No. ID-2533-000]

March 27, 1991.

Take notice that on March 22, 1991, Stanley C. Van Ness tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Jersey Central Power & Light company ("JCP&L").

Director, Prudential Insurance company of America.

Comment date: April 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

17. Stephen B. Wiley

[Docket No. ID-2534-000]

March 27, 1991.

Take notice that on March 22, 1991, Stephen B. Wiley tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Jersey Central Power & Light Company ("JCP&L").

Director (Chairman), First Morris Bank.

Comment date: April 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

18. Bruce G. Willison

[Docket No. ID-2387-001]

March 27, 1991.

Take notice that on March 22, 1991, Bruce G. Willison (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Chairman of the Board, Chief Executive Officer and President, First Interstate Bank of California.

Director, First Interstate Bank of Oregon.

Director, Portland General Electric Company.

Comment date: April 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

19. United Technologies Corporation, Pratt & Whitney

[Docket No. QF91-44-000]

March 28, 1991.

On March 22, 1991, United Technologies Corporation, Pratt & Whitney Operations, tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain aspects of thermal and mechanical uses of steam and provides revised computations of operating and efficiency values.

Comment date: April 25, 1991, in accordance with Standard Paragraph E at the end of this notice.

20. Central Maine Power Company

[Docket No. ER90–471–002]

March 28, 1991.

Take notice that on March 11, 1991, Central Main Power Company (CMP) tendered for filing an unexecuted Transmission Service Contract between CMP and Massachusetts Municipal Wholesale Electric Company (MMWEC). This contract is filed pursuant to the Commission's Orders dated December 28, 1990 and February 28, 1991 in Docket Nos. ER90–471–000 and ER90–471–001 and covers transmission service for MMWEC of 100 megawatts of capacity from the New Brunswick Electric Power Commission Point Lepreau generating facility.

CMP requests that the Commission waive its notice and filing requirements in connection with the filing.

CMP has served copies of the filing on the affected customer and on the Maine Public Utilities Commission.

Comment date: April 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

21. Arkansas Power and Light Company

[Docket No. ER91–331–000]

March 28, 1991.

Take notice that Arkansas Power and Light Company (AP&L) tendered for filing on March 22, 1991, a proposed Agreement for Wholesale Power Service (Power Agreement), Service Area Boundary Agreement (Boundary Agreement) and Interchange Agreement between AP&L and Union Electric Company (UE). In addition, AP&L tendered for filing a proposed Interconnection Agreement between AP&L and Associated Electric Cooperative, Inc. (AECI). The Power Agreement, Boundary Agreement and the Interchange Agreement (collectively Agreements) are being filed in connection with a sales agreement whereby AP&L would sell to UE the facilities currently used by AP&L to provide retail electric service within the state of Missouri, and UE would thereafter provide the retail electric service to those customers. AP&L proposes May 1, 1991, the day after the expected Closing Date of the sales agreement, as the effective date for the Agreements.

Under the proposed Interchange Agreement, the parties will operate their systems in synchronization and will cooperate in furnishing to each other such quantities of electric power and energy as either party may request, subject to the terms and conditions contained within the Interchange Agreement. The Boundary Agreement permits one party to request the other to extend distribution facilities to customers of the requesting party when it is more reasonable for such line extensions to be constructed by the other party.

Under the Power Agreement, UE has agreed to purchase certain quantities of power and energy from AP&L, in accordance with the terms and conditions contained therein. The Power Agreement shall have an initial term of ten years from its effective date.

As related transaction in conjunction with the proposed sale, transfer and assignment of the assets from AP&L to UE, AP&L and AECI entered into an Interconnection Agreement. Under the proposed Interconnection Agreement, AP&L and AECI will cooperative in furnishing to each other such quantities of electric power and energy as either party may request, subject to the terms and conditions contained within the Interconnection Agreement and the service schedules attached thereto.

Comment date: April 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

22. Kansas Gas and Electric Company

[Docket No. FA89–23–002]

March 28, 1991.

Take notice that on March 25, 1991, Kansas Gas and Electric Company tendered for filing its refund report in compliance with the Commission's letter order issued on February 28, 1991 in this docket.

Comment date: April 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

23. Atlantic City Electric Company

[Docket No. ER91–335–000]

March 28, 1991.

Take notice that on March 26, 1991, Atlantic City Electric Company (AE) tendered for filing under section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, a Power Sales Agreement between AE and the city of Vineland (Vineland) dated February 5, 1991.

AE states that the Agreement sets forth the terms and conditions for the sale by AE to Vineland of 24 MW of firm capacity (100% availability) and associated energy for the period of 6/1/91 through 5/31/92. AE will also provide Vineland with 25 MW for the period 6/1/92 through 5/31/92 through 5/31/93, and 29 MW for the period 6/1/93 through 5/31/94. AE states that the proposed rates were achieved through arms-length negotiations between Vineland and Atlantic Electric. AE has requested an effective date of June 1, 1991.

AE states that a copy of this filing has been sent to Vineland and to the New Jersey Board of Public Utilities.

Comment date: April 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

24. Southern California Edison Company

[Docket No. ER91–321–000]

March 28, 1991.

Take notice that on March 18, 1991, Southern California Edison Company (SCE) tendered for filing notices of termination for the following agreements and rate schedules:

	Commission rate schedule
Edison-Anaheim CDWR:	
Supplemental Integration Agreement	246.1
Firm Transmission Service Agreement	246.2
Edison-Azusa CDWR:	
Supplemental Integration Agreement	247.1
Firm Transmission Service Agreement	247.2
Edison-Banning CDWR:	
Supplemental Integration Agreement	248.1
Firm Transmission Service Agreement	248.2
Edison-Colton CDWR:	
Supplemental Integration Agreement	249.1
Firm Transmission Service Agreement	249.2

Comment date: April 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

25. Southern California Edison Company

[Docket No. ER91–320–000]

March 28, 1991.

Take notice that on March 18, 1991, Southern California Edison Company (SCE) tendered for filing a Notice of Termination for the following agreement and rate schedule:

	Commission rate schedule
Edison-Vernon LADWP:	
Firm Transmission Service Agreement	236

Comment date: April 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

26. Iowa Public Service Company

[Docket No. ER91-256-000]

March 28, 1991.

Take notice that on March 26, 1991, Iowa Public Service Company tendered for filing an Amendment to its FERC filing of February 8, 1991 of an executed Contract for Electric Service (Nonfirm Energy Service) and Interconnection Agreement between IPS and the U.S. Department of Energy, Western Power Administration, Pick-Sloan Missouri Basin Program, Eastern Division.

Comment date: April 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

27. Pacific Gas and Electric Company

[Docket No. ER91-332-000]

March 28, 1991.

Take notice that on March 25, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing an agreement dated April 20, 1990 between PG&E and the Washington Water Power Company (Washington) for the exchange of seasonal capacity and associated energy (the Agreement). Under the Agreement, Washington will provide up to 150 megawatts (MW) of capacity and 216,660 megawatt-hours (MWh) of energy during the summer season, and in exchange PG&E will provide Washington with an equal amount of capacity and energy during the winter season. This agreement has a minimum term of 20 years, after which either party can terminate it with five years' notice.

Copies of this filing have been served upon Washington and the California Public Utilities Commission.

Comment date: April 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

28. Boston Edison Company

[Docket No. ER91-330-000]

March 28, 1991.

Take notice that on March 22, 1991, Boston Edison Company (Edison) tendered for filing of supplemental exhibit B to a Service Agreement for New England Power Company (NEP), under its FERC Electric Tariff, Original Volume No. IV, Firm Transmission Service (the Tariff). The supplement to exhibit B provides for an Interconnection Agreement between NEP and Edison for construction of two interconnection taps on Edison lines located in Randolph, Massachusetts.

Edison requests waiver of the Commission's notice requirements to permit the exhibit B to become effective as of October 23, 1990, the effective date of the Interconneciton Agreement.

Edison states that it has served the filing on NEP and the Massachusetts Department of Public Utilities.

Comment date: April 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Comission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7871 Filed 4-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF90-207-000, et al.]

US West Financial Services, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

March 26, 1991.

Take notice that the following filings have been made with the Commission:

1. US West Financial Services, Inc.

[Docket No. QF90-207-000]

On March 8, 1991, US West Financial Services, Inc. (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment is intended to clarify certain aspects of Applicant's ownership interest in the Springville electric generating facility.

Comment date: April 25, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Kingsbrook Jewish Medical Center

[Docket No. QF91-65-000]

On March 21, 1991, Kingsbrook Jewish Medical Center tendered for filing an amendment to its filing in this docket.

The amendment includes clarification of certain aspects of the thermal energy uses and the ownership of the proposed cogeneration facility.

Comment date: April 25, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Stone Container Corp.

[Docket No. QF85-102-002]

On March 18, 1991, Stone Container Corporation of 360 N. Michigan Avenue, Chicago, Illinois submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Florence, South Carolina. The facility consists of a boiler and a double automatic extraction/condensing steam turbine generator. Extracted steam recovered from the facility will be used for pulp production and paper drying.

The original certification was issued on April 12, 1985 (31 FERC ¶ 62,036 (1985)). The instant recertification is requested due to an increase in the net electric power production capacity from 58 MW to 74.8 MW.

Comment date: May 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7864 Filed 4-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10898-000 New Hampshire]

Sweetwater Hydroelectric, Inc. Availability of Environmental Assessment

March 28, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for license for the Sweetwater Hydroelectric Project, located on the Sugar River in Sullivan County, New Hampshire, and has prepared an Environmental Assessment (EA) for the proposed project. The project would consist of an existing operating south powerhouse and the refurbishment of the inoperative north powerhouse. In the EA, the Commission's staff has analyzed the environmental impacts of the project and has concluded that approval of the project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7859 Filed 4-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-1617-000, et al.]

Colorado Interstate Gas Company, et al.; Natural Gas Certificate Filings

March 26, 1991.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP91-1617-000]

Take notice that on March 21, 1991, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP91-1617-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Universal Resources Corporation, d/b/a Questar Energy Company, a marketer, under the blanket certificate issued in Docket No. CP86-589, et al. pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that, pursuant to an agreement dated December 1, 1990, under its Rate Schedule TI-1, it proposes to transport up to 20,000 Mcf per day equivalent of natural gas. CIG indicates that the gas would be transported from Wyoming, Kansas, Oklahoma, and Colorado, and would be redelivered in Oklahoma. CIG further indicates that it would transport 20,000 Mcf on an average day and 400,000 Mcf annually.

CIG requests that the Commission waive the 120-day limitation in § 284.223(a)(1) of the regulations and allow CIG to continue transporting gas without interruption through the end of the 45-day prior notice period.

CIG advises that service under § 284.223(a) commenced January 1, 1991, as reported in Docket No. ST91-6630.

Comment date: May 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line

[Docket Nos. CP91-1564-000, CP91-1565-000, CP91-1566-000, and CP91-1567-000]

Take notice that on March 15, 1991, Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251-1642, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-585-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: May 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1]These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1564-000 (3-15-91)	Panhandle Eastern Pipe Line Co.	Ensearch Gas Co.	50,000 50,000 18,250,000	CO, KS, OK, TX	KS	2-1-91 PT	CP86-585-000 ST91-7119-000
CP91-1565-000 (3-15-91)	Panhandle Eastern Pipe Line Co.	Fuel Services Group, Inc.	3,333 3,333 1,216,545	CO, IL, KS, MI, OH, OK, TX, WY.	IN	2-1-91 PT	CP86-585-000 ST91-7121-000
CP91-1566-000 (3-15-91)	Panhandle Eastern Pipe Line Co.	Associated Natural Gas, Inc.	25,000 25,000 9,125,000	CO	CO	2-1-91 PT	CP86-585-000 ST91-7122-000
CP91-1567-000 (3-15-91)	Panhandle Eastern Pipe Line Co.	Citizens Gas Supply Corp.	75,000 75,000 23,375,000	CO, IL, KS, MI, OH, OK, TX.	IN	2-1-91 PT	CP86-585-000 ST91-7060-000

[1] Quantities are shown in Dt. unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

3. Trunkline Gas Company

[Docket Nos. CP91-1608-000, CP91-1609-000, and CP91-1610-000]

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: May 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1608-000 (3-20-91)	Trunkline Gas Company, P.O. Box 642, Houston, Tx 77251-1642.	PSI, Inc.	50,000 50,000 18,250,000	IN, IL, Offshore LA, TX, TN.	OH	PT, Interruptible, 2/12/91.	CP86-586-000, ST91-7585-000.
CP91-1609-000 (3-20-91)	Trunkline Gas Company, P.O. Box 642, Houston, Tx 77251-1642.	Seagull, Marketing, Inc.	100,000 100,000 36,500,000	IN, IL, Offshore LA, TX, TN.	OH	PT, Interruptible, 2/7/91.	CP86-586-000, ST91-7108-000.
CP91-1610-000 (3-20-91)	Trunkline Gas Company, P.O. Box 642, Houston, Tx 77251-1642.	Equitable Resources Marketing Company.	10,000 10,000 3,650,000	Offshore TX	Offshore TX	PT, Interruptible, 2/1/91.	CP86-586-000, ST91-6968-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

4. Transcontinental Gas Pipe Line Corporation, Willison Basin Interstate Company, Northwest Pipeline Company

[Docket Nos. CP91-1604-000, CP91-1605-000, and CP91-1606-000]

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: May 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1604-000 (3-20-91)	Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, TX 77251.	Appalachian Gas Sales.	10,000 10,000 3,650,000	NJ, PA	PA	IT, Interruptible, 2-2-91.	CP88-328-000, ST91-7113-000.
CP91-1605-000 (3-20-91)	Williston Basin Interstate Pipeline Company, 304 East Rosser Avenue, Bismarck, ND 58501.	PSI Gas Marketing, Inc.	50,000 10,000 18,250,000	ND, WY	ND	IT, Interruptible, 2-8-91.	CP89-1118-000, ST91-7597-000.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1606-000 (3-20-91)	Northwest Pipeline Corporation, 295 Chipeta Way, Salt Lake City, UT 84108.	Industrial Gas Sales, Inc.	1,000 1,000 36,000	Various	Various	IT-1, Interruptible, 2-8-91.	CP86-578-000, ST91-7676-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP91-1619-000]

Take notice that on March 21, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP91-1619-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Energy Marketing Exchange, Inc., a marketer, under the blanket certificate issued in Docket No. CP88-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that, pursuant to an agreement dated October 17, 1990, under its Rate Schedule IT, it proposes to transport up to 2,000,000 Dth per day equivalent of natural gas. Transco indicates that the gas would be tranported from Pennsylvania, Mississippi and offshore and onshore Texas and Louisiana, and would be redelivered in Georgia, Mississippi, South Carolina, Louisiana and onshore and offshore Texas. Transco further indicates that it would transport 2,000,000 Dth on an average day and 730,000,000 Dth annually.

Transco advises that service under § 284.223(a) commenced February 5, 1991, as reported in Docket No. ST91-7640.

Comment date: May 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket Nos. CP91-1620-000, CP91-1621-000, CP91-1622-000, CP91-1623-000, CP91-1624-000, CP91-1625-000, and CP91-1626-000]

Take notice that United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: May 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1620-000 (03-21-91)	Consolidated Fuel Corporation (marketer).	77,250 77,250 28,196,250	various	various	07-26-88, ITS, Interruptible.	ST91-7690-000 03-05-91.
CP91-1621-000 (03-21-91)	Equitable Resources Marketing Company (marketer).	257,500 257,500 93,987,000	various	various	08-17-89, ITS, Interruptible.	ST91-7696-000 03-05-91.
CP91-1622-000 (03-21-91)	Graham Energy Marketing Corp. (marketer).	123,600 123,600 45,114,000	various	various	11-09-88, ITS, Interruptible.	ST91-7689-000 03-04-91.
CP91-1623-000 (03-21-91)	Citizens Gas Supply Corp. (marketer).	20,600 20,600 7,519,000	various	various	05-06-86, ITS, Interruptible.	ST91-7008-000 01-31-91.
CP91-1624-000 (03-21-91)	Eastex Gas Transmission (Int. P/L Co).	144,200 144,200 52,633,000	various	various	01-09-87, ITS, Interruptible.	ST91-7695-000 03-05-91.
CP91-1625-000 (03-21-91)	Texaco Gas Marketing Inc. (marketer).	206,000 206,000 75,190,000	various	various	06-14-88, ITS, Interruptible.	ST91-7699-000 02-26-91.
CP91-1626-000 (03-21-91)	Pennzoil Gas Marketing Company (marketer).	206,000 206,000 75,190,000	various	various	12-31-86, ITS, Interruptible.	ST91-7700-000 02-19-91.

7. Shell Gas Pipeline Company

[Docket No. CP91–1590–000]

Take notice that on Mareh 18, 1991, Shell Gas Pipeline Company (SGPC), P.O. Box 2463, Houston, Texas 77252–2463, filed in Docket No. CP91–1590–000 a petition under rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order disclaiming jurisdiction over certain natural gas gathering facilities SGPC proposes to construct in federal waters on the Outer Continental Shelf (OCS), Offshore Louisiana. SGPC states that these facilities will be used to gather to the nearest interstate pipeline connection natural gas to be produced by Shell Offshore, Inc. (SOI) from its frontier deepwater development, Prospect Auger, in Garden Banks Area Blocks 426, 427, 470 and 471, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

SGPC states that it is a wholly owned subsidiary of Shall Oil Company and its sole business activity has been the development of several non-jurisdictional gathering lines connecting offshore platforms operated by SOI to jurisdictional gas transmission lines. In the instant proposal, SGPC states that it will be entirely responsible for the development, construction and operation of the line and has been planning to be the owner. However, SGPC is currently exploring whether its financing costs could be reduced through some form of a sale and leaseback transaction under which the line would be owned by a passive investor. SGPC states that, if such a method is ued to finance construction of the line, it would ensure that any such passive investor/owner would not be a jurisdictional natural gas company.

It is stated that the gathering line proposed herein is only one part of the entirely Shell owned and operated project to develop its Auger discovery. SGPC states that the prospect is approximately 214 miles southwest of New Orleans in record water depth of 2860 feet. The production facilities are designed for a peak daily rate of 40,000 barrels of oil and 150,000 Mcf (at 1750 psig) of natural gas. It is estimated that the current assessment of total gross recovery is approximately 220 million barrels of oil and gas equivalent, with a ratio of 70 percent oil to 30 percent gas.

SGPC states that the Auger gas gathering line will extend from the SOI tension-leg platform in Garden Banks Area Block 426 to the nearest interstate pipeline, the 24-inch pipeline of ANR Pipeline Company (ANR) at Vermilion Area Block 397. It is stated that such block represents a gathering point for pipelines from other producers' platforms. According to SGPC, the Auger line will consist of 36 miles of 12-inch pipeline and approximately 21 miles of line will be installed in water depths ranging from 100 to 2860 feet.

According to SGPC, production will be separated and dehydrated on the tension-leg platform to prevent hydrates and slugging in the line. It is explained that this will be necessary due to cold seafloor temperatures (38 °F) and the steep incline of the pipeline along the shelf approach. The gas will be compressed on the platform to a pressure which is sufficient to overcome the pressure drop in the 36-mile Auger line and allow the gas to flow into ANR's pipeline. SGPC states that the gas will be processed onshore at the Calumet gas plant in St. Mary's Parish, Louisiana.

SGPC believes that any determination of gathering or jurisdiction of its proposal should consider the changing technical and geologic nature of exploration and production stated by the Commission in its order in *Amerada Hess Corporation, et al.*, 52 FERC 61,268 (1990). SGPC states that the 2860 foot water depth encountered at the Auger prospect for exceeds the maximum depth at which a conventional, fixed-leg platform could be installed. Therefore, it is stated that SOI will use a buoyant structure which is tethered to the seafloor using 12, 26-inch diameter tendons. This Auger tension-leg platform (TLP) will have a displacement of 69,000 tons and will be designed for 32 wells and be equipped with a drilling rig and complete production facilities.

It is stated that the difficulties and technological challenges in laying the Auger gathering line will be substantially greater than those that have been presented by any U.S. undersea project to date. SGPC states that construction of the line in the mountainous underwater topography has already required very extensive reliance on proprietary technology to develop the specific route and will require equipment that is very specialized, costly and of limited availability.

According to SGPC, there are very few vessels in the world capable of laying this line. Because of the depths involved, the lay vessel must be equipped to use dynamic positioning to remain on location instead of conventional anchoring. It is stated that the vessel's displacement must be sufficient to support and handle up to two-thirds of a mile of 12-inch pipe, and the vessel will have to be extensively retrofitted to allow the pipe to be constructed vertically. The J-lay procedure will be necessary to reduce the potential of buckling the pipe during installation. It is stated that buckling is a significant concern due to the extreme bending stresses that will be encountered during installation, and because of the high external pressure at these depths. Special buckle arrestor collars will be fabricated onto the pipe joints to assist in the handling of the pipe and to limit the extent of damage in the event the pipe buckles. SGPC states that the line will be attached to the Auger TLP using a flex-joint connector which has been specially developed to support the weight of the line and allow relative motion between the TLP and pipeline. Moreover, it is averred that all work on the deepwater segment must rely on remote operated subsea vehicles without diver intervention, as the maximum depth will be more than twice the maximum industry accepted working diving limit.

SGPC states that the gas will be separated from oil, condensate and water at the TLP where it will then be dehydrated, compressed and metered before being injected into the Auger gas gathering line. Separation of all liquids and some condensable hydrocarbons at the TLP is necessary due to the problems that would otherwise be encountered with liquid slugging. It is stated that because of the steep gradients along the pipeline route, liquids would collect at the deep end of the pipeline until enough liquid had collected to be carried up the slope as a slug. According to SGPC, this would result in operational problems with pressure fluctuations and handling of large volume, high velocity slugs at the interconnection with ANR. In addition, it is stated that there is also concern with the flow of saturated gas through the line. Removal of water vapor from the gas stream by dehydration is critical in order to prevent the potential for hydrates to form in the line and cause a plug. It is further stated that this problem is accentuated by the colder temperatures encountered in the deep water.

SGPC submits that the Commission has reaffirmed the application of the primary function test in *Amerada Hess*, as modified to reflect the guidance of the *EP Operating Co., et al* v. *FERC*, 876 F2d. 46 (5th Cir. 1989). In *EP Operating*, SGPC states that the court reversed a Commission order holding that a 51-mile, 16-inch pipeline from the deepwater OCS was not an exempt gathering facility.

In applying the modified primary function test to the Auger line, SGPC states that the 36-mile length of the line is simply the minimum distance to the nearest pipeline connection, and the pipe size is 12-inch, which is not large for the distance offshore. It is stated that the design capacity of 150,000 Mcf per day (Mcfd) is the maximum rate of the platform facilities. SGPC states that the Auger line more than meets the key physical indicia of gathering as reflected in the *EP Operating* decision. There, it is stated that the 51-mile Green Canyon gathering line was designed at 200,000 Mcfd, which provided a planned, 40 percent excess over the projected maximum production of 140,000 Mcfd, for the express purpose of transporting gas for others. According to SGPC, the Auger line should be considered even less a jurisdictional transmission line, because its lower 150,000 Mcfd capacity is intended only to provide gathering of SOI's own production.

SGPC states that there is no realistic likelihood of transportation for third parties through the Auger line since it has been sized solely to gather the projected maximum gas production of SOI. Additionally, the rough terrain along the pipeline route obstructs access on both sides of the line, and the technological constraints make it prohibitively costly for third parties to connect to the 21-mile deep water segment of the line. For the segment of the line in a water depth of less than 1000 feet, it is stated that there appears to be no practical prospects for interconnection, even if any excess capacity existed.

SGPC believes that the same factual analysis applies to the other possible physical considerations of processing and compression. Separation, dehydration and compression will be done on the Auger TLP and ordinary processing will be undertaken onshore at the existing Calumet plant. It is stated that separation and dehydration at the Auger TLP is necessary in order to prevent operational problems in the line, such as fluid slugging or the formation of hydrates. These physical problems are compounded by the near-freezing temperatures on the sea floor and the steep gradient of the subsea terrain. SGPC states that compression at the TLP is required to flow the gas through the 36-mile line to the nearest interstate pipeline and to provide the pressure necessary to flow the gas into the 24-inch line against a normal operating pressure of 1200 psig. In addition, it is stated that since this is an oil field, compression is also required for capturing oil-well gas.

SGPC states that in declaring the Auger line an exempt gathering line, like all of SGPC's other facilities, the Commission will be reflecting appropriately the business practicalities or realities of domestic deep water development, as well as the physical and geographic facts of such development.

Comment date: April 16, 1991 in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7872 Filed 4-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-103-001]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 28, 1991.

Take notice that Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee") on March 26, 1991, tendered for filing an amendment to its February 28, 1991 filing proposing changes to its FERC Gas Tariff, First Revised Volume No. 1. Alabama-Tennessee has requested that the proposed filing become effective May 1, 1991 instead of April 1, 1991 as proposed in its February 28, 1991 filing. Alabama-Tennessee proposes no other changes to that filing.

Alabama-Tennessee states that it seeks to defer by one month the effective date of its February 28, 1991 filing because it has achieved a settlement in principle with its affected jurisdictional sales customers. Alabama-Tennessee states that this additional month will provide it the time in which to finalize and prepare for filing the settlement agreement.

Alabama-Tennessee states that this amendment is being made contingent upon the Commission's approval of the request sought in its filing. In the event the Commission issues an order accepting Alabama-Tennessee's February 28, 1991 filing, Alabama-Tennessee states that its amendment should be deemed withdrawn and no action should be taken on the revised tariff sheets submitted therewith. In such case, Alabama-Tennessee requests that its February 28, 1991 filing be accepted and made effective April 1, 1991, as originally proposed.

In addition, Alabama-Tennessee states that in order to file these revised tariff sheets as rapidly as possible, it has been unable to submit its filing on electronic media as required under the Commission's Regulations. Alabama-

Tennessee requests that the Commission grant a limited, one-week waiver of its Regulations in order to submit this electronic media information on or before April 3, 1991. Alabama-Tennessee also requests that the Commission grant it any other waiver of the Commission's Regulations which may be required in order to accept its revised tariff sheets as requested.

Alabama-Tennessee states that copies of this amendment have been mailed to Alabama-Tennessee's jurisdictional customers, interested public bodies and all persons on the Commission's official service list in the captioned docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 4, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7861 Filed 4-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 29, 1991.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on March 28, 1991 certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective May 1, 1991.

ESNG states that such tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and sections 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a decrease of $0.5466 per dt in the Commodity Charge and a decrease of $1.4708 per dt in the Demand Charge, all as measured against ESNG's previously scheduled PGA filing in Docket No. TQ91-1-23-000, *et al.* as filed on December 27, 1990 and approved to be effective on February 1, 1991.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 and rule 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 8, 1991. 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. 91-7867 Filed 4-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-8-51-000, TQ91-7-51-001 and RP91-110-002

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

March 28, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on March 26, 1991 tendered for filing the following tariff sheets to its FERC Gas Tariff:

Item 1: *First Revised Volume No. 1.*

First Revised Thirty-Fifth Revised Sheet No. 57(i)

First Revised Thirty-Fifth Revised Sheet No. 57(ii)

First Revised Thirty-First Revised Sheet No. 57(v)

Item 2: *First Revised Volume No. 1.*

Substitute Thirty-Sixth Revised Sheet No. 57(i)

Item 3: *First Revised Volume No. 1.*

Substitute Thirty-Seventh Revised Sheet No. 57(i)

Great Lakes states that the tariff sheets in Item 1 were filed to reflect revised current PGA rates for the months of March, 1991 and April, 1991. The tariff sheets were filed as an out-of-cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements are the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes states that the tariff sheet referenced in Item 2 was filed to amend the tariff sheet previously filed at Docket No. RP91-110-000 to reflect the latest PGA rates filed in the March 1, 1991 out-of-cycle PGA at Docket No. TQ91-8-51-000.

Great Lakes states that the tariff sheet referred to Item 3 was filed to amend the tariff sheet previously filed at Docket No. TQ91-07-51-000 to reflect the appropriate current PGA rates for the month of April, 1991 as a result of the PGA filing made at Docket No. TQ91-8-51-000. Great Lakes states that no change is reflected in the cumulative adjustment rates or the surcharge rates from those filed with the Commission in Docket No. TQ91-7-51-000.

Great Lakes requested waiver of the notice requirements so as to permit the tariff sheets in Item 1 to become effective March 1, 1991, as described in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis. Great Lakes requested that the tariff sheets in Item 2 and Item 3 become effective April 1, 1991 in order to amend such sheets to reflect the appropriate PGA rate adjustments resulting from the PGA filed in Docket No. TQ91-8-51-000.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC, 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before April 5, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7862 Filed 4-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-9-51-000]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff; Purchased Gas Adjustment Clause Provisions

March 29, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on March 28, 1991 tendered for filing Thirty-Eighth Revised Sheet No. 57(i) to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that the above tariff sheets reflected PGA rates for the months of May, June, and July, 1991 pursuant to the Quarterly PGA filing requirements of § 154.304(a)(2) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before April 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7868 Filed 4-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-86-016]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

March 28, 1991.

Take notice that K N Energy, Inc. ("K N") on March 27, 1991 tendered for filing proposed changes in its FERC Gas Tariff to comply with the Commission's "Order Approving Uncontested Settlement" issued in the referenced proceedings on February 25, 1991, 54 FERC ¶ 61,186 (1991).

K N states that copies of the filing were served upon K N's jurisdictional customers and on the interested public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 5, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7858 Filed 4-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC91-8-000]

Mississippi River Transmission Corp.; Tariff Filing

March 29, 1991.

Take notice that on March 15, 1991, Mississippi River Transmission Corporation (Mississippi) filed revised Tariff Sheets to become effective April 15, 1991, pursuant to § 281.204(b) of the Commission's Regulations which requires interstate pipelines to update their respective Index of Entitlements annually to reflect changes in Essential Agricultural Use. The following sheets have been submitted:

Second Revised Sheet No. 92
Second Revised Sheet No. 93
Second Revised Sheet No. 95
Second Revised Sheet No. 96

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7866 Filed 4-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-25-000

Mississippi River Transmission Corp. Proposed Change in FERC Gas Tariff

March 29, 1991.

Take notice that on March 28, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing an original and six (6) copies of the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Fifty-Ninth Revised Sheet No. Effective 4—June 1, 1991
Eighteenth Revised Sheet No. 4.1—Effective June 1, 1991
Eighteenth Revised Sheet No. 4.2—Effective June 1, 1991

MRT states that the instant filing reflects MRT's annual purchased gas cost adjustment (PGA), submitted pursuant to § 154.305 of the Commission Regulations and paragraph 17 of MRT's Tariff. When compared to the gas cost contained in MRT's last scheduled PGA, the commodity component of Rate Schedule CD-1 and the single part rate under Rate Schedule SGS-1 reflect an increase of $.0502 per MMBtu. The demand charge component of Rate Schedule CD-1 reflects no change in gas cost. The revised Surcharge Adjustments for the demand and commodity components of Rate Schedule CD-1 are credits of $.046 and $.1176, respectively. The new Surcharge Adjustment under Rate Schedule SGS-1 is a credit $.1221 per MMBtu.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and the State Commission of Arkansas, Missouri, and Illinois.

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 Captitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 18, 1991. 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 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. 91-7869 Filed 4-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-23-001]

North Penn Gas Co.; Compliance Filing and Acceptance of Settlement Offer as Modified by the Commission

March 28, 1991.

Take notice that North Penn Gas Company (North Penn) on March 27, 1991 tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Substitute 92nd Revised Sheet No. PGA-1—Effective March 1, 1989
Substitute 93rd Revised Sheet No. PGA-1—Effective June 1, 1989
2nd Substitute 93rd Revised Sheet No. PGA-1—Effective August 1, 1989
2nd Substitute 94th Revised Sheet No. PGA-1—Effective September 1, 1989
Substitute 95th Revised Sheet No. PGA-1—Effective October 1, 1989
Substitute 96th Revised Sheet No. PGA-1—Effective December 1, 1989
Substitute 97th Revised Sheet No. PGA-1—Effective March 1, 1990
2nd Substitute 98th Revised Sheet No. PGA-1—Effective June 1, 1990
2nd Substitute First Revised Sheet No. 3A—Effective September 1, 1990
Substitute 1st Revised 1st Revised Sheet 3A—Effective October 1, 1990
Substitute Second Revised Sheet No. 3A—Effective November 1, 1990
Substitute Third Revised Sheet No. 3A—Effective December 1, 1990
2nd Substitute Fourth Revised Sheet No. 3A—Effective March 1, 1991
Substitute Fifth Revised Sheet No. 3A—Effective April 1, 1991
Seventh Revised Sheet No. 15C—Effective April 1, 1991

The revised tariff sheets are being filed in compliance with the February 25, 1991 order of the Commission Accepting the Settlement offer submitted in this Docket.

North Penn also provides notice that is is accepting the settlement as modified by the February 25, 1991 order.

Any person desiring to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before April 5, 1991. 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. 91-7855 Filed 4-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-7-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 28, 1991.

Take notice that on March 22, 1991, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

One Hundredth Revised Sheet No. 4A
Seventh Revised Sheet No. 4B.1
Seventh Revised Sheet No. 4B.2
Seventh Revised Sheet No. 4B.3
Second Revised Sheet No. 4B.4
Second Revised Sheet No. 4B.5
Second Revised Sheet No. 4B.6
Nineteenth Revised Sheet No. 4J
Eighth Revised Sheet No. 45P

Southern states that the above-referenced tariff sheets are being filed with a proposed effective date of May 1, 1991, in compliance with the requirements of the Stipulation and Agreement approved by Commission order of March 23, 1989 in Docket Nos. RP83-58-000, *et al.*

Southern states that the proposed tariff sheets reflect adjustments to Southern's fixed take-or-pay surcharge in order to reconcile projected interest recovered during the past twelve-month period with Commission prescribed interest rates in effect during that period, and to adjust the projected interest for the twelve-month period commencing May 1, 1991 to conform to the currently effective Commission interest rate. The proposed tariff sheets also reflect a revised volumetric take-or-pay surcharge of 8.187¢ per MMBtu, resulting from the reconciliation of projected interest collected during the preceding twelve-month period with Commission prescribed interest rates in effect during that period, and the recomputation of the surcharge to reflect an interest projection consistent with the currently effective Commission prescribed interest rate.

Southern states that copies of Southern's filing were served upon all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 5, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-7863 Filed 4-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-29-004]

Tennessee Gas Pipeline Co.; Compliance Filing

March 28, 1991.

Take notice that on March 27, 1991, Tennessee Gas Pipeline Company (Tennessee) filed revised tariff sheets to its Third Revised Volume No. 1 and Original Volume No. 2 to be effective May 1, 1991.

Tennessee states that this filing is made to modify its transition cost recovery mechanism to comply with the Commission's March 1, 1991 Order and Order No. 528-A directing revised allocations to small customer fixed charges. The revised tariff sheets are based on the allocation/recovery method accepted, subject to refund, by Commission order issued December 14, 1990, as modified (1) To reduce by 50 percent the allocation of direct billed transition costs to Tennessee's G and GS customers and (2) to recover "new costs," which the Commission defined in Order No. 528 as "costs not previously included in an Order No. 500 filing," through a combination of fixed and volumetric charges.

Tennessee further states that, consistent with the Commission's definitions of old and new costs and with its requirement that small customers be provided relief, this compliance filing (1) Maintains Tennessee's 50 percent absorption of "old costs," with direct billing of the amount to be recovered from Tennessee's customers based on each customer's relative AQL level as of July 1, 1988; (2) allocates "new costs" under a 25 percent absorption/25 percent direct bill/50 percent volumetric surcharge formula; and (3) reallocates 50 percent of the direct billed "old" and "new" costs otherwise allocable to G

and GS customers to Tennessee's other customers.

Tennessee also states that it is submitting to the Commission on a confidential basis and in compliance with the Commission's Letter Order dated February 28, 1991 in Docket No. RP91–29–002 supporting documentation for certain of its transition costs filed in that proceeding. In further compliance with that order, Tennessee is submitting the previously filed tariff sheets to FERC Gas Tariff, Third Revised Volume No. 1, on electronic medium.

Tennessee states that copies of the filing have been mailed to all parties on the Docket No. RP91–29 service list, and all of its customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 5, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–7856 Filed 4–3–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–6–18–002]

Texas Gas Transmission Corp.; Refund Report

March 28, 1991.

Take notice that on March 22, 1991, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a refund report of amounts due customers under Texas Gas's Docket No. TM90–6–18.

Texas Gas states that this filing is in accordance with Order No. 528 by distributing, with interest, amounts refunded to Texas Gas from United Gas Pipe Line Company (United) in its Docket No. RP90–132. Pursuant to Order No. 528, Texas Gas reserves the right to make future filings, if necessary, to recover all costs Texas Gas might be allocated by United in Docket No. RP90–132 or any future filings.

Texas Gas states that copies of this filing are being mailed to all of Texas Gas's jurisdictional sales customers affected by the report as well as parties on the official service list and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before April 4, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–7857 Filed 4–3–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–2–18–000]

Texas Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

March 29, 1991.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on March 28, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Thirty-seventh Revised Sheet No. 10
Thirty-seventh Revised Sheet No. 10A
Eighteenth Revised Sheet No. 11
Eighth Revised Sheet No. 11A
Eighth Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to the Quarterly Rate Adjustment provision of the Purchased Gas Adjustment clause of its FERC Gas Tariff and are proposed to be effective May 1, 1991. Texas Gas further states that the proposed tariff sheets reflect a commodity rate decrease of $(.5847) per MMBtu and a D–1 demand rate decrease of $(.02) per MMBtu from the rates set forth in the Annual PGA filed November 30, 1990 (Docket No. TA91–1–18). No change in the D–2 demand rate is proposed in the instant filing. The instant filing reflects a $(.1254) per MMBtu commodity rate decrease and a $(.01) D–1 demand rate decrease from the proposed rates effective April 1, 1991 (Docket No. TF91–5–18).

Texas Gas states that copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before April 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–7870 Filed 4–3–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP91–1603–000]

United Gas Pipeline Co.; Request Under Blanket Authorization

March 28, 1991.

Take notice that on March 20, 1991, United Gas Pipe Line Company (United) P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No CP91–1603–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, to construct and operate a two-inch meter station at an existing delivery point in St. Martin Parish, Louisiana, as fully set forth in the request on file with the Commission and open to public inspection.

United states that the meter station, delivery tap and related facilities will enable United to transport an estimated average of 1,000 Mcf/d of natural gas for Eagle Natural Gas to serve Cargill Salt Company under United's ITS Rate Schedule.

United further states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Any person or Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the

time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91–7860 Filed 4–3–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–2–82–000]

Viking Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

March 29, 1991.

Take notice that on March 28, 1991, Viking Gas Transmission Company (Viking) filed its Fourteenth Revised Sheet No. 6 to Original Volume No. 1 of its FERC Gas Tariff, to be effective May 1, 1991.

Viking states that the current Purchased Gas Cost Rate Adjustments reflected on Fourteenth Revised Sheet No. 6 consist of a 52.05 cents per dekatherm adjustment applicable to the gas component of Viking's sales rates, and a $1.23 per dekatherm adjustment applicable to the Demand D–1 component.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and affected stated regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before April 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–7865 Filed 4–3–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

High Energy Physics Advisory Panel; Cancellation

The announced open meeting of the High Energy Physics Advisory Panel posted in the **Federal Register**/Vol. 56, No. 53, page 11552, Tuesday, March 19, 1991, scheduled for April 15–16, 1991, 8:30 a.m., 5 p.m. in room 540, National Science Foundation, 1800 G Street NW., Washington, DC 20550 has been cancelled. A new meeting date will be rescheduled as soon as possible.

Issued at Washington, DC, on April 1, 1991.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 91–7947 Filed 4–3–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 90–110–NG]

Alcan Aluminum Corp.; Conditional Order Granting Authorization To Export and Import Natural Gas to and From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of a conditional order granting authorization to export and import natural gas to and from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued a conditional order in FE Docket No. 90–7–NG granting authorization to Alcan Aluminum Corporation (Alcan) to export to Canada at St. Clair, Michigan, up to 8 MMcf per day of natural gas, and to import from Canada at Grand Island, New York, up to 8 MMcf per day of natural gas with adjustments for line losses, for a period of fifteen years. The company intends to utilize firm transportation srevice on the proposed Empire State Pipeline, whose application for construction currently is pending before the Federal Energy Regulatory Commission. A final opinion and order will be issued after completion of the necessary environmental analysis.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 28, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–7940 Filed 4–3–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–111–NG]

The Consumers' Gas Co., LTD. Order Granting Blanket Authorization To Export Natural Gas To Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting The Consumers' Gas Company Ltd. blanket authorization to export to Canada up to 100 Bcf of natural gas over a two-year term beginning on the date of first export after April 1, 1991.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 28, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–7941 Filed 4–3–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–34–NG]

Fulton Cogeneration Associates; Conditional and Final Long-Term Authority To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order granting conditional and final long-term authorization to import and export natural gas from and to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice that it has issued a conditional order and a final order in Docket No. 90–34–NG granting authorization to Fulton Cogeneration Associates (Fulton) to import and export natural gas from and to Canada to fuel a new cogeneration plant being built in Fulton, New York.

Fulton is granted final authorization to import at Emerson, Manitoba using existing pipeline facilities, up to 12,500 Mcf per day of natural gas from the date of the initial delivery through October 31, 2002, and up 6,000 Mcf per day thereafter through October 31, 2005, not to exceed a total of 55 Bcf. In addition, solely as part of a transportation arrangement, this gas may be exported back to Canada at St. Clair, Michigan and then reimported at Niagara Falls, New York for ultimate delivery to Fulton's cogeneration plant.

Further, Fulton is conditionally authorized to import these volumes using the proposed Empire State Pipeline (Empire) facilities subject to the entry of a final opinion and order after review by DOE of the environmental documentation being prepared by the Federal Energy Regulatory Commission on the Empire project.

A copy of this order is available for inspection and copying in the Office of Fuels Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW. Washington, DC 20585 (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 28, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–7942 Filed 4–3–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–16–NG]

Husky Gas Marketing, Inc.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on February 21, 1991, of an application filed by Husky Gas Marketing, Inc. (HGMI), for blanket authorization to import up to 50 Bcf of natural gas from Canada for a two-year term beginning on the date of first delivery. HGMI intends to use existing facilities on the border between the United States and Canada and existing facilities within the U.S. for the transportation of the imported gas. The company states that it will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington, DC, at the address listed below, no later than 4:30 p.m., May 6, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

John S. Boyd, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4523

Diane J. Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Enrgy, Forrestal Building, Room 6E–042, GC–14, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: HGMI, a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania, is a wholly owned subsidiary of Husky (U.S.A.), Inc. HGMI explores, develops, produces, transports, purchases and markets natural gas. The company proposes to import gas into the U.S., under contract terms that will be competitive throughout the contract period. The terms of each short-term or spot market sale, including price, will be freely negotiated between HGMI, its Canadian suppliers, and U.S. purchasers.

The decision on this import application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that freely negotiated short-term or spot market sales will ensure the efficient allocation of natural gas in the marketplace. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the requested blanket import application is granted, natural gas may be imported at any point on the international border between the United States and Canada where existing pipeline facilities are located.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the apporpriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for

a trial-type hearing must show that there are factual issus genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of HGMI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on March 28, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–7943 Filed 4–3–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossile Energy

[FE Docket No. 91–01–NG]

Mock Resources, Inc.; Order Granting Authorization To Import Canadian Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Mock Resources, Inc., authorization to import up to 30 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery of the import.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 28, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–7944 Filed 4–3–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 91–18–NG]

Tex/Con Gas Marketing Co.; Application To Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on February 28, 1991, of an application filed by TEX/CON Gas Marketing Company (TCGM), requesting blanket authorization to export up to 73 Bcf of natural gas from the United States to Canada and Mexico over a two-year period commencing with the date of first delivery. TCGM intends to use existing pipeline facilities within the United States and at the international border for transportation of the exported natural gas. TCGM states that it will notify DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington, DC, at the address listed below no later than 4:30 p.m., May 6, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Xavier Puslowski, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4708.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: TCGM, a Delaware corporation with its principal place of business in Houston, Texas, is a wholly owned subsidiary of TEX/CON Oil and Gas Company. TCGM requests blanket authorization to export for its own account as well as for the accounts of U.S. suppliers and Canadian and Mexican purchasers. TCGM expects that most of the transactions with Canadian and Mexican purchasers will be for less than two years; however, some arrangements could be for terms of up to two years. The applicant states that the contractual arrangements will be the product of arms-length negotiations with an emphasis on competitive prices and contract flexibility.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the natural gas is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The Natural Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests,

motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decisioin in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must that that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of TCGM's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 28, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-7945 Filed 4-3-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3917-8]

Request for Information Concerning Heavy-Duty Engine Rebuild Study

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for information.

SUMMARY: As required by the Clean Air Act Amendments of 1990, the Agency has begun a study of heavy-duty engine rebuild practices and the impact these practices have on engine emissions. This study will assist the Agency in determining whether regulations governing rebuilding practices are needed. To aid the Agency in conducting this study, EPA requests written submissions from all interested parties who wish to comment on heavy-duty engine rebuild practices, the impact of these practices on engine emissions, and any other related aspects of the heavy-duty truck market.

DATES: Comments from interested parties should be received no later than May 8, 1991.

ADDRESSES: Written comments should be sent to: Environmental Protection Agency, Manufacturers Operations Divison (EN-340F), Attn: Karl Simon, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Karl Simon, at the address given above; telephone (202) 382-2510.

SUPPLEMENTAL INFORMATION:

I. Introduction

Section 202(a)(3)(D) of the Clean Air Act, as revised by the Clean Air Act Amendments of 1990, requires EPA to study the practice of heavy-duty engine rebuilding and its impact on engine emissions. On the basis of such study and any other pertinent information, the Administrator may prescribe any requirements to control rebuilding practices, including standards for emissions from rebuilt heavy-duty engines which cause or contribute to air pollution which may be reasonably anticipated to endanger public health or welfare, taking costs into account.

The EPA Office of Mobile Sources, Manufacturers Operations Division, has begun a study of heavy-duty engine rebuilding practices. For the purpose of this study, a heavy-duty engine is one used in a heavy-duty vehicle as defined at 40 CFR 86.082-2. This definition includes, in general, trucks with a gross vehicle weight rating (GVWR) greater than 8,500 pounds. The results of this study, along with any other available information on this topic, will form the basis for the determination as to whether further action by EPA, such as regulations or guidelines, to control engine rebuilding practices is needed.

Among the information sought through this request for information are data on the nature of the heavy-duty rebuilding industry, the volume of heavy-duty rebuilding occurring annually, the parties involved in rebuilding and in the manufacturing of parts used by rebuilders, the nature of rebuilding practices, and the costs associated with all aspects of this industry. EPA also plans, as part of this study, to conduct emissions testing of different heavy-duty engines in various rebuilt stages. Data generated from these tests will be used to determine the air quality impact of rebuilt engines.

Some of the questions posed in this request for information may ask for information that may be considered confidential business information by a company wishing to respond to the EPA. Submitting parties may assert a business confidentiality claim covering all or part of the information provided in response to this request. To assert a business confidentiality claim regarding any of the information, you should do so in a manner consistent with 40 CFR 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures set forth in 40 CFR part 2, subpart B. If no claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the submitting party.

Questions:

Please indicate the questions you are responding to in your response. Whenever possible, please break down responses into the following two categories:

a. Fuel type
1. gas,
2. diesel.
b. Vehicle/engine class
1. Class IIB (8,500 < GVWR ≤ 10,000 lbs),
2. Class III (10,000 < GVWR ≤ 14,000 lbs),
3. Class IV (14,000 < GVWR ≤ 16,000 lbs),
4. Class V (16,000 < GVWR ≤ 19,500 lbs),
5. Class VI (19,500 < GVWR ≤ 26,000 lbs),
6. Class VII (26,000 < GVWR ≤ 33,000 lbs),
7. Class VIII (GVWR > 33,000 lbs).

Interested parties are invited to address any question of fact, law, or policy which they feel may have a

bearing on the heavy-duty engine rebuilding study and is not addressed in the questions below.

1. Please describe your organization or company and its function?

a. How many members or employees do you have?

2. If you employ or represent engine mechanics, what percentage are certified by ASE or some other association?

3. If you own or operate any heavy-duty trucks, please describe your general fleet make-up in terms of model year, fuel type, and categories.

4. How would you define:

a. A rebuilt engine?

b. A remanufactured engine?

c. An overhauled engine?

5. How can one tell if an engine has been rebuilt? For example, is it labeled in any way?

a. Are original equipment manufacturer labels removed during the rebuild process?

b. What types of warranties are available on rebuilt engines?

6. Does your organization or company perform engine rebuilds? If so, please answer the following questions:

a. In the last five years, how many complete engine, long block, and short block rebuilds did you perform?

b. What criteria are used to determine when an engine needs to be rebuilt?

c. What percentage of your rebuilding is done in-chassis and what percentage is done out-of-chassis?

d. How many diesel and gasoline fuel systems (not including those already accounted for under complete engines) have you rebuilt in the past five years?

e. For each of the past five years, please list the number of rebuilds performed for the following model years:

a. 1975 and before engines.

b. 1976–1980 engines.

c. 1981–1985 engines.

d. 1986–1990 engines.

f. What percentage of your rebuild work is performed in-house and what percentage is contracted out to independent shops? Is your rebuild work done by factory-authorized or factory-owned rebuild shops? If so, please give the approximate number of engines sent out to be rebuilt each year.

7. For the following parts list, please list the criteria that are used to determine when to replace each part during rebuilding, how often they are replaced (if at all), and whether they are replaced with original equipment, rebuilt original equipment, aftermarket, rebuilt aftermarket, or some other type of parts (please specify):

a. Piston

b. Piston rings

c. Injectors/nozzles

d. Governor

e. Carburetor

f. Injection pump

g. Crankshaft

h. Main bearings

i. Cylinder

j. Catalyst

k. Turbocharger

l. Connecting rods

m. Connecting rod bearings

n. Camshaft

o. Camshaft bushings

p. Cam follower

q. Cylinder head (components)

8. How many times is the average heavy-duty engine rebuilt in its lifetime?

a. What is the approximate total mileage and time a rebuilt engine will be run before another rebuild?

b. How many years and miles will a rebuilt engine last before it must be scrapped/replaced?

c. What criteria are used to determine when to scrap the engine?

9. What is the approximate time required (in man-hours) and the cost of a typical rebuild for:

a. A long block?

b. A short block?

c. A complete engine?

d. A gasoline fuel system?

e. A diesel fuel system?

10. If you do rebuilds for customers, do they receive the same block back or do they get a like-for-like trade? How often do customers want a different-powered engine than the one they bring in?

11. How long does it take to develop and bring into production an engine replacement part and what are the approximate associated costs? This question applies to both original equipment upgrade parts and aftermarket parts.

12. Are retrofit emissions upgrade kits available now? If not, is it feasible to develop them? If so, please specify applicable model years and/or engine families.

13. What engine parts could be upgraded and included in a retrofit kit? What parts could not be upgraded?

14. Do you have any emissions test data relating to engine rebuilding? If yes, please provide.

15. Assuming that regulation of engine rebuilding practices will occur, what would you propose as the most feasible and equitable regulatory scheme?

Dated: March 29, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91–7926 Filed 4–3–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3919–4]

Availability of Testing Manual

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Document entitled "Evaluation of Dredged Material Proposed for Ocean Disposal-Testing Manual."

SUMMARY: This action announces the availability of the revised testing manual entitled "Evaluation of Dredged Material Proposed for Ocean Disposal-Testing Manual." Copies of the manual can be requested by writing to the address listed below under "**ADDRESSES**".

ADDRESSES: A copy of "Evaluation of Dredged Material Proposed for Ocean Disposal-Testing Manual" and/or the initial mixing model disks can be obtained by writing to Ms. Billie Skinner, U.S. Army Corps of Engineers, Waterways Experiment Station, EP–D, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

FOR FURTHER INFORMATION CONTACT: David Redford, Mail Code WH–556F, Marine Permits and Monitoring Branch, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (phone (202) 475–7179); or David Mathis, Office of Environmental Policy, CECW–PO, U.S. Army Corps of Engineers, 20 Massachusetts Ave. NW., Washington, DC 20314 (phone (202) 272–8843).

SUPPLEMENTARY INFORMATION: Proposed operations involving the dumping of dredged materials into ocean waters must be evaluated to determine the potential environmental impacts of such activities. This is done as part of the permitting process under title I of the Marine Protection, Research, and Sanctuaries Act (Pub. L. 92–532 [MPRSA]). In accordance with section 103 of the MPRSA, the Corps of Engineers (CE) is the permitting authority, with the determination to issue a permit being subject to review by the Environmental Protection Agency (EPA). The MPRSA provides that the CE use environmental criteria developed by EPA under section 102 of the Act in making permit and project decisions. The criteria developed by EPA under section 102 of the MPRSA are printed at 40 CFR parts 220–228. In order to regulate and limit adverse ecological effects of ocean dumping of dredged material, the regulations emphasize valuative techniques such as toxicity and bioaccumulation bioassays, which provide relatively direct estimates of the potential for environmental impact.

In 1977, EPA and CE published a document entitled "Ecological Evaluation of Proposed Discharge of Dredged Materials Into Ocean Waters" (The "Green Book"). This technical testing manual provided guidance for implementing the environmental evaluations required under the ocean dumping regulations to determine the acceptability of dredged materials for ocean dumping. The manual made available today, the 1991 "Green Book," entitled "Evaluation of Dredged Material Proposed for Ocean Disposal-Testing Manual" replaces the 1977 document for testing dredged materials proposed for ocean disposal to ensure compliance with EPA's environmental criteria.

Since the 1977 testing manual was published, EPA and CE have gained a great deal of experience in testing dredged material for environmental effects. New tests have been developed which represent the rapidly advancing state-of-the-art in sediment ecotoxicology. Those new tests and the experience of both Agencies was used to prepare a revised draft testing manual which was made available to the public through a notice of availability in the **Federal Register** on March 7, 1990.

Subsequent to the 1990 **Federal Register** notice of availability, EPA and CE conducted a public meeting in Washington, DC on April 2, 1990, and regional meetings in: Narragansett, RI; Gulf Breeze, FL; Vicksburg, MS; Newport, OR; San Francisco, CA; and, Washington, DC, to discuss the draft manual and receive comments. The comments received at these meetings and those received in writing were carefully considered in the development of the 1991 revised testing manual which is now available.

This final testing manual entitled, "Evaluation of Dredged Material Proposed for Ocean Disposal-Testing Manual," describes the procedures for ecological evaluation of dredged material required by the 1977 ocean dumping regulations. It contains tests to implement these procedures, definitions, sample collection and preservation procedures, valuative procedures, calculations and supporting references. A mathematical model is used in conjunction with the manual to assist in determining initial mixing of dumped material in the water column. The manual sets out a tiered approach to testing materials for their acceptability to be ocean disposed. This tiered approach is a scientifically valid, cost effective means of testing material and is highly reliant on toxicity and bioaccumulation bioassays. The bioassays also employ exposure conditions which are more scientifically defendable based on research and development activities which have transpired since the 1977 testing manual was prepared.

The revised testing manual and its accompanying computer disks containing the initial mixing model are available to the public and can be obtained by writing to the individual listed under "**ADDRESSES.**"

The 1991 revised testing manual will be phased into use by the EPA Regions and CE Districts over the next several months. It is expected that all permit and project decisions regarding the suitability of dredged material for ocean disposal in the U.S. will be following the guidance in the 1991 revised testing manual by October 1, 1991.

Dated: March 29, 1991.

Robert H. Wayland III,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 91-7927 Filed 4-3-91; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-3919-7]

Technical Support Document for Water Quality-Based Toxics Control: Final Guidance Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the final guidance document entitled "Technical Support Document for Water Quality-Based Toxics Control" (TSD) and the responsiveness summary for the major comments received on the June, 1990 draft document. The goal of this document is to provide comprehensive technical recommendations for water quality-based toxics control. These recommendations are intended to provide scientifically sound and useful procedures to regulatory authorities and the regulated community.

DATES: Copies of this guidance document and the responsiveness summary are available beginning today.

ADDRESSES: Copies of the TSD can be obtained through the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4650. When requesting the document, please reference the NTIS No. PB91-127415. Copies of the responsiveness summary can be obtained by writing Ms. Jacqueline Romney, Office of Water Enforcement and Permits, EN-336, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jackie Romney at (202) 475-9528, U.S. Environmental Protection Agency, at the above address.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency's (EPA) national "Policy for the Development of Water Quality-Based Permit Limitations for Toxic Pollutants" (March 1984) states that to control pollutants beyond Best Available Technology Economically Achievable (BAT), secondary treatment, and other Clean Water Act technology-based requirements and in order to meet water quality standards, the EPA will use an integrated strategy consisting of both biological and chemical methods to address toxic and nonconventional pollutants from industrial and municipal sources.

In addition, EPA's surface water toxics control regulation (54 FR 23868 (June 2, 1989)), established specific requirements for assessing and controlling point source discharges of pollutants which cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard.

The final guidance document announced in today's notice is intended to support the implementation of both the policy and the regulation. The document is agency guidance only. It does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made applying the law and regulations on the basis of specific facts when permits are issued or regulations promulgated.

The overall approach taken in this document is to provide additional explanations and clarifications based on accumulated experience and data related to the various recommendations which were made in the original (1985) TSD. Additional data is provided to support the scientific basis for whole effluent toxicity testing and the contro. of the discharge of toxic pollutants through the "integrated strategy". The TSD strongly recommends the use of an integrated water quality-based approach (i.e., employing chemical-specific, whole effluent, and biocriteria components) for preventing impacts to receiving waters from toxic pollutants. The document also discusses mixing zones for toxicity, non-persistent toxicants, and bioaccumulative pollutants; effluent characterization with and without data;

exposure assessment methods; permit issuance procedures; toxicity reduction evaluations (TREs); and recommendations for enforcing water quality-based permits. An overall summary of each chapter as well as the most significant changes since the original TSD are provided below:

Chapter 1: Approaches to Water Quality-Based Toxics Control

This chapter describes the regulatory and scientific bases for water quality-based toxics control and contains much of the information that was contained in the original TSD. In particular, the "integrated" approach to water quality-based toxics controls (i.e., use of assessment and control techniques for both individual chemicals and whole effluent toxicity) is still strongly emphasized. The chapter is now supported by new documentation and explanations.

Chapter 2: Water Quality Criteria and Standards

The discussions in this chapter lay the groundwork for the "standard-to-permits" process by describing key features of water quality criteria and standards for both aquatic life and human health protection. One addition is the presentation of specific procedures for deriving reference ambient concentrations (RAC) for human health protection. The discussion of mixing zones from the previous 1985 version of the document has been revised. Biological and sediment criteria are introduced as future elements of standards.

Chapter 3: Effluent Characterization

This chapter describes the procedures for determining, either with or without effluent data, whether an effluent causes, has the reasonable potential to cause, or contributes to an excursion above a water quality criterion. The effluent characterization recommendations described in this chapter have been completely revised and streamlined as compared to the original TSD. Where effluent data are available, effluent characterization can now be performed in a single step with a minimum of data. A statistical procedure for determining the reasonable potential for exceeding water quality criteria has been added to this chapter.

Chapter 4: Exposure Assessment and Wasteload Allocation

Where effluent characterization indicates the need for a water quality-based permit limitation, the water quality analyst develops a wasteload allocation (WLA) using the procedures described in chapter 4. Information is provided for modeling exposure of an effluent both with mixing zones and where mixing is complete. Recommendations for both steady state and dynamic models are provided. As with the original TSD, ambient criteria to control acute toxicity to aquatic life may be met within a short distance of the outfall. However, this provision is no longer restricted to outfalls which have high rate diffusers, but is now available for any type of outfall for high monitoring data indicate that the criterion maximum concentration (CMC) is met within the short distances specified.

Chapter 5: Permit Requirements

Chapter 5 provides procedures for translating various types of WLA outputs into permit limitations. Other permit-related issues such as permit documentation and toxicity reduction evaluations are also presented. No major changes have been made in the substantive recommendations in the original TSD; all of these have been clarified and supported with additional tables and figures. Better guidance on detection levels and limits for metals was added.

Chapter 6: Enforcement

Compliance monitoring and enforcement considerations for water quality-based permits are summarized in this chapter. The discussions emphasize the regulatory principle that any failure to meet a permit limitation is a violation subject to the full range of possible enforcement responses. Enforcement discretion is explained.

Dated: March 27, 1991.

James R. Elder,

Director, Office of Water Enforcement and Permits.

Dated: March 27, 1991.

Martha G. Prothro,

Director, Office of Water Regulations and Standards.

[FR Doc. 91-7928 Filed 4-3-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

March 28, 1991.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB number: 3060-0405.

Title: Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.

Form number: FCC Form 349.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of response: On occasion reporting.

Estimated annual burden: 600 responses; 35.5 hours average burden per response; 21,300 hours total annual burden.

Needs and uses: FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the exisiting facilities of such stations. The Commission adopted Report and Order in MM Docket No. 88-140, which amended the part 74 of the Rules governing FM Translator stations. The form has been revised to reflect the new/revised rules with an additional burden of 10.33 hours. The form has also been revised to include fee data. The data on the form is used by FCC staff to ensure that the applicant meets basic statutory requirements and will not cause interference to other licensed broadcast services.

OMB number: 3060-0041.

Title: Application for Authority to Operate a Broadcast Station by Remote Control.

Form number: FCC Form 301-A.

Action: Revision.

Respondents: Business or other for-profit (including small businesses).

Frequency of response: On occasion reporting.

Estimated annual burden: 40 responses; .5 hours average burden per response; 20 hours total annual burden.

Needs and uses: FCC Form 301-A is required to be filed by AM licensees or permittees with directional antennas when requesting authority to operate a station by remote control. The form has been revised to include fee data and incorporate changes regarding Character

Qualifications in Broadcast Licensing. The data is used by FCC staff to assure that that the directional antenna system is stable.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91-7954 Filed 4-3-91; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

March 29, 1991.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB number: 3060-0420.

Title: Amendment of part 22 of the Commission's Rules to revise Certain Filing Procedures for Mobile Services Division Application.

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of response: On occasion reporting.

Estimated annual burden: 16,110 responses; 2 hours average burden per response; 32,220 hours total annual burden.

Needs and uses: Continued OMB clearance is sought for the requirement that all non-cellular applications, amendments, correspondence, pleadings, and forms, including attachments, and exhibits of five pages or more be submitted in paper and microfiche formats. The application forms subject to the microfiche rule are: FCC 489 (3060-0318), FCC 490 (3060-0319), FCC 401 (3060-0046), and FCC 405 (3060-0093). All non-cellular and non-initial cellular applications and all amendments must have certain information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche. The information is used by FCC staff in carrying out its duties as set forth in sections 308 and 309 of the Communications Act. The microfiche requirement will facilitate access to information filed with the Commission, enhance service to the public and allow the FCC to make more efficient use of its resources.

OMB number: 3060-0049.

Title: Restricted Radiotelephone Operator Permit and Temporary Restricted Radiotelephone Operator Permit.

Form number: FCC Form 753.

Action: Revision.

Respondents: Individuals or households.

Frequency of response: On occasion reporting.

Estimated annual burden: 50,000 responses; 0.33 hours average burden per response; 16,500 hours total annual burden.

Needs and uses: FCC Form 753 must be completed by applicants to qualify for a radio operator license. The data submitted aids the Commission in determining whether the applicant possesses these qualifications. The form has been revised to include fee data. If the data were not collected, it would be impossible to identify the person to whom the license were issued nor to determine whether that person possessed the qualifications required for issuance of the license.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91-7955 Filed 4-3-91; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

March 29, 1991.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB number: 3060-0035.

Title: Application for Renewal of Auxiliary Broadcast License (Short Form).

Form number: FCC Form 313-R.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of response: Other: once every 7 years for radio; once every 5 years for television.

Estimated annual burden: 50 responses; .50 hours average burden per response; 25 hours total annual burden.

Needs and uses: FCC Form 313-R is used by licensees of remote pickup, television auxiliary, aural studio link and relay stations that are not broadcast licensees (e.g., cable operators, network entities, international broadcast services, motion picture producers and television producers) to renew their auxiliary broadcast license. An FCC Form 313-R shall be filed not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed. If the prescribed deadline falls on a nonbusiness day, the cutoff shall be the close of business of the first full business day thereafter. The form has been revised to include fee data and character qualifications. The data is used by FCC staff to ensure that the station is operating as authorized.

OMB number: 3060-0012.

Title: Application for Additional Time to Construct a Radio Station.

Form number: FCC Form 701.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of response: On occasion reporting.

Estimated annual burden: 162 responses; 2 hours average burden per response; 324 hours total annual burden.

Needs and uses: FCC Form 701 has been modified to incorporate fee collection data. The FCC Form 701 is used when applying for additional time to construct a radio or satellite station. The form is used by FCC staff to determine whether to grant the applicant's request for an additional period of time to construct a station.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91-7956 Filed 4-3-91; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

March 28, 1991.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB number: 3060–0407.

Title: Application for Extension of Broadcast Construction Permit or to Replace Expired Construction Permit.

Form number: FCC Form 307.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of response: On occasion reporting.

Estimated annual burden: 780 responses; 2.25 hours average burden per response; 1,755 hours total annual burden.

Needs and uses: FCC Form 307 is used by licensees/permittees of broadcast stations to request an extension of time to construct a broadcast facility, or when applying for a construction permit to replace an expired permit. The application shall be filed at least 30 days prior to the expiration data of the construction permit if the facts supporting such application for extension are known to the applicant in time to permit such filing. In other cases, an application will be accepted upon a showing satisfactory to the FCC of sufficient reasons for filing within less than 30 days prior to the expiration date. The form has been revised to include fee data, character qualifications, and to clarify requirements of various questions in an effort to ensure that applicants submit only necessary information and eliminate incorrect responses by applicants at the time of application tender. The data is used by FCC staff to ensure that permittees are making a conscientious effort to construct an authorized station in order to bring service to the public.

OMB number: 3060–0410.

Title: Forecast of Investment Usage Report and Actual Usage of Investment Report.

Form number: FCC Forms 495–A and 495–B.

Action: Extension.

Respondents: Business or other for-profit.

Frequency of response: Annually.

Estimated annual burden: 300 responses; 40 hours average burden per response; 12,000 hours total annual burden.

Needs and uses: FCC Forms 495–A and 495–B are needed to detect and correct forecast errors that could lead to significant misallocation of network plant between regulated and nonregulated activities. The forms implement the FCC's Joint Cost Order, CC Docket No. 86–111, which requires that certain telephone plant investments used for both regulated and nonregulated purposes be allocated on the basis of forecasted regulated and nonregulated use. The Forecast of Investment Usage Report (FCC Form 495–A) is used by carriers to submit the forecasts of investments used. The Actual Usage of Investment Report (FCC Form 495–B) is used to submit the actual investments used. These reports are part of the Automated Reporting and Management Information System (ARMIS). The required information provides the necessary detail to enable the Commission to fulfill its regulatory responsibility to ensure that the regulated operations of the carriers do not subsidize the nonregulated operations of those same carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91–7957 Filed 4–3–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

The Dai-Ichi Kangyo Bank; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 April 23, 1991.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. The Dai-Ichi Kangyo Bank, Tokyo, Japan, to engage *de novo* through its subsidiary, The CIT Group Holdings, Inc., New York, New York, and one or more of its subsidiaries, in (i) providing to others data processing and data transmisson services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means pursuant to § 225.25(b)(7); and (ii) providing management consulting advice to nonaffiliated bank and nonbank depository institutions, including commercial banks, savings and loan associations, mutual savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, and industrial loan companies pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted worldwide.

Board of Governors of the Federal Reserve System, March 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-7884 Filed 4-3-91; 8:45 am]

BILLING CODE 6210-01-F

Magna Group, Inc.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 23, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Magna Group, Inc., Belleville, Illinois, and Magna Acquisition Corporation, St. Louis, Missouri; to acquire 100 percent of the voting shares of Landmark Bancshares Corporation, St. Louis, Missouri, and thereby indirectly acquire Landmark Bank, Clayton, Missouri; Landmark Bank of Kansas City, Kansas City, Missouri; Landmark KCI Bank, Kansas City, Missouri; Landmark Bank of St. Charles County, St. Charles, Missouri; Landmark Bank of Southwest Missouri, Ozark, Missouri; Landmark Bank of Carbondale, Carbondale, Illinois; Landmark Bank of Illinois, Fairview Heights, Illinois; Landmark Bank of Madison County, Highland, Illinois; Landmark Bank of Washington County, N.A., Nashville, Illinois; and Landmark Bank of Randolph County, Sparta, Illinois.

In connection with this application, Magna Group, Inc. also proposes to acquire Landmark BVI Limited, St. Louis, Missouri, and thereby engage in credit insurance sales and underwriting, all of which will be directly related to extensions of credit by Applicant or any of Applicant's subsidiaries and will be limited to assuring repayment of the outstanding balance due on such extensions of credit in the event of the death, disability or involuntary unemployment of the respective debtor pursuant to § 225.25(b)(8); and Landmark Trust Company, Fairview Heights, Illinois, and engage in performing fiduciary, agency and custodial functions and activities that may be performed by a trust company authorized by federal and state law pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-7885 Filed 4-3-91; 8:45 am]

BILLING CODE 6210-01-F

Edgar Holland Sims, Jr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 23, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Edgar Holland Sims, Jr., Atlanta, Georgia; as trustee, to retain 25.3 percent of the voting shares of Mountain Bank of Georgia, Hiawassee, Georgia.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Charles H. Burke, Pierre, South Dakota; to acquire 46.22 percent; and Mary R. Burke, Pierre, South Dakota, to acquire 25.19 percent of the voting shares of South Dakota Bancshares, Inc., Pierre, South Dakota, and thereby indirectly acquire Bank West, Pierre, South Dakota.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Giant Bay Resources, Ltd., Vancouver, B. C. Canada; to acquire 19.62 percent of the voting shares of American Pacific Bank, Aumsville, Oregon.

Board of Governors of the Federal Reserve System, March 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-7886 Filed 4-3-91; 8:45 am]

BILLING CODE 6210-01-F

Sunrise Bancorp, 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 April 23, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Sunrise Bancorp, Inc., Wheeling, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Wheeling, Wheeling, West Virginia.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. The Bank of Tokyo, Ltd., Tokyo, Japan; to acquire at least 46.1 percent of the voting shares of The Chicago-Tokyo Bank, Chicago, Illinois.

Board of Governors of the Federal Reserve System, March 29, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-7887 Filed 4-3-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 115]

Availability of Funds for Fiscal Year 1991 for Epidemiological Research Studies of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection in Selected Population Groups

Introduction

The Centers for Disease Control (CDC) announces a program for competitive cooperative agreement and/or research project grant applications to conduct epidemiologic research studies of AIDS and HIV infection. These include studies of the heterosexual and perinatal transmission of HIV infection, specific HIV infection in women, behavioral factors contributing to HIV infection in small cities and rural areas and in populations of adolescents and young adults. The study of these research areas as they pertain to minority populations (defined as one of the four Federally-recognized groups: African-American; Asian/Pacific Islander; Latino/Hispanic and Native American) is encouraged because minorities constitute over 44 percent of all reported cases of AIDS.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV infection. (For ordering a copy of Healthy People 2000, see the section **Where to Obtain Additional Information.**)

Authority

These cooperative agreements and grants are authorized under sections 301 (42 U.S.C. 241) and 311 (42 U.S.C. 243) of the Public Health Service Act, as amended. Regulations are set forth in 42 CFR Part 52, entitled "Grants for Research Projects."

Eligible Applicants

Eligible applicants include States, political subdivisions of States and other public and private nonprofit organizations.

Availability of Funds

Approximately $6,000,000 will be available in Fiscal Year 1991 to fund approximately 12 awards. Of these funds, approximately $3,600,000 is for new PHS initiatives directed at women, infants and youth. The remaining funds are designated for competing renewal applications for on-going heterosexual and perinatal transmission studies. It is expected that the average award will be approximately $400,000, ranging from $200,000 to $800,000. It is expected that about 9 new and 3 competing renewal awards will be made and that awards will begin on or about August 1, 1991, and September 30, 1991, respectively. Awards are usually made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of these awards is to help support researchers in the study of important HIV-related epidemiologic issues concerning risks of transmission, the natural history and transmission of the disease in certain populations and development and evaluation of behavioral recommendations for reducing AIDS and HIV infection. Of special interest are programs that examine these research issues as they impact on minority populations.

Program Requirements

In conducting activities to achieve the purpose of this program, the applicant should follow the procedures set forth below.

Research Issues

Five research issues of programmatic interest to the health care community and to CDC for FY 1991 are listed below. They are considered to be of significant importance in gaining a greater understanding of the epidemiology of AIDS and HIV infection. However, applications submitted by organizations that examine other important HIV-related epidemiologic research issues will also be accepted and considered for funding. All of the research issues described below should include efforts specifically directed at minority populations.

1. Multicenter, Prospective Epidemiologic Study of Heterosexual HIV Transmission

Studies should be designed to identify and follow a cohort of HIV-infected persons and their uninfected heterosexual partners. Periodic evaluations of the participants should be conducted to collect appropriate clinical specimens and to evaluate the effects of behavioral and biological factors on heterosexual transmission of HIV infection. Preference will be given to studies in which a cohort of HIV-infected persons and their partners has already been established and for whom information about other risk behaviors for HIV transmission (e.g., injected drug use) is being ascertained. In addition to the prospective follow-up study, behavioral and biological risk factors for HIV transmission should also be assessed by comparing couples who are concordant for HIV infection with discordant couples. A uniform study protocol and data collection instrument will be developed jointly with CDC and other research collaborators. Because of this, only cooperative agreements will be awarded for this study. CDC and successful applicants will select a single

laboratory to perform HIV testing of semen and cervico/vaginal secretion specimens. Appropriate counseling and risk reduction education must be provided to all study participants.

2. Perinatal HIV Transmission Studies

Studies should be designed to identify HIV-infected women during pregnancy or at delivery and enroll the women and their infants in a prospective follow-up study to examine factors related to perinatal transmission and disease progression. Transmission of other infections to the fetus or infant and role of these infections in HIV transmission or disease progression is also of interest. Preference will be given to studies in which mother-infant pairs are already being systematically followed. To provide adequate rates of follow-up of both mothers and infants, including collection of laboratory specimens at periodic intervals, applicants must demonstrate the ability to enroll at least 30 mother-infant pairs per year. Applicants must demonstrate a willingness to collaborate with other funded perinatal transmission studies and should have a proven collaborative relationship between respective providers of care to infants and to mothers. Study participants can concurrently be enrolled in therapeutic trials.

3. Epidemiologic Studies of HIV Infection in Women

Study proposals that address issues of HIV disease manifestations specific to women are solicited. Major concerns include the questions of whether the natural history of HIV infection varies in women as opposed to men and HIV-related conditions that may occur only in women. One priority is to determine what gender-specific biologic factors, if any, such as pregnancy, hormonal variants, differences in modes of acquisition, nutritional level, access to antiviral therapy or other care and/or use of steroid and other contraceptives alter the course of infection. Diseases of interest include, but are not limited to, gynecologic disorders such as pelvic inflammatory disease, diseases of the cervix and vagina and infectious complications of pregnancy. Behavioral questions of interest include sexual and contraceptive attitudes and practices, reproductive decisionmaking and factors influencing health care seeking behaviors.

Studies may be cross-sectional or longitudinal in design. Clinical sites which are already systematically following more than 100 HIV-infected women will be given preference. Study designs which can incorporate HIV-uninfected women and HIV-infected men from the same community being followed in the same or parallel clinical setting are strongly encouraged. Studies should include an initial behavioral risk assessment. Those with a longitudinal component should monitor behavior changes and the factors, both personal and interpersonal, which facilitate or impede those changes. Applicants should be able to document clearly the referral patterns and HIV testing policies in their clinical setting that would influence the population of persons identified as HIV-infected, as well as their ability to follow persons in the clinic over time.

4. Epidemiologic Studies of HIV in Non-Metropolitan Areas

Special studies are needed to determine predominant modes of spread of HIV in areas of the United States outside large metropolitan areas, particularly rural areas in the Southeast where HIV surveys have documented high seroprevalence in childbearing women. Priority research questions include: What specific behaviors are related to infection of persons residing in these areas? Are residents of these areas primarily being infected through sexual or IV drug use behavior in their area of residence or during visits to metropolitan areas with high rates of HIV infection? What is the relationship between HIV transmission and travel/migration patterns between rural and urban areas endemic for HIV? In what clinical setting and at what disease stage are persons being diagnosed with HIV infection and where are they receiving medical care? Studies should include an adequate focus on women, both those already HIV-infected and those at risk of infection, and an examination of family structure.

5. Epidemiologic Studies of HIV Infection in Adolescents and Young Adults

Study proposals should be designed to delineate factors that affect the risk of becoming HIV-infected during adolescence, through interview and chart review of a systematic sample of 13- to 24-year-olds with newly diagnosed AIDs and a control group of uninfected adolescents and young adults. In areas with HIV reporting, persons with newly diagnosed HIV infection could be studied rather than newly diagnosed AIDS cases. Specific objectives may include: Description of the factors affecting initiation of risky behaviors (sexual and drug use) which are most associated with HIV infection; kind(s) of AIDS information and education these adolescents have received; how and at what disease stage HIV was detected; and type(s) of health care these adolescents had received, before and after their HIV infection was detected. Consideration should be given to following youths at 3- to 6-month intervals to evaluate the clinical disease spectrum, support needs, behaviors and their modification, impact of HIV testing and diagnosis. Close coordination between health departments receiving HIV/AIDS reports and clinical centers which provide clinical care for the affected populations will be necessary and should be specifically addressed in the application.

Research Project Grants

A research project grant is one in which substantial programmatic involvement by CDC is not anticipated by the recipient during the project period. Applicants for grants must demonstrate an ability to conduct the proposed research with minimal assistance, other than financial support, from CDC. This would include possessing sufficient resources for clinical, laboratory and data management services and a level of scientific expertise to achieve the objectives described in the research proposal without substantial technical assistance from CDC.

Cooperative Agreements

A cooperative agreement implies that CDC will assist the collaborator in conducting the epidemiologic research of AIDS and HIV infection described in the Purpose section of this notice. The application should be presented in a manner that demonstrates the applicant's ability to address the research problem in a collaborative manner with CDC. In addition to the financial support provided, CDC will collaborate by: (1) Providing technical assistance in the design and conduct of the reasearch; (2) providing technical guidance in the development of study protocols, consent forms and questionnares, including training and pretesting, as necessary; (3) assisting in designing a data management system; (4) performing selected laboratory tests; (5) coordinating research activities among the different sites, including laboratories and consultants; and (6) participating in the analysis of research information and the presentation of research findings.

Determination of Which Instrument to Use

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement.

The funding agency will review the applications in accordance with the evaluation criteria. Before issuing awards, CDC will determine whether a grant or cooperative agreement is the appropriate instrument based upon the need for substantial Federal involvement in the project.

Review and Evaluation Criteria

Applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicant's abilities to meet the following criteria:

1. The plans to develop and implement the study describing how study participants will be identified, enrolled, tested and followed; (25 points)

2. The ability to enroll and follow an adequate number of eligible study participants to assure proper conduct of the study. This includes both demonstration of the availability of HIV-infected potential study participants and the experience of the investigator in enrolling and following such persons; (25 points)

The applicant's current activities in AIDS and HIV research and how they will be applied to achieving the objectives of the study. Letters of support from cooperating organizations that demonstrate the nature and extent of such cooperation should be included; (25 points)

4. The applicant's understanding of the research study objectives and, for those applicants choosing the cooperative agreement instrument, their ability, willingness and/or need to collaborate with CDC and researchers from other study sites in study design and analysis, including use of common forms, and sharing of specimens and data; (25 points)

5. The plan to protect the rights and confidentiality of all participants and ensure adequate participation; (10 points)

6. The size, qualifications and time allocation of the proposed staff and the availability of facilities to be used during the research study; (10 points)

7. How the project will be administered to assure the proper management of the daily activities of the program; (10 points)

8. The proposed schedule for accomplishing the activities of the research, including time frames; (10 points) and

9. The quality of an evaluation plan which specifies methods and instruments to be used to evaluate the progress made in attaining research objectives. (10 points)

(A maximum of 150 points can be awarded.)

The budget will be reviewed to determine the extent to which it is reasonable, clearly justified and consistent with the intended use of funds. Budget information should be specific to the purpose of each budget item and all budget categories should be itemized.

Funding Priorities

Preference will be given to competing continuation applications over applications for projects not already receiving support under the program.

Other Requirements

1. Paperwork Reduction Act

Projects involving the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

2. Human Subjects

This program involves research on human subjects. Therefore, all applicants must comply with Public Law 93–148 regarding the protection of human subjects. Assurances must be provided that demonstrate that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

3. HIV Program Review Panel

Recipients funded by a grant or cooperative agreement instrument must comply with the requirement to establish an HIV Program Review Panel as defined in the document titled, "Content of HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (January 1991)," a copy of which is included in the application kit.

4. Patient Care

Applicants should provide assurance that all HIV-infected patients enrolled in their studies will be linked to an appropriate local HIV care system that can address their specific needs such as medical care, counseling, social services and therapy. Details of the HIV care system should be provided, describing how patients will be linked to the system.

Executive Order 12372 Review

Applications are not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.118, Acquired Immunodeficiency Syndrome (AIDS) Activity.

Application Submission and Deadline

A signed original and two copies of the application, Form PHS–5161–1, must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, on or before May 31, 1991, for new and competing renewal applications.

Applications shall be considered as meeting the deadline if they are:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications which do not meet the criteria in 1 or 2, above, will be considered late applications, will not be considered in the current competitive cycle and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, application package and business management technical assistance may be obtained from Gordon R. Clapp, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Desease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, telephone (404) 842–6508 or FTS 236–6508.

Programmatic technical assistance may be obtained from John Narkunas, Division of HIV/AIDS, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, Mailstop E45, Atlanta, Georgia 30333, telephone (404) 639–6130 or FTS 236–6130. Eligible applicants are encouraged to call prior to the development and submission of their assistance application.

Please refer to Announcement Number 115 when requesting information and submitting an application for assistance.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Dated: March 29, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–7880 Filed 4–3–91; 8:45 am]

BILLING CODE 4160–18–M

[Announcement 114]

HIV-Related Tuberculosis Demonstration Cooperative Agreements

Introduction

The Centers for Disease Control (CDC) announces that cooperative agreement applications are to be accepted for human immunodeficiency virus (HIV)-related tuberculosis (TB) demonstration projects on Applied Drug Efficacy And Preventive Therapy (ADEPT) and other Prevention Demonstration (PD) projects.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This announcement is related to the priority areas of HIV Infection and Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the Section **Where to Obtain Additional Information.**)

Authority

This program is authorized under the Public Health Service Act, Section 317(k) [42 U.S.C. 247b(k)], as amended; and Section 301 [42 U.S.C. 241], as amended.

Eligibility

Eligible applicants for these cooperative agreements include States, political subdivision of States, and other public and private nonprofit organizations. In addition, to insure statistically significant results, applicants applying for ADEPT must be able to identify, recruit, and maintain a minimum of 300 dually-infected (HIV/TB) persons per year into a preventive therapy trial.

Availability of Funds

Approximately $300,000 is available in Fiscal Year 1991 to fund approximately 1 to 3 ADEPT awards. The average award is expected to be $100,000, ranging from $70,000 to $150,000 for a 12-month budget period beginning on or about July 1 within a 1- to 3-year project period.

If more funds are available, additional ADEPT and/or PD projects will be considered for funding. Additional awards are expected to begin on or about September 15 for a 12-month budget period within a 1- to 3-year project period. Funding estimates may vary and are subject to change. Continuation awards within an approved project period will be made on the basis of satisfactory performance and the availability of funds.

Purpose

ADEPT

The purpose of this program is to improve the diagnosis, prevention, and treatment of HIV-related tuberculosis through demonstration and applied research. Applied research, as used in the context of this announcement, means the process of developing and evaluating practical operational approaches and solutions to HIV-related tuberculosis problems and the evaluation of new technology (e.g., new drugs, new diagnostic tests) in clinical settings to determine its efficacy, feasibility, and applicability.

In Fiscal Year 1991, the priority area of interest is to determine the efficacy of various new and current drugs and drug regimens for tuberculosis preventive therapy in persons with both HIV and tuberculosis infections.

PD

Applications which address other aspects of HIV-related tuberculosis will be considered of lesser priority. These lesser priority projects include projects to assess the risk of *M. tuberculosis* and AIDS among tuberculin positive and negative persons during various stages of HIV infection and the influence of tuberculosis on the progression of HIV infection.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below and CDC will be responsible for conducting activities under B. below.

A. Recipient Activities

1. ADEPT. a. Develop methods and strategies to successfully identify and administer tuberculosis preventive therapy to HIV infected persons who are also infected with *M. tuberculosis*. The strategies should be applicable to TB/HIV infected persons throughout the United States and should include a description of the methods to be used to monitor and insure compliance, assess toxicity, and follow patients for at least 2 years after completion of therapy. Project applicants are required to provide HIV antibody testing to determine a person's HIV infection status; therefore, they must comply with existing State laws and regulations and CDC guidelines regarding pre-test and post-test counseling, and partner notification of HIV-seropositive patients. Applicants must comply with State and local health department requirements regarding specific reportable diseases or conditions. Applicant will also be required to provide referrals for HIV diagnosis and treatment.

b. Develop methods for the follow-up of dually infected (TB/HIV) individuals not receiving preventive therapy.

c. Implement the plans developed to provide preventive therapy and follow-up to dually infected persons.

d. Develop and implement an evaluation plan that measures the effectiveness of the trial regimens employed.

e. Prepare and publish findings.

2. PD. Address other HIV-related tuberculosis problems; develop, implement, and evaluate strategies for addressing HIV-related tuberculosis diagnostic, treatment, and/or prevention problems.

B. CDC Activities

1. Provide consultation and technical assistance in planning, implementing, and evaluating strategies and protocols.

2. Provide up-to-date scientific information and coordinate the exchange of information among recipients.

3. Assist in data management, analysis, and the evaluation of programmatic activities.

4. Assist recipients in collaborating with State and local health departments and other PHS-supported TB and HIV/AIDS recipients.

5. Assist in the preparation and publication of results.

Evaluation Criteria

If applying for more than one program, applicants must submit a separate application for each program (ADEPT and/or PD). Each competing application will be reviewed and evaluated individually according to the following criteria:

A. ADEPT (Maximum of 60 total points)

1. The ability of the applicant to determine the extent of the problem of tuberculosis and HIV infection in their

area to include: a. The number of tuberculosis cases; b. the number of AIDS cases; c. the number of persons with both tuberculosis and AIDS/HIV infection; d. the estimated prevalence of HIV seropositivity in various population groups; and, e. the estimated prevalence of tuberculin reactivity among AIDS risk groups. (25 points)

2. The ability of the applicant to identify the number of dually infected persons, using available epidemiologic information, who can be identified and given tuberculosis preventive therapy. (10 points)

3. The ability of the applicant to monitor and perform follow-up on all participants receiving preventive therapy or observation, including methods to deal with noncompliant patients. (25 points)

In addition, consideration will be given to the extent the budget request is clearly justified and consistent with the intended use of funds.

B. PD (Maximum of 60 total points)

1. The extent to which the applicant has defined an HIV-related tuberculosis problem and the quality of the proposed plan to address that problem. (15 points)

2. The extent to which short-term and long-term objectives are realistic, measurable, time-phased, and related to recipient activities. (15 points)

3. The overall effectiveness of the applicant's proposed activities and methods for meeting the stated objectives. (15 points)

4. The adequacy of plans to evaluate progress in implementing methods and achieving objectives. (15 points)

In addition, consideration will be given to the extent the budget request is clearly justified and consistent with the intended use of funds.

Other Requirements

Recipients must comply with the document titled Content of HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (January 1991).

Applicants must have in place systems to insure the confidentiality of all patient records. Assurance of compliance with regulations regarding protection of human subjects will be required.

Projects involving the collection of information from 10 or more respondents and funded by cooperative agreement may be subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

E.O. 12372 Review

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

E.O. 12372 sets up a system for State and local government review of processed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current SPOC list is included in the application kit. On or before July 15, 1991, the SPOC should send any State process recommendations to: Edwin L. Dixon, Grants Mangement Officer, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, GA 30305, ATTN: Victoria F. Westberg. CDC does not guarantee to "accommodate or explain" for State process recommendations it receives after July 15, 1991.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.118, Acquired Immunodeficiency Syndrome (AIDS) Activities.

Application submission and Deadline

A. Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer, Edwin L. Dixon. It should be postmarked no later than two months prior to the planned submission deadline. The letter should identify announcement number 114, name the principal investigator, and identify applicable project ADEPT or PD. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives relevant information prior to application submission.

B. The original and two copies of each application (PHS Form 5161-1) must be submitted to Edwin L. Dixon, Grants Mangement Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, GA 30305, on or before May 15, 1991.

C. Deadline. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

Late competing applications not accepted for processing may either be returned to the applicant or held for the next regularly scheduled review cycle.

Where to Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address and phone number, and will need to refer to Announcement Number 114. You will receive a complete program description, information on application procedures, an application package, and the name and phone number of the business management technical assistance contact assigned to this program announcement.

Programmatic technical assistance may be obtained from Lawrence J. Geiter, Division of Tuberculosis Control, Center for Prevention Services, Centers for Diesease Control, Atlanta, GA 30333, (404) 639-2530 or FTS 236-2530.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: March 29, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-7881 Filed 4-3-91; 8:45 am]

BILLING CODE 4160-18-M

Prevention of Primary and Secondary Disabilities National Conference; Meeting

The Centers for Disease Control (CDC), the National Council on Disability, and the Minority Health

Professions Foundation announce the following meeting.

Name: National Conference on the Prevention of Primary and Secondary Disabilities.

Time and Date:

Registration: 1 p.m.–9 p.m., June 5, 1991; 7:30 a.m.–8:30 a.m., June 6, 1991

Conference: 8:30 a.m.–5 p.m, June 6–7, 1991; 8:30 a.m.–12 noon, June 8, 1991

Place: Atlanta Airport Hilton, 1031 Virginia Avenue, SW., Atlanta, Georgia 30354.

Status: The conference will be open to the public for observation, participation, and comment, limited only by the space available.

Purpose: The conference will provide a forum for formal presentations and promotion of discussions that will clarify priorities and provide information to be used as a basis for the development of a national plan for the prevention of primary and secondary disabilities.

Matters to be Discussed: The focus of the conference will be on the presentation and discussion of working papers that have been developed for the conference dealing with the prevention of disabilities related to: (1) Birth defects, developmental disabilities, and other disabilities of childhood; (2) injuries; (3) chronic conditions; and (4) the scientific measurement of the public health impact of disabilities including quality of life issues.

Special presentations will include reports and workshops on The Americans with Disabilities Act; the Institute of Medicine report Disability in America; the Public Health Service publication, Healthy People 2000; assistive technology; secondary disabilities; state and community programs; and prevention-related research.

Conference objectives include an emphasis on the knowledge gaps and data needs regarding the key epidemiological variables of disabilities and the recognition of the disproportionate number of minorities in the population of persons with disabilities.

CONTACT PERSON FOR FURTHER INFORMATION: Larry Burt, Program Coordinator, Disabilities Prevention Program, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE., Mailstop F–41, Atlanta, Georgia 30333, telephone (404) 488–4905 or FTS 236–4905.

Dated: March 28, 1991

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–7882 Filed 4–3–91; 8:45 am]

BILLING CODE 4160–18–M

Public Health Service

Subcommittee of the National Vaccine Advisory Committee (NVAC); Public Meeting

AGENCY: Office of the Assistant Secretary for Health.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health (OASH) are announcing the forthcoming meeting of the NVAC Subcommittee on Access to Services.

DATES: Date, Time and Place: May 13, 1991, at 9 a.m., Parklawn Building, Conference Room G, Third Floor, 5600 Fishers Lane, Rockville, Maryland 20857. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Yuth Nimit, Ph.D., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program, 5600 Fishers Lane, Parklawn Building, room 13A–53, Rockville, Maryland 20857 (301) 443–0715.

Agenda: Open Public Hearing: Interested persons may formally present data, information, or views orally or in writing on issues pending before the subcommittee or on any of the duties and responsibilities of the subcommittee as described below. Because of limited seating, those desiring to make such presentations should make a request to the contact person before May 1, and submit a brief description of the information they wish to present to the subcommittee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 10 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Subcommittee Discussion. The subcommittee will develop a draft report to be submitted to the full NVAC of June 6–7. It will focus on barriers to access with emphasis on the unmet needs related to third party payment. It will recommend measures to enhance public and private third party payment, if appropriate, as a mechanism to improve access to immunization. The agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of subcommittee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person.

Dated: March 28, 1991.

Yuth Nimit,

Executive Secretary, NVAC.

[FR Doc. 91–7923 Filed 4–3–91; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Supplemental Security Income Modernization Project; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notices of extension of meeting time.

SUMMARY: The Social Security Administration announces the meeting of the Supplemental Security Income (SSI) Modernization Project (the Project), announced in the **Federal Register** on March 11, 1991 (56 FR 10277), may warrant evening hours from 7 p.m. to 10 p.m. on April 24, 1991. This is in addition to the April 24–25, 1991, 8:30 a.m. to 5 p.m. time previously announced.

DATES: April 24–25, 1991, 8:30 a.m. to 5 p.m.

ADDRESSES: Hubert H. Humphrey Building, room 703A, 200 Independence Ave. SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: SSI Modernization Project Staff, room 300, Altmeyer Bldg., 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–3571.

SUPPLEMENTARY INFORMATION: We announced a meeting of the Project in the **Federal Register** on March 11, 1991 (56 FR 10277). Due to the number of issues to be discussed, the meeting of April 24, 1991, may warrant evening hours from 7 p.m. to 10 p.m. This is in addition to the April 24–25, 1991, 8:30 a.m. to 5 p.m. time previously announced. The need for evening hours will be discussed and announced at the regular daytime session on April 24, 1991.

Dated: March 28, 1991.

Peter Spencer,

Director, SSI Modernization Project Staff.

[FR Doc. 91–7916 Filed 4–3–91; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-050-00-4351-04; CA 27703]

California; Realty Action

AGENCY: United States Department of the Interior, Bureau of Land Management.

ACTION: Notice of realty action; exchange of public lands in Siskiyou, Shasta, Trinity, Tehama, and Butte Counties, California.

SUMMARY: The notice of realty action published on Friday, January 25, 1991, in Volume 56, No. 17 of the **Federal Register**, Pages 2935–2941, is hereby corrected as follows:

1. On line 52 in column 2 on page 2937 which reads: "Sec. 4: S½NE¼SE¼, * * * " should read "Sec. 4: S½NW¼ SE¼, * * * "

2. On line 57 in column 2 on page 2937 which reads: "T. 31 N., R. W.," should read "T. 31 N., R. 5 W.,"

3. On line 61 in column 2 on page 2937 which reads: " * * * N½SW¼NE¼, * * * " should read " * * * N½SW¼ SW¼NE¼, * * * "

4. On line 10 in column 3 on page 2937 which reads: " * * * SE¼SE¼SE¼ SW¼, * * * " should read " * * * SE¼ SE¼SE¼SW¼, * * * "

5. On line 15 in column 3 on page 2937 which reads: " * * * NW¼E½NW¼, * * * " should read " * * * NW¼, E½ NW¼, * * * "

6. On line 23 in column 3 on page 2937 which reads: " * * * SW¼SE¼NE¼ SW¼W½, * * * " should read " * * * SW¼SE¼NE¼SW¼W½, * * * "

7. On line 25 in column 3 on page 2937 which reads: "S½NW¼SW¼SW¼ W½, NE¼, * * * " should read " * * * S½NW¼SW¼SW¼, NE¼, * * * "

8. On line 29 in column 3 on page 2937 which reads: " * * * E½NE¼NW¼ NW¼, * * * " should read " * * * E½ NE¼NW¼, NW¼ * * * "

9. On line 54 in column 2 on page 2938 which reads: "Sec. 22: NW¼SE¼;" should read "Sec. 22: NW¼SE¼;"

10. On line 65 in column 2 on page 2938 which reads: "Sec. 12: All;" should be deleted, as it is the same as line 64.

11. On line 48 in column 2 on page 2939 which reads: "Sec. 34: S¼S½, * * * " should read "Sec. 34: S½S½, * * * "

12. On line 51 in column 2 on page 2939 which reads: "Sec. 4: All;" should be deleted.

13. On line 76 in column 2 on page 2939 which reads: "T. 25 N., 1 E.," should read "T. 25 N., R. 1 E.,"

14. On line 5 in column 3 on page 2939 which reads: "Sec. 18: SW¼SE¼" should read "Sec. 18: N½N½;"

15. On line 55 in column 1 on page 2940 which reads: "Sec. 4: S½NW¼;" should read "Sec. 14: S½NW¼;"

16. On line 26 in column 2 on page 2940 which reads: "Sec. 8: NE¼, E½ NW¼, SE½;" should read "Sec. 8: NE¼, E½NW¼, S½;"

17. On line 7 in column 3 on page 2940 which reads. Sec. 17: NW¼NW¼,N½ NW¼;" should read "Sec. 17: NW¼ NE¼, N½NW¼;"

18. On line 48 in column 1 on page 2941 which reads: "4 Sec. 10: S½S½." should read "Sec. 10: S½S½."

19. On line 32 in column 1 on page 2937 which reads: "Sec. 9: NW¼NE¼;" should read "Sec. 9: N½NW¼NE¼, SW¼NW¼NE¼, N½SE¼NW¼NE¼, SW¼SE¼NW¼NE¼N½SE¼SE¼ NW¼NE¼, SE¼SW¼NE¼, S½SW¼ SWNE¼, S½NE¼SW¼NE¼, NW¼ NE¼SW¼NE¼, S½NE¼NE¼SW¼ NE¼, W½NW¼SE¼, NW¼SW¼SE¼, N½NE¼NW¼SE¼, SW¼NE¼SW¼ SE¼, N½SE¼NE¼SW¼SE¼;"

20. On line 43 in column 1 on page 2937 which reads: "Sec. 31; N½N½, S½ SE¼;" should read "Sec. 31: All;"

21. On line 6 in column 2 on page 2936 which reads: "Sec. 12: Lots 1, 2, 4, 5, N½ NW¼, SE¼NW¼, W½NE¼SW¼;" should read "Sec. 12: All;"

22. On line 42 in column 2 on page 2937 which reads: "Sec. 32: N½." should read "Sec. 32: SE¼SW¼, SE¼."

23. On line 4 in column 1 on page 2938 which reads: "Sec. 30: Lots 5–8, 12, 14, 15;" should read "Sec. 30: All;"

24. The following lands were inadvertently omitted from the original Notice of Realty Action:

The following descriptions are for both the surface and subsurface estates:

T. 48 N., R. 5 W.,
Sec. 34: All.
T. 47 N., R. 6 W.,
Sec. 7: All;
Sec. 29: All.
T. 43 N., R. 10 W.,
Sec. 14: All.
T. 43 N., R. 7 W.,
Sec. 6: N½SE¼SE¼;
Sec. 18: All.
T. 40 N., R. 8 W.,
Sec. 21: Lot 1, 5.
T. 36 N., R. 1 W.,
Sec. 2: All;
Sec. 10: All;
Sec. 14: All;
Sec. 28: All.
T. 36 N., R. 1 E.,
Sec. 6; All;
Sec. 28: All.
T. 35 N., R. 1 W.,
Sec. 4: All;
Sec. 14: All;
Sec. 34: NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, SE¼.
T. 35 N., R. 2 E.,
Sec. 7: SW¼SW¼;
Sec. 18: Lot 3, 4, 6;
Sec. 30: All.
T. 35 N., R. 1 E.,
Sec. 2: All;
Sec. 6: W½SE¼NE¼;
Sec. 32: All.
T. 34 N., R. 1 W.,
Sec. 2: All;
Sec. 21: All;
Sec. 30: All.
T. 34 N., R. 3 E.,
Sec. 7: All.
T. 34 N., R. 2 E.,
Sec. 13: All.
T. 33 N., R. 5 W.,
Sec. 22: All.
T. 33 N., R. 3 W.,
Sec. 26: All;
Sec. 32: All.
T. 33 N., R. 2 W.,
Sec. 8: All;
Sec. 10: All;
Sec. 11: All;
Sec. 12: All;
Sec. 16: All;
Sec. 18: SE¼;
Sec. 20: N½N½;
Sec. 22: All;
Sec. 28: NE¼NE¼, S½NE¼, NE¼SW¼, S½SW¼;,
Sec. 32: N½N½.
T. 33 N., R. 1 W.,
Sec. 8: NW¼.
T.33 N., R. 2 E.,
Sec. 3: NE¼SW¼;
Sec. 8: SW¼, W½SE¼, NE¼SW¼;
Sec. 9: E½NE¼, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, NE¼SE¼;
Sec. 10: All;
Sec. 17: All;
Sec. 25: All.
T. 32 N., R. 9 W.,
Sec. 2: All;
Sec. 32: Lots 1–29;
Sec. 31: Lots 5, 6.
T. 32 N., R. 8 W.,
Sec. 30: All.
T. 32 N., R. 6 W.,
Sec. 24: All;
Sec. 25: All.
T. 32 N., R. 5 W.,
Sec. 10: Lot 26.
T. 32 N., R. 1 E.,
Sec. 4: All;
Sec. 6: All.
T. 31 N., R. 9 W.,
Sec. 2: All.
T. 31 N., R. 7 W.,
Sec. 6: All.
T. 31 N., R. 6 W.,
Sec. 12: All;
Sec. 23: SE¼;
Sec. 24: NE¼, portion of, W½NW¼SE¼, SW¼, SW¼SE¼SW¼, W½SE¼ SE¼SW¼, NE¼SE¼, N½NW¼SE¼, N½SE¼SE¼.
T. 31 N., R. 5 W.,
Sec. 7: Lots 7–10, 14–28, 32, 33, 36.
T. 31 N., R. 2 W.,
Sec. 8: All;
Sec. 22: All;
Sec. 26: All;
Sec. 28: All.

T. 31 N., R. 1 W.,
Sec. 10: NW¼NE¼, N½NW¼;
Sec. 14: All;
Sec. 20: All;
Sec. 22: All;
Sec. 32: All.
T. 31 N., R. 1 E.,
Sec. 8: All;
Sec. 24: W½NE¼, NE¼NW¼.
T. 30 N., R. 3 W.,
Sec. 12: All.
T. 30 N., R. 2 W.,
Sec. 28: S½SE¼;
T. 30 N., R. 1 W.,
Sec. 2: All;
Sec. 6: All;
Sec. 10: E½E½;
Sec. 12: All;
Sec. 26: SE¼SE¼.
T. 30 N., R. 2 E.,
Sec. 18: All.
T. 30 N., R. 1 E.,
Sec. 8: All;
Sec. 10: All.
T. 29 N., R. 4 W.,
Sec. 12: S½SW¼.
T. 27 N., R. 3 W.,
Sec. 6: SE¼NE¼.
T. 27 N., R. 1 W.,
Sec. 6: All.
T. 27 N., R. 3 E.,
Sec. 24: E½SW¼.
T. 26 N., R. 2 W.,
Todd Island.
T. 25 N., R. 2 E.,
Sec. 14: N½NW¼, NE¼SE¼.
T. 23 N., R. 7 W.,
Sec. 2: All;
Sec. 10: E½;
Sec. 12: NE¼NW¼;
Sec. 14: SE¼SW¼.
T. 23 N., R. 2 W.,
Sec. 11: Lot 4,5;
Sec. 14: Lots 1–5;
Sec. 15: Lots 1–5.
T. 20 N., R. 5 E.,
Sec. 13: SE¼SE¼;
Sec. 29: SE¼SE¼;
Sec. 33: NW¼NW¼.
T. 20 N., R. 4 E.,
Sec. 14: NE¼NE¼.

FOR FURTHER INFORMATION CONTACT: Mark Morse, Area Manager, at the Bureau of Land Management, 355 Hemsted Drive, Redding, California, 96002.

Dated: March 6, 1991.

John E. Borgic,

Acting Area Manager.

[FR Doc. 91–7907 Filed 4–3–91; 8:45 am]

BILLING CODE 4310–40–M

[ID–943–01–4212–13; IDI–23235]

Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Blanche Wagoner, Leadore, Idaho; and Oto Mac Wagoner and Betty A. Wagoner, of Dubois, Idaho, for the following described lands under Section 206 of the Federal Land Policy and Management Act of 1976;

Bois Meridian

T. 9 N., R. 30 E.,
Sec. 4, lot 8, SE¼SW¼NW¼, W½SW¼ SE¼, and W½E½SW¼SE¼;
Sec. 5, lots 6 and 7;
Sec. 9, lot 2.
Comprising 122.73 acres of public land.

In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

Parcel 1:

Beginning at the northwest corner of section 9, T. 9 N., R. 30 E., and running north along section line into section 4 a distance of 365 feet more or less to a fence on the west right-of-way line of Highway 28; thence S. 23°22′ E., along said right-of-way line 400 feet more or less to the north line of side section 9; thence continuing along said right-of-way line, 1,436 feet more or less to the south line of NW¼NW¼ of said section 9; thence west along said south line 725 feet more or less to the west line of Section 9; thence north along said section line 1,322 feet more or less to the point of beginning.

Parcel 2:

Beginning at the southwest corner of the northeast quarter of the southwest quarter of section 9, T. 9 N., R. 30 E., and running thence north along west side of said 1/16th line 1,262 feet more or less to a fence on the west right-of-way line of Highway 28; thence S. 23°22′ E., along said right-of-way line 1,373 feet more or less to the south line of the NE¼SW¼; thence west along said south line 543 feet more or less to the point of begininng.

Comprising 21.90 acres of private land.

The purpose of the exchange was to acquire non-federal land which has high public value for recreation, fisheries, and riparian habitat. The public interest was well served through completion of this exchange. The value of the Federal and non-Federal lands was each appraised at $6,000.

Dated: March 22, 1991.

Dave Holman,

Acting Deputy, State Director for Operations.

[FR Doc. 91–7908 Filed 4–3–91; 8:45 am]

BILLING CODE 4310–GG–M

[NM–030–01–4212–14; NMNM 83893]

A Direct Sale of Public Land to Dona Ana County, NM

AGENCY: Bureau of Land Management (BLM), Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land has been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) and at no less than the estimated fair market value. The land will not be offered for sale until at least 60 days after the date of this Notice.

T. 26 S., R. 3 E., NMPM
Sec. 14, W½NW¼SE¼NE¼.

The subject public land contains 5 acres and will be sold to Dona Ana County for a waste transfer site. The land has been identified for disposal in the BLM's Record of Decision for the Southern Rio Grande Plan Amendment (December 1986). The disposal is consistent with State and local government programs, plans, and applicable regulations.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the BLM Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005, or at (505) 525–8228 (FTS 476–8200).

ADDRESSES: Comments should be sent to District Manager, BLM Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

EFFECTIVE DATE: Interested parties may submit comments on the direct sale on or before May 20, 1991.

SUPPLEMENTARY INFORMATION:

The direct sale will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. All oil, gas, and geothermal resource minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Publication of this Notice in the **Federal Register** will segregate the public land from appropriations under the public land laws including the mining laws but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or 270 days from date of publication of this Notice in the **Federal Register** or upon publication of Notice of Termination.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: March 27, 1991.

H. James Fox,

District Manager.

[FR Doc. 91-7909 Filed 4-3-91; 8:45 am]

BILLING CODE 4310-FB-M

[OR-942-00-4730-12: GP1-161]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 2 S., R. 33 E., Accepted March 8, 1991
T. 2 S., R. 34 E., Accepted March 8, 1991
(Sheets 1 and 2)

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE 44th Avenue, Protland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: March 26, 1991

Robert E. Mollohan

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-7910 Filed 4-3-91; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Cheat Mountain Salamander for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Cheat Mountain Salamander Recovery Plan. This species occurs within a 700 square-mile area on public and private lands in the State of West Virginia. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before May 20, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy from the West Virginia Field Office, U.S. Fish and Wildlife Service, route 250, South, Elkins Shopping Plaza, Elkins, West Virginia 26241 (304/636-6586). Copies are also available for purchase from the Fish and Wildlife Reference Service, 5430 Grosvenor Lane, suite 110, Bethesda, Maryland 20814 (301/492-6403 or 1-800/582-3421). Written comments and materials regarding the plan should be addressed to Bill Tolin at the West Virginia Field Office at the above address. The plan is available for public inspection, by appointment, during normal business hours at the above West Virginia Field Office address.

FOR FURTHER INFORMATION CONTACT: Bill Tolin (see Addresses).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans decribe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing recovery plans.

The document submitted for review is the draft Cheat Mountain Salamander (*Plethodon nettingi*) Recovery Plan. This small woodland salamander is currently known to exist at 68 sites in Tucker, Randolph, Pendleton, and Pocahontas Counties in West Virginia. Of the known populations, 75% occur on Monongahela National Forest Lands. Most of the known populations are small, with less than ten salamanders observed. Although historical levels are not known, it is likely that the current population represents only a small portion of the salamander's former distribution and population levels.

The Cheat Mountain salamander was listed as a threatened species on September 28, 1989. It is found in red spruce and mixed deciduous forests above 2,980 feet in microhabitats that have relatively high humidity, moist soils, and cool temperatures. The species is threatened by activities that remove the forest canopy, wildfires, and by roads and possibly trails that remove forest floor litter.

The primary recovery objective of the plan is to restore the salamander to a level of 100 stable populations, distributed throughout the species' range, and to ensure permanent protection of these populations. This will be accomplished through: Population searches and monitoring, delineation and protection of occupied habitat, habitat characterization studies, other ecological and life history studies, long-term management as needed, and a public educational and information program.

This recovery plan is being submitted for agency review. After consideration of comments received during the review period, the plan will be submited for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 26, 1991.

Ralph Pisapia,

Assistant Regional Director.

[FR Doc. 91–7922 Filed 4–3–91; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–755821

Applicant: Fort Worth Zoo, Fort Worth, TX

The applicant requests a permit to import one male gorilla (*Gorilla gorilla*) of wild origin from the Society of Zoologique De Granby, Inc., Canada for the purpose of enhancement of propagation and survival of the species. This male has been held in captivity since 1961.

PRT–755822

Applicant: Fort Worth Zoo, Fort Worth, TX

The applicant requests a permit to import one male captive-born gorilla (*Gorilla gorilla*) from the Calgary Zoo, Canada for the purpose of enhancement of propagation and survival of the species.

PRT–757089

Applicant: Zoological Society of San Diego, San Diego, California

The applicant requests a permit to import one male and two female captive-born white-naped cranes (*Grus vipo*) from the Breeding Farm, Snavelhop, Netherlands for the purpose of enhancement of propagation of the species.

PRT–756304

Applicant: National Zoological Park, Washington, DC

The applicant requests a permit to import one male maned wolf (*Chrysocyon brachyurus*) from the Prague Zoo, Prague, Czechoslovakia. The animal was born in captivity at the Prague Zoo and will be used for captive-breeding at the National Zoo Conservation Center, Front Royal, Virginia.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 29, 1991.

Karen W. Rosa,

Acting Chief, Branch of Permits Office of Management Authority.

[FR Doc. 91–7837 Filed 4–3–91; 8:45 am]

BILLING CODE 4310–55

Garrison Diversion Unit Federal Advisory Council Meeting

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Garrison Diversion Unit Federal Advisory Council established under the authority of the Garrison Diversion Unit Reformulation Act of 1986 (Public Law 99–294, May 12, 1986). The meeting is open to the public. Interested persons may make oral statements to the Council or may file written statements for consideration.

DATES: The Garrison Diversion Unit Federal Advisory Council will meet from 8 a.m. to 4 p.m. on Wednesday, April 24, 1991.

PLACE: The meeting will be held at the North Dakota Game and Fish Department, 100 North Bismarck Expressway, Bismarck, North Dakota.

AGENDA: The Council will receive briefings and discuss subjects such as the Fiscal Year 1991 budget, Garrison Division Unit Task Group's October 1990 report, United States/Canada Consultations, Mitigation and Enhancement Plan status, Wetlands Trust, the Lonetree Area, the mitigation process for Audubon and Arrowwood National Wildlife Refuges, Payment in Lieu of Taxes and Refuge Revenue Sharing, and Kraft Slough.

For further information, individuals may contact Dr. Grady Towns, Fish and Wildlife Enhancement, at (303) 236–8186.

Dated: March 29, 1991

Galen L. Buterbaugh,

Regional Director, Region 6.

[FR Doc. 91–7883 Filed 4–3–91; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Outer Continental Shelf; Availability; Proposed Notice of Sale; Western Gulf of Mexico; Oil and Gas Lease Sale 135

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for Sale 135, Western Gulf of Mexico, may be obtained by written request to the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, or by telephone (504) 736–2519.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for August 1991.

This Notice of Availability is hereby published, pursuant to 30 CFR 256.29(c), as a matter of information to the public.

Dated: March 29, 1991.

Barry Williamson,

Director, Minerals Management Service.

[FR Doc. 91–7843 Filed 4–3–91; 8:45 am]

BILLING CODE 4310–MR–M

Alaska Outer Continental Shelf; Availability; Proposed Notice of Sale; Chukchi Sea Planning Area; Oil and Gas Lease Sale 126

With regard to oil and gas leasing on the Outer Continental Shelf (OCS), the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for Sale 126, Chukchi Sea Planning Area, may be obtained by written request to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, room 544, Anchorage, Alaska 99508–4302, telephone (907) 261–4691.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of the bid

opening. The bid opening is scheduled for August 1991.

This Notice of Availability is hereby published, pursuant to 30 CFR 256.29(c), as a matter of information to the public.

Dated: March 29, 1991.

Barry Williamson,

Director, Minerals Management Service.

[FR Doc. 91-7842 Filed 4-3-91; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders

Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from May 1 through October 31, 1991. The List of Restricted Joint Bidders published in the **Federal Register** on October 10, 1990, at 55 FR 41276 covered the bidding period of November 1, 1990, through April 30, 1991.

Group I.	Chevron Corp.; Chevron U.S.A. Inc.
Group II.	Exxon Corp.; Exxon San Joaquin Production Co.
Group III.	Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.
Group IV.	Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.
Group V.	BP America Inc.; The Standard Oil Co.; BP Exploration Inc.; BP Exploration (Alaska) Inc.

Dated: March 29, 1991.

Albert Modiano,

Director, Minerals Management Service.

[FR Doc. 91-7844 Filed 4-3-91; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 376X)]

CSX Transportation, Inc.—Discontinuance Exemption—in Marion County, WV

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments and Discontinuances to discontinue service over its 20.40-mile line of railroad in Marion County, WV. The line comprises two segments connecting at Mannington: (1) Between milepost 303.43, at Fairmont, and milepost 319.48, at Mannington; and (2) the Dent's Run Branch, between milepost 0.0, at Mannington, and milepost 4.35.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 350 ICC 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 4, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by April 15, 1991. Petitions for reconsideration must be filed by April 24, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by April 9, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 265-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 20, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-7935 Filed 4-3-91; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 ICC 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 ICC 2d 164 (1987).

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1407-91]

Acceptance by Immigration and Naturalization Service of Petitions for Employees of Certain United States Businesses Operating in Hong Kong and of Applications for Priority Date Establishment by Employment Creation Aliens

AGENCY: Immigration and Naturalization Service.

ACTION: Notice of procedures for filing immigrant petitions for employees of certain United States businesses operating in Hong Kong and for filing applications to establish immigration priority dates for employment creation aliens.

SUMMARY: The Immigration Act of 1990 (Pub. L. 101-649) (IMMACT 90) in section 161(b)(3) makes section 124 of IMMACT 90 effective immediately (Fiscal Year 1991). Section 124(b) of IMMACT 90 provides that any employer desiring and intending to employ aliens who are employees of certain United States businesses operating in Hong Kong may file a petition with the Attorney General for immigration to the

United States of those aliens. Thus, petitions may be filed immediately on behalf of such employees for visas beginning in Fiscal Year 1991. This notice advises the public of filing procedures until interim regulations are published.

Section 121(a) of IMMACT 90 amended the Immigration and Nationality Act by creating a new section 203(b)(5) which provides for visas for employment creation aliens who will seek to enter the United States to engage in new commercial enterprises. Such visas will not be available until October 1, 1991 (Fiscal Year 1992). Section 161(a)(9) of IMMACT 90 states that petitions under section 162(b) of IMMACT 90 relating to the immigrant visa petitioning process may be filed immediately, but only for visas beginning in Fiscal Year 1992 (October 1, 1991). Since neither a petition form nor regulations for such a petitioning process are currently in place, the Immigration and Naturalization Service (INS) has devised procedures to enable these aliens to establish contingent priority dates until a form is developed and regulations are published.

EFFECTIVE DATE: April 4, 1991.

FOR FURTHER INFORMATION CONTACT: Edward H. Skerrett, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., room 7122, Washington, DC 20536. Telephone (202) 514–3946.

SUPPLEMENTARY INFORMATION: The following procedures should be followed to a file a petition for an employee of a United States business operating in Hong Kong or for establishing a priority date in the case of an employment creation alien.

Employees of Certain United States Businesses Operating in Hong Kong

Section 124 of IMMACT 90 (relating to employees of certain United States businesses operating in Hong Kong) provides that a petition may be filed by an employer desiring and intending to employ such an employee within the United States. INS will accept Form I–140 (Petition for Prospective Immigrant Employee), with fee and signature, for the purposes of this provision. Petitions must be filed with the INS Service Center having jurisdication over the petitioner's U.S. corporate headquarters. The employee's priority date of immigration, if he/she is found eligible, will be the date of filing.

The petition must be accompanied by Form ETA–750B, Statement of Qualifications of the Alien, and a letter from the employer. Form ETA–750B and the employer's letter should indicate the following:

1. The alien is a resident of Hong Kong (without regard to nationality) and is employed (and has been employed during the 12 previous consecutive months) as an officer, supervisor, manager, executive, or specialized knowledge employee.

2. The alien is an employee of a business entity which is owned and organized in the United States, or the employee of a subsidiary or affiliate of such an entity. The entity must employ at least 100 employees in the United States and at least 50 employees outside the United States (not necessarily all in Hong Kong), and must have a gross annual income of at least $50 million.

3. The alien must have a qualifying job offer in the United States from the business entity effective from the time of filing through the time of entry, and the U.S. job offer must provide for salary and benefits comparable to the salary and benefits provided to others with similar responsibilities and experience within the same company. The move from Hong Kong does not not need to take place immediately since section 154 of IMMACT 90 allows for extension of immigrant visa validity for section 124 aliens. For aliens who will immigrant immediately, a specific job description must be provided. For aliens who will defer immigration, an initial simple commitment by the employer that a qualifying job will be available will be acceptable.

4. The job offer must be in one of the following capacities: officer, supervisor, or in a capacity which is managerial, executive, or involves specialized knowledge. "Officer and "supervisor" are defined in section 124. "Managerial capacity" and "executive capacity" are defined in section 101(a)(44) of the Immigration and Nationality Act (INA), as amended by section 123 of IMMACT 90. "Specialized knowledge" is defined in INA section 214(c)(2)(B), as amended by section 206(b)(2) of IMMACT 90.

Section 124 is effective through fiscal year 1993 (end date September 30, 1993). It allows for 12,000 immigrant visas each year for principal aliens, spouses, and unmarried dependent children under 21 years of age. Section 124 does not preclude adjustment of status to permanent residence in the United States, but an adjustment application on Form I–485 will be accepted only after an I–140 petition is approved by a Service Center.

Establishment of Priority Dates by Employment Creation Aliens

INS Service Centers will accept Form I–526, Request for Determination that Prospective Immigrant is an Investor, and basic supporting documentation without fee from an alien seeking to establish eligibility under section 203(b)(5) relating to employment creation. Form I–526 should be filed with the Service Center having jurisdiction over the area in which the new business enterprise will be located.

Form I–526 and supporting documentation will be retained at the Service Center, and notification will be sent to the alien that a contingent priority date has been established but that no adjudication of eligibility can be made at that time. Aliens will be advised to file the appropriate petition form, fee, and supporting documentation when governing regulations are in effect.

Dated: February 4, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91–7937 Filed 4–3–91; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATIO

[Notice 91–31]

Space Station Freedon

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of final Environmental Impact Statement.

SUMMARY: Notice is hereby given of the public availability of the final Environmental Impact Statement (EIS), Tier 1 for the Space Station Freedom program. The final EIS, Tier 1 addresses NASA's decision making associated with the development and operation of Space Station Freedom, including its first element launch in 1995, a permanent manned capability in 1997, and assembly completion in 1999.

ADDRESSES: Persons seeking further information or a copy of this final EIS, Tier 1 should contact Ms. Lyn D. Wigbels; NASA Headquarters/Code MB, Washington, DC 20546 (202) 453–8662.

SUPPLEMENTAL INFORMATION: Comments on the draft EIS, Tier 1 were previously solicited from Federal, State and local agencies and members of the public through notices published in the **Federal Register:** NASA notice on March 8, 1990 (55 FR 8622); Environmental Protection Agency notice on March 9, 1990 (55 FR 8983).

Copies of this final statement have been furnished to the Council on Environmental Quality; the

Environmental Protection Agency; the Departments of Air Force, Commerce, Defense, Energy, Health and Human Services, and Transportation; the National Academy of Sciences; the Office of Management and Budget; other Federal agencies appropriate State and local agencies; and numerous private organizations.

Copies of the final statement may be examined by contacting the Freedom of Information Act Office at any of the following locations:

(a) National Aeronautics and Space Administration, Washington, DC 20546 (202–453–2939).

(b) NASA, Ames Research Center, Moffett Field, CA 94035 (415–604–9000).

(c) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–7995).

(d) Jet Propulsion Laboratory, NASA Resident Office, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(e) NASA, Johnson Space Center, Houston, TX 77058 (713–483–8625).

(f) NASA, Kennedy Space Center, Kennedy Space Center, FL 32899 (407–867–2622).

(g) NASA, Langley Research Center, Hampton, VA 23665 (804–864–6125).

(h) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2902).

(i) NASA, Marshall Space Flight Center, Marshall Space Flight Center, AL 35812 (205–544–0031).

(j) NASA, Stennis Space Center, Stennis Space Center, MS 39529 (601–688–2164).

Dated: March 20, 1991.

C. Howard Robins, Jr.,

Associate Administrator for Management.

[FR Doc. 91–7836 Filed 4–3–91; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before May 20, 1991. Once the appraisal of the records in completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one or its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of the Air Force (N1–AFU–91–11). Administrative and facilitative records relating to autopsies and laboratory specimens.

2. Department of the Air Force (N1–AFU–91–19). Routine financial records.

3. Army and Air Force Exchange Services (N1–334–91–1). Annual statements of employee benefits.

4. Defense Logistics Agency, Legal Services Records (N1–361–91–5). Routine and facilitative records relating to legal matters and contract administration.

5. Federal Property Resources Service (N1–291–91–1). Background materials for an unpublished study of jewel bearing production.

6. War Assets Administration (N1–270–90–1). Abstracts of unliquidated obligations, reading file, and miscellaneous administrative records, 1947–49.

7. Department of Justice, Foreign Claims Settlement Commission (N1–299–90–2). Routine and facilitative correspondence, claims papers, registration files and working papers.

8. Department of Justice, Community Relations Service (N1–379–91–1). Routine and facilitative material interspersed among permanent files.

9. National Archives and Records Administration (N1–64–90–1). Update to comprehensive schedule.

10. Peace Corps (N1–362–91–1). Routine public relations files, 1961–1968.

11. President's Commission on the Federal Appointment Process (N1–220–91–2). Sound recordings of Commission meetings for which official transcripts exist.

12. Department of State, Bureau of Educational and Cultural Affairs (N1–59–91–6). Routine, facilitative, and grant files.

13. Department of Treasury, Internal Revenue Service (N1–58–91–2). Photographs documenting a records cleanup campaign in headquarters, ca. 1953.

Dated: March 28, 1991.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91–7911 Filed 4–3–91; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before May 6, 1991.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506, (202) 786–0494 and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503, (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506, (202) 876–0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency from number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Reinstatement

Title: Reviewer Evaluation.
Form Number: Not Applicable.
Frequency of Collection: Quarterly.
Respondents: Specialists and experts in the humanities.
Use: Evaluation of grant applications.
Estimated Number of Respondents: 200.
Frequency of Response: Once.
Estimated Hours for Respondents to Provide Information: Two hours per respondent.
Estimated Total Annual Reporting and Recordkeeping Burden: 400 hours.

Thomas S. Kingston,
Assistant Chairman for Operations.

[FR Doc. 91–7936 Filed 4–3–91; 8:45 am]
BILLING CODE 7536–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29023; File No. SR–NSCC–90–24]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing of Proposed Rule Change Regarding Modifications to the CNS Reorganization Processing System

March 28, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] notice hereby is given that on November 28, 1990, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–90–24) as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization ("SRO"). On February 19, 1991, NSCC amended the proposed rule change by filing Amendment No. 1. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will enhance the CNS Reorganization Processing System ("System") [2] to provide for the processing of voluntary tender or exchange offers ("tender offers") with protection periods [3] of five days or greater.

[1] 15 U.S.C. 78s(b).

[2] NSCC's rules governing its CNS Reorganization Processing System are set forth in NSCC Procedures, § VII.H.4. (Corporation Reorganizations), pp. 48–52 (rev. ed. Jan. 30, 1991). *See also* Securities Exchange Act Release No. 24365 (April 17, 1987), 52 FR 13779 [File No. SR–NSCC–87–03] (Order approving CNS Reorganization Processing System).

The term "CNS System" refers to NSCC's Continuous Net Settlement System for processing securities transactions. NSCC Rule 11 (CNS System), pp. 37–42 (rev. ed. Jan. 30, 1991).

[3] The filing defines "protect period" or "protection period" as the amount of time after the expiration of a tender offer that the owner or record holder who has elected to pariticpate in the tender offer has to submit the shares to the tender agent to cover his position.

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Current Procedures

For NSCC members that hold long positions in securities subject to a tender offer, the System provides members with an increased opportunity to obtain more of those securities. The System does so by putting such members on high priority for allocation of securities and by holding the NSCC members with short positions in those securities liable for failing to deliver. Currently, securities eligible for processing in the System are those securities subject to a tender offer with protect periods of eight days.

NSCC provides up to two reorganization sub-accounts for each security in order to provide protection for up to two competing tender offers.[4] If there are more than two tender offers for a security, all positions in the security not previously moved to a sub-account are removed from the CNS System and balance orders are produced. Four days after the expiration date of the tender offer (*i.e.*, "E+4"), members with long CNS positions in a security subject to a tender offer may submit a Letter of Liability to NSCC instructing NSCC to move those positions to a reorganization sub-account. On E+5, NSCC issues Potential Liability Reports to members with the oldest short positions advising these members of their potential liability for the tender value. After the day cycle on E+5, NSCC moves long positions for which it has received Letters of Liability into the sub-account. Concurrently, NSCC moves a corresponding number of short positions into the sub-account.

Between E+5 and the end of the protect period, regular CNS allocation occurs with the long positions in the

[4] NSCC procedures governing sub-accounts are set forth in NSCC Procedures, § VII.I., p. 54–55 (rev. ed. Jan. 30, 1991).

sub-account assigned the highest priority for allocation. In addition, on E+6 and each day thereafter until payable date, NSCC marks each short position from the current market price to the tender offer price. Upon completion of the tender offer, members with long positions are credited and members with short positions are debited for the securities and/or cash under the terms of the tender offer.

(2) Proposed Rule Change

When NSCC implemented the System in 1987,[5] it limited processing to accommodate tender offers with eight day protect periods because most tender offers at that time had eight day protect periods. Since implementation, NSCC has recognized that there are an increased number of tender offers with protect periods of five days or greater that could benefit from the System. To accommodate these tender offers, NSCC is proposing the following changes to the System: [6]

1. The ability to submit adjustment input in the form of an add instruction will not be available for tender offers with five day protect periods, and the withdrawal capability will be available only for tender offers with protect period of greater than five days.

2. CNS allocations will occur from E+5 until the day cycle of the last day of the protect period no matter whether the protect period is five or eight days.

3. Potential Liability Reports will be issued one day earlier (*i.e.*, on E+4). This change will enable members with short positions to receive earlier notification of their potential liability.

4. Members who contact each other directly and arrange for delivery of securities themselves will be able to notify NSCC of such delivery by submitting a CNS exit request form to NSCC. If delivery is made outside the System without NSCC being so notified, the short member's account will automatically be debited for the cash or securities under the terms of the tender offer.

5. A technical change is being made to provide that the reorganization information will no longer appear on the CNS Projection Report but will appear on a separate Reorganization Information Report.

6. NSCC will modify the Automated Customer Account Transfer ("ACAT") Service in order to provide that securities subject to a tender offer will be deemed non-CNS eligible for ACAT processing.[7]

7. NSCC will amend its Automated Stock Borrowing Procedure to preclude borrowing from participants securities undergoing a voluntary tender offer after the nighttime allocation on E+2 until the end of the protect period.[8]

NSCC believes that since the proposed rule change will allow NSCC to enhance its ability to process transactions within the CNS System, it will promote the prompt and accurate clearance and settlement of securities transactions. The proposed rule change, therefore, will be consistent with the requirements of the Act, particularly those of section 17A(b)(3)(F) of the Act,[9] and the rules and regulations applicable to NSCC.

(B) SRO's Statement on Burden on Competition

NSCC believes that the proposed rule will impose no burden on competition.

(C) SRO's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

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 the SRO consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-90-24 and should be submitted by April 25, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-7841 Filed 4-3-91; 8:45 am]

BILLING CODE 8010-01-M

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[5] Securities Exchange Act Release No. 24365, *supra* note 2.

[6] Unless otherwise noted, the modifications are reflected in changes to NSCC Procedures, § VII.H.4. (Corporate Reorganizations) (rev. ed. Jan. 30, 1991).

[7] The ACAT Service is an industry-wide service that assists customers in transferring their accounts between brokers. NSCC Rule 50, section 10 (ACAT Service), pp. 108-115 (rev. ed. Jan. 30, 1991).

[8] NSCC Procedures, Addendum C (NSCC Automated Stock Borrow Procedures) (rev. ed. Jan. 30, 1991).

[9] 15 U.S.C. 78q-1(b)(3)(F).

[10] 17 CFR 200.30-3(a)(12).

[Release No. 35-25291]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 1, 1991.

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 April 22, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevent 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.

Eastern Utilities Associates (70–7844)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered public-utility holding company, has filed a declaration under section 12(c) of the Act and Rule 46 thereunder.

On February 28, 1991 EUA Power Corporation ("EUA Power"), a direct, wholly owned subsidiary of EUA, filed a voluntary petition under Chapter 11 of the U.S. Bankruptcy Code in the Bankruptcy Court for the District of New Hampshire. Due to this bankruptcy filing, EUA has elected to "write off" its investment in EUA Power. As a result, EUA Power has provided an impairment reserve that effectively values the assets of EUA Power at an amount which approximates the debt which is nonrecourse to EUA. Such reserve effectively eliminates the investment of EUA in EUA Power and in addition provides a reserve on the balance sheet of EUA equal to all of EUA's guarantees and commitments to EUA Power, and certain of its creditors, as of the date of EUA Power's bankruptcy filing.

Due to the creation of the reserve account, and certain other charges to earnings, EUA anticipates a retained earnings deficit of approximately $78 million. Section 12(c) under the Act and Rule 46(a) thereunder prohibit paying dividends out of capital or unearned surplus without Commission authorization.

EUA now requests authority to declare and pay dividends out of capital surplus in an aggregate amount up to $29 million through the period ending February 15, 1992. EUA expects such payments to be made on or about the following four dates: May 15, August 15 and November 15, 1991 and February 15, 1992.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–7949 Filed 4–3–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18070; File No. 812–7677]

The Manufacturers Life Insurance Company of America, *et al.*

March 29, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Manufacturers Life Insurance Company of America (the "Company"), Separate Account One of The Manufacturers Life Insurance Company of America ("Separate Account One"), and Man-Equity, Inc. (the "Underwriter").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) granting exemptions from sections 9(a), 13(a), 15(a) and 15(b) and Rule 6e–2(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the sale of shares of Manulife Series Fund, Inc. (the "Fund") to both variable life insurance and variable annuity separate accounts of insurance companies affiliated with the Company. The requested order would expand the "mixed funding" relief which already permits shares of the Fund to be sold to both variable life insurance and variable annuity separate accounts of the Company.

FILING DATE: The Application was filed on February 6, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on April 23, 1991, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Manufacturers Life Insurance Company of America and Separate Account One of The Manufacturers Life Insurance Company of America, One Meridian Place, Philadelphia, PA 19102. ManEquity, Inc., 200 Bloor Street East, Toronto, Ontario, Canada M4W 1E5.

FOR FURTHER INFORMATION CONTACT: L. Bryce Stovell, Attorney-Adviser, at (202) 504–2272, or Barry D. Miller, Senior Attorney, at (202) 272–3012 (Office of Insurance Products and Legal Compliance, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company that is licensed to engage in the insurance business in the District of Columbia and all states other than New York. It is a wholly-owned subsidiary of the Manufacturers Life Insurance Company of Michigan, which, in turn, is a wholly-owned subsidiary of The Manufacturers Life Insurance Comany (the "Parent Company"). The Parent Company, a mutual life insurance company organized under Canadian law, ranks among the top 20 life insurance companies in North America when measured by assets held worldwide or by insurance in force.

2. Separate Account One is a separate account of the Company established on May 25, 1983 under the laws of the Commonwealth of Pennsylvania. Separate Account One was registered under the 1940 Act as a unit investment trust on December 23, 1983 (File No. 811–3933). A registration statement under the Securities Act of 1933 is in effect for certain scheduled premium variable rate life insurance policies participating in Separate Account One (File No. 2–88607). Assets of Separate Account One are invested in shares of Manulife Series Fund, Inc. (the "Fund"), a Maryland corporation registered under the 1940 Act as a diversified open-end management investment company (File No. 811–3815).

3. The Underwriter, an indirect wholly-owned subsidiary of the Parent Company, is the principal underwriter of the life insurance policies participating in Separate Account One. The Underwriter is a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers.

4. Applicants currently rely on the provisions of Rule 6e–2 and upon the terms of a Commission order granting another exemptive application, Investment Company Act Release No. 16070 (Oct. 21, 1987) (the "Prior Order") to issue the life insurance policies participating in Separate Account One. Under the terms of the Prior Order, Applicants were granted exemptive relief from the same sections of the 1940 Act from which relief is sought in this application. The exemption application granted by the Prior Order requested relief only to the extent needed to permit variable life insurance and variable annuity separate accounts of the Company to invest in the Fund.

5. The Parent Company now proposes to issue through a newly-created separate account of either the Company or the Parent Company certain variable annuity contracts that also will be funded in part by investment in the Fund. In the future, the Parent Company and other life insurance companies affiliated with the Company may, from time to time, cause other new or existing separate accounts funding variable contracts to invest in the Fund. The requested order would permit account values of the life insurance policies funded by Separate Account One to continue to be invested in the Fund when account values of contracts or policies issued through separate accounts of the Parent Company, and other life insurance companies affiliated with the Company, invest in the Fund.

6. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants also assert that there is no policy reason why the exemptions provided by paragraph (b)(15) of Rule 6e–2 should not be extended to the extent necessary to permit variable annuity and variable life insurance separate accounts of the Parent Company or other affiliates of the Company, as well as Separate Account One and other of the Company's variable life insurance and variable annuity separate accounts, to invest in Fund shares.

Applicants' Conditions

7. Applicants request exemption from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and paragraph (b)(15) of Rule 6e–2 to the extent necessary to permit the sale of Fund shares to both variable annuity and variable life insurance separate accounts of life insurance companies affiliated with the Company, subject to the provisions of clauses (i) through (iv) of Rule 6e–2(b)(15) and the following conditions:

(a) The board of directors of the Fund, constituted with a majority of disinterested directors, will monitor the Fund for the existence of any material irreconcilable conflict between the interests of holders of variable rate annuity contracts investing in the Fund and the interests of holders of scheduled or flexible premium variable rate life insurance policies investing in the Fund.

(b) The Company agrees that it will be responsible for reporting any potential or existing conflicts to the directors of the Fund.

(c) If a material irreconcilable conflict arises, the Company will, at its own cost, remedy such conflict up to and including establishing a new registered management investment company and segregating the assets underlying the variable annuity policies and the scheduled or flexible premium variable life insurance policies.

(d) If and to the extent that Rule 6e–2 is amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed funding on terms and conditions materially different from those of the exemptions requested in this application, Applicants shall take any steps necessary to comply with those rules as amended or adopted, to the extent that the rules are applicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–7948 Filed 4–3–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 29024/March 28, 1991; File No. 600–25]

The registration as a clearing agency of the Participants Trust Company; Order Granting Accelerated Approval of Registration Until March 31, 1992

On February 25, 1991, Participants Trust Company ("PTC") filed, pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] with the Securities and Exchange Commission ("Commission") an amendment to its Form CA–1 [2] requesting the Commission to extend PTC's registration as a clearing agency until March 31, 1992.[3] Notice of PTC's amended application and request for extension of temporary registration appeared in the **Federal Register** on March 8, 1991.[4] No comments were received. This order approves, on an accelerated basis, PTC's amendment by extending PTC's registration as a clearing agency until March 31, 1992.

As discussed in detail in the initial order granting PTC's registration,[5] one of the primary reasons for PTC's registration was to develop facilities for mortgage-backed securities, particularly, securities guaranteed by the Government National Mortgage Association ("GNMA"). PTC services include certificate safekeeping, book entry deliveries, an automated facility for the pledge or segregation of securities and other services related to the immobilization of securities certificates.

Over the past year, PTC has expanded its depository facilities by making all GNMA securities depository eligible. Deposits of GNMA securities grew from $254 billion in March of 1990 to $454 billion in January of 1991.[6] PTC also undertook to consider and implement several operational and procedural changes in connection with PTC's registration.[7] Although PTC has made considerable progrees toward complying with those conditions, PTC needs more time to comply with those undertakings. Accordingly, PTC has requested that the Commission extend PTC's registration as a clearing agency until March 31, 1992, to permit PTC to gain experience and stability as a fully operative depository and to fully comply with the undertakings made in connection with PTC's registration.[8]

The Commission believes that PTC continues to meet the determinations enumerated in section 17A(b)(3). PTC has facilitated the prompt and accurate clearance and settlement of mortgage-backed securities. For example, PTC has functioned as a clearing agency for the past 24 months in compliance with the Act. As discussed above, more than $454 billion in securities are on deposit at PTC and PTC routinely processes more than 50,000 deliveries on settlement days each month.

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[1] 15 U.S.C. 78s(a).

[2] *See* letter from John J. Sceppa, President and CEO, PTC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission, dated February 22, 1991.

[3] On March 28, 1989, the Commission granted PTC temporary registration as a clearing agency pursuant to sections 17A and 19(a)(1) of the Act, and rule 17Ab2–1 thereunder for a period of twelve months. Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266.

On March 28, 1990, the Commission approved PTC's proposal to amend its application requesting that the Commission extend PTC's registration as a clearing agency until March 31, 1991. Securities Exchange Act Release No. 27858 (March 28, 1990), 55 FR 12614

[4] Securities Exchange Act Release No. 28924 (February 27, 1991), 56 FR 10000.

[5] Securities Exchange Act Release No. 26671 (March 28, 1989), *supra* note 3.

[6] *See* letter from John J. Sceppa, *supra* note 2.

[7] Among other things, PTC undertook to make participant financing of uncollected principal and interest payments, now mandatory, optional; review its rules and procedures for consistency with its operations; phase out the aggregate excess net debit limitation for extensions under PTC's net debit monitoring level procedures; and operate a back-up facility for processing mortgaged-backed securities. Securities Exchange Act Release No. 26671 (March 28, 1989), *supra* note 3.

[8] *See* letter from John J. Sceppa, *supra* note 2.

The Commission finds that "good cause" exists, pursuant to section 19(a) of the Act, for approving PTC's registration as a clearing agency prior to the thirtieth day after the date of publication of the notice in the **Federal Register.** No comments have been received to date indicating any basis exists for denying PTC's ability to continue its operation as a clearing agency.

It is therefore ordered, that PTC's temporary registration as a clearing agency be, and hereby is, extended until March 31, 1992, subject to the terms, undertakings, and conditions specified in Securities Exchange Act Release No. 26671.[9]

By the Commission.

Margaret H. McFarland,

Deputy Security.

[FR Doc. 91–7840 Filed 4–3–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1368]

Fine Arts Committee; Meeting

The Fine Arts Committee of the Department of State will meet on Friday, May 10, 1991 at 11 a.m. in the John Quincy Adams State Drawing Room. The meeting will last approximately until 12:30 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in September 1990 and the announcement of gifts and loans of furnishings as well as financial contributions for calendar year 1990.

Public access to the Department of State is strictly controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Monday, May 6, 1991, telephone (202) 647–1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: March 19, 1991.

Clement E. Conger,

Chairman, Fine Arts Committee.

[FR Doc. 91–7913 Filed 4–3–91; 8:45 am]

BILLING CODE 4710–13–M

[9] Securities Exchange Act Release No. 26671 (March 28, 1989), *supra* note 3.

DEPARTMENT OF THE TREASURY

Office of Inspector General

Privacy Act of 1974, System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of unpublished system of records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, the Office of Inspector General (OIG) gives notice of an existing system of records entitled the OIG Management Information System (MIS)—Treasury/DO .191 which has not been previously published. The MIS is comprised of subsystems that are categorized into resource tracking and administrative systems. The MIS resource tracking systems serve as a central repository of statistical data for the management of OIG resources and projects, as well as the preparation of reports. The MIS administrative system provides information for the day-to-day operation of the OIG.

DATES: Comments must be received no later than May 6, 1991.

ADDRESSES: Comments should be sent to Department of the Treasury, Office of Inspector General, room 7133, 1201 Constitution Avenue, NW., Washington, DC 20220, Attn: Disclosure Coordinator.

FOR FURTHER INFORMATION CONTACT: Ann Marie Gould, Disclosure Coordinator, (202) 377–7274, Office of Inspector General, room 7133, 1201 Constitution Ave., NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The Management Information System (MIS) was established to assist the OIG in managing assignment and workload status information. In addition, the system is also used to prepare reports for the Congress, the Office of Management and Budget, the General Accounting Office and other government agencies. The MIS contains the names of present and former OIG employees. Records are maintained by individuals' names and an OIG employee number.

Dated: March 27, 1991.

Linda M. Combs,

Assistant Secretary (Management).

TREASURY/DO .191

SYSTEM NAME:

OIG Management Information System (MIS)—Treasury/DO SYSTEM LOCATION: Office of Inspector General (OIG), all headquarters, regional and field offices. (See appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Office of Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) MIS Personnel system records contain OIG employee name, office, start of employment, series/grade, title, separation date; (2) MIS tracking records contain status information on audits, investigations and other projects from point of request or annual planning through follow-up and closure; (3) MIS Timekeeping records contain assigned projects and distribution of time; (4) MIS Equipment Inventory records contain assigned equipment; (5) MIS Travel records contain dates, type of travel and costs; (6) MIS Training records contain dates, title of training, and costs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978 (Pub. L. 95–452), as amended, 5 U.S.C. 301 and 31 U.S.C. 321.

PURPOSE:

The purpose of the MIS system is to: (1) Manage effectively OIG resources and projects; (2) capture accurate statistical data for mandated reports to the Secretary of the Treasury, the Congress, the Office of Management and Budget, the General Accounting Office, the President's Council on Integrity and Efficiency and other federal agencies; and (3) provide accurate information critical to the OIG's daily operation, including employee performance and conduct.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record from the system of records, which indicates, either by itself or in combination with other information, a violation or potential violation of law, whether civil or criminal, and whether arising by statute, regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local, or foreign agency or other public authority that investigates or prosecutes or assists in investigation or prosecution of such violation, or enforces or implements or assists in enforcement or implementation of the statute, rule, regulation or order. (2) A record from the system of records may be disclosed to a Federal, State, local, or foreign agency or other public authority, or to private sector (i.e., non-Federal, State, or local government) agencies, organizations, boards, bureaus, or commissions, which maintain civil, criminal, or other relevant enforcement

records or other pertinent records, such as current licenses in order to obtain information relevant to an agency investigation, audit, or other inquiry, or relevant to a decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, the issuance of a license, grant or other benefit, the establishment of a claim, or the initiation of administrative, civil, or criminal action. Disclosure to the private sector may be made only when the records are properly constituted in accordance with agency requirements; are accurate, relevant, timely and complete; and the disclosure is in the best interest of the Government. (3) A record from the system of records may be disclosed to a Federal, State, local, or foreign agency or other public authority, or private sector (i.e., non-Federal, State, or local government) agencies, organizations, boards, bureaus, or commissions, if relevant to the recipient's hiring or retention of an employee or other personnal action, the issuance of a security clearance, the letting of a contract, the issuance of a license, grant or other benefit, the establishment of a claim, or the initiation of administrative, civil, or criminal action. Disclosure to the private sector may be made only when the records are properly constituted in accordance with agency requirements; are accurate, relevant, timely and complete; and the disclosure is in the best interest of the Government. (4) A record from the system of records may be disclosed to any source, private or public, to the extent necessary to secure from such source information relevant to a legitimate agency investigation, audit, or other inquiry. (5) A record from the system of records may be disclosed to the Department of Justice when the agency or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records. (6) A record from the system of records may be disclosed in a proceeding before a court of adjudicative body, when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records. (7) A record from the system of records may be disclosed to a Member of Congress from the record of an individual in response to any inquiry from the Member of Congress made at the request of that individual. (8) A record from the system of records may be disclosed to the Department of Justice and the Office of Government Ethics for the purpose of obtaining advice regarding a violation or possible violation of statute, regulation, rule or order or professional ethical standards. (9) A record from the system of records may be disclosed to the Office of Management and Budget for the purpose of obtaining its advice regarding agency obligations under the Privacy Act, or in connection with the review of private relief legislation. (10) A record from the system of records may be disclosed in response to a subpoena issued by a Federal agency having the power to subpoena records of other Federal agencies if, after careful review, the OIG determines that the records are both relevant and necessary to the requesting agency's needs and the purpose for which the records will be used is compatible with the purpose for which the records were collected. (11) A record from the system of records may be disclosed to a private contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records subject to the same limitations applicable to U.S. Department of Treasury officers and employees under the Privacy Act. (12) A record from the system of records may be disclosed to a grand jury agent pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury provided that the Grand Jury channels its request through the cognizant U.S. Attorney, that the U.S. Attorney has been delegated the authority to make such requests by the Attorney General, that she or he actually signs the letter specifying both the information sought and the law enforcement purpose served. In the case of a State Grand Jury subpoena, the State equivalent of the U.S. Attorney and Attorney General shall be substituted. (13) A record from the system of records may be disclosed to a Federal agency responsible for considering suspension or debarment action where such record would be relevant to such action. (14) A record from the system of records may be disclosed to an entity or person, public or private, where disclosure of the record is needed to enable the recipient of the record to take action to recover money or property of the United States Department of the Treasury, where such recovery will accrue to the benefit of the United States, or where disclosure of the record is needed to enable the recipient of the record to take appropriate disciplinary action to maintain the integrity of the programs or operations of the Department of the Treasury. (15) A record from the system of records may be disclosed to a Federal, State, local or foreign agency, or other public authority, for use in computer matching programs to prevent and detect fraud and abuse in benefit programs administered by any agency, to support civil and criminal law enforcement activities of any agency and its components, and to collect debts and overpayments owed to any agency and its components. (16) A record from the system of records may be disclosed to a public or professional licensing organization when such record indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed. (17) A record from the system of records may be disclosed to the Office of Management and Budget, the General Accounting Office, the President's Council on Integrity and Efficiency and other federal agencies for mandated reports.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debtor information may also be furnished, in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982, to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

Most files are accessed by OIG employee name, employee number, office, or cost center. Some records may be accessed by entering equipment or project information.

SAFEGUARDS:

Access is limited to OIG employees who have a need for such information in the course of their work. A central console is located in a departmental computer room which is staffed during normal business hours and locked at other times. Terminals and paper copies are maintained in offices which are staffed during normal business hours and locked at other times. Access to records on magnetic media is controlled by computer passwords. Access to specific MIS records is further limited and controlled by computer security programs limiting access to authorized personnel.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and are retained as long as necessary.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Policy, Planning and Resources, room 7210, 1201 Constitution Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in this system may inquire in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix A. Individuals must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Assistant Director, Disclosure Services (see "Records Access Procedures" below).

RECORD ACCESS PROCEDURES:

Assistant Director, Disclosure Services, Department of the Treasury, room 1054, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CONTESTING RECORDS PROCEDURES:

See "Records Access Procedures" above.

RECORD SOURCE CATEGORIES:

Current and former employees of the OIG.

SYSTEMS EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

None.

Headquarters

Department of Treasury
Office of Inspector General
Office of the Assistant Inspector General for Policy, Planning and Resources
Room 7210
1201 Constitution Avenue, NW.
Washington, DC 20220

Field locations

Contact System Manager for addresses.

Department of Treasury
Office of Inspector General
Office of the Assistant Inspector General for Investigations
Office of the Regional Inspector General for Investigations, Central Regional Office
Chicago, IL 60605

Department of Treasury
Office of Inspector General
Office of the Assistant Inspector General for Investigations
Office of the Regional Inspector General for Investigations, Southern Regional Office
Houston, TX 77057

Department of Treasury
Office of Inspector General
Office of the Assistant Inspector General for Investigations
Office of the Regional Inspector General for Investigations, Western Regional Office
El Segundo, CA 90245–4320

Department of Treasury
Office of Inspector General
Office of the Assistant Inspector General for Audit
FLETC Field Office
Federal Law Enforcement Training Center
Glynco, GA 31524

Department of Treasury
Office of Inspector General
Office of the Assistant Inspector General for Audit
Office of the Regional Inspector General for Audit, Northeastern Regional Office
Boston, MA 02222–1052

Department of Treasury
Office of Inspector General
Office of the Assistant Inspector General for Audit
Office of the Regional Inspector General for Audit, Northeastern Regional Office
New York Field Office
New York, NY 10048

Department of Treasury
Office of Inspector General
Office of the Assistant Inspector General for Audit
Office of the Regional Inspector General for Audit, Northeastern Regional Office
Philadelphia Field Office
Philadelphia, PA 19106

Department of Treasury
Office of Inspector General
Office of the Assistant Inspector General for Audit
Office of the Regional Inspector General for Audit, Central Regional Office
Chicago, IL 60603

Department of Treasury
Office of Inspector General
Office of the Assistant Inspector General for Audit
Office of the Regional Inspector General for Audit, Central Regional Office
Chicago Field Office
Chicago, IL 60605

Department of Treasury
Office of Inspector General
Office of the Assistant Inspector General for Audit
Office of the Regional Inspector General for Audit, Central Regional Office
Indianapolis Field Office
Indianapolis, IN 46278

Department of Treasury
Office of Inspector General
Office of the Assistant Inspector General for Audit
Office of the Regional Inspector General for Audit, Southern Regional Office
Houston, TX 77057

Department of Treasury
Office of Inspector General
Office of the Assistant Inspector General for Audit
Office of the Regional Inspector General for Audit, Southern Regional Office
Miami Field Office
Miami, FL 33131

Department of Treasury
Office of Inspector General
Office of the Assistant Inspector General for Audit
Office of the Regional Inspector General for Audit, Southern Regional Office
New Orleans Field Office
New Orleans, LA 70130

Department of Treasury
Office of Inspector General
Office of the Assistant Inspector General for Audit
Office of the Regional Inspector General for Audit, Western Regional Office
El Segundo, CA 90425–4320

Department of Treasury
Office of Inspector General
Office of the Assistant Inspector General for Audit
Office of the Regional Inspector General for Audit, Western Regional Office
San Francisco Field Office
San Francisco, CA 94103

[FR Doc. 91–7838 Filed 4–3–91; 8:45 am]

BILLING CODE 4810–25

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256. USIA is requesting approval for a three-year extension to an information collection entitled "Artistic Ambassador Program Biographic Information Form for Auditioners" under OMB Control Number 3116–0172 (IAP–121). USIA is also requesting approval of revisions made to the form, which include deletions of information no longer required by applicant. Estimated burden hours per response is 1½ hours. Respondents will be required to respond only one time.

DATES: On or before May 6, 1991.

COPIES: Copies of the Request for Clearance (SF–83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for USIA; and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washingotn, DC 20547, telephone (202) 619–5503; and OMB review: Mr. C. Marshall Mills, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0172) is estimated to average 1½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Artistic Ambassador Program Biographic Information Form for Auditioners.

Form Number: IAP–121.

Abstract: This form is intended to obtain information from aspiring musicians who are interested in competing for the chance to represent the United States overseas. Candidates are screened, and through a process of elimination, finalists are selected. Overseas tours are from 4 to 6 weeks in duration, during which the successful candidates will give concerts for foreign audiences and represent the United States through personal contacts and the presentation of American art and culture. This program is intended to fulfill the requirements for the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, imposed upon USIA to strengthen international cooperative relations through tours in foreign countries by creative performing artists.

Proposed Frequency of Responses:

No. of Respondents	135.0
Recordkeeping Hours	0
Total Annual Burden	202.5

Dated: March 28, 1991.

Rose Royal,

Federal Register Liaison

[FR Doc. 91–7914 Filed 4–3–91; 8:45 am]

BILLING CODE 8230–01–M

Cultural Property Advisory Committee; Meetings

AGENCY: United States Information Agency.

ACTION: Notice of meeting of the Cultural Property Advisory Committee.

SUMMARY: The Cultural Property Advisory Committee will meet on Tuesday, April 16, 1991 from 9 a.m. to approximately 5 p.m., at USIA headquarters, 301 4th Street, SW., Conference Room 800, Washington, DC. The meeting will be open to the public. The meeting's agenda will include discussion of a number of issues focusing on the impact of import restrictions in place on artifacts from El Salvador, Bolivia and Peru, as required by the Convention of Cultural Property Implementation Act; discussion of the Committee's advisory role at USIA; discussion of USIA's dissemination of information about the Convention on Cultural Property Implementation Act and U.S. acceptance of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

The meeting of the Cultural Property Advisory Committee will be open to the public. Due to security requirements and limited space, persons wishing to attend should telephone the Cultural Property Staff at (202) 619–6612 by 5 p.m. on Monday, April 15. A list of public attendees will be posted at the security desk of USIA headquarters in order to facilitate access to the meeting room.

Dated: March 29, 1991.

Eugene P. Kopp,

Acting Director, U.S. Information Agency.

[FR Doc. 91–7915 Filed 4–3–91; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 65
Thursday, April 4, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

TIME AND DATE: 10:00 pm, Tueseday, April 23, 1991.

PLACE: SD–116, Dirksen Senate Office Building, Washington, DC 20510.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Report on results of Scholarship Review Panel
   A. Discussion and consideration of scholarship candidates
   b. Selection of Goldwater Scholars

CONTACT PERSON FOR MORE INFORMATION: Gerald J. Smith, Executive Secretary, Telephone: (202) 755–2312.

Gerald J. Smith,

Executive Secretary.

[FR Doc. 91–8008 Filed 4–2–91; 11:01 am]

BILLING CODE 4738–91–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91–6931.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 28, 1991, 10 a.m., Meeting Open to the Public.

The Following Item Was Deleted From the Agenda:

Advisory Opinion 1991–3: TEX/CON PAC

The Following Item Was Added to the Agenda:

Convention Regulations—Final Rules and Draft Explanation and Justification

DATE AND TIME: Tuesday, April 9, 1991, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, April 11, 1991, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinions:
  1991–3: Tex/Con PAC
  1991–5: Todd Campbell for Tennessee Democratic Party
  1991–6: Lance H. Olson on behalf of the California Democratic Party
  1991–10: Andrew M. Hochberg on behalf of Sherwood Guernsey to the U.S. Congress
Notice of Proposed Rulemaking on Disposition of Excess Campaign Funds.
Final Audit Report—Dole for President Committee.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91–8080 Filed 4–2–91; 3:00 p.m.]

BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, April 10, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–8087 Filed 4–2–91; 3:00 p.m.]

BILLING CODE 6210–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 4:53 p.m., Monday, April 1, 1991.

PLACE: Chairman's Office, 6th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Closed.

MATTER CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board voted unanimously to close the meeting under the exemptions listed above. Deputy General Counsel James Engel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91–8049 Filed 4–2–91; 2:27 pm]

BILLING CODE 7535–01–M

Corrections

Federal Register
Vol. 56, No. 65
Thursday, April 4, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-88-206]

United States Standards for Grades of Pickles

Correction

In rule document 91-6265 beginning on page 11905 in the issue of Thursday, March 21, 1991, make the following corrections:

§ 52.1687 [Corrected]

1. On page 11911, in the second column, in § 52.1687, in the third paragraph, in the first line, add "(c)" before "*Drained weight/volume.*".

2. In the same column, in § 52.1687(c)(3), in the fourth line, "less" should read "larger".

§ 52.1691 [Corrected]

3. On page 11912, in § 52.1691, in table VI, in the second column, in the entry marked "Large & extra large [over 12 mm (.47 in)]", "D10%" should read "10%".

4. On page 11913, in § 52.1691, in table XI, in the fourth column, in the entry marked "Uniformity of size", add "Reasonably good1".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances: Transfer of Glutethimide from Schedule III to Scheidule II

Correction

In rule document 91-6667 beginning on page 11930 in the issue of Thursday, March 21, 1991, make the following correction:

On page 11931, in the third column, in the paragraph numbered 9, in the fifth line, "April 22, 1991" should read "March 21, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[CGD 90-043]

RIN 2115-AD52

Federal Pilotage Requirement for Foreign Vessels and U.S. Vessels Sailing on Register in Certain Designated Waters Within the States of Oregon and Washington

Correction

In proposed rule document 91-3851 beginning on page 6598 in the issue of Tuesday, February 19, 1991, make the following correction:

On page 6599, in the first column, under **Regulatory Evaluation**, in the first paragraph, in the fourth line from the bottom, "Order Guard" should read "Coast Guard".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 16

[CGD 90-053]

RIN 2115-AD63

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Amendment

Correction

In proposed rule document 91-3850 beginning on page 6778 in the issue of Tuesday, February 19, 1991, make the following corrections:

1. On page 6778, in the second column, under **Pre-Employment Testing Exceptions**, in the second paragraph, in the second line, "individual" should read "individuals"; and in the fourth line, "exceptions" should read "exception".

§ 16.210 [Corrected]

2. On page 6779, in the third column, in § 16.210(a), in the fifth line, "individual" was misspelled.

3. On the same page, in the same column, in § 16.210(b)(1), in the second line, "required" was misspelled.

BILLING CODE 1505-01-D

federal register

Thursday
April 4, 1991

Part II

Department of Transportation

Office of the Secretary

49 CFR Parts 27 and 37

Transporation for Individuals With Disabilities; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 27 and 37

[Docket No. 47483; Notice 91-7]

RIN 2105-AB53

Transportation for Individuals With Disabilities

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department is proposing to amend its rule implementing the Americans with Disabilities Act (ADA) by adding sections concerning complementary paratransit, transportation facilities, and other matters not covered in its initial ADA final rule. This notice also responds to comments on that rule. It also proposes changes in the Department's rule implementing section 504 of the Rehabilitation Act of 1973 in light of the ADA rule.

DATES: Comments are requested by June 3, 1991. Late-filed comments will be considered to the extent practicable. In addition, UMTA is sponsoring six public hearings on this NPRM. A separate **Federal Register** notice will be published giving the exact locations and dates of the public hearings. The preliminary schedule of hearings is as follows:

April 23, 1991—Kansas City, Missouri
April 25, 1991—Seattle, Washington
April 30, 1991—Los Angeles, California
May 7, 1991—New York City, New York
May 8, 1991—New Orleans Louisiana
May 9, 1991—Washington DC

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No., Department of Transportation, 400 7th Street, SW., room 4107, Washington, DC, 20590. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC, 20590. (202) 366-9306 (voice); (202) 755-7687 (TDD). or Susan Schruth, Office of Chief Counsel, Urban Mass Transportation Administration, same address, room 9316. (202) 366-4011. Copies of the NPRM will be made available on request in other accessible formats.

SUPPLEMENTARY INFORMATION: This portion of the preamble discusses the basis and purpose of newly proposed sections of part 37 and of proposed revisions to portions of part 37 issued October 4, 1990 (55 FR 40763). It also responds to comments on relevant portions of the Department's March 26, 1990, NPRM under section 504 of the Rehabilitation Act of 1973 (55 FR 11120), and describes proposed changes to 49 CFR part 27, the Department's section 504 rule.

The Department received over 90 comments on the October 4, 1990 final rule, in addition to the over 170 received on the March 26, 1990, NPRM concerning section 504. These comments came primarily from disability groups transit providers, state and local government agencies, as well as interested individuals. Among national organizations participating were the American Public Transit Association (APTA), American Bus Association (ABA), Paralyzed Veterans of America (PVA), Coalition of Citizens with Disabilities (CCD), and Disability Rights Education and Defense Fund (DREDF). The latter organization produced a form comment which was submitted by a substantial number of disability groups. For the most part, while the trend of comments from transit agencies, disability groups, and other commenters is cited, this discussion does not list the commenters by name or attempt to tally the number of letters supporting a particular position. It is the substance of the comments that is of primary concern.

On January 28-29, 1991, UMTA sponsored a meeting of an Advisory Committee, which include 26 persons representing transit providers, disability groups, the Architectural and Transportation Barriers Compliance Board, the Office of the Secretary and UMTA. A number of observers from other organizations also contributed to the discussion. The principal subjects discussed were service criteria for complementary paratransit, undue financial burden for complementary paratransit, and operational issues. The preamble notes where matters discussed by the committee are reflected in the proposed rule.

Amendments to 49 CFR Part 27

In the interest of avoiding overlapping or duplicative requirements, the NPRM would amend 49 CFR part 27, the Department's current section 504 rule, by removing subpart E and its explanatory appendix. These are the provisions of the rule which, before the effective date of ADA requirements, established standards for mass transit services for individuals with disabilities. They will no longer be needed after the complete final ADA rule goes into effect January 26, 1992. For the same reason, portions of Subparts B (employment) and D (Program Accessibility Requirements in Specific Operating Administration Programs), a number of definitions from § 27.5, and all of Subpart C (Part Accessibility—General), would also be removed. The Department seeks comment on whether any of the deleted portions of these Subparts should be retained or other sections deleted. Part 27 will continue to require recipients of DOT financial assistance to comply with ADA requirements, (including those of the Department of Justice and Equal Employment Opportunity Commission as well as those of DOT) as a condition of compliance with section 504, and therefore as a condition of receiving financial assistance.

In addition, one new paragraph would be added to § 27.19. It is intended to cover an unusual situation that occurs in a few communities, in which a private firm (e.g., a utility company) owns and operates an UMTA-assisted fixed route transit system in a city. As we understand these situations, the privately owned and operated transit system is the equivalent of publicly owned and operated bus systems, of the sort UMTA typically assists in other cities. In implementing section 504, the Department believes that individuals with disabilities in these cities should have service equivalent to that provided in areas with the more typical public systems. For this reason, the Department proposes making it a condition of Federal financial assistance for these systems to meet public entity requirements established under part 37, even though these requirements may not apply to the private entity in its own right.

Amendments to 49 CFR Part 37

The NPRM would reorganize part 37 for greater clarity, into subparts concerning general matters, transit facilities, acquisition of vehicles by public entities, acquisition of vehicles by private entities, and transportation services.

Subpart A—General

Section 37.1 Purpose

This section would remain unchanged.

Section 37.3 Applicability

This section would change in one respect. Former paragraph (b) would be removed. It concerned requirements for private contractors to public entities, which is now covered in greater detail in § 37.9. Comments on this subject are discussed in connection with § 37.9.

A question has been raised in a few comments, as well as in inquiries to DOT staff offices, concerning whether transportation systems operated by public universities or other public institutions (e.g., shuttle bus systems that provide services on or in the vicinity of university campuses) are covered by the provisions of title II of the ADA, and consequently by this regulation.

The question arises from the way certain of the ADA's definitions may be read together. For example, the requirements of sections 222 and 223 of the ADA apply to a "public entity operating a fixed route system." A public university is clearly a public entity. Most campus bus systems fit the operational requirements of the section 221's definition of a fixed route system. That is, the buses operate along a prescribed route according to a fixed schedule. However, the definition of "fixed route system" also refers to providing "designated public transportation." This term is defined, in turn, as transportation provided to "the general public." Arguably, a campus bus system primarily intended to transport students, faculty and staff is not intended to provide transportation to "the general public," consequently does not involve "designated public transportation," consequently is not a "fixed route system," and therefore is not subject to the accessible vehicle acquisition and complementary paratransit requirements of sections 222 and 223. The same argument would apply to demand response service provided by a public university or other public institutions, since the definition of "demand responsive system" also includes a reference to "designated public transportation."

While the Department understands the basis for this argument, we do not propose to construe the application of the statute in this way. The same argument would apply, perhaps with greater force, to transportation by public schools. Yet Congress specifically exempted "public school transportation" from the definition of "designated public transportation." From this we draw the inference that in the absence of this exemption, public school transportation would have been covered under the "designated public transportation" definition. Congress could have, but did not, make a similar exemption for transportation provided by public universities or other public institutions. This argues strongly that no such exemption was intended.

Title II of the ADA appears to contemplate only two kinds of transportation provided by public entities: fixed route and demand responsive service. Nowhere does the Act suggest that there is intended to be a third category—which might be called "none of the above"—free from accessibility requirements. Indeed, inferring Congressional intent to create such a category would appear sharply contrary to the overall objectives of the statute.

We would also point out that campus shuttles typically serve what can fairly be thought of as the general public of the university community. While not a mass transit system serving the entire community of Ann Arbor or

Madison, the University of Michigan or University of Wisconsin bus system serves the significant subset of the community that traverses the university campuses. Even if one follows literally the words of the title II definitions, and so accepts the argument that a fixed route system must serve "the general public," it is reasonable to conclude that a typical university bus system is covered by title II.

Regardless of whether the position described above (i.e., that bus systems operated by public universities are public entities are subject to title II, subtitle B, of the ADA) or the other reading of the statute that has been suggested to us (i.e., that such systems should not be regarded as providing designated public transportation and hence are not subject to title II, subtitle B), public and private universities will be treated differently from one another. As private entitles not primarily engaged in the business of transporting people, private universities operating bus systems are covered under title III of the ADA and the related requirements of part 37. The Department seeks comments on this disparity, and possible ways of handling it in the final rule.

We also draw commenters' attention to another potentially anomalous situation. Some publicly operated airports operate shuttle bus systems (e.g., between fringe parking lots and terminals). In some cases, people who need lifts to use buses would not use the fringe parking lot, since parking spaces (at fringe lot prices) are provided in close-in lots for individuals with disabilities. In such a situation, complementary paratransit (or even accessible buses) may not be very useful, but the logic of the statute appears to call for their provision anyway. The Department seeks comment on how to deal with this situation.

Section 37.5 Definitions

A definition of "station" would be added to the definitions section. This definition, which applies only to commuter and intercity rail systems, is taken directly from section 241(6) of the ADA. The Department also proposes to add a definition of "wheelchair," which would clarify that the term includes three-wheeled scooters and other non-traditional mobility devices. This inclusion of mobility aids other than the traditional kind of wheelchair is consistent with the intent of the ADA. *See* S. Rept. 101–116 at 48.

The Department also proposes to add a definition of "commuter bus service." This definition is important because commuter bus routes are excluded from the requirements for complementary paratransit. The definition is drawn from a description of commuter bus service in the legislative history of the statute. H. Rept. 101–485, Pt. 1, at 30.

One transit agency asked that the definition of "vehicle" be amended, as applied to rapid rail systems, to mean a train rather than a car. The effect of this amendment, the commenter said, would be to permit operators to avoid the cost of making every car of every train accessible. This suggestion is at variance with the statute. Section 228(b) of the ADA requires "one vehicle per train" to be made accessible in five years in situations in which "2 or more vehicles [are] operated as a train by a light or rapid rail system." It seems clear from this language that a vehicle is not a train; rather, a vehicle is a car which is a component of a train. It would not make sense to read section 228 to require "one train per train" to be accessible.

There are certain kinds of systems or conveyances which do not conveniently fit the definition of fixed route service, but are probably closer to fixed route than to demand responsive service. We refer to systems such as inclined planes, aerial tramways, and jitney service. The Department seeks comment on how to treat such relatively unusual types of service, with respect to which some of the requirements for fixed route service (e.g., complementary paratransit) do not seem to make too much sense. Would it be reasonable, for example, to treat an aerial tramway essentially as a public accommodation rather than a mode of transportation for purposes of the ADA?

The definition of "disability" would be amended to include the words "contagious or noncontagious" diseases and to include specific mention of learning disabilities, HIV disease, and tuberculosis. These changes are proposed in order that this definition remain consistent with definitions of this term in the Department of Justice's proposed title II and III rules.

Section 37.7 Nondiscrimination

This section would be shortened by the deletion of paragraphs (c) through (f), which dealt with maintenance of vehicles, training and operational requirements, communications and timely service. These matters would be addressed by the proposed sections concerning training and provision of service, (proposed §§ 37.9 and 37.127, respectively). The one exception is paragraph (f), concerning timeliness of service for demand-responsive systems. The Department believes that this issue is most relevant in the context of complementary paratransit provided by public entities, and a provision on this subject has been included in the section concerning service criteria for complementary paratransit (see § 37.111). Paragraphs (a) and (b) would remain unchanged.

The proposed section adds a paragraph that would prohibit special charges for providing reasonable accommodations in general, or services required by this rule in particular, to individuals with disabilities. For example, a transit authority could not charge a "user fee" to persons who must use lifts to access a bus. A private transportation provider could not charge more to handle a wheelchair than it does to handle another passenger's luggage.

A proposed paragraph would also be added to implement section 304(b)(1) of the ADA, pertaining to nondiscrimination by private entities primarily engaged in the business of transporting people. The paragraph refers to applicable sections of the Department of Justice title III regulation with respect to eligibility criteria, reasonable modifications, and barrier removal.

Section 37.9 Training Requirement

With respect to training, the October 4, 1990, final rule (§ 37.7(d)) of the current part 37 requires that

> Each covered entity shall ensure that personnel are trained and supervised so that they operate vehicles and equipment safely and properly and treat individuals with disabilities who use the service in a respectful and courteous way.

The preamble to the October rule asked for comment on whether a more systematic requirement for training, along the lines of requirements issued for the airline industry in the Department's March 1990 Air Carrier Access Act rule, should be adopted. Virtually all disability group comments addressing the subject, including the DREDF form letter, supported such a requirement. There were few comments on the subject from transit agencies or other commenters, although APTA, in the context of securement of wheelchair users, noted that transit providers already had to train their personnel.

A well-trained work force is essential in ensuring that the accessibility-related equipment and accommodations required by the ADA actually result in the delivery of good transportation service to individuals with disabilities. The utility of training was recognized by Congress was well. *See* S. Rept 100–116 at 48. At the same time, we believe that training should be conducted in an efficient and effective manner, with appropriate flexibility allowed to the organizations that must carry it out.

The Department is proposing a variation on the existing provision, with mentions added of training to proficiency and training with respect to the differing abilities of individuals with disabilities. Given that transit properties typically train their personnel in equipment operation and customer relations in the normal course of business, a more detailed training requirement is not needed. The Department has considered comments favoring a more specific training requirement, like that of the Air Carrier Access Act regulation. We would point out that the air carrier industry has a long tradition of Federally-mandated specific training requirements, while the tradition in the transit industry has been for transit providers to devise their training programs without direct Federal prescription. The transit industry also includes a wide spectrum of transportation providers from one or two person operations to systems operating in America's largest metropolitan areas.

One of the important points in training concerns differences among the abilities of individuals with disabilities. All individuals with disabilities, of course, are not alike. The appropriate ways one deals with persons with various kinds of disabilities (e.g., mobility, vision, hearing, or mental impairments) are likely to differ and, while no one expects bus drivers to be trained as disability specialists, recognizing relevant differences and responding them appropriately is important.

The training would be intended to be to proficiency. That is, this option does not propose a particular number of hours of training or prescribe a curriculum. Transit providers are well positioned to determine what sort of training, and how much, is needed to ensure that their personnel do not err in serving passengers with disabilities for lack of sufficient instruction.

It should be noted that training should be provided only as appropriate to the duties of each employee. A paratransit driver may need instruction in how to assist passengers in boarding a van, but mechanics would not. A scheduler/dispatcher would need training in taking and acting upon requests for paratransit service, which a bus driver would not. A mechanic who works on lifts would need instruction in maintenance procedures for lifts, but unlike public contact personnel, may not need training in properly interacting with passengers with disabilities. Tailoring training requirements in this way will limit training costs to providers.

One of the best sources of information on how best to train personnel to interact appropriately with individuals with disabilities is the disability community itself. Consequently, the Department urges public entities to consult with disability organizations concerning how to train their personnel. Involving these groups in the process of establishing training programs, in addition to providing useful information, should help to establish to improve working relationships among transit providers and disability groups that, necessarily, will be of long duration.

Section 37.11 Private Entities Providing Service Under Contract with Public Entities

The applicability section of the October 4, 1990, final rule (§ 37.3(b)) provides that:

> Those who contract with a UMT Act recipient of other [public entity] to provide designated public transportation or intercity or commuter rail transportation service (including a private entity which might otherwise be subject to the private entity provisions of this part) are subject to the public entity provisions of this part.

This section has been the subject of several questions raised with the Department since the publication of the October 4 rule. Accordingly, § 37.11 has been revised to clarify the requirements, as explained below.

This provision is based on the definition of the term "operates" in section 221(4) of the ADA, which says that the term

. . . as used with repect to a fixed route system or demand repsonsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

When section 222(b) of the Act provides that it is discrimination for a public entity to purchase or lease an inaccessible vehicle, it applies the accessible vehicle acquisition requirement to private entities "operating" such a system, or part of one, under a contract for a public entity. As the preamble to the October 4 rule stated, the private entity "stands in the shoes" of the public entity for this purpose.

This understanding of the statutory language was clearly contemplated by Congress.

With regard to the operation of a system providing public transportation, if a public entity has entered into a contractual or other arrangement or relationship with a private entity to operate the system, or a portion of the system, the public entity must assure that the same accessibility requirements are met by the private entity for service provided under a contractual, or other arrangement or relationship as would apply if the public entity were operating the system or portion of the system, itself. H. Rept. 101–484 at 26.

If a public entity wishes to acquire vehicles for use on a commuter route, for example, it must acquire accessible vehicles. It may acquire accessible over-the-road buses, it may acquire accessible full-size transit buses, it may acquire accessible smaller buses, or it may acquire accessible vans. I does not matter what kind of vehicles it acquires, so long as they are accessible. On the other hand, if the public entity wants to use inaccessible buses in its existing fleet for the commuter service, it may do so. All replacement vehicles acquired in the future must, of course, be accessible.

Under the provisions of the ADA and the existing § 37.3(b), a private entity which contracts to provide this commuter service stands in the shoes of the public entity and is subject to precisely the same requirements. If the private entity acquires vehicles used to provide the service, the vehicles must be accessible. If it cannot, or chooses not to, acquire an accessible vehicle of one type, it can acquire an accessible vehicle of another type. Like the public entity, it can provide the service with inaccessible vehicles in its existing fleet.

The Department sought comments, in the preamble to the October 4 rule, on two additional steps to ensure the accessibility of service provided under contract. First, the preamble asked for comment on whether the Department should define "purchase or lease" of a vehicle by a public entity to include contracting for service with a private entity. If the Department adopted this approach, each contract would be the equivalent of a purchase or lease, and the public entity would be required to ensure that all vehicles under a contract for service were accessible.

Second, the preamble asked for comment on whether the Department should require that contracts for service call for a percentage of accessible service in its contract service be equivalent to the percentage of accessible service in the remainder of its system. That is, if 20 percent of the overall service provided by a public entity is accessible, then 20 percent of the contract service should also be accessible. This percentage would increase as, over time, the public entity replaced inaccessible buses with accessible buses.

Section 37.3(b) and the preamble discussion generated comment both from disability groups and transit providers. APTA and a number of transit providers essentially agreed with the "stand in the shoes" provision for private contractors. That is, a private contractor acquiring buses for use in contract service to a public entity would have to acquire accessible buses. The contractor, like the public entity itself, could use existing inaccessible buses for the service. These commenters generally opposed the additional options mentioned in the preamble, saying that they went beyond the statute, would create additional cost and burden for providers, and would complicate some local transportation arrangements (e.g., contracting with taxi companies or paratransit providers).

Disability commenters who addressed this issue, on the other hand, generally favored one of the two additional requirements. Otherwise, in their view, accessibility would be delayed and transit providers would have the opportunity to postpone or circumvent compliance with the ADA.

The American Bus Association (ABA) contended that § 37.3(b) was itself flawed. The ABA pointed to the provisions of Title III of the ADA concerning the accessibility of over-the-road buses. Section 305 of the ADA calls for an Office of Technology Assessment (OTA) study of the accessibility of over-the-road buses, which is due July 26, 1993. Under § 306, DOT is to review the study and, within a year of its submission, issue regulations requiring private entities using over-the-road buses to provide accessibility to such buses for individuals who use wheelchairs. These DOT regulations are to be effective on July 26, 1996 and 1997, for larger and smaller private entities, respectively.

Meanwhile, section 306(a)(2)(A)(i) provides that, as part of this rulemaking, DOT is to issue interim regulations;

* * * that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

From this provision, ABA argues that until 1996/97, a private entity which provides transportation under a contract with a public entity using an over-the-road bus may do so in a bus which is inaccessible to wheelchair users, and that Congress did not intend;

* * * to apply the accessibility requirements for transit buses to over-the-road coaches when such coaches are used by private entities in providing transit services under contract with public entities . . . All that was intended by section 221(4) of the ADA [the definition of "operates"] was to prohibit public entities from evading their obligation to purchase fully accessible transit buses by contracting for service to be provided in transit buses by third parties.

We do not agree with this argument. Under section 222(a), the requirement on public entities relates to the "purchase and lease of new *vehicles*" [emphasis added]. This section requires a public entity operating a fixed route system to purchase or lease "a new bus" or "any other new vehicle to be used on the system" that is accessible. This language does not limit the requirement to "transit buses," as the ABA's comment suggests. Indeed, the statute never uses the term "transit bus."

The import of the definition of "operates" is that it requires a private entity contracting to provide transportation service to a public entity follow the rules applicable to the public entity. For the time being, a private entity operating in its own right can purchase a new over-the-road bus inaccessible to individuals who use wheelchairs. (The "stands in the shoes" provision of the statute and rule apply only to those buses used under contract in public transit service). A private entity under contract to a public entity can continue to purchase inaccessible over-the-road vehicles for its other activities.) When that private entity operates service under contract to a public entity, however, it is just as obligated as the public entity itself to purchase an accessible bus for use in

that service, whether or not it is an over-the-road bus.

In the Department's view, it is likely that the economies that encourage public transit agencies to contract service out apply whether (as formerly) nobody had to buy accessible buses or whether (as now) everybody has to buy them. Private firms can acquire accessible buses for contracts with public entities just as easily as public entities can acquire them for their own fleets. While there are understandable reasons why both transit authorities and private contractors would want to acquire over-the-road buses (e.g., more comfortable seating for passengers on long commuter runs, ability to use buses with baggage capacity for weekend charter trips), these considerations do not override a statutory mandate for accessibility.

The ABA also asks that all references to private entities in the October 4 final rule be deleted, on the ground that since these provisions had not previously been the subject of an NPRM, their promulgation was contrary to the Administrative Procedure Act (APA). The preamble to the October 4 final rule noted that provisions affecting parties not receiving UMTA funds had not previously been the subject of notice and comment. Given that these provisions implemented ADA requirements to which all concerned parties were already subject (as of August 26, 1990) as a statutory matter, the preamble noted the Department's determination that "it would be unnecessary, impracticable, and contrary to the public interest to postpone regulatory implementation of these statutory provisions in order to issue a proposed rule on these subjects." 55 FR at 40775. With this determination, DOT met its obligations under the APA. (We would point out that, even in the absence of the October 4 regulatory provisions, public entities would be subject to the same statutory requirement to acquire only accessible vehicles for fixed route service and ensure that their private contractors do the same.) The comment period during which ABA submitted its comments was explicitly established to provide an opportunity for comment on provisions concerning private entities. *Id.*

The Department is not proposing to add a provision defining all contract actions as purchases or leases. We believe that such a requirement would impose a substantially more stringent standard on the portion of a transit authority's service it contracts out than it would place on the rest of its service, since it would effectively require all contract vehicles to be accessible, even those from contractors' existing fleets. It does not appear to us that the ADA contemplates such a markedly higher standard.

However, the Department seeks additional comment on a provision that would require public entities to ensure that service they provide via contract does not diminish the percentage of accessible service they provide. This proposal is a modification of the second alternative mentioned in the October 4 preamble and it was discussed in the Advisory Committee meeting. The proposal seeks to ensure maximum accessible service within the intent and framework of the ADA.

As an example under this proposal, suppose a public entity has 100 buses in its fleet, of which 20 are accessible, meaning that 20 percent of its fleet is accessible. The entity decides to add a fixed route, for which a contractor is engaged. The contractor is supplying ten of its existing inaccessible buses for the fixed route. To maintain the 20 percent accessibility ratio, there would have to be 22 accessible buses out of the 110 buses now in operation in carrying out the public entity's service. The public entity could maintain its 20 percent level of accessibility through any one or more of a number of means, such as having the contractor to provide two accessible buses, retrofitting two of its own existing buses, or accelerating replacement of two of its own inaccessible buses with accessible buses.

Similar examples could be devised for situations in which a contractor's vehicles replaced the public entity's vehicles for existing, rather than new, routes. The Department seeks comment on whether the final rule should require or allow other ways of calculating accessible service ratios (e.g., based on numbers of runs rather than numbers of buses).

The Department calls commenters' attention to proposed language providing that not only vehicles acquired by private entities explicitly under terms of an executed contract to provide service to a public entity, but also vehicles acquired "in contemplation of use" for service under such a contract, would have to be accessible. This language is included to ensure good faith compliance with accessibility requirements for vehicles acquired before the execution of a contract.

The Department also notes that the "stands in the shoes" requirement may differ depending on the kind of service involved. The public entity's "shoes" are shaped differently, for example, depending on whether the public entity is providing fixed route or demand responsive service to the general public. In the case of demand responsive service, a public entity is not required to buy an accessible vehicle if its demand responsive system, when viewed in its entirety, provides service to individuals with disabilities equivalent to its service to other persons. A private contractor providing a portion of this paratransit service would not necessarily have to acquire an accessible vehicle if this equivalency test is being met by the system as a whole.

The ABA and two commenters from New York State raised the issue of systems in which a private operator receives a state operating subsidy. According to the comments, this arrangement is distinguishable from the situation in which a public transit authority contracts out part of its service to a private provider. In the New York case, according to the comments, service operated to a public authority is not contracted out. Rather, service provided by a private operator is subsidized by the state, either directly or through a municipality. Presumably, it would not be economic for the private company to provide the service in the absence of the subsidy, and if the private operator did not provide the service, either a public entity would have to provide the service or it would not be provided. The subsidy unquestionably flows from the public entity to the private entity via a contractual or other arrangement.

The preliminary view of the Department about such an arrangement is that it would not, through the definition of "operates," be brought under the requirements of title II of the Act. An existing state program of this kind, not designed to avoid accessibility requirements, and not replacing service that has traditionally been provided by a public operator, appears closer to a private system subject to title III than a public system subject to title II. The state's role in providing financial assistance and regulatory oversight raises the question of at what point state involvement is so pervasive as to render the operation a public system, but it is not clear that the New York program, as described, would pass this point. In any event, this matter involves what appears to us to be a matter of interpretation, not requiring language in the regulatory text.

The Department seeks further comment on the appropriate treatment for the New York operating subsidy arrangement, as well as other subsidy arrangements that may exist elsewhere. We are concerned about any potential use of such arrangements to circumvent

the effect of the ADA, and seek suggestions about how such use could be prevented.

Section 37.13 Standards for Accessible Vehicles and Transportation Facilities

A number of sections of the October 4, 1990, final rule established interim vehicle accessibility standards, including § 37.31 (buses and vans), § 37.57 (light and rapid rail vehicles), § 37.87 (intercity rail passenger cars), and § 37.89 (commuter rail cars). The Architectural and Transportation Barriers Compliance Board (ATBCB) has published proposed minimum guidelines and requirements covering transit vehicles (CITE). The ADA calls for final ATBCB guidelines to be published by April 26, 1991. The Department intends to incorporate these guidelines as its standard for accessible vehicles. Consequently, the Department proposes not to continue the interim vehicle accessibility standards as part of the rule. The ATBCB guidelines would become appendix A to part 37.

There were a substantial number of comments to the docket concerning vehicle accessibility standards. For example, the ABA said that § 37.31's requirement for wheelchair accessibility features should not apply to over-the-road buses. The Department agrees that, under the ADA, the references to § 37.31 in the section concerning private entities (§ 37.29) should not be viewed as imposing wheelchair accessibility requirements on over-the-road buses. The Department will so interpret the existing part 37. Since § 37.31 is not proposed to be part of the final ADA rule in July 1991, and since the ATBCB guidelines will contain provisions on over-the-road buses, this situation will be short-lived.

DREDF and other disability group commenters asked that the rule require at least two wheelchair securement locations in each vehicle (§ 37.31 required at least one). Because the number of securement locations in an accessible vehicle is properly a matter for the ATBCB vehicle guidelines, the Department is deferring on this issue to the ATBCB. We have provided a copy of comments to the October 4 rule to the ATBCB for its information.

Once the ATBCB has published final vehicle accessibility guidelines, there is no reason for the Department to continue to rely on the interim accessibility requirements published October 4. Consequently, the Department proposes to remove §§ 37.31, 37.57, 37.87, and 37.89, replacing them with § 37.13(a) of this NPRM and appendix A, containing the ATBCB guidelines, as soon as those guidelines are effective. The Department, subject to comments on the proposal, may publish a final rule incorporating the final ATBCB vehicle standards prior to the rest of the final rule based on this NPRM.

The ATBCB has also published proposed transportation facility guidelines (CITE). Like the ATBCB vehicle guidelines, these guidelines are scheduled to be made final by April 26, 1991. The Department proposes to adopt these guidelines as its standards for transportation facilities and incorporate them as appendix B to part 37. For the information of readers, we have included the proposed ATBCB guidelines for vehicles and facilities in appendices A and B, respectively, to this rule. The Department urges persons with comments to submit them both to DOT and the ATBCB. The DOT address for comments is set forth at the beginning of this NPRM. The ATBCB's address is 1111 18th St., NW., Washington, DC, 20036.

Section 37.15 Administrative Enforcement

This section lists the administrative enforcement mechanisms available to persons who believe that a covered entity has failed to comply with part 37. (The ADA makes certain judicial enforcement mechanisms available as well). For UMTA or other DOT recipients, a violation of part 37 is a violation of section 504 of the Rehabilitation Act of 1973. The enforcement procedures of 49 CFR part 27, subpart B, apply, as does the ultimate administrative sanction of a fund cutoff.

For public entities who do not receive DOT funds, the procedures of the Department of Justice's title II regulation would apply. These procedures include the availability of DOT investigation of a complaint and an attempt to find a voluntary settlement. If such a settlement cannot be reached, DOT can refer the matter to the Department of Justice for litigation. Finally, an alleged violation by a private entity could be handled through the procedures of the Department of Justice's regulation implementing title III of the ADA. Under these procedures, complaints would be referred to the Department of Justice.

In considering enforcement matters, the Department is guided by a policy that emphasizes compliance. The aim of enforcement action, as we see it, is to make sure that entities meet their obligations, not to impose sanctions for their own sake. The Department's enforcement priority is on failures to comply with basic requirements and "pattern or practice" kinds of problems, rather than on isolated operational errors.

Subpart B—Transportation Facilities

Section 37.21 Construction and Alteration of Transportation Facilities by Public Entities

This section follows closely the proposed Department of Justice (DOJ) rule to implement title III of the ADA (28 CFR part 36), particularly subpart D (New Construction and Alterations) (*see* proposed rule published February 22, 1991; 56 FR 7452). Interested persons are referred to the preamble to that NPRM for DOJ's explanation of the understanding of the statute underlying the proposed provisions. We would point out that, like the DOJ proposal, this proposal asks for comment on alternatives for the "disproportionality" criterion with respect to costs for providing an accessible path to an altered area. The alternatives are 10, 20, or 30 percent. The Department will remain consistent with DOJ's decisions in this area, though we will provide to DOJ copies of comments on this issue that arrive in time to be useful to DOJ.

This section would make some minor changes to the DOJ language for purposes of specific references to transportation facilities (e.g., references to intercity and commuter rail stations). We would call attention to paragraph (d), which proposes to define primary function areas for transportation facilities as including ticket purchase and collection areas, train or bus platforms, baggage checking and return areas, and employment areas. We seek comment on whether additional areas should be included, or changes made to this list. We would also note that, in paragraph (a), a facility is treated as "new" if construction begins after January 26, 1992. The beginning of construction, for this purpose, would be the time of the issuance of a notice to proceed.

The NPRM proposes to add a paragraph (parallel to part of the provision of service requirements in subpart E) requiring that accessibility features be maintained in good working order and that, when an accessibility feature is out of order, reasonable accommodation be provided to individuals with disabilities who would otherwise use it. For example, some transit authorities announce to rail system riders when an elevator at a given station is out of order and provide shuttle service from the nearest station while the elevator is being repaired.

Section 37.23 Construction and Alteration of Transportation Facilities by Private Entities

This section references the Department of Justice title III regulations with which private entities must comply. It is the Department's understanding that, under the DOJ rules, private entities who maintain transportation facilities will be subject to the transportation facilities provisions of the ATBCB guidelines.

Section 37.25 Key Stations in Light and Rapid Rail Systems

One of the most important provisions of the ADA with respect to rail systems calls for "key" stations to be made accessible. Section 227(b) of the ADA requires key stations, as determined under the criteria of this regulation, to be made accessible within three years, except that the Secretary may extend the period for up to 30 years, provided that two-thirds of the stations are made accessible within 20 years. Rail operators must submit a compliance plan to the Secretary.

The Congressional committee reports discuss the various committees' views on which stations should be regarded as key stations. Types of stations mentioned in the reports include high ridership stations, transfer points, feeder stations, end stations, and stations that are not in proximity to other accessible stations. *See* H. Rept. 101–485, Pt. 1, at 33–34; S. Rept. 101–116 at 55–56. These criteria are very similar to those established by the Department of Transportation's 1979 rule implementing section 504. (44 FR 31478, May 31, 1979.)

Two other points from the committee reports are of interest. The Senate report noted that:

> Exactly what stations will be determined "key" is a decision best left to the local community. The Committee does not intend to mandate a process to identify "key" stations except that—in developing the criteria that will be used to determine which stations will be "key"—it is important to significantly involve organizations representing people with disabilities and individual consumers with disabilities. S. Rept. 101–116 at 56.

Both Senate and House reports referred to settlements concerning station accessibility in New York and Philadelphia, suggesting that these agreements should be viewed as in compliance with ADA regulations. S. Rept. 101–116 at 56; H. Rept. 101–485, Pt. 1, at 34.

The key station criteria in the proposed rule closely follow the Department's 1979 criteria and the discussions in the committee reports. The basic responsibility for determining which stations are key is assigned to the public entity, taking these criteria into account. High ridership stations are defined as those where passenger boardings exceed average station boardings by at least 15 percent. Transfer stations, end stations, and stations involving an intermodal interface (what the Congressional reports appear to refer to as "feeder stations") are also key stations. With respect to high ridership stations and end stations, the criteria would note that where such a station is in close proximity to another accessible station, it is not necessary to designate both as key stations Finally, stations serving major activity centers and major trip generators for individuals with disabilities—even if not high ridership stations for the general public—would be considered for key station status. The Department seeks comment on the appropriateness of these criteria and suggestions for modification.

As required by the statute, public entity rail operators would have to submit a plan to the Secretary for complying with key station requirements. (With respect to those cities in which agreements mentioned by the Committee reports have already been worked out (i.e., New York and Philadelphia), submission of the plans developed under the agreements would satisfy the requirement.) The plan would have to include milestones and reflect the public and consumer participation called for by the statute. This requirement will ensure appropriate Departmental oversight of the rail operators, most of whom are UMTA recipients. With the plan in hand, UMTA can respond to any problems or complaints that arise and can direct a rail operator to make changes in its efforts to comply with the ADA, if necessary.

The proposed rule is not intended to require a public entity to nominate as a key station every station that may meet one of the criteria. Rather, the aim of the provision is to ensure that the system, when viewed as a whole, becomes accessible to and usable by individuals with disabilities. The success of the public entity's key station designations would be judged according to this standard. In looking at plans from New York and Philadelphia, the Department would be mindful of the Congressional reports' endorsement of them. The Department does not, however, view this endorsement as establishing a level of accessibility that would necessarily or automatically be appropriate for other cities.

If a public rail operator wishes to apply for an extension of the three-year deadline for completing key station accessibility, the application must be included in its plan submission. As provided in section 227(b), extensions may be granted only for extraordinarily expensive modifications, such as installations of elevators or changing the level of platforms. It should be noted that extensions should not be automatically requested for the full 20- to 30-year period provided in the statute. Modifications are to be made "as soon as practicable," up to the statutory time limits. Modifications other than the "extraordinarily expensive" ones, of course, are to be made within the original three-year period, even in stations where elevator or platform modification deadlines are extended. The Secretary's decisions on extensions would take these factors into account.

The Department seeks comment on whether any different treatment is needed in terms of station standards or other requirements for monorail or people mover systems, which we would otherwise treat under this section

Section 37.27 Key Stations in Commuter Rail Systems

This provision parallels § 37.25. Two differences should be noted. First, extensions of time for extraordinarily expensive modifications may be made only up to 20 years. Second, most of the tasks under the section necessarily involve the "responsible person(s)" for designated key stations as well as the commuter rail operator itself. (The designation of responsible persons for commuter rail station accessibility is treated by § 37.31.) The Department seeks comment on whether additional delineation of the respective functions of commuter rail operators and responsible persons should be provided, and, if so, what refinements are appropriate.

The Department is aware of the differences between commuter rail transportation, on one hand, and urban rail mass transit system on the other. The Department seeks comment on whether the key station criteria or other aspects of this section should be altered to take these differences into account (one commenter, for example, suggested that stations distant from other stations and end stations might not be appropriate in the commuter rail context).

This section also includes a proposal that the various parties involved with making a key station accessible would designate one of their number as project manager for accessibility improvements. Doing so would provide a consistent focal point for management of the tasks involved as well as a convenient contact

point for the Department and interested members of the public.

Section 37.29 Intercity Rail Station Accessibility

This section incorporates the statutory requirement that all intercity rail stations be made accessible within 20 years. The Department seeks comment on the issue of how the time frames for making intercity and commuter stations accessible, on one hand, and for light and rapid rail stations, on the other, would work together in a station served by both categories of systems. For example, when should accessibility work at a station served by Amtrak (which has a 20-year timetable) and a rapid rail system (which has a 30-year timetable for extraordinarily expensive changes) be completed?

Section 37.31 Designation of Responsible Persons for Intercity and Commuter Rail Stations

Often, intercity rail and commuter rail stations are owned by a number of parties, which may or may not include some or all of the intercity or commuter rail operators who use the station. The legal and financial responsibility for station accessibility modifications is assigned by the ADA to "responsible persons" as defined by section 241(5). The most complete statement of the intent of this definition is provided by H. Rept. 101–485, Pt. 4, at 42–43:

> The inclusion in the ADA of the term "responsible person" is designed to improve upon current law, which arguably subjects private parties owning passenger rail stations to legal and financial obligations imposed under 49 CFR 27.73(a)(2) [a section of the current DOT section 504 rule affecting intercity rail service]. These regulations set forth the requirements and timetable for making existing passenger rail stations accessible. As a matter of equity and sound transportation policy, the Committee views it as unfair and unwise to impose these obligations upon private parties. The vast majority of Amtrak's 499 stations, for example, are owned by freight railroads who have little or no business interest in the continuation of rail passenger service at these stations. The Committee believes that the legal and financial responsibilities associated with making existing intercity and commuter rail stations accessible or with making alterations to such stations in an accessible manner should be [imposed] upon those parties that actually operate the rail service being provided to passengers at each location or, where applicable, upon those public entities that own all or a share of such stations.
>
> Under the bill, the Secretary is directed to issue regulations allocating responsibility in various circumstances "of an equitable basis" among Amtrak and the commuter railroad (or railroads) and other public entity owners. In making this allocation, the Committee expects the Secretary to apply the principle of "costs to the cost-causer," at least to the extent that it is practicable to ascertain cost causation, and in addition to weigh such other sound economic, transportation, and other public policy considerations as will lead to an "equitable" result.

The Department believes that parties involved with a station should have the opportunity, before any Federal regulation becomes involved, to make their own arrangements for who should be designated a responsible person. Consequently, the Department would accept any valid contractual or other written agreement among the parties making such a designation.

In the absence of such a voluntary designation, the rule would designate responsible persons. The statute provides that where a public entity owns over 50 percent of a station, it is the responsible person. Where a private party owns more than 50 percent of the station, the commuter or intercity railroads providing passenger service to the station are the responsible parties, in proportion to the percentage of passenger boardings at the station attributable to the service of each during the past year. The Department believes that reference to passenger boardings is the most equitable way of dividing responsibility among railroads, since the number of people drawn to the station by each is likely to reflect "cost causation" quite closely. The Department is open to other methods of dividing responsibility, as long as they accurately reflect what party is the "cost causer," as expressed in the legislative history. Accordingly, the Department seeks comment on whether a different criterion, or additional criteria, would be more appropriate.

The Department also notes that, as passenger boarding percentages change over time, the portion of responsibility assigned to each party would also change. While this seems equitable, the Department recognizes that accommodating the changes could create some difficulties for the parties. That is, station modifications may involve long-term capital investment and planning, while passenger boarding percentages are more volatile. Some railroads may stop serving a station, while others may begin service. The Department seeks comment on how to deal with this potential problem.

The most complicated situation is one in which no party owns 50 percent of the station. For example, consider the following hypothetical situation:

Party	Ownership %	Passenger boarding %
Private railroad	40	0
Public entity	30	0
Amtrak	0	25
Commuter A	30	50
Commuter B	0	25

Under the proposed rule, and consistent with the statute, the private freight railroad drops out of the calculation of who is responsible. All of the responsibility would be allocated among four public entities: The public entity owner, Amtrak, and the two commuter railroads. First, we would consider ownership (excluding the private entity's share). Sixty percent of the station is owned by the public entity (e.g., a city) and Commuter A, each of whom own 30 percent of the station. Since the public entity owns half of the portion of the station in non-private hands, it would be allocated 50 percent of the legal and financial responsibility for station modifications. The rest of the responsibility would be allocated among the other public entities serving the station, in proportion to their use of the station, as measured by percentage of passenger boardings. Comuter A has 50 percent of passenger boardings, so it is allocated half the remaining responsibility, or 25 percent of the total. This would be true notwithstanding its 30 percent ownership interest in the station, as its passenger boardings would, under this proposal, be the most salient determinant of responsibility for a rail operator. Commuter B and Amtrak each have 25 percent of boardings, so they would share the remaining responsibility equally (i.e., each would carry 12.5 percent of the total responsibility).

The Department seeks comment on whether this method of allocating responsibility would be equitable in real situations (as between public entites that do and do not operate rail services through the station). For instance, should the public entity which owns 30 percent of the station have a greater legal and financial responsibility for station modifications than the commuter railroad which owns 30 percent of the station and, in the example above, is the principal "cost causer" responsible for 50 percent of passenger boardings? The Department is open to suggestions that demonstrate more equitable approaches of dividing responsibility and seeks comments on how to weigh ownership versus passenger boardings in determining responsibility.

The proposal also states that the legal and financial responsibility of each responsible party is proportional to the degree of responsibility determined under this section. Thus, in the above example, Amtrak would pay 12.5 percent of modification costs.

Section 37.33 Required Cooperation

This section would implement section 242(e)(2)(C) of the ADA, which treats as discrimination a failure, by an owner or person in control of an intercity rail station, to provide reasonable cooperation to the responsible persons' efforts to comply with accessibility requirements. For example, the imposition by the owner of an unreasonable insurance bond from the responsible person as a condition of making accessibility modifications would violate this requirement. *See* H. Rept. 101–485 at 53.

The statute also provides that failure of the owner or person in control to cooperate does not create a defense to a discrimination suit against the responsible person, but the responsible person would have a third party action against the uncooperative owner or person in control. The Department does not believe that it is necessary to restate this portion of the statute in the regulation, since it would be implemented by the courts if such an action is brought.

Section 37.35 Public Transportation Programs and Activities in Existing Facilities

This section implements section 228(a) of the statute, and concerns the ADA's program accessibility concept as applied to programs conducted in existing facilities.

Subpart C—Acquisition of Accessible Non-Rail Vehicles by Public Entities

Section 37.51 Purchase or Lease of New Non-Rail Vehicles by Public Entities Operating Fixed Route Systems

This section is identical to § 37.21 of the current rule, published October 4, 1990. There were relatively few comments on this section, most of which supported its provisions. One commenter suggested requiring transit providers receiving a lift waiver to escrow enough funds to pay for the later lift retrofit that the waiver provision calls for. Since the underlying requirement is there, the Department does not believe that this intermediate fiscal management step is a necessary part of the regulation. Another suggested that a particular entity be eligible for only one lift waiver. While the Department does not anticipate widespread or frequent use of the waiver provision, we do not believe that an artificial ceiling on the number of waivers or requests would be reasonable. This is particularly true in light of the requirement that inaccessible buses purchased under a waiver must later be made accessible.

The Department specifically seeks comment on this section in two areas. First, paragraph (c) of this section requires the public entity to hold a public hearing before applying for a waiver. While the Department considers this consistent with the public participation emphasis in most decisionmaking under the ADA, we seek comment on whether this hearing requirement is unduly burdensome. Second, we seek comment on the "fraudulent application" provision. Paragraph (g) lays out a procedure for the UMTA Administrator to cancel a waiver or take other appropriate action if the Administrator has reason to believe that a waiver application is fraudulent. While we anticipate this being a rare or non-existent occurrence, it is appropriate to give notice of the Administrator's decision. In cases where the public entity believes the information available to the Administrator is incomplete, the entity may request a review of the case by the Administrator. As a practical matter, in any case involving possible fraud, the Administrator would refer it to the Department's Inspector General for further investigation and resolution.

Section 37.53 Purchase or Lease of Used Non-Rail Vehicles by Public Entities Operating Fixed Route Systems

This section is likewise almost identical to its counterpart in the October 4 final rule (§ 37.23). One minor change in response to a comment is the addition of clarifying language specifying that the good faith efforts exception applies in a situation where a public entity has been unable to obtain an accessible used vehicle. This was the Department's understanding of the original language.

Another comment suggested that a good faith effort should be required to include retrofitting. The Department has not adopted this suggestion, given our understanding that this portion of the ADA does not contemplate retrofitting. Other comments asked for additional procedural prerequisites to the use of the good faith efforts exception, such as publication of a **Federal Register** notice, expansion of the record retention requirement to five years, and notification of its disability advisory committee. The Department believes that the procedures of the existing rule are sufficient and that adding more procedural steps could be unnecessarily burdensome.

The good faith efforts which this section requires derive from a discussion of the issue in the legislative history of the ADA, which is cited in the preamble to the October 4 final rule (55 FR at 46771). Briefly, both Senate and House report language noted that good faith efforts were intended to require a nationwide search, not one limited to a particular region. Advertisement in a nationwide trade publication, like *Passenger Transport*, was one of the ways suggested in which public entities could meet the good faith efforts requirement.

Section 37.55 Remanufacture of Non-Rail Vehicles and Purchase or Lease of Used Non-Rail Vehicles by Public Entities Operating Fixed Route Systems

This section did not generate significant comment. Comments concerning the historical vehicles exception to the requirement for accessible remanufactured vehicles pertained to rail vehicles, and are discussed in the sections concerning rail vehicles. The section is identical to § 37.25 of the October 4 rule.

The Department would point out that this provision, and all the other provisions dealing with remanufactured vehicles, are not intended to provide an "out" for all accessibility-related modifications in the event remanufacture of a vehicle as accessible is unfeasible. That is, even if it is infeasible to put a lift on a remanufactured vehicle, the entity would still have to include other accessibility modifications that were feasible.

Section 37.57 Purchase or Lease of New Non-Rail Vehicles by Public Entities Operating Demand Responsive Systems

The counterpart to this section in the October 4 rule (§ 37.27) generated little comment. One commenter asked for additional clarification of the comparability standards set forth in the section. The standards are straightforward. There is equivalent service if a passenger with a disability can get a vehicle to arrive as soon as a passenger without a disability, pay an equivalent fare, go to the same places at the same times, have no more restrictions on trip purpose, etc. The criteria are listed in the section.

One issue raised by commenters concerned the treatment of publicly-sponsored or funded vanpool operations. There are a variety of kinds

of vanpool arrangements involving public agencies. A public agency may own the vehicles and pay the drivers, a public agency may subsidize the purchase of vans, which are operated by private individuals, or a public agency may simply provide services, such as a clearinghouse for ridesharing arrangements.

With respect to a truly public vanpool system (i.e., one in which the vehicles are purchased or leased by the public agency and/or in which the drivers are paid by the public agency), the issue is whether the system should be regarded as a fixed route or demand responsive system. It is not a pure case of either. On one hand, a vanpool system serves a limited number of people, all of whom request to be part of the service. The routes may change over time in response to people joining or leaving a particular vanpool. On the other hand, no one has to make a call to get a ride on a particular day, and the van usually follows a given route of pickup and dropoff points which it attempts to meet at specific times. On balance, the Department believes that it is more reasonable to treat such a system as a paratransit system, meaning that it must acquire accessible vehicles unless it can demonstrate that it provides equivalent service to passengers with disabilities. It is likely that this demonstration could be made if accessible vehicles are made available for vanpools of which a member is an individual (or membership is sought by an individual) with a disability. The Department seeks further comment on this way of treating public vanpool systems under the rule.

With respect to vanpool systems that are not publicly run, the provisions of subpart C would apply. These systems are discussed in the portion of the preamble concerning subpart C.

Finally, § 37.27 of the October 4 rule contained a technical error which is corrected in this NPRM. The October 4 rule had a section 16(b)(2) recipient certifying to the state administering agency that it had equivalent service before purchasing an inaccessible vehicle. Since these recipients are typically private entities, a reference to them should not have been included. This NPRM makes it clear that UMTA recipients who must certify to the state include recipients under section 9 or 18 of the UMT Act which receive UMTA funds through a state administering agency.

Section 37.59 Purchase or Lease of New Rail Vehicles by Public Entities Operating Rapid or Light Rail Systems

This section would be unchanged from its counterpart in the October 4 final rule. The Department seeks comment on whether any separate treatment is needed with respect to standards for monorail or people mover systems.

Section 37.61 Purchase or Lease of Used Rail Vehicles by Public Entities Operating Rapid or Light Rail Systems

This section would be unchanged from § 37.53 of the October 4 final rule, with the exception of the same clarification concerning inability to obtain an accessible vehicle described under § 37.53 above. One commenter suggested a requirement for making accessibility modifications to used rail vehicles employed in new or expanded service. The statute does not impose this requirement, and the Department does not believe that it is necessary to add to the statute in this respect.

Section 37.63 Remanufacture of Rail Vehicles and Purchase or Lease of Remanufactured Rail Vehicles by Public Entities Operating Rapid or Light Rail Systems

One question that came up in comments on this section, and which also applies to the other sections of the rule dealing with remanufacturing vehicles, concerns the distinction between remanufacturing and rehabilitating or overhauling a vehicle. Substantial rehabilitation or overhauling work can be done without triggering the remanufacturing requirements of this and related sections, which apply only with respect to a vehicle that has been structurally restored and has had new or rebuilt major components installed to extend its service by the number of years stated in each section. UMTA has made guidance on this point available.

There were a number of comments on the historical vehicle exception to the accessible remanufacturing requirement. Some comments recommended that the rule require a good faith effort to make historic vehicles accessible. This could be done, the comments suggested, by a variety of means, such as remodeled platforms, ramps, specially tailored wayside lifts, widened doorways, or removable seats. Others suggested, in response to a question in the October 4 preamble, that the ADA requirement for the exception that the vehicles be operated solely on a line included on the National Register of Historic Places be softened or stricken, or amended to include vehicles operated as part of a transportation museum. Other comments asked that the historic vehicles exception never be applied to replicas, altered vehicles, or vehicles operated out of historical context (e.g., vehicles imported from one location to act as a tourist attraction at another city's waterfront).

Given the specificity of the statute, we do not believe that the Department has discretion to permit historical vehicle exemptions except in the circumstances the statute spells out—with respect to a vehicle of historic character operated solely on a segment of a fixed route system which is on the National Register of Historic Places. We agree with commenters that vehicles which are manufactured to look like historic vehicles, but are not, or replicas, or old vehicles moved from their original location to a new location to serve as a tourist attraction, are not intended to be covered by the exception. It is fair to infer from the statutory language that what Congress intended to cover was a historic system, where not only the vehicles themselves are of historic character but also the fixed segment on which they operate has sufficient historic importance to merit inclusion on the National Register. The example that come to mind is the San Francisco cable car system. The Department would appreciate information on others that might qualify.

The Department asks for comment on whether there would be merit to the suggestion that, where a historic vehicle exception is requested, the applicant be required to make good faith efforts to ensure accessibility to the vehicles by means that would not significantly alter their historic character. Such a requirement could be imposed as a condition of the grant of a waiver. The Department is concerned that such an approach, which would of necessity pertain to specific vehicles being remanufactured, might not result in significant accessibility in the system as a whole.

The Department also seeks comment on whether a vehicle operated within the confines of a museum—where it is the attraction rather than simply a means of getting around to other attractions (like operating trolley cars at a trolley museum, but not like the shuttle system at theme parks or sites like Colonial Williamsburg)—should be considered to fall within the definition of designated public transportation at all.

Section 37.65 Purchase or Lease of New Intercity and Commuter Rail Cars

This section incorporates the statutory requirement that new intercity and commuter rail cars be accessible. The specific accessibility provisions of the statute (e.g., different requirements for different sorts of intercity rail cars) are incorporated in the ATBCB guidelines

and Appendix A, rather than in the body of this proposed rule. With that exception, this section is the same as § 37.81 of the October 4 rule.

Section 37.67 Purchase or Lease of Used Intercity and Commuter Rail Cars

This section incorporates the statutory requirement that used intercity and commuter rail cars be accessible. The good faith efforts provision is parallel to that of §§ 37.53 and 37.51 of this NPRM, and is essentially the same as § 37.83 of the October 4 rule.

Section 37.69 Remanufacture of Intercity and Commuter Rail Cars and Purchase or Lease of Remanufactured Intercity and Commuter Rail Cars

This section differs from the counterpart sections for non-rail vehicles and light and rapid rail vehicles in two ways. First, the extension of useful life that triggers the section is ten, rather than five, years. Second, there is no historic vehicle exception. Both of these differences are statutory. As noted above, the distinction between rehabilitating and remanufacturing a vehicle applies. One transit system asked that the notion of "feasibility" be expanded to include cost as well as structural integrity. As explained in the preamble to the October 4 rule (55 FR at 40772), the Department believes that Congress intended the focus to be on structural integrity. We do not propose changing this provision. Except for references to the interim accessibility standards which are to be replaced by the ATBCB guidelines and appendix A, this section is the same as § 37.85 of the October 4 rule.

Section 37.71 Ferries and other Vessels

This section is reserved in the NPRM. Ferries and other watercraft, while not specifically mentioned in the text of the Act, would appear to be subject to coverage. The Department recognizes that passenger vessels may present different problems with respect to accessibility than buses and trains. The Department does not have a great deal of information about what the problems are or how to solve them. As a prelude to rulemaking, the Department solicits comment on these matters. A supplemental notice of proposed rulemaking may have to be issued concerning vessels. The Department also calls interested persons' attention to the provisions concerning vessels in the proposed ATBCB transit vehicles guidelines.

Subpart D—Acquisition of Transportation Vehicles by Private Entities

Section 37.91 Purchase or Lease of Non-Rail Vehicles by Private Entities Not Primarily Engaged in the Business of Transporting People

This section implements a complicated portion of the statute. For clarity, we offer the following chart, which concerns when, under the section, a private entity not primarily engaged in the business of transporting people must acquire an accessible vehicle.

System type	Vehicle seating capacity	Requirement
Fixed Route	Over 16	Accessible vehicle.
Fixed Route	16 or less	Accessible vehicle unless service is equivalent.
Demand Responsive.	Over 16	Accessible vehicle unless service is equivalent.
Demand Responsive.	16 or less	No requirement.*

*But § 37.125(a) requires provision of equivalent service.

It appears that a number of commenters find it quite attractive to be regarded as providing demand-responsive service. Some commenters said that vanpool service should be regarded as demand responsive. As noted above, the Department agrees with this characterization. We also note the comment in the Senate report that title III is not intended to apply to "volunteer-driven commuter ridership arrangements." (S. Rept. 101–116 at 72.) Consequently, the Department would view some, but not all, private vanpools as subject to the requirements of this section applicable to demand responsive services. For those employer-sponsored vanpools that would be covered under this section (i.e., which are not volunteer-driven), the Department seeks comment on the relationship of requirements under this section to requirements under title I of the ADA (employment).

The American Car Rental Association (ACRA) and a rental car company commented that shuttle bus systems between airport terminals and rental car lots should be regarded as demand responsive systems. This is so, ACRA says, because there is not a published schedule people can rely on, there is no prescribed route, and because customer demand and changes in airline schedules affect the timing of departures. ACRA also contends that the systems are demand responsive because there is an advance request for service that occurs when the customer reserves a rental car.

The Department is not wholly persuaded by this argument. Congress contemplated that shuttle services between airport terminals and other facilities could be either fixed route or demand responsive. *See* H. Rept. 101–485, Pt. 1, 38, citing an example of a fixed route hotel shuttle, and S. Rept. 101–116 at 68, citing an example of a demand responsive hotel shuttle. To accept the ACRA argument would be to determine that all such shuttle service is *per se* demand responsive, a determination at odds with the words of the statute and its legislative history.

In the Department's view, rental car shuttles (or hotel shuttles, or any similar service) may be either fixed route or demand responsive in a particular case, depending on the service characteristics involved. The Department recognizes that shuttle service may not always be a pure case either or fixed route or demand responsive service, but in particular circumstances may take on more characteristics of one or the other mode.

The most important defining characteristic of demand responsive service is that before an individual can ride, he or she must request the service, typically by making a call. *See* S. Rept. 101–116 at 54. If, for example, a rental agent, on behalf of the customer, makes a specific call to the rental car lot saying "Joe Smith just rented a car, please come and pick him up now," we would probably have a demand responsive situation. If the rental agent tells Joe Smith that he should go to the curb and wait for the shuttle, it is more likely that we would have a fixed route situation.

The absence of published schedules is no impediment to a system being considered fixed route. Operating with set intervals between vehicles or operating at set times of day is sufficient. *See* H. Rept. 101–485, Pt. 1, at 26. That the intervals or operating times may vary at different times of the day (including variations in response to airline schedules) is not sufficient to negate this element of the meaning of a fixed route service. It is possible that some rental car shuttles do not have a prescribed route. Many, however, do have prescribed routes (e.g., a loop from the rental car lot past a series of points at the terminal or terminals of the airport and back to the rental car lot). Again, the Department believes that the determination of whether a particular service is fixed route or demand responsive is one best made on a case-by-case basis.

These commenters suggested that the means that rental car companies use to provide equivalent service to passengers with disabilities was to bring a specially-equipped car around to the passenger at the terminal. The Department sees no objection to this approach to providing equivalent service, which seems well within the concept of equivalent service envisioned by Congress. *See* H. Rept. 101–485, Pt. 1, at 38, S. Rept. 101–116 at 68. The Department notes, however, that such service must truly be equivalent if it is to provide a legitimate rationale for not purchasing accessible vehicles. For example, the specially-equipped car should arrive in about the same amount of time as it would take the passenger to be served by the regular shuttle.

Finally, these comments suggested that the term "in the most integrated setting feasible" be replaced by "in the most integrated setting appropriate to the needs of the individual." The latter term is specifically used in section 302(b)(1)(B) of the statute. The Department will make this change, in the interest of consistency with statutory language. The change does not have any substantive effect in this context, however; the former requires nothing more nor less of rental car companies than would be required by the latter, in the Department's view.

With the exception, the proposed section is substantively identical to § 37.29(a) of the October 4 rule.

Section 37.93 Purchase or Lease of Non-Rail Vehicles by Private Entities Primarily Engaged in the Business of Transporting People

Section 37.95 Acquisition of Passenger Rail Cars by Private Entities Primarily Engaged in the Business of Transporting People

These proposed sections are substantively identical to § 37.29 (b) and (c) of the October 4 rule. For further information on these sections, readers are referred to the preamble discussion of § 37.29 of the October 4 rule (55 FR 40773–4).

Section 37.97 Ferries and Other Vessels

Similar considerations apply here for vessels operated by private entities as for those operated by public entities, as discussed under §37.71. The Department also seeks comment on whether any different provisions should apply to privately, as opposed to publicly, operated vessels.

Subpart E—Transportation Services

Section 37.111 Paratransit as a Complement to Fixed Route Service

This new section, and §§37.113–37.127 as well, are intended to implement section 223 of the ADA, which requires public entities operating fixed route systems to provide paratransit as a complement to their fixed route service. This service is intended for persons with disabilities who are unable to use accessible fixed route transit. The paratransit service is to be "comparable" to fixed route service. "Since the operations of fixed route and paratransit service differ so markedly, levels of service must only be comparable—not identical." H. Rept. 101–485, Pt. 1, at 28.

The statute is quite explicit about who Congress intended to be eligible for this service. Paragraph (b) of the proposed section requires each entity to have a process for determining "ADA Paratransit Eligibility." It is important to note that "ADA Paratransit Eligibility" is different from the eligibility requirement of the Department's current section 504 requirement and that "ADA Paratransit Eligibility" may differ significantly from a transit provider's existing eligibility standards. Particularly with respect to a situation in which a public entity's fixed route system is completely accessible, "ADA Paratransit Eligibility" encompasses a very narrow and specifically defined subset of the population of all individuals with disabilities. One of the keys to making the complementary paratransit requirement work is for transit providers to strictly limit "ADA Paratransit Eligibility" to persons in the statutory categories. See H. Rept. 101–485, Pt. 1, at 29–30. The proposal so requires.

The Department is aware that many existing paratransit systems currently carry a broader spectrum of persons than those who would be "ADA Paratransit Eligible". For example, some systems may make eligible all elderly persons, all persons with disabilities, or low-income persons. This rule would not in any way prohibit a public entity from providing service to such persons. However, service to persons other than "ADA Paratransit Eligible" individuals would not be required by this rule and would not have to meet the regulatory service criteria, and costs of this service could form a portion of an undue financial burden of meeting the requirements of this rule.

The first category of "ADA Paratransit Eligible" people consists of individuals who, as the result of their disabilities, cannot independently board, ride, or disembark from accessible vehicles. Persons with mental and visual impairments, as well as physical disabilities, may be eligible in this category (e.g., persons who are unable to determine where to get off the bus).

The second category of ADA Paratransit Eligibility concerns individuals who have a "specific impairment-related condition" which prevents them from getting to a boarding or from a disembarking location. The House report cites, as examples, people with chronic fatigue syndrome, visual or mental impairments, or special temperature sensitivities whose disabilities do not allow them to get to a stop or from a stop to their destination. See H. Rept. 101–485, Pt. 1, at 29. Physical barriers in the environment—lack of curb cuts, hills, distance from a stop, snow, etc—do not, by themselves, confer eligibility in this category. See H. Rept. 101–485, Pt. 1, at 29.

It should be emphasized that this category is intended to be very narrow, limited to a few ascertainable conditions, and not intended to include persons who find it uncomfortable or difficult to get to and from stops. During the drafting of the NPRM, inquiries were made to DOT staff concerning, for example, a wheelchair user who had difficulty pushing his manual wheelchair through snow or an elderly person who expressed difficulty walking three blocks to a bus stop. It seems clear from the statutory language and legislative history that such persons were not intended to be regarded as ADA Paratransit Eligible. The Department seeks comment on any refinements that should be made to the proposed rule text in this regard.

Read together, these categories include people who, because of a disability, cannot "navigate the system" or successfully use it for transportation, even if they can enter a bus. A consequence of this concept of eligibility is that eligibility may be subject to a trip-by-trip review. For example, a person with a visual or mental impairment may have been trained to go from his/her usual bus stop to his/her workplace. But if there is a detour from the usual bus stop because of construction, or if the individual is going to a different bus stop to go to a doctor's office or a movie, the individual may not be able to complete the trip independently. In the first case, the individual would be able to use fixed route transit, and so would be ineligible for paratransit. In the second case, the same individual would be unable to use fixed route transit, and would be eligible

for paratransit. Of course, an individual can be eligible on the basis of either a permanent or temporary disability.

The eligibility categories discussed above will continue to exist even when all bus systems are 100 percent accessible. The third eligibility category, however, is more a transitional device to full fixed route accessibility. It includes individuals who need a level change mechanism to use a bus or other vehicle, during times when an accessible bus that the individual can use is not being employed on the route on which the individual wants to travel.

Suppose, for example, that a transit authority has 20 bus routes. Five are run with all accessible buses. Ten have no accessible buses. The other five have accessible buses only during peak hours. If an individual who uses a wheelchair wants to travel on a route that has no accessible buses, or travel during off-peak hours on a route that offers accessible buses only during peak hours, that individual would be eligible for complementary paratransit. (The individual's eligibility would vary with the trip he/she wanted to make; he/she would not be eligible for paratransit for a trip he/she could take on an accessible route.) As the bus system becomes fully accessible, this type of eligibility would gradually disappear.

With respect to persons in this transitional eligibility category, the Department's preliminary view is that "on-call" bus systems (i.e., the use of accessible buses on a particular route at a particular time in response to an advance request from a passenger) would suffice to meet the complementary paratransit obligations of transit providers. Since these persons, by definition, are able to use accessible buses, providing an accessible bus to them on request would seem to meet the intent of the statute and provide them transportation they could readily use. Obviously, the service would have to meet the criteria respecting hours and days of service, response time, fares, and so forth. The Department seeks comment on this point and on whether further regulatory specification is necessary.

In the Advisory Committee, there was some discussion of problems that occur when a lift cannot be used at a stop without a sidewalk or curb (e.g., because the lift stops at curb height, leaving a several-inch gap between the lift and the street) or some similar reason not under the control of the transit operator. The Department seeks comment on whether an individual with a disability who would otherwise use an origin or destination stop at which the lift cannot be used for such a reason would be eligible for complementary paratransit for that trip, under the third eligibility category discussed above.

The Department seeks comment on another variation on this situation as well. A person in this final eligibility category could use accessible mass transit but is unable to do so because there are no accessible vehicles on the route he would use. If a paratransit vehicle picks the individual up at his residence and takes him or her to an accessible bus or rail line, and the accessible bus or rail line could take the person to or near his or her destination, that service arguably meets the intent of the statute. (Similar service would have to be provided for the return trip, of course.) The regulation would incorporate the statutory requirement concerning persons accompanying ADA Paratransit Eligible riders on paratransit. One person accompanying the eligible individual would always have to be provided service, with others carried on a space-available basis. These requirements go to anyone the eligible individual wants to travel with—friends, family, a date, etc. There could be no requirement that the person accompanying the eligible person be an attendant.

Each entity would have to have a process for determining "ADA Paratransit Eligibility." Information about the process and materials necessary for eligibility would have to be made available in accessible formats. To encourage efficient processing, the Department is proposing a "presumptive eligibility" status for applicants. If an individual with a disability submits a complete application for eligibility, and does not receive a decision within a time to be specified in the rule, the individual would become "presumptively eligible" until such time as the entity made a determination to the contrary. The Department seeks comment on what time period would be appropriate (e.g., two weeks, four weeks).

Decisions concerning eligibility would have to be provided to the applicant in writing (again, in accessible formats where needed), and, at least in the case of denials, would have to state the basis for the decision. There would have to be an administrative appeals process. The NPRM does not propose any details of how such a process would work; our view is that the details should be worked out as part of the entity's planning process for complementary paratransit. It would have to involve basic administrative due process protections, however. The Department seeks comment on whether any additional specification is needed.

To persons found ADA Paratransit Eligible, the entity would issue an identification card or other documentation specifying on its face that the individual was "ADA Parastransit Eligible". The documentation could State any conditions or limitations on the person's eligibility. The main reason for this requirement is to provide to persons with disabilities documentation of their ADA paratransit eligible status that they could present when they sought to use out-of-town paratransit service. The Department, in the interest of reducing potential paperwork burdens, seeks comment on whether such documentation should only be provided on request, or could be omitted.

The proposed rule provides that any person with disabilities who travels to another jurisdiction would be eligible immediately for paratransit service. The NPRM would require that any public entity provide service to any individual with disabilities with a current ADA Paratransit Eligibility card from any other public entity. If the visitor does not have an identification card (e.g., the visitor comes from an area that does not have a mass transit system or does not need paratransit in a city with which he or she is familiar), the public entity would provide service to any individual with a disability who asserts ADA Paratransit Eligibility.

As proposed, the NPRM handles out-of-town visitors differently from persons with disabilities who reside in the jurisdiction, since a resident may have to wait a period of time before becoming presumptively eligible. The visitor would, in effect, be presumptively eligible immediately. The Department thinks this difference is reasonable, given the different challenges facing a visitor and the fact that, in the case of most business or pleasure trips, the visitor is likely to have come and gone before normal application processing would be complete. The Department seeks comment on this issue.

There were a substantial number of comments about eligibility to the March 1990 NPRM. Many of these comments related to March 1990 proposals which have now been overtaken by the ADA provisions on the subject. A few of the comments related to the eligibility process. Various commenters asked for a neutral third party to make eligibility decisions, provisional eligibility, an appeal mechanism, and local option in the decisionmaking mechanism. These comments are incorporated, to one degree or another, in the proposal.

Paragraph (c) of this section sets forth the proposed service criteria for

complementary paratransit. In order to meet the statutory obligation for comparability, a complementary paratransit system is required to meet these criteria. (If an entity is granted an undue financial burden waiver, it could comply with the rule while providing less than a comparable level of service.)

Service Area

The first criterion concerns service area. The ADA (section 222(c)(2)) requires the provision of complementary paratransit "in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service." Both House and Senate reports say that service must be provided "throughout" the service area. *See* H. Rept. 101–485, Pt. 1, at 30; S. Rept. 101–116 at 52.

In the current section 504 rule and the March 1990 NPRM, service area was defined in an areawide sense. The 504 rule uses the term "circumferential" service area, meaning that the transit area would provide service to all origins and destinations within an area whose boundaries are defined by "connecting the dots" representing the outer ends of transit lines (except for commuter lines).

There were few comments on this issue to the March 1990 NPRM. A few disability organizations supported the existing approach; a few transit authorities wanted discretion to define their own service areas for paratransit purposes. One transit authority asked about how overlapping service areas would be handled.

In the Advisory Committee, there was considerable discussion of what came to be called the "starfish" or "crab" model (the identity of the crustacean involved was thought to vary with local geography). In this concept, the public entity would identify corridors of a given width along all its fixed routes. Paratransit service would be provided to origins and destinations within the corridors. The merit of this model, as committee members discussed it, was that it would closely implement the intent of the ADA, viewed as providing for eligible individuals with disabilities paratransit service comparable to (but not better or more readily or widely available than) service provided to users of the fixed route system.

The Department believes that this model is a sensible and appropriate way of approaching a service area criterion under the ADA. Consequently, the Department proposes that complementary paratransit service be provided to all origins and destinations within a corridor of a given width on each side of any fixed route, except for commuter bus-only routes. The Department seeks comment on both this concept and the appropriate width of the corridors. A width of one mile was discussed in the Advisory Committee; on the other hand, ¼ mile is a distance often used for transit planning purposes. A committee member also mentioned an approach considered in one transit system in which ¼ mile would be used for urban areas, one mile for suburban areas, and 1½ miles for exurban or rural areas.

The Department also seeks comment on how, if at all, this criterion should be modified for light and rapid rail operators (as fixed route operators, they are subject to the complementary paratransit requirement). A simple corridor paralleling the rail line may be inadequate, given the territory from which a rail system typically draws passengers. One member of the Advisory Committee suggested the concept of a "catchment area" for this purpose. Another idea could be a circle of a certain radius around each station. The Department seeks comment on these or other ideas as well as how they might be operationalized.

Service areas of two or more public entities abutt or overlap in a number of metropolitan areas around the country. For example, significant parts of the service areas of a number of public transit authorities overlap in the San Francisco Bay and Los Angeles areas. In the Washington DC area, there are smaller, local fixed route systems embedded in the service area of the principal transit provider. The principal way contemplated by Congress for dealing with overlaps of this kind is through coordination:

> With regard to overlapping or contiguous service areas of fixed route systems operated by public entities, it is the Committee's expectation that, to the extent possible, the public entities providing paratransit in these areas will coordinate the overall paratransit service provided. In fact, it is quite possible that a single public entity might provide better, coordinated paratransit service in the combined, overlapping or contiguous service areas of several fixed route operators (or better coordinate service among these operators) than if each of the operators provided a portion of the service itself. [The regulations should permit this approach] * * * so long as the total level of service provided met or exceeded the combined level of service which would otherwise be required of all the affected fixed route operators. The coordinating public entity would share joint responsibility with the fixed route operator(s) [for both service and planning]. H. Rept. 101–485, Pt. 1, at 30–31.

The issue of coordinated and combined planning and service provision is discussed in connection with the subsequent sections.

The proposal includes a proviso that an entity would not be required to provide service outside the jurisdiction in which it is authorized to operate. For example, suppose a transit authority is authorized to operate only within a particular county. One of its routes parallels the county line, a quarter-mile away from the line. Providing service a mile from the bus route would have the transit authority serving a three-quarter mile swath of the next county, in which the authority is not legally authorized to operate. In this case, the service could stop at the county boundary. Hopefully, service with the next county could be coordinated to avoid problems to passengers in this situation.

Response Time

The next criterion is response time. Section 223(a) requires that complementary paratransit response time be "comparable, to the extent practicable" with the fixed route service. The qualification was introduced to acknowledge "that paratransit vehicle response time may not meet a standard of comparability with a fixed route system which operates vehicles at short headways." H. Rept. 101–485, Pt. 1, at 28.

The current DOT section 504 regulation and the March 1990 NPRM both included a 24-hour response time criterion. The explanatory appendix to the existing regulation noted that, as a practical matter, this criterion often would boil down to next-day service. 51 FR 19027, May 23, 1986. Transit provider comments to the March 1990 NPRM almost unanimously endorsed the 24-hour response time criterion. Disability groups virtually all favored a shorter response time. Suggestions included making "next day" service an explicit regulatory requirement, specific shorter response times (e.g., 8, 4, or 2 hours, or a requirement that phased in progressively shorter response times over several years), or response times comparable to bus headways.

Advisory Committee discussion focused on two major alternatives. One was "next day service," in which a call to the transit provider at any time during normal business hours one day, would result in a pickup at any time the next day. Proponents of this advance reservation approach said that allowing the transit provider overnight to schedule the next day's trips would result in more efficient use of vehicles and vehicle hours and miles, thereby reducing costs. The other alternative was referred to as "real-time

scheduling," in which a call to the transit provider would result in an "as soon as possible" pickup the same day. (This approach assumes radio or cellular telephone communication between dispatcher and vehicles.) Proponents of this approach said that, in addition to providing greater passenger convenience, real-time scheduling would result in efficiencies because there would be fewer cancellations and no-shows. (Some paratransit systems which use advance reservation scheduling reportedly have cancellation/no-show rates as high as ⅓ of all reservations.)

Proponents of real-time scheduling cited instances in which the practice had resulted in lower per trip costs. They also pointed out that, since most systems with advance reservation systems set up return trips on an as-needed basis, those systems were already, in effect, using real-time scheduling for half their trips. Proponents of the next-day service approach pointed to studies and experience showing that (at least in part because of higher demand generated under real-time scheduling) real-time scheduling resulted in higher overall program costs. They also said that advance scheduling was less labor intensive and created fewer administrative problems.

Participants in the discussion suggested various ways in which the two ideas might be combined. For example, there could be a baseline requirement of next-day service, with a requirement or means of encouraging providers to use real-time scheduling for an increasing percentage of trips over a period of years. It was also emphasized that the use by a system of real-time scheduling did not exclude the use of advance reservations in appropriate cases (e.g., subscription service, reservations by people who wanted a vehicle to arrive at a time certain the next day).

The proposed regulatory text incorporates the next-day service concept, but we also seek comment on the respective merits and problems of the alternative approaches. The Department also seeks information on the cost impacts of real-time scheduling, particularly data supporting (or refuting) claims that it results in greater efficiency and higher overall costs.

The regulatory proposal on response time also seeks comment on the times during which reservation service is available. The basic requirement is to have reservation service available during normal business hours. On days when the offices are not open, but there will be service the next day, there would have to be a reservation system available to ensure actual next-day service, during the equivalent of normal business hours (e.g., 8:30–5 on Sundays). We recognize that these hours are likely to vary among localities.

Comparable Fares

The next criterion is comparable fares. The text of the ADA does not specify any particular requirement for fares. The Senate report mentions that fares should be comparable to those charged users of the fixed route system for a trip of similar length at a similar time of day. S. Rept. 101–116 at 52.

The current section 504 rule requires comparable fares. The explanatory appendix notes that this idea of comparability includes the possibility of paratransit fares approximately twice as high as fixed route fares. 55 FR 19027, May 23, 1986. The March 1990 NPRM proposed two alternatives, one of which would maintain the existing concept and the other of which would require that fares not exceed fixed route fares for a similar trip at a similar time of day.

Transit providers who commented on the March 1990 NPRM predominantly favored the existing approach, which they said gave them some flexibility to take into account the cost differences between the two modes of service. One major coalition of disability groups said that this approach was acceptable as long as there was a ceiling on fare differences (e.g., no paratransit fare could be more than twice the fixed route fare), as long as there could be no exorbitant fares and UMTA monitored fares on a case-by-case basis. Most disability group commenters favored the stricter "may not exceed" approach, however, one of them noting that while doubling or tripling the fixed route fare would not provide that much additional income to the transit provider, the difference could deter individuals with disabilities (especially those with low incomes) from using the service.

The Department is proposing a refinement of the existing approach. Fares would have to be comparable, with the base fare for determining comparability being the base fare for using the fixed route system. This would include any discounts that the person would receive on the fixed route system (e.g., the required off-peak half fares for individuals with disabilities and individuals with longevity). The entity could charge the equivalent of transfer fees, premium service charges (e.g., for express bus service), or other exactions that a passenger on a comparable fixed route trip would encounter. Except for such fees and charges, the provider could charge no more than twice the base fare.

For example, suppose the base fare is $1.00. During peak hours, the transit provider could charge no more than $2.00 for a paratransit trip, with the exception that if a transfer fees and premium charges applicable to a comparable fixed route trip would bring the total cost of the fixed route trip to more than $2.00 (e.g., base fare of $1.00+$.50 transfer fee+$.75 premium charge for express service=$2.25), then the transit provider could charge the comparable fare higher than $2.00 ($2.25, in this example).

Since the entity's paratransit plan would have to speak to fares, as well as other service characteristics, UMTA would have the opportunity to review the fare policy.

One point made during the Advisory Committee meeting concerned arrangements between transit providers and social service agencies for transportation of the agencies' clients. In such a situation, in which the agency pays for service to one or more clients and it, rather than the individual client, sets up the service, this provision is not intended to stop the transit provider and the agency from agreeing on a higher fare or charge for the service. We would also point out that, since these service criteria do not apply to non-ADA Paratransit Eligible users of the service, the entity would not be constrained by this paragraph with respect to its fare policy for those users.

Trip Purpose: Hours and Days of Service

The next two criteria have not been controversial. Prohibiting restrictions based on trip purpose and requiring paratransit service during the same days and hours of service seem clearly to be among the components of a comparable paratransit service. Both provisions were in the existing section 504 rule and the March 1990 NPRM. There were few comments on these criteria, most of which supported their continued use. A small number of transit providers suggested there should be local option. The NPRM would include both criteria.

One idea that was discussed in the Advisory Committee concerning hours and days would involve averaging the duration of service on all fixed routes and using that average as the number of hours during which paratransit service would be required. This would have the effect of permitting paratransit to be shut down during hours (usually "night owl" times on the system when only a reduced number of fixed routes were operating) in which low paratransit demand would be expected. While probably making paratransit service more efficient, this idea could result in

an eligible user who wanted to go somewhere at 2 a.m. being unable to do so, whereas a fixed route user counterpart would be able to travel at that time. The Department seeks comment on the advisability of this approach.

Capacity Constraints

The final criterion would be new. It would prohibit capacity constraint devices that limit the availability of paratransit services to eligible persons, such as waiting lists, limits on the number of trip available to a particular user in a given time period, consistent denials of trip requests based on insufficient capacity, or consistent untimeliness in terms of pickups or excessively long trips times. Such capacity constraints are inconsistent with the concept of comparable service.

While fixed route capacity is constrained in some senses (e.g., by limitations on routes and schedules), paratransit that meets the other criteria is already comparable to the constrained fixed route system. Additional administrative constraints imposed on paratransit users exceed the limits of fixed route service, and have no true parallel for fixed route users (e.g., no fixed route user is told he/she can get on a bus only 15 times a month). The Department seeks comment, however, on the idea that capacity constraints on complementary paratransit analogous to the unmet fixed route demand on the system could be acceptable, and on how this comparison would be made.

The ADA excepts from the complementary paratransit requirement routes where a public entity provides solely commuter bus transportation. The Department, consequently, is not proposing complementary paratransit meeting the requirements of § 37.111 for commuter bus routes.

Section 37.113 Requirements To Develop and Submit Paratransit Plan

This section sets out the general requirement that all public providers of fixed route service are required to develop and implement a plan for paratransit service that is a complement to its fixed route service. Both the statute and the legislative history make it clear that paratransit service is to be just as described—complementary to a public provider's fixed route service. One of the goals of the ADA is to guarantee access to transportation by persons with disabilities. The paratransit services required by this regulation are intended solely as a substitute for fixed route accessible service for those individuals who as a result of their disabilities cannot use accessible fixed route service, or for whom, in the transition period while accessible service is being implemented, it is unavailable. Therefore, the service must be comparable to the entity's fixed route service, as discussed earlier in this preamble.

The legislative history to section 223 discusses the possibility of public entities cooperating with each other in providing coordinated paratransit. To help facilitate this goal, § 37.115 of the proposed rule makes it clear that more than one entity may submit a paratransit plan.

The paratransit service required by the ADA is a complement to fixed route service. An entity providing only demand responsive service is not required to develop a paratransit service under this section.

The definition of fixed route service for the purpose of this regulation does not include any service which involves an interaction between the user and the system, beyond waiting at a stop for a bus. If, in order to receive service, a potential user must, or may, call in advance to request service, the system would be considered demand responsive rather than fixed route, even though there may be fixed starting and ending points. Some rural and small urbanized operators may find on careful evaluation that what are currently assumed to be fixed route operations may actually be fixed route deviation services not subject to the complementary paratransit requirement.

In addition, it is possible, during the planning process for paratransit service, that a community currently providing fixed route service may decide that the transportation needs of the entire community might be better served by providing a good demand responsive system than by making the compromises necessary to implement complementary paratransit in addition to fixed route service.

In some rural and small urbanized areas, citizens with and without disabilities may be well served by a single demand responsive service. The ADA allows this substitution of mode when it is the result of the local planning process involving full public participation. On the other hand, if a community thinks that it is in the position of not being able to afford both fixed route service and comparable paratransit and is considering dropping its fixed route solely to avoid the requirements of the regulation, it should consider applying for a waiver based on undue financial burden, as discussed in §§ 37.123–129.

Section 37.115 also specifies that the initial plans must be submitted by January 26, 1992, and annually thereafter. The ADA allows very little time between the statutory deadline for DOT issuing its final rule (July 26, 1991) and an entity's required submission of its paratransit plan (January 26, 1992). While no proposed rule is binding, the Department encourages entities to work with the proposed rule in beginning its planning process early. To the extent the final rule changes from the proposed rule, the Department will take that into consideration in reviewing the plans. We believe that it is important to begin the planning process as soon as feasible, since public participation and comment are such an important element of the planning process.

As proposed, the plans are to be submitted to one of two places. Any section 18 recipient that is a public body operating a fixed route transit service must submit its plan to UMTA through the state agency which administers the section 18 program. Likewise, any small urbanized area which receives section 9 funds through a state administered program rather than directly from UMTA must submit its plan through the state administering agency. In addition, public entities which operate fixed route transit service, but do not receive UMTA funds, also must submit plans through the state agency administering public transportation programs. The Department assumes that the vast majority of these non-UMTA recipients are beneficiaries of state transportation program funds.

Because the statute assigns to the Secretary the ultimate responsibility for reviewing and approving or disapproving plans, this section would require UMTA to be the decisionmaker in all cases. However, given the prominent state role with respect to these categories of providers, the proposal would call on the states to conduct the initial review of the plans and to make a recommendation to UMTA concerning disapproval or other action. UMTA would then act, taking the state's recommendation into consideration. We considered the possibility of delegating the approval/disapproval decision to the states in these cases. However, given the language of the statute, it is doubtful that this responsibility may be delegated outside DOT.

All other recipients of section 9 funds, and other UMTA recipients not described above must submit their plan directly to the UMTA regional office. Any plan which includes coordinated efforts between two or more states must be submitted directly to UMTA as well.

While the statute requires "annual" submissions of a paratransit plan, the Department seeks only information which indicates how circumstances have changed in the past year. It is unlikely anyone would have to submit an entirely new plan after the first year, unless the plan were being submitted by different entities than the initial plan or the submitting agency significantly changed its plan over the year.

Section 37.115 Specific Requirements for Developing a Paratransit Plan

This section sets out the requirements for developing the paratransit plan, including public participation, a public hearing, opportunity to comment, etc. An important element of this planning is to provide the material in a variety of accessible formats.

Section 223(c)(6) specifies that each public entity operating fixed route service hold a public hearing and "consult with individuals with disabilities" in developing its plan. The proposed rule specifies an annual hearing requirement, to precede both the submission of the first paratransit plan, and each annual plan thereafter.

Section 37.117 Contents of the Plan

The Department proposes a specific list of elements in the plan, which must be included to be considered complete. An entity may, if it wishes, submit additional data that relates to its unique circumstances. In the final rule, the Department anticipates setting forth for format in which plans must be submitted in more detail.

Under paragraph (e) of this section, the Department proposes requiring a timetable for plan implementation. Although not discussed by the Advisory Committee, some kind of timetable for implementation of the plan was raised individually by members of the Committee. It is also one of the most frequently asked questions of UMTA since the ADA's passage.

In keeping with the rest of the rule, this section does not prescribe a specific time by which all paratransit plans must be fully operational. Because entities have chosen different ways of providing accessible transit in the past, there are a variety of factors which can affect each community's ability to implement different phases of its plan. In the Department's previous 504 rule, plans had to be completely operational within five years of the effective date of the rule. The Department seeks comments on whether a similar deadline should be specified in this rule. If none is specified in the rule, then each entity's timetable specified in its plan would be subject to review as part of UMTA's review of the plan as a whole. This allowance of a "phase-in" period is based on our view that the statute, when it provides for a public entity to begin implementing its plan in January 1992, does not mean that service fully meeting the regulatory criteria must be up and running immediately. In many cases, this would not be possible.

This section also includes the requirements of section 223(c)(8) of the ADA, that the entity "identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies." While the submitting agency is free to "count" this paratransit service in assessing whether the paratransit service in the area is comparable, paragraph (b) of § 37.119 specifies that the entity submitting the plan must ensure that the service criteria are met. Thus, if service provided by another organization does not meet all of the service criteria, the public entity will have to supplement that service. For example, if a private non-profit agency provides medical trips on Mondays and Fridays, these trips can be counted toward meeting the need of the paratransit plan. However, since the trips are limited as to trip purpose—only for medical trips—the public entity would have to ensure that other trip needs are also being met during that time period.

To the extent that (particularly in a metropolitan area) fixed route providers may wish to collaborate to produce a consolidated plan, the proposed rule allows this. However, since in this case the actual preparer of the plan may not be an operator of fixed route service (such as a metropolitan planning organization or a regional transportation authority), paragraph (i) of § 37.119 requires that any consolidated plan include certifications by the fixed route operators, affirming their participation in the development and execution of the plan.

Section 37.119 Review and Approval of Plans

In reviewing each paratransit plan, UMTA and the states will look to see that the plan meets the requirements of the statute and the regulation, contains all necessary elements, and is feasible. This review will include an examination of the level of commitment to the plan, as well as circumstances unique to the particular entity.

Section 37.121 Plan Implementation

Section 37.121 contains the requirements for implementing the plan. Because the statute does not specify a deadline for review of the plan, but suggests simultaneous submission and implementation of the plan, the proposed rule requires an entity to begin implementation of its plans in good faith while UMTA/State review the plan. This requirement to begin implementation must be consistent with the entity's phase in schedule identified in the plan, and must be done in good faith, whether or not the entity has requested an undue financial burden waiver.

Undue Financial Burden

Sections 37.123—37.127 contain procedures for requesting a waiver of the paratransit service requirements based on undue financial burden.

In the March 1990 NPRM, the Department set forth a number of proposals for how an undue burden might be calculated. These proposals were based on the idea that what made a burden "undue" was the effect the cost of providing complementary paratransit would have on the rest of the entity's transit service. So if fares had to be increased, or service reduced, or deficits increased, by a certain percentage, then the burden could be viewed as undue. While some commenters embraced one or another version of this approach, most comments did not find the approach satisfactory. Concerns were expressed that it would have to depend on arbitrary percentage cutoffs or would set different transit constituencies against one another.

The Department continues to view effects on other aspects of transit service as a relevant consideration relating to the determination of whether a burden is undue. Another aspect of undue burden, conceptually, is the idea of disproportionality. A burden may be regarded as undue because the cost of providing paratransit service meeting the service criteria is out of proportion to the cost of providing it that other, similarly situated, entities must bear, or because substantially greater numbers of trips would need to be provided to users of the paratransit service than are provided to users of the fixed route service.

The Department received numerous other comments on the undue financial burden waiver provisions in its March 26, 1990, proposed rule. Most notably, transit properties urged the Federal government to fund the civil rights provisions it had mandated in the ADA. In the absence of increased funding, some commenters felt that almost any burden was undue. While the

Department understands the difficulties facing transit providers, it is a fact that, under the ADA, providers will have to undertake additional burdens, and which Federal funds will not be available to carry. Still other comments recommended that the costs of providing fixed route accessible service be included in the calculation of undue financial burden. The statute, however, makes clear that it is only the burdens of providing complementary paratransit service that may be considered. Many comments favored letting the local planning process (including public participation and involvement of persons with disabilities) play a role in sorting out the local priorities. The ADA and this NPRM call for the involvement of the local planning process in determining the service that will be provided.

The Department and Congress recognized that while it is the intent of the ADA that both accessible fixed route service and comparable paratransit service be implemented, there are transit providers in some areas which will not be able to meet the goals of the ADA immediately without tremendous financial hardship. The Department recognizes the specific mandates of the ADA to ensure access to transportation by those with disabilities and assumes good faith on the part of transit providers in implementing the services required.

Clearly, the requirement for paratransit service that is comparable to fixed route service will impose varying levels of burden on transit operators. Those systems which have emphasized accessible fixed route service, the ultimate goal of the ADA, may have to work harder to implement totally new paratransit services. On the other hand, the initial demand for paratransit service may be less because more individuals with disabilities will have access to mainstream service. Systems which have relied on paratransit service to meet the requirements of the 504 rule will have experience in operating paratransit service and a base fleet of paratransit vehicles with which to begin complementary service. These same systems will have much greater demand for paratransit service until the fixed route fleet becomes accessible. Many such existing paratransit services also had capacity constraints which will have to be removed to comply with the service criteria for comparability.

Since, under the statute, only those expenses incurred for implementing comparable paratransit to ADA Paratransit Eligible persons, not for acquiring accessible vehicles for use in fixed route service, are considered when determining what is an undue burden, the impact of the ADA may be felt differently by communities, depending on their previous approach to 504 compliance. The Department recognizes this situation and believes that current efforts will be reflected in the plans and in any undue financial burden waiver requests. Communities with good previous experience in involving local groups will enter the planning process with an advantage.

The proposed rule establishes service criteria which are considered by the Department to provide a comparable level of service to persons with disabilities. Section 37.127 lays out the basic provision that UMTA will make a waiver determination on a case-by case basis and sets out three options for the proposed "trigger" for being able to request a waiver on the basis of undue financial burden. (These trigger mechanisms would not ensure that an entity receives a waiver; they merely establish the entity as eligible to request a waiver). The Department seeks comments on other approaches (including other trigger mechanisms) to determining undue financial burden as well.

The first option would provide that each entity must meet all of the service criteria, and if it cannot do so without a significant adverse effect on its overall service, then it may apply for an undue financial burden waiver. This action would allow any entity that believed that providing complementary paratransit meeting the criteria would have a significant adverse impact on its overall service to apply for a waiver.

The second option is similar to the first, with an added measure in the triggering event. The proposed rule lays out a trips per capita concept: the entity is eligible to request a waiver if the entity cannot provide as many trips per registered ADA-eligible person capita, as it does for its fixed route trips per capita, based on general population, without a significant adverse effect on its overall service. This second option was discussed at length at the ADA Federal Advisory Committee.

In this second option, the entity first calculates trips per capita based on the population of the service area divided into the number of fixed route transit trips provided. Second, the entity provides this same number of paratransit trips to persons registered and meeting the eligibility requirements of § 37.111 of this part, on a per capita basis.

For example, if the population of the service area is one million persons, and the fixed route service provides 50 million annual trips, then the system provides 50 trips per capita. In this example, the trigger for this entity requesting an undue financial burden waiver request would be the inability to provide 50 trips per ADA-eligible and registered capita without a significant adverse effect on its overall service. In requesting a waiver based on trips per capita, the entity must ensure that service provided meets the service criteria to be considered eligible for inclusion in the per capita calculation.

There are a number of variations on this option that could be used. For example, instead of general population figures used in the first calculation, the formula could be based on the number of persons served by the transportation system in the previous year. Another modification could be that the ADA Parastransit Eligible rate could be determined using the total number of ADA-eligible individuals in an area, rather than ADA-eligible persons registered for service.

In addition, other service measures could be used in the formulation of a trigger for eligibility to request a waiver instead of the trips per capita. For example, a measure of service which could be substituted for passenger trips per capita is passenger-miles per capita. This measure combines the number of rides and the trip distance, providing a comparable statistic to use in the determination of undue financial burden. Passenger-miles is a calculation UMTA section 9 recipients already perform, so that this calculation would not be completely new to UMTA recipients.

The third option on which the Department seeks comment would be to make use of the extensive research the Department has undertaken in the last few years in an attempt to determine the cost of providing different levels and types of services. The Department would calculate the average cost of providing service meeting the criteria in cities in several size categories. This calculation would probably have to be made initially with data from an existing computer model of paratransit service used in the regulatory impact analysis for this NPRM. Later, it could be based on data collected from public entities concerning their complementary paratransit service. (If this option were adopted, it is likely that an additional information collection requirement would be established for this purpose.) An entity that exceeded the average cost for its size category (or, alternatively, exceeded a figure one

standard deviation above the average) would be eligible to apply for a waiver.

For the information of commenters considering this option, the following chart presents the Department's current, preliminary, estimates of the average costs of providing complementary paratransit to ADA-eligible persons meeting the service criteria. It should be noted that these figures are preliminary estimates that are being refined as part of the Department's ongoing work on its regulatory impact analysis, and that the Department's final estimates may change.

City size category	Estimated average annual cost
Ten largest entities	$28,699,000
Over 1 million	10,028,000
500,000–1 million	5,782,000
250,000–500,000	2,056,000
Under 250,000	746,000

Obviously, if it made sense to do so, these categories could be arranged differently. There is a gap in the current coverage of the model, which does not separately cover small transit operators (i.e., those in areas under 50,000 population).

It is important to point out that in all calculations of undue financial burden, the costs of providing comparable paratransit service must be in terms of the three ADA-eligible categories discussed in detail in the preamble for § 37.111. It is not appropriate for the Department to interfere with local policy decisions concerning the expansion of eligibility categories based on local circumstances. However, in reviewing an application for a waiver, only costs for providing service at the levels set forth in the criteria to ADA Paratransit Eligible individuals can be considered. Service at higher levels, or service to other persons (e.g., all persons above a certain age) cannot be taken into consideration, since costs for such service are incurred voluntarily by the public entity, and are not part of the "burden" imposed on the entity by the ADA and this regulation.

Section 37.127 lists the factors the Department will consider in determining undue financial burden. No single factor will govern this determination. The different factors attempt to reflect changes to service, without putting paratransit service against fixed route service. What may be adequate service in one jurisdication may not be adequate in another.

We would point to one of the factors, the efficiency of providing service, in context of a suggestion from the House Public Works and Transportation Committee.

> The regulations issued pursuant to this section may include a requirement that each fixed route operator consider measures to improve the cost effectiveness of the delivery of both fixed route and paratransit service provided by that operator before limiting paratransit service under the undue financial burden limitation. H. Rept. 101–485, Pt. 1, at 31.

For example, it appears that in cities above 250,000 population, considerable savings could be realized by the use of user-side subsidy systems rather than public entity-provided paratransit. Another of the factors, concerning effects on other services, would allow the transit agency to take effects on other forms of specialized transportation service (e.g., for elderly persons) into account as well as effects on fixed route transit.

In asking for information on the resources available to provide complementary paratransit, the Department is seeking information on the financial picture of the applicant. For example, city A and city B may have about the same costs for providing complementary paratransit, but city A may have substantially greater resources available for this purpose than city B. This information about resources would be essential to the Administrator in determining whether the cities' waiver requests should be granted. The Department would not intend, however, to attempt to require cities to seek new funding sources (e.g., additional taxes, additional appropriations from their state legislatures) in order to be granted an undue burden waiver. Such a requirement would, in our view, go beyond the policy of Executive Order 12612 on Federalism.

A public entity seeking an undue burden waiver, in its paratransit plan, would have to submit a description of the service it would propose to provide if the waiver were granted. The UMTA Administrator could require changes in this service, consistent with the avoidance of an undue burden, needed to maximize paratransit availability to ADA-eligible persons.

As discussed earlier in this preamble, the Department proposes to interpret the statute to include public universities providing transportation under subtitle B of title II. Thus, as a public provider of fixed route service, the university would be subject to complementary paratransit requirements and eligible to apply for a waiver on the basis of undue financial burden. While the Department proposes to deal with requests from public universities within the framework proposed for all public entities, we seek comment on whether additional or modified criteria should be established for public universities in the final rule.

It should be noted that, under § 37.123(b)(2), an undue financial burden wavier could be conditioned upon the jurisdiction providing at least a minimum level of service, which the proposed section would define as providing service along key routes during core service hours. Such a requirement is authorized by section 223(c)(5) of the ADA. However, there may be cases in which it is not feasible for a public entity to provide even this basic paratransit service. For such cases, the proposed § 37.123(b)(3) provides that the Administrator may, instead of requiring the entity to provide any service of its own, merely require the entity to coordinate with other available providers of demand responsive services. The Department seeks comment on these provisions as the basis for the service that a public entity would have to provide, even if doing so resulted in an undue financial burden.

Section 37.129 Interim Requirements of Over-the-Road Bus Service Operated by Private Entities

Section 306(a)(2)(A) of the ADA requires the Department to issue interim regulations for over-the-road bus[es] (OTRB) service provided by private entities. These requirements cannot include mandates for wheelchair lifts or the purchase of boarding assistance devices. It should be noted that the ATBCB transit vehicle guidelines include certain accessibility feature requirements (short of wheelchair lifts) for OTRBs.

Because the statute postpones for several years requirements for key structural modifications that would make OTRBs accessible to individuals who use wheelchairs, the Department believes that the key to "providing accessibility to such bus[es]" is ensuring that services provided by the private entities involved facilitate the use of the OTRBs by individuals as much as practicable. The requirements proposed in this section go to such areas as avoiding arbitrary denials of service, provision of boarding assistance, stowage of mobility devices and other assistive devices, carriage of service animals, charges for required services, and advance notice. The Department seeks comment on the advisability of these or other service requirements for OTRBs.

With respect to boarding assistance, the Department notes, consistent with the ADA, that there is no requirement

for the purchase of boarding assistance devices. The requirement is for a service, not for the acquisition of hardware. The extent to which a private entity would choose to acquire hardware to meet its obligation to provide service is a matter for its discretion. Also, the Department seeks comment on whether, if a private entity permits an attendant to ride free, boarding assistance tasks can be delegated to the attendant. The Department seeks comment, as well, on the issue of whether requirements concerning OTRBs should differ based on the type of service involved (e.g., intercity, excursion or charter, commuter).

The proposed rule includes a provision concerning carriage of wheelchairs and other mobility aids and assistive devices. Through this provision, the Department is seeking comments on how best to handle the situation in which a person with disabilities needs to store a wheelchair or other assistive device in order to take the trip on the bus. The Department seeks to ensure the ability of wheelchair users to travel without unduly inconveniencing other passengers.

The proposed provision describes a similar procedure to that established in the Air Carrier Access Act rulemaking (14 CFR part 382). In brief, it provides that, at any given stop, a person with a wheelchair or other assistive device would have the device loader before other items at this stop. From the point of view of the disability community, an individual traveling with a wheelchair is not similarly situated to a person traveling with luggage. For the wheelchair user, the wheelchair is an essential mobility device, without which travel is impossible. Asking a wheelchair user to leave the wheelchair behind is tantamount to asking someone else to leave his legs behind, many individuals with disabilities would assert. The rationale of this proposed provision is that, while no one wants his or her items left behind, carrying the wheelchair is more important to its user than ordinary luggage to a traveler, if it comes to an either/or choice (the wheelchair user's luggage would not have any priority over other luggage, however). There would be no requirement, under this option, for "bumping" baggage already on the bus from previous stops in order to make room for the wheelchair, however.

The Department is concerned about any potential inequity to other passengers from this provision. We would point out that, under the proposal, bus operators could ask for up to 48 hours' advance notice for transporting an electric wheelchair (which, as a large, bulky item, would be the kind of mobility device most likely to result in a problem for the carriage of other items). With this information in hand, the bus operator could inform other passengers who asked that a large item was being carried on a particular trip, so they would have at least some wearing that there could be a problem. We also seek comment on any other mechanisms that could accomplish the objective of ensuring meaningful transportation opportunities for wheelchairs while avoiding inequity to other passengers. For example, given the actual operational practices of bus companies, would a system of reserving cargo space, on a first-come-first-served policy at bus stations, be workable?

Section 37.131 Equivalency Requirement for Demand Responsive Service by Private Entities Not Primarily Engaged in the Business of Transporting People

This section implements section 302(b)(2)(C)(i) of the ADA, which pertains to demand responsive services operated by private entities not primarily engaged in the business of transporting people. The companion paragraph of the statue (section 302(b)(2)(C)(ii) implemented by § 37.91(c) of this NPRM) requires such an entity to purchase a vehicle with greater than a 16 seat capacity as accessible, unless the demand responsive system meets equivalency criteria. Section 302(b)(C)(i), however, is an operational rather than a vehicle acquisition requirement. It provides that, to avoid discriminating under the ADA, the entity must operate its system so that it provides equivalent service to individuals with disabilities. This regulatory provision would carry out this operational requirement, defining equivalency in the same manner as elsewhere in the regulation.

Section 37.133 Provision of Service

Implementation of the ADA will not result in actual, nondiscriminatory service for individuals with disabilities unless transportation providers actually use, and allow passengers to use, the equipment that the ADA requires to be provided.

> Merely installing the access equipment is never sufficient by itself, however; the lifts and elevators must operate, be in good working order, and be available when needed for access in order for an entity to be in compliance with the law. S. Rept. 101–116 at 46.

The same point applies to services which the ADA requires. It is of little use to an individual with a disability that physical barriers to travel have been mitigated if administrative barriers remain. This section of the regulation includes a number of proposals to this end. It should be noted that these proposals apply to both public and private entities. We seek comment on whether any of these provisions should differ depending on whether one is a public or private transportation provider.

Paragraphs (c), (d), and (e) of this section concern what remains the most passionately debated issue in the rulemaking—the service that transit providers should make available to users of three-wheeled scooters and other so-called "non-traditional mobility devices." It is the intent of the ADA that accessible service be available to persons with mobility impairments no matter what kind of mobility aid they may use. "People who use crutches, walkers, or three-wheeled mobility aids should be allowed to use a lift." S. Rept. 101–116 at 48.

The Department has taken a similar position under section 504 of the Rehabilitation Act. See 51 FR 19024; May 23, 1986. The March 1990 NPRM proposed including a requirement to provide service to all kinds of wheelchairs in common use, generating the highest volume of comments on any issue raised by that rulemaking. The comments to the March 1990 NPRM were discussed extensively in the preamble to the October 4, 1990, final rule. See 5 FR 40767–40770. It is not necessary to repeat that discussion here.

This issue was again the subject of many comments to the October rule. These comments tended to reiterate the points of view explained in comments to the March 1990 NPRM, and they did not present significant additional information. Disability community commenters almost unanimously opposed permitting transit providers any discretion to deny transportation to non-traditional mobility devices or to require transfers to a vehicle seat. They said that doing so would be discriminatory, since other passengers and objects they carried were not subject to similar requirements. They also pointed to the lack of actual accident data supporting claims that these devices pose a greater safety hazard than other devices.

A majority of transit providers continued to express concern about the safety and liability risks involved with carrying, unsecured mobility devices, especially those, like the three-wheeled scooters, that are structurally weaker or less stable than others. Mandatory transfers were a reasonable means for

accommodating persons using such devices, many comments said. Comments reiterated the call for Federal standards for a transit-compatible wheelchair that everyone could feel confident would be safe in a transit vehicle. A number of transit authorities, however, reported success with securing many non-traditional devices and said they had not encountered significant safety or liability problems.

A consistent undercurrent in comments from both transit providers and disability groups was frustration at what they perceived as the unwillingness of wheelchair manufacturers to respond to requests for working with providers and consumers to improve wheelchair designs for transit use. (One commenter even suggested that manufacturing a wheelchair that could not safely be carried on a transit vehicle should be made a felony.) The Department seeks input from manufacturers concerning how changes in wheelchair design or features could help to alleviate this overall problem.

Discussion of these issues continued at a session on the subject at the January 1991 Transportation Research Board meeting in Washington, DC, and at the Advisory Committee meeting. Participants in these discussions were aware that the ATBCB, in its transit vehicle guidelines, intended to establish dimensions and a weight-bearing capacity for lifts. These standards, most participants agreed, would address a portion of the problem, in that mobility devices that did not fit the ATBCB standards would not be required to be transported.

Paragraph (c) incorporates this idea. That is, if a mobility device can fit onto a lift meeting ATBCB standards, the entity must allow the device to ride on the vehicle. The Department is aware that some existing lift-equipped buses may have smaller or weaker lifts. We propose to interpret the regulation to require that, until accessible vehicles meeting the ATBCB standards make up 100 percent of a fleet, users of mobility devices which could be used on those vehicles, but which are too large or heavy for existing lift-equipped vehicles, be treated as eligible for complementary paratransit under § 37.111(b)(2), with respect to routes or runs using lift-equipped buses which they cannot access for this reason.

Based on discussions in the Advisory Committee, the Department proposes to permit transit providers to refuse to allow mobility devices to "park" in locations in a vehicle other than the designated securement locations. That is, if wheelchairs are using all securement locations on a particular bus, the transit operator is not obligated to let another wheelchair on the bus, since doing so would probably block an aisle or otherwise inconvenience other passengers.

The Department is persuaded that denial of transportation to an individual or his mobility aid because the device cannot readily be secured by the particular mobility device in a vehicle is discriminatory. In an environment where many persons and objects traditionally are not required to be secured, focusing on the safety risks of mobility devices and their users can raise protection to the level of exclusion, a result not intended, in our view, by the ADA.

At the same time, the Department (which in other contexts mandates the provision or use of nondiscriminatory passenger restraints) recognizes the potential value of securing both devices and passengers. We encourage the use of securement, and the NPRM proposes allowing transit agencies not only to recommend securement for mobility devices but to require such securement, to the extent practicable. For example, if a passenger enters a bus with a wheelchair that the securement system can readily handle, it would be appropriate for the bus driver to insist that the wheelchair be secured. On the other hand, if the passenger's device cannot be completely secured by the securement system, the bus driver would do the best job possible of securing it but could not deny transportation to the individual or the device because the securement was not satisfactory or could not be done at all. According to some comments and statements in the Advisory Committee meeting, securement devices that secure a wide range of mobility devices can be installed at relatively low cost (the figure of $70 per copy was mentioned by one transit authority representative to the Advisory Committee).

Transit providers have expressed concern about safety and liability. We hope that this concern leads them to install such securement devices as soon as practicable, in existing as well as new vehicles. Securement, we would note, is a very specific term relating to tying a device down to a particular minimal standard of movement. Even where securement, in this sense, may not be achieved, the Department believes that it is important for transit authorities to take reasonable steps to prevent mobility devices from causing damage to other persons in the vehicle. Consequently, the proposal would require some means of confining mobility devices to the securement area (e.g., an auxiliary strap system, even if it would not secure the device within the meaning of the ATBCB guidelines).

The Department specifically seeks comments on the securement issue. In every recent rulemaking on transporting individuals with disabilities, the Department has sought information on possible liability costs associated with carrying persons employing various mobility devices. While the concern about liability is raised repeatedly, we have not yet received any specific data on litigation awards, settlements, or other indicia of increased liability for carrying certain kinds of mobility aids and their users. We have heard from some transit providers that securement systems on the market are affordable and effective. The Department again seeks specific data both on the liability issue and the cost of effective securement systems.

The issue of mandatory transfers relates to the securement of passengers, not mobility devices. Transit providers require transfers because they believe that in situations like an accident, panic stop, or sharp turn at speed, a wheelchair user is more likely to be stable in a vehicle seat than in a mobility device. Many individuals with disabilities oppose mandatory transfers. They cite not only inconvenience and discomfort (many wheelchairs are customized to the needs of the user, which vehicle seats are not), but also risks of injury resulting from the transfer itself.

One of the most important points made at the Seattle conference on transportation of non-traditional mobility devices mentioned in the October 4 preamble, as well as the TRB session and Advisory Committee meeting, concerns differences among vehicles. Other things being equal, an unsecured passenger in a paratransit van is likely to be tossed about the vehicle interior with greater force in an accident situation than an unsecured passenger in a full-size bus. This suggests that it may be reasonable to have a different requirement for larger and smaller vehicles, and paragraph (e) proposes such a system.

The proposal would not permit mandatory transfers in larger vehicles. Not only is the safety need for such transfers less clear, but these vehicles (e.g., a full-size transit bus) are more likely to lack passenger restraints in vehicle seats, which themselves may not be well-contoured for the comfort and safety of a passenger with a disability.

In a smaller vehicle, of the kind normally used for paratransit operations, the transit provider could

require a transfer, but only under certain conditions. First, since the main reason for the transfer, as we understand it, is passenger securement, the transferred passenger would have to be able to be adequately secured in the vehicle seat. Second, as a nondiscrimination matter, the vehicle would have to be one in which all passengers had to be secured (the securement devices would not necessarily need to be the same for all passengers, however). Third, after consulting with the passenger, the transit provider would have to determine that the risk of injury to the passenger was greater if the passenger stayed (unsecured) in his or her own mobility device than if the passenger transferred.

The Department seeks comment on what the dividing line should be between the larger and smaller vehicles for this purpose. The proposal uses 16/over 16 seat capacity simply because the ADA uses the distinction for other purposes. We realize that a different distinction might be more relevant here, but we need information on the point.

Another securement-related issue concerns operator assistance. Some individuals with disabilities cannot secure their own mobility devices using securement systems in some vehicles. The Department believes that it should be incumbent on vehicle operators to assist passengers with securement, where necessary or requested by the passenger. This is particularly so when a transit provider requires securement. We are aware that some transit agencies, for reasons such as concern over liability or provisions of labor-management agreements, have policies against vehicle operators leaving their seats to assist a passenger. Paragraph (f) is intended to override such policies.

Vehicle and equipment maintenance is an important component of successful accessible service. In particular, an aggressive preventive maintenance program for lifts is essential. Lifts remain rather delicate, complicated pieces of machinery, with lots of moving parts, which often must operate in a harsh environment of potholes, dust and gravel, variations in temperature, snow, slush, and deicing compounds. It is not surprising that they are sometimes given to breakdowns. Commenters and participants in the Advisory Committee discussion have emphasized the necessity of good maintenance, and paragraph (b) of this section of the NPRM, like the 1986 rule and March 1990 NPRM, requires equipment to be maintained properly.

In addition, one maintenance practice followed by some transit agencies seems worth proposing as a general requirement. This proposal is that the lift on each accessible bus be cycled before the bus goes into service each day. (If it were more convenient, this requirement could be met by cycling the lift at the end of the previous work day, after the bus had finished its runs for that day.) If the lift doesn't work, the bus goes straightaway to the repair shop, where the lift must be fixed before the bus is put back onto the street. This idea received support both from transit industry and disability group representatives at the Advisory Committee.

The Department realizes that, in the years before bus fleets are completely accessible, taking buses with lifts out of service for repairs in this way would probably result in an inaccessible reserve fleet bus being used on the route, but at least attention would have to be paid quickly to the lift repair, resulting in a quicker return to service of a working accessible bus. We propose a partial exception to this provision for small transit providers, allowing them to keep a bus with a nonworking lift on the road for up to seven working days if keeping it out of service would reduce service to the general public (e.g., if a small operator had only two buses, and putting one in the shop would cut service in half).

The Department seeks comments on whether this exception could be applied to larger operators without vitiating the basic purpose of requiring prompt servicing of accessibility equipment. For example, it is possible that a transit provider that repairs its own vehicles has a waiting list for repairs. If there were five buses with lifts needing to be repaired, it may not be necessary to have all of them out of service, since all five probably would not be worked on at once. The vehicles, while awaiting repair, could be used on inaccessible routes (i.e., during the period before all buses are accessible) if deemed appropriate by the transit provider. The primary concern of the Department remains that no delay occur in the repair of an accessibility feature, however. The Department seeks comment on this issue.

Other provisions of the section would require stops to be announced and a means provided to let people with visual or mental impairments at a stop know what route a vehicle was serving. As under the 1986 rule, information and assistance would have to be made available to people with disabilities in accessible formats.

The ATBCB guidelines require various accessibility features. The final paragraph of this section would require transit provider personnel to use these features. A bus lift does no good if the driver does not deploy it; a public address system does no good if the driver does not pick up the microphone to talk.

Two rail system commenters raised a question that involves this principle. Their systems, they said, use accessible cars that have carborne lifts (similar questions could arise in systems using wayside lifts or mini-high platforms). However, there is only an operator in the first car of the train, meaning that subsequent cars have no one to operate the lifts in those cars. Consequently, the subsequent cars, while abstractly "accessible," are no more usable by a wheelchair user than a lift-equipped bus with an inoperable lift. Recognizing the problem faced by the rail system operators (i.e., that to make the lifts usable it might either need to hire additional personnel or cause an operator to run back and forth between cars), the Department seeks comment on how to address the situation in a way consistent with the statute.

Section 37.135 One Car Per Train Rule

This section incorporates the one car per train rules applicable to intercity and commuter rail service (from Sections 242(a)(1) and 242(b)(1) of the ADA) and to light and rapid rail service (from section 228(b)(1) of the ADA).

Section 37.137 Wheelchair Securement Locations and Food Service on Intercity Rail Trains

This provision would implement the wheelchair securement location and food service requirements for intercity rail of section 241(a) of the ADA.

Regulatory Analyses and Notices

Executive Order 12291 and Department of Transportation Regulatory Policies and Procedures

This NPRM is a major rule under Executive Order 12291, in that its expected annual costs exceed $100 million. It is also a significant rule under the Department of Transportation's Regulatory Policies and Procedures. The Department has prepared a Regulatory Impact Analysis and filed it in the docket for the rulemaking. The NPRM has been reviewed by the Office of Management and Budget under Executive Order 12291.

As the analysis shows, the costs of implementing the requirements of this rule are expected to be high. These costs are driven by the statutory requirements of the ADA itself. These requirements were enacted after lengthy negotiation and debate involving disability groups, the transit industry, the Administration

and Congress. The Department has used its discretion under the ADA conservatively, to minimize the addition of costs to public and private entities beyond what the statute itself imposes.

Paperwork Reduction Act

This rule includes information collection requirements subject to the Paperwork Reduction Act. These include the requirements for submission of certifications concerning inaccessible used vehicles and the submission of plans for complementary paratransit and key station modifications. A request for Paperwork Reduction Act approval has been submitted to the Office of Management and Budget in conjunction with this NPRM.

Executive Order 12250

The portion of this NPRM amending 49 CFR part 27, the Department's section 504 rule, has been reviewed by the Department of Justice under Executive Order 12250. Rules implementing the ADA are not subject to Department of Justice review under this Executive Order. However, given that the Department of Justice is also deeply involved in implementing other portions of the statute, the Department provided an information copy of part 37 to the Department of Justice in advance of its publication.

Regulatory Flexibility Act

Under the terms of the Regulatory Flexibility Act, this NPRM could have a significant economic impact on a substantial number of small entities. The entities would be both small private and public entities that are subject to ADA accessible transportation requirements. The Regulatory Impact Analysis discusses impacts of the rule on small entities, serving the purpose of a Regulatory Flexibility Analysis. We would point out that these impacts are required by the ADA itself, and the statute gives the Department little discretion to contrive less burdensome requirements for small entities.

Executive Order 12612

This rule will have some Federalism impacts. A number of actions (e.g., providing complementary paratransit, buying all accessible buses) are mandatory for state and local agencies that, under previous regulations, were discretionary. Nevertheless, these requirements are statutory, and the Department does not have discretion to avoid imposing them. The Regulatory Impact Analysis for this rule discusses the impacts of these requirements on public entities, who are predominantly state and local government agencies. This discussion serves the purposes of a Federalism Assessment for purposes of this NPRM.

The Department also points out that subpart E proposes to assign to state agencies a significant role in reviewing paratransit plans for small transportation providers. This approach would allow states to continue in their traditional oversight role for these providers, avoiding unnecessary centralization of compliance planning and review at the Federal level, beyond what is required for compliance with the statute.

Issued This 28th Day of March, 1991, at Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to amend 49 CFR subtitle A, as follows:

PART 27—[AMENDED]

A. Part 27 is amended as follows:

1. The authority citation for part 27 is revised to read as follows:

Authority: 29 U.S.C. 794; 49 U.S.C. 1612(a) and 1612(d); 49 U.S.C. 142 nt.; 42 U.S.C. 12101 et seq.; and 49 U.S.C. 322.

2. To amend § 27.19 by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 27.19 Compliance with Americans with Disabilities Act Requirements and UMTA Policy.

(a) Recipients subject to this part shall comply with all applicable requirements of the Americans with Disabilities Act (ADA) of 1990 (Pub. L. 101–336), including the Department's ADA regulations (49 CFR part 37), the regulations of the Department of Justice implementing titles II and III of the ADA (28 CFR parts 35 and 36), and the regulations of the Equal Employment Opportunity Commission (EEOC) implementing title I of the ADA (29 CFR part 1630). Compliance with the EEOC title I regulations is required as a condition of compliance with section 504 for DOT recipients even for organizations which, because they have fewer than 25 or 15 employees, would not be subject to the EEOC regulation in its own right. Compliance with all these regulations is a condition of receiving Federal financial assistance from the Department of Transportation. Any recipient not in compliance with this requirement shall be subject to enforcement action under subpart C of this part.

* * * * *

(c) A private entity which receives UMTA financial assistance for the operation of a fixed route transportation system, as that term is defined in 49 CFR part 37, shall, as a condition of receiving the financial assistance, comply with the requirements of 49 CFR part 37 applicable to public entities which operate a fixed route transportation system.

Subparts B, C, and E [Removed]

Subpart D [Amended]

4. To remove subparts B (§§ 27.31–27.37), C (§§ 27.61–27.63), E (§§ 27.81–27.103) and the appendix to subpart E and to remove § 27.73 and appendix A from subpart D.

5. To redesignate subpart F (§§ 27.121–27.129) as subpart C and subpart D (§§ 27.71 and 27.75) as Subpart B.

§ 27.5 [Amended]

6. To remove from § 27.5 the definitions of "accessible," "closed station," "flag stop," "mass transportation," "open station," "passenger," and "urbanized area."

b. To revise part 37 to read as follows:

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Sec.
37.1 Purpose.
37.3 Applicability.
37.5 Definitions.
37.7 Nondiscrimination.
37.9 Training requirements.
37.11 Private entities providing service under contract with public entities.
37.13 Standards for accessible vehicles and transportation facilities.
37.15 Administrative enforcement.
37.17–37.19 [Reserved]

Subpart B—Transportation Facilities

37.21 Construction and alteration of transportation facilities by public entities.
37.23 Construction and alteration of transportation facilities by private entities.
37.25 Key stations in light and rapid rail systems.
37.27 Key stations in commuter rail systems.
37.29 Intercity rail station accessibility.
37.31 Designation of responsible person(s) for intercity and commuter rail stations.
37.33 Required cooperation.
37.35 Public transportation programs and activities in existing facilities.
37.37–37.49 [Reserved]

Subpart C—Acquisition of Accessible Vehicles by Public Entities

37.51 Purchase or lease of new non-rail vehicles by public entities operating fixed route systems.

37.53 Purchase or lease of used non-rail vehicles by public entities operating fixed route systems.
37.55 Remanufacture of non-rail vehicles and purchase or lease of remanufactured non-rail vehicles by public entities operating fixed route systems.
37.57 Purchase or lease of new non-rail vehicles by public entities operating demand responsive systems for the general public.
37.59 Purchase or lease of new rail vehicles by public entities operating rapid or light rail systems.
37.61 Purchase or lease of used rail vehicles by public entities operating rapid or light rail systems.
37.63 Remanufacture of rail vehicles and purchase or lease of remanufactured rail vehicles by public entities operating rapid or light rail systems.
37.65 Purchase or lease of new intercity and commuter rail cars.
37.67 Purchase or lease of used intercity and commuter rail cars.
37.69 Remanufacture of intercity and commuter rail cars and purchase or lease of remanufactured intercity and commuter rail cars.
37.71 Ferries and other vessels operated by public entities. [Reserved]
37.73–37.89 [Reserved]

Subpart D—Acquisition of Accessible Vehicles by Private Entities

37.91 Purchase or lease of non-rail vehicles by private entities not primarily engaged in the business of transporting people.
37.93 Purchase or lease of non-rail vehicles by private entities primarily engaged in the business of transporting people.
37.95 Acquisition of passenger rail cars by private entities primarily engaged in the business of transporting people.
37.97 Ferries and other vessels operated by private entities. [Reserved]
37.99–37.109 [Reserved]

Subpart E—Transportation Services

37.111 Paratransit as a complement to fixed route service.
37.113 Requirement to develop and submit paratransit plan.
37.115 Specific requirements for developing a paratransit plan.
37.117 Contents of plan.
37.119 Review and approval of plans.
37.121 Plan implementation.
37.123 Exception for undue financial burden.
37.125 Request for undue financial burden waiver.
37.127 Determination of undue financial burden.
37.129 Interim requirements for over-the-road bus service operated by private entities.
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Appendix C to Part 37—Where to Send Paratransit Plans.

Appendix D to Part 37—Certification of Equivalent Service.

Appendix E to Part 37—Explanations and Interpretations of Regulatory Provisions. [Reserved]

Authority: 49 U.S.C. 322.

Subpart A—General

§ 37.1 Purpose.

The purpose of this part is to implement the transportation and related provisions of the Americans with Disabilities Act of 1990 (Pub. L. 101–336).

§ 37.3 Applicability.

(a) This Part applies to the following entities, whether or not they receive Federal financial assistance from the Department of Transportation:

(1) Any public entity that provides designated public transportation or intercity or community rail transportation;

(2) Any private entity that provides specified public transportation; and

(3) Any private entity that is not in the principal business of transporting people but operates a demand responsive or fixed route system or otherwise transport individuals.

(b) For entities receiving Federal financial assistance from the Department of Transportation, compliance with applicable requirements of this part is a condition of receiving the financial assistance. This obligation is enforced under the provisions of 49 CFR part 27, not under this part.

§ 37.5 Definitions.

As used in this part: *ADA* or *"the Act"* means the Americans with Disabilities Act of 1990 (Pub. L. 101–336), as it may be amended from time to time. *Auxiliary aids and services* includes:

(1) Qualified interpreters or other methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; or

(4) Other similar services or actions.

Commerce means travel, trade, transportation, or communication among the several states, between any foreign country or any territory or possession and any state, or between points in the same state but through another state or foreign country.

Commuter authority means any state, local, regional authority, corporation, or other entity established for purposes of providing commuter rail transportation (including, but not necessarily limited to, the New York Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Maryland Department of Transportation, the Southeastern Pennsylvania Transportation Authority, the New Jersey Transit Corporation, the Massachusetts Bay Transportation Authority, the Port Authority Trans-Hudson Corporation, and any successor agencies) and any entity created by one or more such agencies for the purposes of operating, or contracting for the operation of, commuter rail transportation.

Commuter bus service means fixed route bus service characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district and outlying suburbs.

Demand responsive system means any system of transporting individuals, including but not limited to providing designated public transportation service or specified public transportation service by vehicle at the request of the user, which is not a fixed route system.

Designated public transportation means transportation provided by a public entity (other than public school transportation) by bus, rail, or other conveyance (other than transportation by aircraft or intercity or commuter rail transportation) that provides the general public with general or special service, including charter service, on a regular and continuing basis.

Disability means, with respect to an individual—

(1) A permanent or temporary physical or mental impairment that substantially limits one or more of the major life activities of such individual. For purposes of this part, a physical or mental impairment means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such contagious or noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction (but not including the current use of illegal drugs) and alcoholism. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; or

(2) A record of such an impairment. For purposes of this Part, a record of an impairment means a history of, or classification or misclassification, as having a mental or physical impairment that substantially limits one or more major life activities; or

(3) Being regarded as having such an impairment. For purposes of this Part, this term means:

(i) Having a physical or mental impairment that does not substantially limit major life activities, but which is treated as constituting such a limitation;

(ii) Having a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(iii) Having none of the impairments set forth in this definition but being treated as having such an impairment.

Fixed route system means a system of transporting individuals (other than by aircraft), including but not limited to providing designated or specified public transportation services, on which a vehicle (including a bus, van, rail vehicle, or other vehicle) is operated along a prescribed route according to a fixed schedule and which does not involve an advance request by a passenger to ensure that service is provided.

Intercity rail passenger car means a rail passenger car obtained by Amtrak for use in intercity rail transportation.

Intercity rail transportation means transportation provided by the National Rail Passenger Corporation (Amtrak).

New vehicle means a vehicle which is offered for sale or lease after manufacture without any prior use.

Operates includes, with respect to a fixed route or demand-responsive system, the provision of transportation service by the public entity itself or by a person under a contractual or other arrangement or relationship with a public entity.

Over-the-road bus means a vehicle characterized by an elevated passenger deck located over a baggage compartment.

Private entity means any entity other than a public entity.

Public entity means:

(1) Any state or local government;

(2) Any department, agency, special purpose district, or other instrumentality of one or more state or local governments; and

(3) The National Railroad Passenger Corporation (Amtrak) and any commuter authority.

Public school transportation means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

Purchase or lease, with respect to vehicles, means the time at which an entity is legally obligated to obtain the vehicles, such as the time of contract execution.

Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids or services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Remanufactured vehicle means a vehicle which has been structurally restored and has had new or rebuilt major components installed to extend its service life.

Secretary means the Secretary of Transportation or his/her designee.

Solicitation means the closing date for the submission of bids or offers in a procurement.

Specified public transportation means transportation by bus, rail, or any other conveyance (other than aircraft) provided by a private entity to the general public, with general or special service (including charter service) on a regular and continuing basis.

Station means, with respect to intercity and commuter rail transportation, the portion of a property located appurtenant to a right of way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but this term does not include flag stops.

UMT Act means the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. App. 1601 *et seq.*):

Used vehicle means a vehicle with prior use that was originally purchased before June 26, 1990.

Vehicle, as the term is applied to private entities, does not include a rail passenger car, railroad locomotive, railroad freight car, or railroad caboose, or other rail rolling stock described in section 242 or Title III of the Act.

Wheelchair means any mobility device with wheels used by an individual with a disability, including three-wheeled scooters and other non-traditional mobility devices.

§ 37.7 Nondiscrimination.

(a) No public or private entity shall discriminate against an individual with a disability in connection with the provision of its transportation service for the general public.

(b) Notwithstanding the provision of any special service to individuals with disabilities, a public or private entity shall not, on the basis of disability, deny to any individual with a disability the opportunity to use the entity's transportation system for the general public, if the individual is capable of using that system.

(c) No public or private entity shall impose special charges on individuals with disabilities, including individuals who use wheelchairs, for providing services required by this part or otherwise necessary to accommodate them.

(d) Private entities that are primarily engaged in the business of transporting people and whose operations affect commerce shall not discriminate against any individual on the basis of disability in the full and equal enjoyment of specified transportation services. This obligation includes, with respect to the provision of transportation services, compliance with the requirements of the Department of Justice concerning eligibility criteria, making reasonable modifications, providing auxiliary aids and services, and removing barriers (28 CFR 6.301—36.306).

§ 37.9 Training requirement.

Each public or private entity which operates a fixed route or demand-responsive system shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they

operate vehicles and equipment safely and properly and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the differences among individuals with disabilities.

§ 37.11 Private entities providing service under contract with public entities.

(a) When a public entity enters into a contractual or other arrangement or relationship with a private entity to provide fixed route or demand-responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.

(b) A private entity which purchases or leases new or used vehicles, or remanufactures vehicles, for use, or in contemplation of use, in fixed route or demand-responsive service under contract or other arrangement or relationship with a public entity, shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so by §§ 37.51–37.57 of this part.

(c) A public entity which enters into a contractual or other arrangement or relationship with a private entity to provide fixed route or demand-responsive service shall ensure that the service provided by the private entity does not diminish the percentage of accessible service provided by the public entity in its overall fixed route or demand-responsive service.

§ 37.13 Standards for accessible vehicles and transportation facilities.

(a) For purposes of this part, a vehicle shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the standards set forth in appendix A to this part.

(b) For purposes of this part, a transportation facility shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the standards set forth in appendix B to this part.

§ 37.15 Administrative enforcement.

(a) For recipients of Federal financial assistance from the Department of Transportation or any of its operating administrations, compliance with this part is a condition of compliance with section 504 of the Rehabilitation Act of 1973 and 49 CFR part 27. The Department will process complaints of noncompliance with this part under the provisions of 49 CFR part 27, subpart B.

(b) For public entities which do not receive Federal financial assistance from the Department of Transportation or any of its operating administrations, administrative enforcement action shall be taken as provided in the regulations of the Department of Justice implementing title II of the ADA (28 CFR part 35).

(c) For private entities, administrative action shall be taken as provided in the regulations of the Department of Justice implementing title III of the ADA (28 CFR part 36).

§§ 37.17–37.19 [Reserved]

Subpart B—Transportation Facilities

§ 37.21 Construction and alteration of transportation facilities by public entities

(a) A public entity shall construct any new facility to be used in providing designated public transportation services so that the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. This requirement also applies to the construction of a new station for use in intercity or commuter rail transportation. For purposes of this section, a facility or station is "new" if its construction begins (i.e., issuance of notice to proceed) after January 26, 1992, or, in the case of intercity or commuter rail stations, after the effective date of this section.

(b)(1) When a public entity alters an existing facility or a part of an existing facility used in providing designated public transportation services in a way that affects or could affect the usability of the facility or part of the facility, the entity shall make the alterations (or ensure that the alterations are made) in such a manner, to the maximum extent feasible, that the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. This paragraph applies to any alteration which begins after January 26, 1992.

(2) When a public entity undertakes an alteration that affects or could affect the usability of or access to an area of a facility containing a primary function, the entity shall make the alteration in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of the alterations; *Provided, That* alterations to the path of travel, drinking fountains, telephones, and bathrooms are not required to be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, if the cost and scope of doing so would be disproportionate.

(3) The requirements of this paragraph also apply to the alteration of existing intercity or commuter rail stations by the responsible person for, owner of, or person in control of the station.

(4) The requirements of this paragraph apply to any alteration made after January 26, 1992, or, in the case of intercity and commuter rail stations, after the effective date of this section.

(c) As used in this section, the phrase "to the maximum extent feasible" applies to the occasional case where the nature of an existing facility makes it impossible to comply fully with applicable accessibility standards through a planned alteration. Any altered feature of the facility or portion of the facility that can be made accessible shall be made accessible. If providing accessibility to certain individuals with disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to individuals with other types of disabilities (e.g., those who use crutches or walkers, persons with vision or hearing impairments).

(d) As used in this section, a "primary function" is a major activity for which the facility is intended. Areas of transit facilities that involve primary functions include, but are not necessarily limited to, ticket purchase and collection areas, train or bus platforms, baggage checking and return areas, and employment areas.

(e) As used in this section, a "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, parking areas, and streets), an entrance to the facility, and other parts of the facility. The term also includes the restrooms, telephones, and drinking fountains serving the altered area. An accessible path of travel may include walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps, clear floor paths through corridors, waiting areas, concourses, and other improved areas, parking access aisles, elevators and lifts, bridges, tunnels, or other passageways between platforms, or a combination of these and other elements.

(f) The costs of providing an accessible path to an altered area are "disproportionate" to the costs of the overall alteration if the cost exceeds (10 or 20 or 30) percent of the cost of the

alteration to the primary function area. Costs that may be counted as expenditures required to provide an accessible path of travel include, but are not necessarily limited to, the following:

(1) Costs associated with providing an accessible entrance and an accessible route to the altered area (e.g., widening doorways and installing ramps);

(2) Costs associated with making restrooms accessible (e.g, grab bars, enlarged toilet stalls, accessible faucet controls);

(3) Costs associated with providing accessible telephones (e.g., relocation of phones to an accessible height, installation of amplification devices or TDDs);

(4) Costs associated with relocating an inaccessible drinking fountain.

(g) (1) When the cost of alterations necessary to make a path of travel to the altered area fully accessible is disproportionate to the cost of the overall extension, then such areas shall be made accessible to the maximum extent that does not result in disproportionate costs;

(2) In this situation, the public entity shall give priority to accessible elements in the following order:

(i) An accessible entrance;

(ii) An accessible route to the altered area;

(iii) At least one accessible restroom for each sex or a single unisex restroom;

(iv) Accessible telephones;

(v) Accessible drinking fountains;

(vi) When possible, other accessible elements (e.g., parking, storage, alarms).

(h) If a public entity performs a series of small alterations to the area served by a single path of travel rather than as making the alterations as part of a single undertaking, it shall nonetheless be responsible for providing an accessible path of travel.

(i) (1) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alteration to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel is disproportionate;

(2) For the first three years after January 26, 1992, only alterations undertaken between that date and the date of the alteration at issue shall be considered in determining if the cost of providing accessible features is disproportionate to the overall cost of the alteration.

(j) Elevators and other accessibility features of facilities shall be maintained in proper working order and shall be repaired promptly if they are damaged or out of order. When an accessibility feature is out of order, the entity shall take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.

§ 37.23 Construction and alteration of transportation facilities by private entities.

In constructing and altering transit facilities, private entities shall comply with the regulations of the Department of Justice implementing title III of the ADA (28 CFR part 36).

§ 37.25 Key stations in light and rapid rail systems

(a) Each public entity that provides designated public transportation by means of a light or rapid rail systems shall make key stations on its system readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. This requirement is separate from and in addition to requirements set forth in § 37.21 of this part.

(b) Each public entity shall determine which stations on its system are key stations, taking into consideration the following criteria:

(1) Stations where passenger boarding exceed average station passenger boardings by at least fifteen percent;

(2) Transfer stations on a rail line or between rail lines;

(3) Major interchange points with other transportation modes, including stations connecting with major parking facilities, bus terminals, intercity or commuter rail stations, or airports;

(4) End stations, unless an end station is close to another accessible station; and

(5) Stations serving major activity centers, such as employment or government centers, institutions of higher education, hospitals or other major health care facilities, or other facilities that are major trip generators for individuals with disabilities.

(c)(1) Except as provided in this paragraph, the public entity shall achieve accessibility of key stations as soon as practicable, but in no case later than July 26, 1993.

(2) The Secretary may grant an extension of this completion date for key station accessibility for a period up to July 26, 2020, provided that two-thirds of key stations are made accessible by July 26, 2010. Extensions may be granted as provided in paragraph (e) of this section.

(d) The public entity shall develop a plan for compliance for this section. The plan shall be submitted to the Secretary by January 26, 1992.

(1) The public entity shall consult with individuals with disabilities affected by the plan. The public entity shall also hold at least one public hearing on the plan and solicit comments on it. The plan submitted to the Secretary shall document this public participation, including summaries of the consultation with individuals with disabilities and the comments received at the hearing and during the comment period. The plan shall also summarize the public entity's responses to the comments and consultation.

(2) The plan shall establish milestones for the achievement of required accessibility of key stations consistent with the requirements of this section.

(e) A public entity wishing to apply for an extension of the July 26, 1993, deadline for key station accessibility shall include a request for an extension with its plan submitted to the Secretary under paragraph (d) of this section. Extensions may be requested only for extraordinarily expensive alterations to key stations (e.g., installations of elevators, raising the entire passenger platform, or alterations of similar magnitude and cost). Requests for extensions shall provide for completion of key station accessibility within the time limits set forth in paragraph (c) of this section. The Secretary may approve, approve with conditions, modify, or disapprove any request for an extension.

§ 37.27 Key stations for commuter rail systems

(a) The responsible person(s) shall make key stations on its system readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. This requirement is separate from and in addition to requirements set forth in § 37.21 of this part.

(b) Each commuter rail authority shall determine, in consultation with responsible persons involved and with individuals with disabilities and organizations representing them, which stations on its system are key stations, taking into consideration the following criteria.

(1) Stations where passenger boardings exceed average station passenger boardings by at least fifteen percent;

(2) Transfer stations on a rail line or between rail lines;

(3) Major interchange points with other transportation modes, including stations connecting with major parking facilities, bus terminals, intercity or commuter rail stations, or airports;

(4) End stations, unless an end station is close to another accessible station; and

(5) Stations serving major activity centers, such as employment or government centers, institutions of higher education, hospitals or other major health care facilities, or other facilities that are major trip generators for individuals with disabilities.

(c)(1) Except as provided in this paragraph, the responsible person(s) shall achieve accessibility of key stations as soon as practicable, but in no case later than July 26, 1993.

(2) The Secretary may grant an extension of this deadline for key station accessibility for a period up to July 26, 2010. Extensions may be granted as provided in paragraph (e) of this section.

(d) The commuter authority and responsible person(s) for stations involved shall develop a plan for compliance for this section. The plan shall be submitted to the Secretary by January 26, 1992.

(1) The commuter authority and responsible person(s) shall consult with individuals with disabilities affected by the plan. The commuter authority and responsible person(s) shall also hold at least one public hearing on the plan and solicit comments on it. The plan submitted to the Secretary shall document this public participation, including summaries of the consultation with individuals with disabilities and the comments received at the hearing and during the comment period. The plan shall also summarize the responsible person(s) responses to the comments and consultation.

(2) The plan shall establish milestones for the achievement of required accessibility of key stations, consistent with the requirements of this section.

(3) The commuter authority and responsible person(s) of each key station identified in the plan shall, by mutual agreement, designate one of the parties involved as project manager for the purpose of undertaking the work of making the key station accessible.

(e) Any commuter authority and/or responsible person(s) wishing to apply for an extension of the July 26, 1993, deadline for key station accessibility shall include a request for an extension with its plan submitted to the Secretary under paragraph (d) of this section. Extensions may be requested only for extraordinarily expensive modifications to stations (e.g., raising the entire passenger platform, installation of an elevator, or a modification of similar magnitude and cost). Requests for extensions shall provide for completion of key station accessibility within the time limits set forth in paragraph (c) of this section. The Secretary may approve, approve with conditions, modify, or disapprove any request for an extension.

§ 37.29 Intercity rail station accessibility.

All intercity rail stations shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than July 26, 2010. This requirement is separate from and in addition to requirements set forth in § 37.21 of this part.

§ 37.31 Designation of responsible person(s) for intercity and commuter rail stations.

(a) When more than one person owns or provides service to an intercity or commuter rail station, the parties may designate one or more responsible persons, for purposes of this part, and allocate the proportion of responsibility of each party, by contract or other written agreement among themselves.

(b) In the absence of such a contract or other written agreement, the following rules determine who the responsible person(s) are for the station:

(1) In the case of a station more than fifty percent of which is owned by a public entity, the public entity is the responsible party.

(2) In the case of a station more than fifty percent of which is owned by a private party, the persons providing commuter or intercity rail service to the station are the responsible parties, in a proportion equal to the percentage of all passenger boardings at the station attributable to the service of each during the immediately past calendar year.

(3) In the case of a station where no party owns more than fifty percent, the owners of the station (other than private party owners) and persons providing intercity or commuter rail service to the station are the responsible persons. Each non-private party owner of the station which does not provide intercity or commuter rail service to the station is a responsible person in the ratio of its ownership interest in the station to the portion of station ownership which is not in the hands of private parties. If there is only one person providing commuter or intercity rail service to the station, that person is the responsible person for the remaining percentage of the station. If more than one person provides commuter or intercity or intercity rail service to the station, these persons divide the remaining percentage of the station in a proportion equal to the percentage of all passenger boardings at the station attributable to the service of each during the immediately past calendar year.

(c) The responsible person(s) designated in accordance with this section shall bear the legal and financial responsibility for making a key station accessible in the same proportions as determined in paragraph (a) or (b) of this section.

§ 37.33 Required cooperation.

An owner or person in control of an intercity or commuter rail station shall provide reasonable cooperation to the responsible person(s) for that station with respect to the efforts of the responsible person to comply with the requirements of this subpart.

§ 37.35 Public transportation programs and activities in existing facilities.

(a) A public entity shall operate a designated public transportation program or activity conducted in an existing facility so that, when viewed in its entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(b) This section does not require a public entity to make structural changes to existing facilities in order to make the facilities accessible by individuals who use wheelchairs, unless and to the extent required by § 37.21 (with respect to alterations) or § 37.25 (with respect to key stations).

(c) Public entities, with respect to facilities that, as provided in paragraph (b) of this section, are not required to be made accessible to individuals who use wheelchairs, are not required to provide to such individuals services made available to the general public at these facilities when the individuals could not utilize or benefit from the services.

§§ 37.37–37.49 [Reserved]

Subpart C—Acquisition of Accessible Vehicles by Public Entities

§ 37.51 Purchase or lease of new non-rail vehicles by public entities operating fixed route systems.

(a) Except as provided elsewhere in this section, each public entity operating a fixed route system making a solicitation after August 25, 1990, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) A public entity may purchase or lease a new bus that is not readily accessible to and usable by individuals with disabilities, including individuals

who use wheelchairs, if it applies for, and the UMTA Administrator grants, a waiver as provided for in this section.

(c) Before submitting a request for such a waiver, the public entity shall hold at least one public hearing concerning the proposed request.

(d) The UMTA Administrator may grant a request for such a waiver if the public entity demonstrates to the UMTA Administrator's satisfaction that—

(1) The initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) Hydraulic, electromechanical, or other lifts for such new buses could not be provided by any qualified lift manufacturer to the manufacturer of such new buses in sufficient time to comply with the solicitation; and

(3) Any further delay in purchasing new buses equipped with such necessary lifts would significantly impair transportation services in the community served by the public entity.

(e) The public entity shall include with its waiver request a copy of the initial solicitation and written documentation from the bus manufacturer of its good faith efforts to obtain lifts in time to comply with the solicitation, and a full justification for the assertion that the delay in bus procurement needed to obtain a lift-equipped bus would significantly impair transportation services in the community. This documentation shall include a specific date at which the lifts could be supplied and copies of advertisements in trade publications and inquiries to trade associations seeking lifts.

(f) Any waiver granted by the UMTA Administrator under this section shall be subject to the following conditions:

(1) The waiver shall apply only to the particular bus delivery to which the waiver request pertains;

(2) The waiver shall include a termination date, which will be based on information concerning when lifts will become available for installation on the new buses the public entity is purchasing. Buses delivered after this date, even though procured under a solicitation to which a waiver applied, shall be equipped with lifts;

(3) Any bus obtained subject to the waiver shall be capable of accepting a lift, and the public entity shall install a lift as soon as one becomes available;

(4) Such other terms and conditions as the UMTA Administrator may impose.

(g) (1) When the UMTA Administrator grants a waiver under this section, he/she shall promptly notify the appropriate committees of Congress.

(2) If the UMTA Administrator has reasonable cause to believe that a public entity fraudulently applied for a waiver under this section, the UMTA Administrator shall:

(i) Cancel the waiver if it is still in effect; and

(ii) Take other appropriate action.

§ 37.53 Purchase or lease of used non-rail vehicles by public entities operating a fixed route system.

(a) Except as provided elsewhere in this section, each public entity operating a fixed route system purchasing or leasing, after August 25, 1990, a used bus or other used vehicle for use on this system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) A public entity may purchase or lease a used vehicle for use on its fixed route system that is not readily accessible to and usable by individuals with disabilities if, after making demonstrated good faith efforts to obtain an accessible vehicle, it is unable to do so.

(c) Good faith efforts shall include at least the following steps:

(1) An initial solicitation for used vehicles specifying that all used vehicles are to be lift-equipped and otherwise accessible to and usable by individuals with disabilities, or, if an initial solicitation is not used, a documented communication so specifying;

(2) A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers; and

(3) Advertising in trade publications and contacting trade associations.

(d) Each public entity purchasing or leasing used vehicles that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts it made for two years from the date the vehicles were purchased. These records shall be made available, on request, to the UMTA Administrator and the public.

§ 37.55 Remanufacture of non-rail vehicles and purchase or lease of remanufactured non-rail vehicles by public entities operating fixed route systems.

(a) This section applies to any public entity operating a fixed route system which takes one of the following actions:

(1) After August 25, 1990, remanufactures a bus or other vehicle so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing; or

(2) Purchases or leases a bus or other vehicle which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after August 25, 1990, and during the period in which the useful life of the vehicle is extended.

(b) Vehicles acquired through the actions listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) For purposes of this section, it shall be considered feasible to remanufacture a bus or other motor vehicle so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that including accessibility features required by this part would have a significant adverse effect on the structural integrity of the vehicle.

(d) If a public entity operates a fixed route system, any segment of which is included on the National Register of Historic Places, and if making a vehicle of historic character used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity has only to make (or purchase or lease a remanufactured vehicle with) those modifications to make the vehicle accessible which do not alter the historic character of such vehicle, in consultation with the National Register of Historic Places.

(e) A public entity operating a fixed route system as described in paragraph (d) of this section may apply in writing to the UMTA Administrator for a determination of the historic character of the vehicle. The UMTA Administrator shall refer such requests to the National Register of Historic Places, and shall rely on its advice in making determinations of the historic character of the vehicle.

§ 37.57 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public.

(a) Except as provided in this section, a public entity operating a demand responsive system for the general public making a solicitation after August 25, 1990, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) If the system, when viewed in its entirety, provides a level of service to

individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities, it may purchase new vehicles that are not readily accessible to and usable by individuals with disabilities.

(c) For purposes of this section, a demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

(1) Response time;

(2) Fares;

(3) Geographic area of service;

(4) Hours and days of service;

(5) Restrictions based on trip purpose;

(6) Availability of information and reservations capability; and

(7) Any constraints on capacity or service availability.

(d) A public entity receiving UMTA funds under section 18 or a public entity in a small urbanized area which receives UMTA funds under Section 9 from a state administering agency rather than directly from UMTA, which determines that its service to individuals with disabilities is equivalent to that provided other persons shall, before any procurement of an inaccessible vehicle, file with the appropriate state program office a certification that it provides equivalent service meeting the standards of paragraph (c) of this section. Public entities operating demand responsive service receiving funds under any other section of the UMT Act shall file the certification with the appropriate UMTA regional office. A public entity which does not receive UMTA funds shall make such a certification and retain in its files, subject to inspection on request of UMTA. All certifications under this paragraph certification may be made and filed in connection with a particular procurement or in advance of a procurement; however, no certification shall be valid for more than one year. A copy of the required certification is found in appendix C to this part.

(e) The waiver mechanism set forth in § 37.21(b)–(h) of this subpart shall be available to public entities operating a demand responsive system for the general public.

§ 37.59 Purchase or lease of new rail vehicles by public entities operating rapid or light rail systems.

Each public entity operating a rapid or light rail system making a solicitation after August 25, 1990, to purchase or lease a new rapid or light rail vehicle for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

§ 37.61 Purchase or lease of used rail vehicles by public entities operating rapid or light rail systems.

(a) Except as provided elsewhere in this section, each public entity operating a rapid or light rail system which, after August 25, 1990, purchases or leases a used rapid or light rail vehicle for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) A public entity may purchase or lease a used rapid or light rail vehicle for use on this rapid or light rail system that is not readily accessible to and usable by individuals if, after making demonstrated good faith efforts to obtain an accessible vehicle, it is unable to do so.

(c) Good faith efforts shall include at least the following steps:

(1) The initial solicitation for used vehicles made by the public entity specifying that all used vehicles were to be accessible to and usable by individuals with disabilities;

(2) A nationwide search for accessible vehicles, involving specific inquiries to manufacturers and other transit providers; and

(3) Advertising in trade publications and contacting trade associations.

(d) Each public entity purchasing or leasing used rapid or light rail vehicles that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts it made for two years from the date the vehicles were purchased. These records shall be made available, on request, to the UMTA Administrator and the public.

§ 37.63 Remanufacture of rail vehicles and purchase or lease of remanufactured rail vehicles by public entities operating rapid or light rail systems.

(a) This section applies to any public entity operating a rapid or light rail system which takes one of the following actions:

(1) After August 25, 1990, remanufactures a light or rapid rail vehicle so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing;

(2) Purchases or leases a light or rapid rail vehicle which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after August 25, 1990, and during the period in which the useful life of the vehicle is extended.

(b) Vehicles acquired through the actions listed in paragraph (a) of this section shall; to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) For purposes of this section, it shall be considered feasible to remanufacture a rapid or light rail vehicle so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that doing so would have a significant adverse effect on the structural integrity of the vehicle.

(d) If a public entity operates a rapid or light rail system any segment of which is included on the National Register of Historic Places and if making a rapid or light rail vehicle of historic character used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity need only make (or purchase or lease a remanufactured vehicle with) those modifications that do not alter the historic character of such vehicle.

(e) A public entity operating a fixed route system as described in paragraph (d) of this section may apply in writing to the UMTA Administrator for a determination of the historic character of the vehicle. The UMTA Administrator shall make such determinations on a case by case basis, in consultation with the National Register of Historic Places.

§ 37.65 Purchase or lease of new intercity and commuter rail cars.

Amtrak or a commuter authority making a solicitation after August 25, 1990, to purchase or lease a new intercity or commuter rail car for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

§ 37.67 Purchase or lease of used intercity and commuter rail cars.

(a) Except as provided elsewhere in this section, Amtrak or a commuter authority purchasing or leasing a used intercity or commuter rail car after August 25, 1990, shall ensure that the car is readily accessible to and usable by

individuals with disabilities, including individuals who use wheelchairs.

(b) Amtrak or a commuter authority may purchase or lease a used intercity or commuter rail car that is not readily accessible to and usable by individuals if, after making demonstrated good faith efforts to obtain an accessible vehicle, it is unable to do so.

(c) Good faith efforts shall include at least the following steps:

(1) An initial solicitation for used vehicles specifying that all used vehicles accessible to and usable by individuals with disabilities;

(2) A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers; and

(3) Advertising in trade publications and contacting trade associations.

(d) Amtrak and commuter authorities purchasing or leasing used intercity or commuter rail cars that are not readily accessible to and usable by individuals with disabilities shall retain documentation of the specific good faith efforts that were made for two years from the date the cars were purchased. These records shall be made available, on request, to the UMTA or FRA Administrator, as applicable.

§ 37.69 Remanufacture of intercity and commuter rail cars and purchase or lease of remanufactured intercity and commuter rail cars.

(a) This section applies to Amtrak or a commuter authority which takes one of the following actions:

(1) Remanufactures an intercity or commuter rail car so as to extend its useful life for ten years or more;

(2) Purchases or leases an intercity or commuter rail car which has been remanufactured so as to extend its useful life for ten years or more.

(b) Intercity and commuter rail cars listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) For purposes of this section, it shall be considered feasible to remanufacture an intercity or commuter rail car so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that remanufacturing the car to be accessible would have a significant adverse effect on the structural integrity of the car.

§ 37.71 Ferries and other vessels operated by public entities. [Reserved]

§§ 37.73–37.89 [Reserved]

Subpart D—Acquisition of Accessible Vehicles by Private Entities

§ 37.91 Purchase or lease of non-rail vehicles by private entities not primarily engaged in the business of transporting people.

(a) A private entity which is not primarily engaged in the business of transporting people, which operates a fixed route system, and which makes a solicitation after August 25, 1990, to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) A private entity which is not primarily engaged in the business of transporting people and which operates a fixed route system shall not purchase or lease a vehicle, after August 25, 1990, with a seating capacity of 16 passengers or less (including the driver) for use on the system that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the system, when viewed in its entirety, ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals with disabilities. For purposes of this paragraph, a fixed route system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs for the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

(1) Schedules/headways;
(2) Fares;
(3) Geographic area of service;
(4) Hours and days of service;
(5) Availability of information; and
(6) Any constraints on capacity or service availability.

(c) A private entity which is not primarily engaged in the business of transporting people and which operates a demand responsive system shall not make a solicitation, after August 25, 1990, to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on its system that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless its system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, that is equivalent to the level of service provided to individuals without disabilities. For purposes of this paragraph, this equivalent service requirement shall be deemed to have been met if service to individuals with disabilities is provided in the most integrated setting appropriate to the needs of the individual and is the same as or fully equivalent to the service provided other individuals with respect to the following service characteristics:

(1) Response time;
(2) Fares;
(3) Geographic area of service;
(4) Hours and days of service;
(5) Restrictions based on trip purpose;
(6) Availability of information and reservations capability; and
(7) Any constraints on capacity or service availability.

§ 37.93 Purchase or lease of non-rail vehicles private entities primarily engaged in the business of transporting people.

(a) Except as provided in this paragraph, a private entity which is primarily engaged in transporting people and whose operations affect commerce, which make a solicitation after August 25, 1990, to purchase or lease a new vehicle (other than an automobile, a van with a seating capacity of less than eight persons, including the driver, or an over-the-road bus) for use in providing specified public transportation on the system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) The entity may purchase such a new vehicle that is not readily accessible to and usable by individuals with disabilities if the vehicle is to be used solely on a demand responsive system and the entity can demonstrate that the system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities. For purposes of this paragraph, a demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most

integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

(1) Response time;
(2) Fares;
(3) Geographic area of service;
(4) Hours and days of service;
(5) Restrictions based on trip purpose;
(6) Availability of information and reservations capability; and
(7) Any constraints on capacity or service availability.

(c) Except as provided in this paragraph, a private entity which is primarily engaged in transporting people and whose operations affect commerce, which makes a solicitation after February 25, 1992, to purchase or lease a new van with a seating capacity of less than eight persons, including the driver, for use in providing specified public transportation on the entity's system shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. The entity may purchase such a new van that is not readily accessible to and usable by individuals with disabilities, if the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities. For purposes of this paragraph, the system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including wheelchair users, is provided in the most integrated setting feasible and is the same as or fully equivalent to the service provided other individuals with respect to the following service characteristics:

(1) Response time (if the system is demand responsive) or schedules/headways (if the system is a fixed route system):
(2) Fares;
(3) Geographic area of service;
(4) Hours and days of service;
(5) Restrictions based on trip purpose;
(6) Availability of information and reservations capability; and
(7) Any constraints on capacity or service availability.

§ 37.95 Acquisition of passenger rail cars by private entities primarily engaged in the business of transporting people.

(a) A private entity which is primarily engaged in the business of transporting people and whose operations affect commerce, which makes a solicitation after February 25, 1992, to purchase or lease a new rail passenger car to be used in providing specified public transportation, shall ensure that the car is readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. The accessibility standards in appendix A which apply depend upon the type of service in which the car will be used.

(b) Except as provided paragraph (c) of this section, a private entity which is primarily engaged in transporting people and whose operations affect commerce, which remanufactures a rail passenger car to be used in providing specified public transportation to extend its useful life for ten years or more, or purchases or leases such a remanufactured rail car, shall ensure that the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. For purposes of this paragraph, it shall be considered feasible to remanufacture a rail passenger car to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that doing so would have a significant adverse effect on the structural integrity of the car.

(c) Compliance with paragraph (b) of this section is not required to the extent that it would significantly alter the historic or antiquated character of a historic or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in the violation of any rule, regulation, standard or order issued by the Secretary under the Federal Railroad Safety Act of 1970. For purposes of this section, a historic or antiquated rail passenger car means a rail passenger car—

(1) Which is not less than 30 years old at the time of its use for transporting individuals;

(2) The manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(3) Which—

(i) Has a consequential association with events or persons significant to the past; or

(ii) Embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

§ 37.97 Ferries and other vessels operated by private entities. [Reserved]

§§ 37.99–37.109 [Reserved]

Subpart E—Transportation Services

§ 37.111 Paratransit as a complement to fixed route service.

(a) Except as provided in §§ 37.123–37.127 of this part, each public entity operating a fixed route system, other than a system which provides solely commuter bus service, shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system.

(b) Each public entity subject to the requriement of paragraph (a) of this section shall establish a process for determining the "ADA Paratransit Eligibility" of persons seeking to use the service. The entity, through this process, shall strictly limit "ADA Paratransit Eligibility" to persons required to be eligible under this paragraph.

(1) Individuals with permanent or temporary disabilities in the following categories shall be eliglble for the service at all times, or with respect to a particular type of trip or a trip under particular conditions, even when the fixed route system is completely accessible:

(i) Any individual with a disability who is unable, as the result of a physical or mental impairment (including a vision impairment), and without the assistance of another individual (except the operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) Any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(2) Individuals with permanent or temporary disabilities in the following category shall be eligible for the service, at all times or with respect to a particular type of trip or a trip under particular conditions, until complete accessibility of the fixed route system is achieved: any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device and is able, with such assistance, to board, ride and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants

to travel on a route on the system during the hours of operation of the system at a time, or within a reasonable period of such time, when such a vehicle is not being used to provide designated public transportation on the route; and

(3) Individuals accompanying an eligible individual with a disability shall be provided service as follows:

(i) One other individual accompanying the eligible individual with a disability shall be provided service;

(ii) Additional individuals accompanying the eligible individual with a disability shall be provided service provided that space is available for them in the paratransit vehicle carryng the eligible individual with a disability and that transportation of the additional individuals will not result in a denial of service to individuals with disabilities.

(4) The entity's process for determining "ADA Paratransit Eligibility" shall include the following features:

(i) Information about the process and materials necessary to apply for eligibility shall be made available in accessible formats.

(ii) Individuals with disabilities shall be presumptively "ADA Paratransit Eligible" if the entity has not made an eligibility determination within (2 or 4) weeks of the submission of a completed application. Such presumptive eligibility shall remain in effect until and unless the entity determines that the individual is ineligible.

(iii) The entity's determination concerning eligibility shall be in writing. If the determination is that the individual is ineligible the determination shall state the basis for the finding.

(iv) The entity shall establish an administrative appeal process through which individuals who are denied "ADA Paratransit Eligibility' can obtain review of the denial.

(v) The entity shall provide documentation to each eligible individual stating that he or she is "ADA Paratransit Eligible." The documentation shall include any expiration date for eligibility and any conditions or limitations on the individual's eligibility.

(5) Each entity shall treat as eligible for its complementary paratransit service all individuals, regardless of place of residence, who present documentation that they are "ADA Paratransit Eligible" for complementary paratransit, under the criteria of this section, in the jurisdiction in which they reside. With respect to individuals with disabilities who do not present such documentation and who do not reside in the entity's service area, the entity shall make presumptive "ADA Parastransit Eligibility" available to them immediately, without the (2 or 4) week waiting period provided for in paragraph (b)(4)(ii) of this section.

(c) In order to meet the requirement of this section for comparable service, the complementary paratransit shall meet the following service criteria:

(1) Service shall be provided to all origins and destinations within (one mile *or* ¼ mile *or* a range from ¼ mile to 1½ miles, depending on the population density of the area through which a route or portion of a route passes) on each side of any fixed route, except a route on which the entity provides only commuter bus service; *Provided,* That a public entity is not required to provide paratransit service outside the boundaries of the jurisdiction in which it is authorized to operate.

(2) The entity shall schedule and provide paratransit service to any eligible person at any time on a particular day in response to a request for service made any time the previous day. The entity shall make reservation service directly available during at least all normal business hours of the entity's offices, as well as during times, comparable to normal business hours, on a day before a service day when the entity's offices are not open.

(3) The fare for a trip charged to a user of the complementary paratransit system shall be comparable to the base fare that would be charged to the individual for a trip of similar length, at a similar time of day, on the entity's fixed route system.

(i) The base fare, for this purpose, shall include discounts to which the individual would be entitled on the fixed route system.

(ii) Except as provided in this paragraph (c)(3)(iii) of this section, the fare shall not in any case exceed twice this base fare that would be charged to the individual for a trip of similar length, at a similar time of day, on the entity's fixed route system.

(iii) The entity may charge, in addition to the base fare, the equivalent of transfer, premium, or other charges that a person making a similar trip, at a similar time of day on the fixed route system, would have to pay, even if the total of the base fare and these extra charges is more than twice the base fare.

(iv) Nothing in this paragraph shall preclude the entity from charging higher fares or fees to social service or other organizations which arrange with the entity to provide transportation for their clients or other individuals with disabilities.

(4) The entity shall not impose restrictions or priorities based on trip purpose.

(5) The complementary paratransit service shall be available throughout the same hours and days as the entity's fixed route service.

(6) The entity shall not limit the availability of complementary paratransit service to eligible persons by capacity constraints including, but not limited to, restrictions on the number of trips an individual will be provided, waiting lists or consistent denials of trip requests on the basis of insufficient capacity, or consistent untimeliness with respect to scheduled pickup times or trip lengths.

§ 37.113 Requirement to develop and submit paratransit plant.

(a) Each public entity operating a fixed route system shall submit to the appropriate office (indicated in paragraph (b) of this section) a plan for providing paratransit service as a complement to its fixed route service. For purposes of developing and submitting a plan, a group of two or more public entities with overlapping or contiguous service areas may develop and submit a single plan covering their service area. Joint plans must clearly identify the cooperating entities and indicate their endorsement of the plan.

(b) Initially, each plan must be submitted by January 26, 1992. Plan updates must be submitted annually thereafter, with each year's submission due January 26, of that year.

(c) An entity shall submit its plan to one of the following offices, as appropriate:

(1) UMTA Regional Office, as listed in Appendix C to this Part, if it is—

(i) An UMTA recipient under section 9 of the UMT Act;

(ii) Submitting a joint plan and any of the entities is a recipient under section 9 of the UMT Act; or

(iii) Submitting a joint plan that covers portions of more than one State.

(2) UMTA, through the individual state administering agency, if it is—

(i) A section 18 recipient;

(ii) A small urbanized recipient of section 9 funds administered by the state; or

(iii) A public entity that is not an UMT Act recipient.

(d)(1) With respect to plans submitted to UMTA under paragraph (c)(1) of this section, UMTA will approve or disapprove each plan submitted to it, consistent with the provisions of § 37.119 of this part.

(2)(i) With respect to plans submitted through a state under paragraph (c)(2) of

this section, the state shall review the plan consistent with the provisions of § 37.119 of this part and further guidance provided by UMTA, as applicable. Upon completion of its review, the state shall forward the plan to the relevant UMTA regional office, attaching specific findings and a recommendation for approval or disapproval. As a further part of its review of plans from non-urbanized areas, the state shall determine whether the plan is in compliance with statewide planning activities.

(ii) If a paratransit plan includes a request for a waiver based on undue financial burden, the state shall also forward the request, with its recommendation for action to the appropriate UMTA Regional office.

(iii) If the state recommends disapproval, the state's transmittal shall include the basis of the recommendation and suggested modifications that the entity must make to come into compliance. Taking the state's recommendation into consideration, UMTA will approve or disapprove the plan.

(3) If the plan is disapproved, UMTA will specify which provisions are disapproved. Each entity shall amend its plan consistent with this information and resubmit the plan to the appropriate entity within 90 days of receipt of the disapproval letter.

§ 37.115 Specific requirements for developing a paratransit plan.

(a) Each submitting entity shall ensure public participation in the development of its paratransit plan. At a minimum, this must include:

(1) *A public hearing.* The entity shall provide adequate notice of the meeting, including use of appropriate media, such as newspapers of general and special interest and radio announcements.

(2) *Opportunity for public comments.* In making the plan available for public review, the entity shall ensure that the plan is available upon request in appropriate accessible formats, such as large print, tape, etc.; and

(3) *Consultation with individuals with disabilities.* Each entity shall make special efforts to contact individuals with disabilities and groups representing them in the community.

(b) Each submitting entity shall survey the area to be covered by the plan to identify any person or entity (public or private) which provides a paratransit or other special transportation service for ADA-eligible individuals in the service area to which the plan applies. The submitting entity can consider transportation service provided by others in its plan to meet the paratransit needs of its service area, without duplicating this service.

(c) The requirements of this section apply to the initial plan as well as each annual submission thereafter.

§ 37.117 Contents of plan.

Each plan must contain the following:

(a) A description of the fixed route system, including:

(1) Data on overall service area, routes, population served, hours and days of service, fare structure, and unmet demand;

(2) Data on number of accessible vehicles in fleet, total fleet size, current distribution of accessible vehicles in daily service.

(b) An inventory of existing paratransit service. When the public entity intends to include service provided by the other entities in its overall paratransit plan, the public entity shall ensure and document that:

(1) the listed service is being provided in the manner represented;

(2) *ADA Paratransit Eligible* individuals have access to these services; and

(3) if this other service does not meet all of the service criteria specified in § 37.111 of this part, the public entity shall supplement the service it provides to ensure that the service criteria are met.

(c) Analysis of discrepancies between the current paratransit service and what is required under this part;

(d) Discussion of the public participation process including a description of public hearings held, public comment periods, outreach efforts, etc. The discussion should include resolution of issues raised during the public comment period.

(e) Description of the plan to provide complementary paratransit. This must include:

(1) A description of the service as it relates to each of the service criteria described in § 37.111 of this part;

(2) A budget for complementary paratransit service, including capital and operating expenditures over the next six years;

(3) A description of changes to existing service that will take place during the implementation of the complementary paratransit service;

(4) A timetable for implementation of the paratransit plan. This should include specific milestones for implementing phases of the plan, if phase-in is required, with a specific date indicating when the plan will be completely operational.

(f) Efforts to coordinate the provision of paratransit service by other providers;

(g) Description of process used to certify individuals with disabilities as eligible for service. This must include a policy on accepting travelers consistent with § 37.111(b)(5) of this part.

(h) A contact person.

(i) The following certifications:

(1) Certification by the submitting entity(ies) that the entity(ies) concur with the plan.

(2) In urbanized area, the Metropolitan Planning Organization (MPO) must endorse the plan and certify that the plan is in conformance with the transportation plan developed under 49 CFR part 613 and 23 CFR part 450 (the UMTA/FHWA joint planning regulation).

(j) A request for a waiver based on undue financial burden, if applicable (See §§ 37.123–37.127 of this part). If a request for an undue financial burden waiver is made, the plan shall include a description of the complementary paratransit service the entity intends to provide if the waiver is granted.

§ 37.119 Review and approval of plans.

In reviewing each plan UMTA/state (as appropriate) will consider the following:

(a) Whether plan includes all of the elements required under § 37.117 of this part.

(b) Whether the plan is consistent with the substantive provisions of this part, and

(c) Whether public participation in the development of the paratransit plan consistent with this part has taken place.

§ 37.121 Plan implementation.

(a) Each entity shall begin implementation of its complementary paratransit plan, pending notice of approval or disapproval from UMTA. The implementation of the plan shall be consistent with the terms of the plan, including its specified phase-in period.

(b) If the plan includes a request for a waiver for undue financial burden, the entity shall begin implementation of its plan, pending a determination on its waiver request.

§ 37.123 Exception for undue financial burden.

(a) An entity may request a waiver from providing comparable paratransit service which meets the service criteria of § 37.111 of this part, if the entity satisfies the condition specified in § 37.125 of this part.

(b) The Administrator will make a determination to grant a waiver for undue financial burden on a case-by-case basis, after considering the factors

identified in § 37.127 of this part and the information accompanying the request. Any waiver granted will be for a limited and specified time period. If the Administrator grants the applicant a waiver, the Administrator will do one of the following:

(1) Require the public entity to provide complementary paratransit to the extent it can do so without incurring an undue financial burden. The entity shall make changes in its plan that the Administrator determines are appropriate to maximize the complementary paratransit service that is provided to ADA Paratransit Eligible individuals.

(2) Require the public entity to provide basic complementary paratransit services to all "ADA Paratransit Eligible" individuals, even if doing so would cause the public entity to incur an undue financial burden. Basic complementary paratransit service shall include at least complementary paratransit service along the public entity's key routes during core service hours.

(i) For purposes of this section, key routes are defined as routes along which there is service at least hourly throughout the service day.

(ii) For purposes of this section, core service hours encompass at least morning, noon and evening peak periods, as these periods are defined locally for fixed routes service, consistent with industry practice.

(3) If the Administrator determines that the public entity will incur an undue financial burden as the result of providing basic complementary paratransit service, such that it is infeasible for the entity to provide basic complementary paratransit service, the Administrator shall require the public entity to coordinate with other available providers of demand responsive service in the area served by the public entity to maximize the service to "ADA Paratransit Eligible" individuals, to the maximum extent feasible.

§ 37.125 Request for undue financial burden waiver.

An entity submitting a plan for complementary paratransit is eligible to apply for a waiver based on undue financial burden, if

Option I: The entity asserts that it is unable, without significant adverse effects on its overall service to all individuals, to meet the requirements in § 37.111 of this part.

Option II: The entity asserts that it is unable, without significant adverse effects on its overall service to all individuals, to provide to ADA-eligible persons a comparable number of trips meeting the requirements of § 37.111 of this part, as it provides to all other individuals. The entity shall calculate trips per capita on its fixed route system based on the entire population of the service area divided into the total number of fixed route trips provided. A comparable number of complementary paratransit trips is provided if this number of trips is made available to all ADA Paratransit Eligible persons registered for complementary paratransit service with the public entity.

Option III: The entity exceeds the average cost of providing complementary paratransit service for an area of its size classification.

§ 37.127 Determination of undue financial burden.

(a) In making a determination of undue financial burden, the UMTA Administrator will consider the following factors: (1) Effects on current fixed route service, including reallocation of accessible fixed route vehicles and potential reduction in service, measured by service miles;

(2) Reductions in other services (including other special services as well as fixed route service);

(3) Increases in fares;

(4) Resources available to implement complentary paratransit service, over the period covered by the plan.

(5) Percentage of budget needed to implement the plan, both as a percentage of operating and a percentage of entire budget.

(6) The current level of accessible service, both fixed route and paratransit;

(7) Cooperation/coordination among area transportation providers;

(8) Evidence of increase efficiencies that have been or could be effectuated that would benefit the level and quality of complementary paratransit service available; and

(9) Unique circumstances in the submitting entity's area that affect the ability of the entity to provide paratransit, that militate against the need to provide paratransit, or in some other respect create a circumstance considered exceptional by the submitting entity.

(b) Costs attributable to complementary paratransit shall be limited to costs of providing service specifically required by this part to ADA-eligible individuals, by entities responsible under this part for providing such service.

§ 37.129 Interim requirements for over-the-road bus service operated by private entities.

(a) Private entities operating over-the-road buses, in addition to compliance with other applicable provisions of this part, shall provide accessible service as provided in this section.

(b) The private entity shall provide assistance, as needed, to individuals with disabilities in boarding and disembarking, including moving to and from the bus seat for the purpose of boarding and disembarking.

(c) The private operator shall not deny transportation to any individual on the basis of disability, except on the basis that such denial is essential for the safety of the individual or other persons using the bus. In the event of a denial of transportation on this basis, the private entity shall provide to the individual, within 20 days, a written explanation of the reasons for its action.

(d) To the extent that they can be accommodated in the areas of the passenger compartment provided for passengers' personal effects, wheelchairs or other mobility aids and assistive devices used by individuals with disabilities, or components of such devices, shall be permitted in the passenger compartment. When the bus is at rest at a stop, the driver or other personnel shall assist individuals with disabilities with the stowage and retrieval of mobility aids, assistive devices, or other items that can be accommodated in the passenger compartment of the bus.

(e) Wheelchairs and other mobility aids or assistive devices that cannot be accommodated in the passenger compartment (including electric wheelchairs and mobility devices) shall be accommodated in the baggage compartment of the bus, unless the size of the baggage compartment prevents such accommodation.

(f) At any given stop, individuals with disabilities shall have the opportunity to have their wheelchairs or other mobility aids or assistive devices stowed in the baggage compartment before other baggage or cargo is loaded, but baggage or cargo already on the bus does not have to be off-loaded in order to make room for such devices. This requirement is subject to the provisions of paragraph (j) of this section with respect to electric wheelchairs.

(g) The private entity shall permit a service animal to accompany an individual with a disability in the passenger compartment.

(h) The private entity shall not mandate separate treatment for individuals for disabilities who use its

service, except as permitted or required by this part.

(i) The private entity shall not impose charges for providing facilities, equipment or services required by this part to individuals with disabilities.

(j) The private entity may require 48 hours advance notice for provision of boarding assistance under paragraph (b) of this section or stowage of an electrically-powered mobility device in the baggage compartment under paragraph (e) of this section.

§ 37.131 Equivalency requirement for demand responsive service operated by private entities not primarily engaged in the business of transporting people.

A private entity not primarily engaged in the business of transporting people which operates a demand responsive system shall ensure that its system, when viewed in its entirety, provides equivalent service to individuals with disabilities, including individuals who use wheelchairs, as it does to individuals without disabilities. For purposes of this paragraph, a demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including wheelchair users, is provided in the most intergrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

(a) Response time;

(b) Fares;

(c) Geographic area of service;

(d) Hours and days of service;

(e) Restrictions based on trip purpose;

(f) Availability of information and reservations capability; and

(g) Any constraints on capacity or service availability.

§ 37.133 Provision of service.

(a) This sections sets forth requirements for the provision of service by public and private entities operating fixed route or demand responsive systems.

(b) Vehicles or other conveyances used for transportation of individuals with disabilities, and lifts, securement devices, and other equipment used to accommodate such individuals, shall be maintained in proper operating condition. The lift on each vehicle shall be tested before the vehicle goes into service each day. If the lift does not work properly, the vehicle shall not go into service until repairs or maintenance is performed that cause the lift to work properly; *Provided,* That a public entity listed in § 37.113(c)(2) (i) or (ii) may continue to use the vehicle on an inaccessible route if keeping the vehicle out of service for repairs would reduce service to the general public. Such use of a vehicle with a nonworking lift may not continue for more than five working days.

(c) All wheelchairs and other mobility devices, including three-wheeled mobility devices, which, with their users, can be accommodated within the size and weight limits set forth in the standards of appendix A to this part, shall be transported on the entity's vehicles or other conveyances. The entity is not required to permit wheelchairs or mobility devices to ride in places other than designated securement locations in the vehicle.

(d) The entity may require that a mobility device be secured, to the extent practicable, given the characteristics of the device and the vehicle's securement system. The entity may not deny transportation to the device or its user on the ground that the device cannot be secured by the securement system. If the entity is unable to secure the device in accordance with the provisions of appendix A, it shall provide a means of ensuring that the mobility device remains within the securement area.

(e) Except as provided in this paragraph, the entity may not require that an individual transfer from his or her mobility device to a vehicle seat. The entity may require such a transfer only in a vehicle with a capacity of 16 seats or less, including the driver, and only under the following conditions:

(1) All persons riding in the vehicle are required to be secured;

(2) The individual can be secured adequately in the vehicle seat; and

(3) The entity determines, after consulting with the individual, that the risk of injury to the individual is greater from remaining in his or her own mobility device than the risk of injury to the individual from transferring.

(g) Operators of vehicles or other conveyances, or other personnel of the entity, shall assist passengers, where necessary or requested by the passenger, in the use of the lift and securement devices, leaving their seats to provide such assistance as needed.

(f) Where vehicles or other conveyances for more than one route serve the same stop, the entity shall provide a means by which a person with a visual impairment or mental disability can identify the proper vehicle to enter or be identified to the operator as a person seeking to ride on a particular route.

(g) Adequate assistance and information concerning transportation services shall be made available to individuals with disabilities, including those with vision and hearing impairments. This obligation includes making adequate communications capacity available, in accessible formats, to enable users to obtain information about and schedule service.

(h) Operators of vehicles shall announce stops or cause them to be announced.

(i) Operators of vehicles and other personnel of the entity shall make use of accessibility-related equipment or features required by appendices A and B to this part.

§ 37.135 One car per train rule.

(a) Each person providing intercity rail service and each commuter rail authority shall ensure that, as soon as practicable, but in no event later than July 26, 1995, that each train has one car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) Each public entity providing light or rapid rail service shall ensure that each train, consisting of two or more vehicles, includes at least one car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no case later than July 25, 1995.

§ 37.137 Wheelchair securement locations and food service on intercity rail trains.

(a) As soon as practicable, but in no event later than July 26, 1995, each person providing intercity rail service shall provide on each train a number of spaces—

(1) To park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one half of the number of single level rail passenger coaches in the train; and

(2) To fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one half the number of single level rail passenger coaches in the train.

(b) As soon as practicable, but in no event later than July 26, 2000, each person providing intercity rail service shall provide on each train a number of spaces—

(1) To park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single level rail passenger coaches in the train; and

(2) To fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less

than the total number of single level rail passenger coaches in the train.

(c) In complying with paragraphs (a) and (b) of this section, a person providing intercity rail service is not required to provide more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs in any one coach or food service car.

(d) Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a single level dining car through which an individual who uses a wheelchair may enter.

(e) On any train in which either a single level or bi-level dining car is used to provide food service, a person providing intercity rail service shall provide appropriate auxiliary aids and services to ensure that equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals. Appropriate auxiliary aids and services include providing a hard surface on which to eat.

Appendix A to Part 37—Standards for Accessible Vehicles

Note: This appendix consists of the Transit Vehicle Standards of the ATBCB. The proposed ATBCB standards are set forth below:

AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR TRANSPORTATION VEHICLES

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Authority: Americans With Disabilities Act of 1990, Pub. L. 101–336, 42 U.S.C. 12204.

A—General

1 Purpose

This part provides minimum guidelines and requirements for accessibility standards to be issued by the Department of Transportation in 49 CFR part 37 for transportation vehicles required to be accessible by the Americans with Disabilities Act (ADA) of 1990.

3 Definitions [Reserved]

B—Large Buses and Systems

21 General

(a) New, used or remanufactured buses having a Gross Vehicle Weight Rating (GVWR) of 19,500 pounds or above (except over-the-road buses covered by subpart H of this part), to be considered accessible by regulations issued by the Department of Transportation in 49 CFR part 37, shall comply with the applicable provisions of this subpart.

(b) If portions of the vehicle are modified in such a way that it affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible buses be retrofitted with lifts, ramps or other boarding devices.

23 Mobility aid accessibility

(a) *General.* All vehicles covered by this subpart shall provide a level-change merchanism or boarding device (e.g., lift or ramp) complying with paragraph (b) or (c) of this section; sufficient clearances to permit a wheelchair or other mobility aid user to reach a securement location; and at least one securement device complying with paragraph (d) of this section.

(b) *Vehicle lift*—(1) *Design load.* The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Nonworking parts, such as platform, frame, and attachment hardware which would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

(2) *Controls.* The controls shall be interlocked with the vehicle brakes or transmission, or shall provide other appropriate fail-safe mechanisms or systems, so that the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks are engaged. Each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

(3) *Emergency operation.* The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator.

(4) *Power or equipment failure.* Platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12 inches/second or their dropping of an occupant in the event of a failure of power, chain, cable or hydraulic hose.

(5) *Platform barriers.* The lift platform shall be equipped with barriers to prevent any of

the wheels of a wheelchair or mobility aid from rolling off the platform during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the vehicle until the platform is in its fully raised position. Each side of the lift platform which extends beyond the vehicle shall have a barrier a minimum 1½ inches high. Such barriers shall not interfere with entering the vehicle. The loading-edge barrier (roll-off barrier) which functions as a loading ramp when the lift is at ground level, shall be sufficiently high when raised or closed to prevent a power wheelchair or mobility aid from riding over it and shall withstand a static load of 1,600 pounds, applied at a height of 3 inches above and parallel to the platform, for 5 seconds without deflecting more than 5 degrees from the unstressed position. The barrier on the outboard or loading edge of the lift shall automatically raise or close, and remain raised or closed, at all times that the platform is more than 3 inches above the roadway or sidewalk and the platform is occupied. Alternatively, a barrier may be raised, lowered, opened or closed by the lift operator provided an interlock or inherent design feature prevents the lift from raising unless the barrier is raised or closed.

(6) *Platform surface*—(i) *Requirements.* The platform surface shall be free of any protrusions over ¼ inch high and shall be slip resistant. The platform shall have a minimum clear width of 30 inches measured from the platform surface to 30 inches above the platform and a minimum clear length of 48 inches measured from 2 inches above the surface of the platform to 30 inches above the surface of the platform. (See Fig. 1)

(ii) *Exception.* Where a bus body structural member would preclude a lift platform with a minimum 30 inch clear width, the minimum clear width shall be as close to 30 inches as possible but in no case less than 28½ inches.

(7) *Platform gaps.* Any openings between the platform surface and the raised barriers shall not exceed ⅝ inch wide. When the platform is at vehicle floor height with the inner barrier down or retracted, gaps between the forward lift platform edge and the vehicle floor shall not exceed ½ inch horizontally and ⅝ inch vertically.

(8) *Platform entrance ramp.* The entrance ramp, or loading-edge barrier used as a ramp, shall not exceed a slope of 1:8, for a maximum rise of 3 inches, and the transition from roadway or sidewalk to ramp may be vertical without edge treatment up to ¼ inch inch. Thresholds between ¼ and ½ inch shall be beveled with a slope no greater than 1:2.

(9) *Platform deflection.* The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees in any direction between its unloaded position and its position when loaded with 600 pounds applied through a 26 inch by 26 inch test pallet at the centroid of the platform.

(10) *Platform movement.* No part of the platform shall move at a rate exceeding 6 inches/second during deployment, lowering, lifting, or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum platform horizontal and vertical acceleration shall be 0.2g.

(11) *Boarding direction.* The lift shall permit both inboard and outboard facing of wheelchairs and mobility aids.

(12) *Use by standees.* Lifts shall accommodate persons using walkers, crutches, canes or braces or who otherwise cannot use steps. The platform may be marked to indicate a preferred standing position.

(13) *Handrails.* Platforms on lifts shall be equipped with handrails which move in tandem with the lift on both sides which shall be graspable throughout the entire lift operation. Handrails shall have a horizontal or diagonal component at least 12 inches long with the top between 30 inches and 34 inches above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(c) *Vehicle ramp*—(1) *Design load.* Ramps shall support a load of 600 pounds, placed at the centroid of the ramp distributed over an area of 26 inches by 26 inches, with a safety factor of at least 3 based on the ultimate strength of the material.

(2) *Ramp surface.* The ramp surface shall be continuous and slip resistant; shall not have protrusions from the surface greater than ¼ inch; shall have a clear width of 30 inches; and shall accommodate both four-wheel and three-wheel mobility aids.

(3) *Ramp threshold.* The transition from roadway or sidewalk and the transition from vehicle floor to the ramp may be vertical without edge treatment up to ¼ inch. Changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(4) *Ramp barriers.* Each side of the ramp shall have barriers at least 2 inches high to prevent mobility aid wheels from slipping off.

(5) *Slope.* Where a 1:12 slope is not feasible, ramps shall have a slope no steeper than 1:8 for a maximum 3 inch rise, or no steeper than 1:10 for a maximum 6 inch rise. The slope shall be measured when the ramp is deployed to typical stops in the operating environment. Folding or telescoping ramps are permitted provided they meet all structural requirements of this section.

(6) *Attachment.* When in use for boarding or alighting, the ramp shall be firmly attached to the vehicle so that it is not subject to displacement when loading or unloading a heavy power mobility aid and that any gaps between vehicle and ramp shall not exceed ⅝ inch.

(7) *Stowage.* Ramps, including portable ramps stowed in the passenger area, shall be stowed in such a way that they do not pose any hazard to passengers.

(8) *Handrails.* If provided, handrails shall allow persons with disabilities to grasp them from outside the vehicle while starting to board, and to continue to use them throughout the boarding process, and shall have the top between 30 inches and 34 inches above the ramp surface. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(d) *Securement devices*—(1) *Design load.* Securement systems on vehicles with GVWRs of 30,000 pounds or above, and their attachments to such vehicles, shall restrain a force in the forward longitudinal direction of up to 2,000 pounds per securement leg or clamping mechanism and a minimum of 4,000 pounds for each mobility aid. Securement systems on vehicles with GVWRs of up to 30,000 pounds, and their attachments to such vehicles, shall restrain a force in the forward longitudinal direction of up to 2,500 pounds per securement leg or clamping mechanism and a minimum of 5,000 pounds for each mobility aid.

(2) *Location and size.* The securement system shall be placed as near to the accessible entrance as practicable and shall have a clear floor area of 30 inches by 48 inches. Not more than 6 inches of the required clear floor space may be accommodated for footrests under another seat provided there is a minimum of 9 inches from the floor to the lowest part of the seat overhanging the space. Securement areas may have fold-down seats to accommodate other passengers when a wheelchair or mobility aid is not occupying the area, provided the seats, when folded up, do not obstruct the clear floor space required. (See Fig. 2)

(3) *Mobility aids accommodated.* The securement system shall secure common wheelchairs and mobility aids and shall either be automatic or easily attached by a person familiar with the system and mobility aid and having average dexterity.

(4) *Orientation.* The securement device or system shall secure the wheelchair or mobility aid facing toward the front of the vehicle.

(5) *Movement.* When the wheelchair or mobility aid is secured in accordance with manufacturer's instructions, the securement system shall limit the movement of an occupied wheelchair or mobility aid to no more than 2 inches in any direction.

(6) *Stowage.* When not being used for securement, or when the securement area can be used by standees, the securement system shall not interfere with passenger movement, shall not present any hazardous condition, shall be reasonably protected from vandalism, and shall be readily accessed when needed for use.

25 Doors, Steps and Thresholds

(a) *Slip resistance.* All floors and steps shall have slip-resistant surfaces.

(b) *Contrast.* All step edges and thresholds shall have a band of color(s) running the full

width of the step with contrasts from the step tread and riser by 70%, as determined by the formula:

Contrast = [B1 − B2)/B1] × 100

where:

B1 = light reflectance value (LRV) of brighter area, and

B2 = light reflectance value (LRV) of darker area.

(c) *Step height and risers.* The height from the ground to the first step shall not exceed 14 inches at the front door and 16 inches at the rear side door. All stair risers shall not exceed 8 inches and the tread depth shall not be less than 11 inches.

(d) *Clear width and closing force*—(1) *Requirements.* All doors shall have a minimum clear width when open of 32 inches. A door shall not require more than 15 lbf (66 N) to prevent if from closing at any point in the closing cycle.

(2) *Exception.* Where a bus body structural member would preclude a door with a minimum 32 inch clear width, the minimum clear width shall be as close to 32 inches as possible but in no case less than 30 inches.

27 Priority Seating Signs

(a) Each vehicle shall contain sign(s) which indicate that seats in the front of the vehicle are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them. At least one set of forward-facing seats shall be so designated.

(b) Each securement location shall have a sign designating it as such.

(c) Characters on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case "X") of ⅝ inch, with "wide" spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background by 70%, as determined by the formula in .25(b).

29 Interior Circulation, Handrails and Stanchions

(a) Interior handrails and stanchions shall permit ample turning and maneuvering space for wheelchairs and other mobility aids to reach a securement location from the lift or ramp.

(b) Handrails and stanchions shall be provided in the entrance to the vehicle in a configuration which allows persons with disabilities to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding and fare collection process. These assists shall have sufficient clearance from the driver's barrier to prevent inadvertent wedging of a passenger's arm. Where on-board fare boxes are provided, a horizontal passenger assist shall be located across the front of the vehicle and shall prevent passengers from sustaining injuries on the fare collection device or windshield in the event of a sudden deceleration. Without restricting the vestibule space, the assist shall provide support for a boarding passenger from the front door through the boarding procedure. Passengers shall be able to lean against the assist for security while paying fares.

(c) Overhead handrail(s) shall be provided which shall be continuous except for a gap at the rear doorway.

(d) Handrails and stanchions shall be sufficient to permit safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(e) For vehicles with front-door lifts or ramps, vertical stanchions immediately behind the driver shall either terminate at the lower edge of the aisle-facing seats, if applicable, or be "dog-legged" so that the floor attachment does not impede or interfere with wheelchair footrests. The driver seat platform, to the maximum extent feasible, shall not extend into the aisle or vestibule beyond the wheel housing.

31 Lighting

(a) Any stepwell or doorway immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread or lift platform.

(b) Other stepwalls and doorways, including doorways in which lifts or ramps are installed, shall have, at all times, at least 2 foot-candles of illumination measured on the step tread, or lift or ramp, when deployed at the vehicle floor level.

(c) The vehicle doorways shall have outside light(s) which provide at least 1 foot-candle of illumination on the street surface for a distance of 3 feet from all points on the bottom step tread or lift or ramp outboard edge. Such light(s) shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

33 Fare Box

Where provided, the farebox shall be located as far forward as practicable and shall not obstruct traffic in the vestibule, expecially wheelchairs or mobility aids.

35 Public Information System

(a) Each vehicle shall be equipped with a public address system permitting the driver, on recorded or digitized human speech messages, to announce stops and provide other passenger information within the vehicle and outside the front door.

(b) An information system shall be provided which is capable of providing the same or equivalent information to hearing impaired persons using an assistive listening system (e.g., magnetic inductive loops) or other appropriate technology or service.

37 Stop Request

(a) Where passengers may board or alight at multiple stops at their option, each vehicle shall provide controls adjacent to the securement location for requesting stops and which alerts the driver that a mobility aid user wishes to disembark. Such a system shall provide auditory and visual indications that the request has been made.

(b) Controls shall be mounted no higher than 48 inches and no lower than 15 inches above the floor, shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no longer than 5 lbf (22.2 N).

39 Destination and Route Signs

(a) Where destination or route information is displayed on the exterior of a vehicle, each vehicle shall have illuminated signs on the front and boarding side of the vehicle.

(b) Characters on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case "X") of 1 inch for signs on the boarding side and a minimum character height of 2 inches for front "headsigns", with "wide" spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background by 70%, as determined by the formula in 25(b).

C—Rapid Rail Vehicles and Systems

51 General

(a) New, used and remanufactured rapid rail vehicles, to be considered accessible by regulations issued by the Department of Transportation in 49 CFR part 37, shall comply with this subpart.

(b) If portions of the vehicle are modified in such a way that it affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible vehicles be retrofitted with lifts, ramps or other boarding devices.

53 Doorways

(a) *Clear width and closing force.* Passenger doorways on vehicle sides shall have clear openings at least 32 inches wide when open. Doorways at ends of vehicles shall have clear openings of 30 inches to permit wheelchair and mobility aid users to be evacuated to an adjoining vehicle in an emergency. Automatic doors shall not require more than 15 lbf (66 N) to prevent closing at any point in the closing cycle. The closing speed shall be one foot per second maximum.

(b) *Signage.* The international symbol of accessibility shall be displayed on the exterior of accessible vehicles operating on an accessible rapid rail system unless all vehicles are accessible, in which case no symbol shall be displayed.

(c) *Signals.* Auditory and visual warning signals shall be provided to alert passengers of closing doors.

(d) *Coordination with boarding platform*—(1) *Requirements.* Where the vehicle will operate in an accessible station, the design of vehicles shall be coordinated with the boarding platform design such that the horizontal gap between a vehicle door at rest and the platform shall be no greater than 3 inches and the height of the vehicle floor shall be plus or minus ⅝ inch of the platform height under all normal passenger load conditions. Vertical alignment may be accomplished by vehicle air suspension or other suitable means of meeting the requirement.

(2) *Exception.* New vehicles operating in existing stations may have a floor height plus or minus 1½ inches of the platform height provided the horizontal gap is no greater than 2½ inches.

55 Priority Seating Signs

(a) Each vehicle shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them.

(b) Characters on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case "X") of ⅝ inch, with "wide" spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background by 70%, as determined by the formula:

Contrast = [(B1 − B2)/B1] × 100

where:

B1 = light reflectance value (LRV) of brighter area, and

B2 = light reflectance value (LRV) of darker area.

57 Interior Circulation, Handrails and Stanchions

(a) Handrails and stanchions shall be provided to assist safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(b) Handrails, stanchions, and seats shall allow a wheelchair or mobility aid user to enter the vehicle and position the wheelchair or mobility aid in an area, having a minimum clear space of 48 inches by 30 inches, which does not prevent movement of other passengers. Particular attention shall be given to ensuring maximum maneuverability immediately inside doors. Ample vertical stanchions from ceiling to seat-back rails shall be provided. Vertical stanchions from ceiling to floor shall not interfere with wheelchair or mobility aid circulation and shall be kept to a minimum in the vicinity of doors.

(c) The diameter or width of the gripping surface of handrails and stanchions shall be 1¼ inches to 1½ inches or provided an equivalent gripping surface.

59 Floor Surfaces

All floors shall have slip-resistant surfaces.

61 Public Information System

(a)(1) *Requirements.* Each vehicle shall be equipped with a public address system permitting transportation system personnel, or recorded or digitized human speech messages, to announce stations and provide other passenger information. Alternative systems or devices which provide equivalent access are also permitted. At least one vehicle in each train shall have an external public address system to permit transportation system personnel, or recorded or digitized human speech messages, to announce train, route, or line identification information.

(2) *Exception.* Where station announcement systems provide information on arriving trains, an external train speaker is not required.

(b) [Reserved]

63 Between-Car Barriers

(a) *Requirement.* Suitable devices or systems shall be provided to prevent individuals from inadvertently stepping off the platform between cars. Acceptable solutions include, but are not limited to, pantograph gates, chains, motion detectors or similar devices.

(b) *Exception.* Between-car barriers are not required where platform screens are provided which close off the platform edge and only open when trains are correctly aligned with the doors.

D—Light Rail Vehicles and Systems

71 General.

(a) New, used and remanufactured light rail vehicles, to be considered accessible by regulations issued by the Department of Transportation in 49 CFR part 37, shall comply with this subpart

(b)(1) Vehicles intended to be operated solely in light rail systems confined to a dedicated right-of-way, and for which all stations or stops are designed and constructed for revenue service after January 26, 1993, shall provide level boarding and shall comply with .73(d)(1) and .85.

(2) Vehicles designed for, and operated on, pedestrian malls, city streets, or other areas where level boarding is not feasible shall provide wayside or car-borne lifts, mini-high platforms, or other means of access in compliance with 2.83(b) or (c).

(c) If portions of the vehicle are modifed in such a way that it affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible vehicles be retrofitted with lifts, ramps or other boarding devices.

(3) *Exception.* Where it is not operationally or structurally feasible to meet the horizontal or vertical requirements, platform or vehicle devices complying with platform or vehicle mounted ramps or bridge plates complying with 83(c) shall be provided.

75 Priority Seating Signs

(a) Each vehicle shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them.

(b) Where designated wheelchair or mobility aid seating locations are provided, signs shall indicate the location and advise other passengers of the need to permit wheelchair and mobility aid users to occupy them.

(c) Characters on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case "X") of 5/8 inch, with "wide" spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background by 70% as determined by the formula of 79(b).

77 Interior Circulation, Handrails and Stanchions

(a) Handrails and stanchions shall be sufficient to permit safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

73 Doorways

(a) *Clear width and closing force.* All passenger doorways on vehicle sides shall have minimum clear openings of 32 inches when open. Where multi-vehicle trains are operated with doors between vehicles, doorways at ends of vehicles shall have minimum clear openings of 30 inches to permit wheelchair and mobility aid users to be evacuated to an adjoining vehicle in an emergency. Automatic doors shall not require more than 15 lbf (66 N) to prevent closing at any point in the closing cycle. The closing speed shall be one foot per second maximum.

(b) *Signage.* The international symbol of accessibility shall be displayed on the exterior of each vehicle operating on an accessible light rail system unless all vehicles are accessible, in which case no symbol shall be displayed.

(c) *Signals.* Auditory and visual warning signals shall be provided to alert passengers of closing doors.

(d) Coordination with boarding platform—(1) *Requirements.* The design of level-entry vehicles shall be cooordinated with the boarding platform design so that the horizontal gap between a vehicle at rest and the platform shall be no greater than 3 inches and the height of the vehicle floor shall be plus or minus 5/8 inch of the platform height. Vertical alignment may be accomplished by vehicle air suspension, automatic ramps or lifts, or any combination.

(2) *Exception.* New vehicles operating in existing stations may have a floor height plus or minus 1-1/2 inches of the platform height provided the horizontal gap is no greater than 2-1/2 inches.

(b) At entrances equipped with steps, handrails and stanchions shall be provided in the entrance to the vehicle in a configuration which allows passengers to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding process. These assists shall have sufficient clearance from the driver's barrier to prevent inadvertent wedging of a passenger's arm. Where on-board fare collection devices are used, a horizontal passenger assist shall be located between boarding passengers and the fare collection device and shall prevent passengers from sustaining injuries on the fare collection device or windsheld in the event of a sudden deceleration. Without restricting the vestibule space, the assist shall provide support for a boarding passenger from the door through the boarding procedure. Passengers shall be able to lean against the assist for security while paying fares.

(c) At all doors on level-entry vehicles and at each entrance accessible by lift, ramp or other suitable means, handrails, stanchions, passenger seats, vehicle driver seat platforms, and fare boxes, if applicable, shall be located so as to allow a wheelchair or mobility aid to enter the vehicle and position the wheelchair or mobility aid in an area having a minimum clear area of 48 inches by 30 inches, which does not prevent the movement of other passengers. Particular attention shall be given to ensuring maximum maneuverability immediately inside doors. Ample vertical stanchions from ceiling to seat-back rails shall be provided. Vertical stanchions from ceiling to floor shall not

interfere with wheelchair or mobility aid circulation and shall be kept to a minimum in the vicinity of accessible doors.

(d) The diameter or width of the gripping surface of handrails and stanchions shall be 1¼ inches to 1½ inches or shall provide an equivalent gripping surface.

79 Floor, Steps and Thresholds

(A) All floors and steps shall have slip-resistant surfaces.

(b) All thresholds and step edges shall have a band of color(s) running the full width of the step or threshold which contrasts from the step tread and riser or adjacent floor by 70%, as determined by the formula:

Contrast=[(B1−B2)/B1[×100

where:

B1=light reflectance value (LRV) of brighter area, and

B2=light reflectance value (LRV) of darker area.

(c) The height from the ground to the first step shall not exceed [ ] inches. All stair risers shall not exceed [ ] inches and the tread depth shall not be less than [ ] inches. [See preamble Question 37 for options.]

81 Lighting

(a) Any stepwell or doorway with a lift, ramp or bridge plate immediately adjacent to the driver shall have, when the door is open, at least 2 footcandles of illumination measured on the step tread or lift platform.

(b) Other stepwells and doorways with lifts, ramps or bridge plates shall have, at all times, at least 2 footcandles of illumination measured on the step tread or lift or ramp, when deployed at the vehicle floor level.

(c) The doorways of vehicles not operating at lighted station platforms shall have outside lights which provide at least 1 footcandle of illumination on the station platform or street surface for a distance of 3 feet from all points on the bottom step tread, lift platform, ramp or bridge plate edge. Such lights shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

83 Mobility Aid Accessibility

(a)(1) *General.* All new light rail vehicles, other than level entry vehicles, covered by this subpart shall provide a level-change mechanism or boarding device (e.g., lift, ramp or bridge plate) complying with either paragraph (b) or (c) of this section and sufficient clearances to permit a wheelchair or other mobility aid user to reach a location, with a minimum clear floor area of 48 inches by 30 inches, which does not prevent passenger flow.

(2) *Exception.* If lifts, ramps or bridge plates meeting the requirements of this section are provided on station platforms or other stops, the vehicle is not required to be equipped with a car-borne device.

(b) *Vehicle lift*—(1) *Design load.* The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Nonworking parts, such as platform, frame, and attachment hardware which would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

(2) *Controls*—(i) *Requirements.* The controls shall be interlocked with the vehicle brakes or propulsion system so that the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks are engaged. Each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

(ii) *Exception.* Where physical or safety constraints prevent the deployment at some stops of a lift having its long dimension perpendicular to the vehicle axis, the transportation entity may specify a lift which is designed to deploy with its long dimension parallel to the vehicle axis and which pivots into or out of the vehicle while occupied (i.e., "rotary lift"). The requirements of paragraph (b)(2)(i) of this section prohibiting the lift from being stowed while occupied shall not apply to a lift design of this type in which the stowed position is within the passenger compartment and which is intended to be stowed while occupied.

(iii) *Exception.* The brake or propulsion system interlocks requirement does not apply to a station platform mounted lift provided that a mechanical, electrical or other system operates to ensure that vehicles cannot move when the lift is in use.

(3) *Emergency operation.* The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator.

(4) *Power or equipment failure.* Lift platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12 inches/second or their dropping of an occupant in the event of a failure of power, chain, cable or hydraulic hose.

(5) *Platform barriers.* The lift platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the lift during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the vehicle until the lift is in its fully raised position. Each side of the lift platform which extends beyond the vehicle shall have a barrier a minimum 1½ inches high. Such barriers shall not interfere with entering the vehicle. The loading-edge barrier (roll-off barrier) which functions as a loading ramp when the lift is at ground level, shall be sufficiently high when raised or closed to prevent a power wheelchair or mobility aid from riding over it and shall withstand a static load of 1,600 pounds, applied at a height of 3 inches above and parallel to the platform, for 5 seconds without deflecting more than 5 degrees from the unstressed position. The barrier on the outboard or loading edge of the lift shall automatically rise or close, and remain raised or closed, at all times that the lift is more than 3 inches above the station platform or roadway and the lift is occupied. Alternatively, a barrier may be raised, lowered, opened or closed by the lift operator provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed.

(6) *Platform surface.* The lift platform shall be free of any protrusions over ¼ inch high and shall be slip resistant. The lift platform shall have a minimum clear width of 30 inches measured from the lift platform surface to 30 inches above the surface and a minimum clear length of 48 inches measured from 2 inches above the surface of the platform to 30 inches above the surface. (See Fig. 1)

(7) *Platform gaps.* Any openings between the lift platform surface and the raised barriers shall not exceed ⅝ inch wide. When the lift is at vehicle floor height with the inner barrier down or retracted, gaps between the forward lift platform edge and vehicle floor shall not exceed ½ inch horizontally and ⅝ inch vertically.

(8) *Platform entrance ramp.* The entrance ramp, or loading-edge barrier used as a ramp, shall not exceed a slope of 1:8, for a maximum rise of 3 inches, and the transition from the station platform or roadway to ramp may be vertical without edge treatment up to ¼ inch. Thresholds between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(9) *Platform deflection.* The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees in any direction between its unloaded position and its position when loaded with 600 pounds applied through a 26 inch by 26 inch test pallet at the centroid of the lift platform.

(10) *Platform movement.* No part of the lift platform shall move at a rate exceeding 6 inches/second during deployment, lowering, lifting, or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum lift horizontal and vertical acceleration shall be 0.2g.

(11) *Boarding direction.* The lift shall permit both inboard and outboard facing of wheelchairs and mobility aids.

(12) *Use by standees.* Lift shall accommodate persons using walkers, crutches, canes or braces or who otherwise cannot use steps. The lift may be marked to indicate a preferred standing position.

(13) *Handrails.* Platforms on lifts shall be equipped with handrails, which move in tandem with the lift on both sides which shall be graspable throughout the entire lift operation. Handrails shall have a horizontal or diagonal component at least 12 inches long with the top between 30 inches and 34 inches above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or

its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(c) *Vehicle ramp or bridge plate*—(1) *Design load.* Ramps or bridge plates shall support a load of 600 pounds, placed at the centroid of the ramp distributed over an area of 26 inches by 26 inches, with a safety factor of at least 3 based on the ultimate strength of the material.

(2) *Ramp surface.* The ramp or bridge plate surface shall be continuous and slip resistant, shall not have protrusions from the surface greater than ¼ inch; shall have a clear width of 30 inches; and shall accommodate both four-wheel and three-wheel mobility aids.

(3) *Ramp threshold.* The transition from roadway or station platform and the transition from vehicle floor to the ramp or bridge plate may be vertical without edge treatment up to ¼ inch. Changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(4) *Ramp barriers.* Each side of the ramp or bridge plate shall have barriers at least 2 inches high to prevent mobility aid wheels from slipping off.

(5) *Slope.* Where a 1:12 slope or less is not feasible, ramps or bridge plates shall have slopes no steeper than 1:8 for no more than a 3 inch rise, or no steeper than 1:10 for a 6 inch rise. The slope shall be measured when the ramp or bridge plate is deployed to its normal operating point such as the roadway or station platform. Folding or telescoping ramps or bridge plates are permitted provided they meet all structural requirements of this section.

(6) *Attachment*—(i) *Requirement.* When in use for boarding or alighting, the ramp or bridge plate shall be firmly attached to the vehicle so that it is not subject to displacement when loading or unloading a heavy power mobility aid and that any gaps between vehicle and ramp shall not exceed ⅝ inch.

(ii) *Exception.* Ramps or bridge plates which are attached to, and deployed from, station platforms are permitted in lieu of vehicle devices provided they meet the displacement requirements of paragraph (c)(6)(i) of this section.

(7) *Stowage.* Ramps or bridge plates, including portable devices stowed in the passenger area, shall be stowed in such a way that they do not pose any hazard to passengers.

(8) *Handrails.* If provided, handrails shall allow persons with disabilities to grasp them from outside the vehicle while starting to board, and to continue to use them throughout the boarding process, and shall have the top between 30 inches and 34 inches above the ramp surface. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

85 Between-Car Barriers

Devices or systems shall be provided where vehicles operate in a high-platform, level-boarding mode to prevent individuals from inadvertently stepping off the platform between cars. Appropriate devices include, but are not limited to, pantograph gates, chains, motion detectors or other suitable devices.

E—Commuter Rail Cars and Systems

91 General.

(a) New, used and remanufactured commuter rail cars, to be considered accessible by regulations issued by the Department of Transportation in 49 CFR part 37, shall comply with this subpart.

(b) If portions of the car are modified in such a way that it affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible cars be retrofitted with lifts, ramps or other boarding devices.

(c)(i) Commuter rail cars shall comply with § 1192.93(d) for level boarding wherever structurally and operationally feasible.

(ii) Where level boarding is not structurally or operationally feasible, commuter rail cars shall comply with 95.

93 Doorways.

(a) *Clear width.* All doors opening onto station platforms and all doorways into passenger coach compartments shall have a minimum clear opening of 32 inches. Doorways at ends of cars connecting two adjacent single level cars shall have a minimum clear opening of 30 inches.

(b) *Passageways.* At least one doorway on each side from which passengers board the car shall permit access by persons using mobility aids and shall have an accessible route at least 32 inches wide leading to a seating location complying with 95(a)(3). In cars where such doorways require passage through a vestibule, such vestibule shall have a minimum width of 42 inches. (see Fig. 3)

(c) *Signals and closing force.* If doors to the platform close automatically or from a remote location, auditory and visual warning signals shall be provided to alert passengers of closing doors. Automatic doors shall not require more than 15 lbf (66 N) to prevent closing at any point in the closing cycle. The closing speed shall be one foot per second maximum.

(d) *Coordination with boarding platform*—(1) *Requirements.* Cars operating in stations with high platforms shall be coordinated with the boarding platform design such that the horizontal gap between a car at rest and the platform shall be no greater than 3 inches and the height of the car floor shall be plus or minus ⅝ inch of the platform height. Vertical alignment may be accomplished by car air suspension, platform lifts or other devices, or any combination.

(2) *Exception.* New vehicles operating in existing stations may have a floor height plus or minus 1½ inches of the platform height provided the horizontal gap is no greater than 2½ inches.

(3) *Exception.* Where platform set-backs do not allow the specified horizontal gap or vertical alignment, car, platform or portable lifts complying with 95(b), or car or platform ramps or bridge plates, complying with 95(c), shall be provided.

(e) *Signage.* The international symbol of accessibility shall be displayed on the exterior of all doors complying with this section unless all cars and doors are accessible, in which case no symbol shall be displayed. Appropriate signage shall also indicate which accessible doors are adjacent to an accessible restroom, if applicable.

95 Mobility Aid Accessibility

(a)(1) *General.* All new commuter rail cars, other than level entry cars, covered by this subpart shall provide a level-change mechanism or boarding device (e.g., lift, ramp or bridge plate) complying with either paragraph (b) or (c) of this section; sufficient clearances to permit a wheelchair or other mobility aid user to reach a seating location; and at least one mobility aid seating location complying with paragraph (d) of this section.

(2) *Exception.* If portable or platform lifts, ramps or bridge plates meeting the applicable requirements of this section are provided on station platforms or other stops, the car is not required to be equipped with a car-borne device.

(b) *Car Lift*—(1) *Design Load.* The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Nonworking parts, such as platform, frame, and attachment hardware which would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

(2) *Controls*—(i) *Requirements.* The controls shall be interlocked with the car brakes or propulsion system so that the car cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks are engaged. Each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

(ii) *Exception.* The brake or propulsion system interlocks requirement does not apply to a platform mounted or portable lifts provided that a mechanical, electrical or other system operates to ensure that cars cannot move when the lift is in use.

(3) *Emergency operation.* The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency

method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator.

(4) *Power or equipment failure.* Platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12 inches/second or their dropping of an occupant in the event of a failure of power, chain, cable or hydraulic hose.

(5) *Platform barriers.* The lift platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the platform during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the car until the lift is in its fully raised position. Each side of the lift platform which extends beyond the car shall have a barrier a minimum 1½ inches high. Such barriers shall not interfere with entering the car. The loading-edge barrier (roll-off barrier) which functions as a loading ramp when the lift is at ground level, shall be sufficiently high when raised or closed to prevent a power wheelchair or mobility aid from riding over it and shall withstand a static load of 1,600 pounds, applied at a height of 3 inches above and parallel to the lift platform, for 5 seconds without deflecting more than 5 degrees from the unstressed position. The barrier on the outboard or loading edge of the lift shall automatically rise or close, and remain raised or closed, at all times that the lift platform is more than 3 inches above the station platform and the lift is occupied. Alternatively, a barrier may be raised, lowered, opened or closed by the lift operator provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed.

(6) *Platform surface.* The lift platform surface shall be free of any protrusions over ¼ inch high and shall be slip resistant. The lift platform shall have a minimum clear width of 30 inches measured from the lift platform surface to 30 inches above the surface and a minimum clear length of 48 inches measured from 2 inches above the surface of the platform to 30 inches above the surface. (See Fig. 1).

(7) *Platform gaps.* Any openings between the lift platform surface and the raised barriers shall not exceed ⅝ inch wide. When the lift is at car floor height with the inner barrier down or retracted, gaps between the forward lift platform edge and car floor shall not exceed ½ inch horizontally and ⅝ inch vertically.

(8) *Platform entrance ramp.* The entrance ramp, or loading-edge barrier used as a ramp, shall not exceed a slope of 1:8, for a maximum rise of 3 inches, and the transition from station platform to ramp may be vertical without edge treatment up to ¼ inch. Thresholds between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(9) *Platform deflection.* The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees in any direction between its unloaded position and its position when loaded with 600 pounds applied through a 26 inch by 26 inch test pallet at the centroid of the lift platform.

(10) *Platform movement.* No part of the lift platform shall move at a rate exceeding 6 inches/second during deployment, lowering, lifting, or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum lift horizontal and vertical acceleration shall be 0.2g.

(11) *Boarding direction.* The lift shall permit both inboard and outboard facing of wheelchairs and mobility aids.

(12) *Use by standees.* Lifts shall accommodate persons using walkers, crutches, canes or braces or who otherwise cannot use steps. The lift may be marked to indicate a preferred standing position.

(13) *Handrails.* Platforms on lifts shall be equipped with handrails, which move in tandem with the lift, on both sides which shall be graspable throughout the entire lift operation. Handrails shall have a horizontal or diagonal component at least 12 inches long with the top between 30 inches and 34 inches above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the car.

(c) *Car ramp or bridge plate*—(1) *Design load.* Ramps or bridge plates shall support a load of 600 pounds, placed at the centroid of the ramp distributed over an area of 26 inches by 26 inches, with a safety factor of at least 3 based on the ultimate strength of the material.

(2) *Ramp surface.* The ramp or bridge plate surface shall be continous and slip resistant, shall not have protrusions from the surface greater than ¼ inch, shall have a clear width of 30 inches and shall accommodate both four-wheel and three-wheel mobility aids.

(3) *Ramp threshold.* The transition from station platform to the ramp or bridge plate and the transition from car floor to the ramp or bridge plate may be vertical without edge treatment up to ¼ inch. Changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(4) *Ramp barriers.* Each side of the ramp or bridge plate shall have barriers at least 2 inches high to prevent mobility aid wheels from slipping off.

(5) *Slope.* Where a 1:12 slope or less is not feasible, ramps or bridge plates shall have slopes no steeper than 1:8 for no more than a 3 inch rise, or no steeper than 1:10 for a 6 inch rise. The slope shall be measured when the ramp or bridge plate is deployed to its normal operating point such as the station platform. Folding or telescoping ramps or bridge plates are permitted provided they meet all structural requirements of this part.

(6) *Attachment*—(1) *Requirement.* When in use for boarding or alighting, the ramp or bridge plate shall be firmly attached to the car so that it is not subject to displacement when loading or unloading a heavy power mobility aid and that any gaps between car and ramp shall not exceed ⅝ inch.

(ii) *Exception.* Ramps or bridge plates which are attached to, and deployed from, station platforms are permitted in lieu of car devices provided they meet the displacement requirements of paragraph (c)(6)(i) of this section.

(7) *Stowage.* Ramps or bridge plates, including portable devices stowed in the passenger area, shall be stowed in such a way that they do not pose any hazard to passengers.

(8) *Handrails.* If provided, handrails shall allow persons with disabilities to grasp them from outside the vehicle while starting to board, and to continue to use them throughout the boarding process, and shall have the top between 30 inches and 34 inches above the ramp surface. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(d) *Mobility aid seating location.* Spaces for persons who wish to remain in their wheelchairs or mobility aids shall have a minimum clear floor area 48 inches by 30 inches. Such spaces shall adjoin or overlap an accessible route. Such space may have fold-down or removable seats for use when not occupied by a wheelchair or mobility aid user. (See Fig. 2)

97 Interior Circulation, Handrails and Stanchions

(a) Where provided, interior handrails or stanchions shall be placed to permit ample turning and maneuvering space for wheelchairs and other mobility aids to reach a seating location, complying with 95(d), from an accessible entrance.

(b) Where provided, handrails or stanchions shall be sufficient to permit safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(c) At entrances equipped with steps, handrails or stanchions shall be provided in the entrance to the car in a configuration which allows passengers to grasp such assists from outside the car while starting to board, and to continue using such assists throughout the boarding process.

(d) The diameter or width of the gripping surface of handrails and stanchions shall be 1¼ inches to 1½ inches or shall provide an equivalent gripping surface.

99 Floors, Steps and Thresholds

(a) All floors and steps shall have slip-resistant surfaces.

(b) All step edges and thresholds shall have a band of color(s) running the full width of the step or threshold which contrasts from the step tread and riser or adjacent floor by 70%, as determined by the formula:

$$\text{Contrast} = [(B1 - B2)/B1] \times 100$$

where:

B1=light reflectance value (LRV) of brighter area, and
B2=light reflectance value (LRV) of darker area.

(c) The height from the platform to the first step shall not exceed [ ] inches. All stair risers shall not exceed [ ] inches and the tread depth shall not be less than [ ] inches. [See preamble Question 45 for options.]

101 Lighting

(a) Any stepwell or doorway with a lift, ramp or bridge plate shall have, when the door is open, at least 2 footcandles of illumination measured on the step tread, ramp, bridge plate, or lift platform.

(b) The doorways of cars not operating at lighted station platforms shall have outside lights which provide at least 1 footcandle of illumination on the station platform surface for a distance of 3 feet from all points on the bottom step tread, ramp, bridge plate or lift platform edge. Such lights shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

103 Public Information System

(a) Each car shall be equipped with a public address system permitting transportation system personnel, or recorded or digitized human speech messages, to announce stations and provide other passenger information.

(b) [Reserved]

105 Priority Seating Signs

(a) Each car shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities and that other passengers should make such seats available to those who wish to use them.

(b) Characters on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case "X") of ⅝ inch, with "wide" spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and shall contrast with the background by 70%, as determined by the formula of 99(b).

107 Restrooms

(a) If a restroom is provided for the general public, it shall be designed so as to allow a person using a wheelchair or mobility aid to enter and use such restroom as specified below.

(1) The minimum clear floor area shall be 35 inches by 60 inches. Permanently installed fixtures may overlap this area a maximum of 6 inches, if the lowest portion of the fixture is a minimum of 9 inches above the floor, and a maximum of 19 inches, if the lowest portion of the fixture is a minimum of 29 inches above the floor, provided such fixtures do not interfere with access to the water closet. Fold-down or retractable seats or shelves may overlap the clear floor space at a lower height provided they can be easily folded up or moved out of the way.

(2) The height of the water closet shall be 17 inches to 19 inches measured to the top of the toilet seat. Seats shall not be sprung to return to a lifted position.

(3) A grab bar at least 24 inches long shall be mounted behind the water closet, and a grab bar at least 40 inches long shall be mounted on at least one side wall, not more than 12 inches from the back wall, at a height between 33 inches and 36 inches above the floor.

(4) Faucets and flush controls shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2 N). Controls for flush valves shall be mounted no more than 44 inches above the floor.

(5) Doorways on the end of the enclosure, opposite the water closet, shall have a minimum clear opening of 32 inches. Doorways on the side wall shall have a minimum clear opening of 39 inches. Door latches and hardware shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist.

(b) Restrooms designed to be accessible shall be in close proximity to at least one seating location for persons using mobility aids and shall be connected to such a space by an unobstructed path having a minimum width of 32 inches.

F—Intercity Rail Cars and Systems

111 General

(a) New, used and remanufactured intercity rail cars, to be considered accessible by regulations issued by the Department of Transportation in 49 CFR part 37, shall comply with this subpart to the extent required for each type of car as specified below.

(1) Single-level rail passenger coaches and food service cars (other than single-level dining cars) shall comply with 113 through 123. Compliance with 125 shall be required only to the extent necessary to meet the requirements of paragraph (d) of this section.

(2) Single-level dining and lounge cars shall have at least one connecting doorway complying with 113, connected to a car accessible to wheelchairs and mobility aids, and at least one space complying with 125(d)(2), to provide table service to a person who wishes to remain in his or her wheelchair, and space to fold and store a wheelchair for a person who wishes to transfer to an existing seat.

(3) Bi-level dining cars shall comply with 113(a), 115 (b) through (d), 117 (a) and (b), and 121.

(4) Bi-level lounge cars shall have doors on the lower level, on each side of the car from which passengers board, complying with 113, a restroom complying with 123, and at least one space complying with 125(d)(2) to provide table service to a person who wishes to remain in his or her wheelchair and space to fold and store a wheelchair for a person who wishes to transfer to an existing seat.

(5) Restrooms complying with 123 shall be provided in single-level rail passenger coaches and food service cars adjacent to the accessible seating locations required by paragraph (d) of this section. Accessible restrooms are required in dining and lounge cars only if restrooms are provided for other passengers.

(6) Sleeper cars shall comply with 113 (b) through (d), 115 (b) through (c), 117 through 121, and 125, and have at least one compartment which can be entered and used by a person using a wheelchair or mobility aid and complying with 127.

(b)(1) If physically and operationally feasible, intercity rail cars shall comply with 113(d) for level boarding.

(2) Where level boarding is not structurally or operationally feasible, intercity rail cars shall comply with 125.

(c) If portions of the car are modified in such a way that it affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible cars be retrofitted with lifts, ramps or other boarding devices.

(d) Passenger coaches or food service cars shall have the number of spaces complying with 125(d)(2) and the number of spaces complying with 125(d)(3), as required by 49 CFR 37.87.

113 Doorways

(a) *Clear width.* All doors opening onto station platforms and all doorways into coach passenger compartments shall have a minimum clear opening of 32 inches. Doorways at ends of cars connecting two adjacent cars shall have a minimum clear opening of 32 inches to permit wheelchair and mobility aid users to enter into a single-level dining car, if available, and to be evacuated to an adjoining single-level coach or food service car in an emergency.

(b) *Passageway.* At least one doorway, on each side of the car from which passengers board, of each car required to be accessible by 111(a) and where the spaces required by 111(d) are located, shall permit access by persons using mobility aids and shall have an unobstructed passageway at least 32 inches wide leading to an accessible sleeping compartment complying with 127 or seating locations complying with 125(d). In cars where such doorways require passage through a vestibule, such vestibule shall have a minimum width of 42 inches. (see Fig. 4)

(c) *Signals and closing force.* If doors to the platform close automatically or from a remote location, auditory and visual warning signals shall be provided to alert passengers of closing doors. Automatic doors shall not require more than 15 lbf (66 N) to prevent closing at any point in the closing cycle. The closing speed shall be one foot per second maximum.

(d) *Coordination with boarding platforms*—(1) *Requirements.* Cars which provide level-boarding in stations with high platforms shall be coordinated with the boarding platform design such that the horizontal gap between a car at rest and the platform shall be no greater than 3 inches and the height of the car floor shall be plus or minus ⅝ inch of the platform height. Vertical alignment may be accomplished by car air suspension, platform lifts or other devices, or any combination.

(2) *Exception.* New vehicles operating in existing stations may have a floor height plus or minus 1½ inches of the platform height provided the horizontal gap is no greater than 2½ inches.

(3) *Exception.* Where platform set-backs do not allow the specified horizontal gap or vertical alignment, platform or portable lifts

complying with 125(b), or car or platform bridge plates, complying with 125(c), may be provided.

(e) *Signage.* The international symbol of accessibility shall be displayed on the exterior of all doors complying with this section unless all cars and doors are accessible, in which case no symbol shall be displayed. Appropriate signage shall also indicate which accessible doors are adjacent to an accessible restroom, if applicable.

115 Interior Circulation, Handrails and Stanchions

(a) Where provided, interior handrails or stanchions shall be designed and placed to permit ample turning and maneuvering space for wheelchairs and other mobility aids to reach a seating location, complying with 125(d), from an accessible entrance.

(b) Where provided, handrails and stanchions shall be sufficient to permit safe boarding, on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(c) At entrances equipped with steps, handrails or stanchions shall be provided in the entrance to the car in a configuration which allows passengers to grasp such assists from outside the car while starting to board, and to continue using such assists throughout the boarding process.

(d) The diameter or width of the gripping surface of handrails and stanchions shall be 1¼ inches to 1½ inches or shall provide an equivalent gripping surface.

117 Floors, Steps and Thresholds

(a) All floors and steps shall have slip-resistant surfaces.

(b) All step edges and thresholds shall have a band of color(s) running the full width of the step or threshold which contrasts from the step tread and riser or adjacent floor by 70%, as determined by the formula:

$$\text{Contrast} = [(B1 - B2)/B1] \times 100$$

where:

B1 = light reflectance value (LRV) of brighter area, and

B2 = light reflectance value (LRV) of darker area.

(c) The height from the platform to the first step shall not exceed [ ] inches. All stair risers shall not exceed [ ] inches and the tread depth shall not be less than [ ] inches. [See preamble Question 49 for options].

119 Lighting

(a) Any stepwell, or doorway with a lift, ramp or bridge plate, shall have, when the door is open, at least 2 footcandles of illumination measured on the step tread, ramp, bridge plate or lift platform.

(b) The doorways of cars not operating at lighted station platforms shall have outside lights which provide at least 1 footcandle of illumination on the station platform surface for a distance of 3 feet from all points on the bottom step tread, ramp bridge plate or lift platform edge. Such lights shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

121 Public Information System

(a) Each car shall be equipped with a public address system permitting transportation system personnel, or recorded or digitized human speech messages, to announce stations and provide other passenger information.

(b) [Reserved]

123 Restrooms

(a) If a restroom is provided for the general public, and an accessible restroom is required by 111 (a) and (d), it shall be designed so as to allow a person using a wheelchair or mobility aid to enter and use such restroom as specified below.

(1) The minimum clear floor area shall be 35 inches by 60 inches. Permanently installed fixtures may overlap this area a maximum of 6 inches, if the lowest portion of the fixture is a minimum of 9 inches above the floor, and may overlap a maximum of 19 inches, if the lowest portion of the fixture is a minimum of 29 inches above the floor. Fixtures shall not interfere with access to and use of the water closet. Fold-down or retractable seats or shelves may overlap the clear floor space at a lower height provided they can be easily folded up or moved out of the way.

(2) The height of the water closet shall be 17 inches to 19 inches measured to the top of the toilet seat. Seats shall not be sprung to return to a lifted position.

(3) A grab bar at least 24 inches long shall be mounted behind the water closet, and a grab bar at least 40 inches long shall be mounted on at least one side wall, not more than 12 inches from the back wall, at a height between 33 inches and 36 inches above the floor.

(4) Faucets and flush controls shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2 N). Controls for flush valves shall be mounted no more than 44 inches above the floor.

(5) Doorways on the end of the enclosure, opposite the water closet, shall have a minimum clear opening of 32 inches. Doorways on the side wall shall have a minimum clear opening of 39 inches. Door latches and hardware shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist.

(b) Restrooms required to be accessible shall be in close proximity to at least one seating location for persons using mobility aids complying with 125(d) and shall be connected to such a space by an unobstructed path having a minimum width of 32 inches.

125 Mobility Aid Accessibility

(a)(1) *General.* All intercity rail cars, other than level entry cars, required to be accessible by 111 (a) and (d) of this subpart shall provide a level-change mechanism or boarding device (e.g., lift, ramp or bridge plate) complying with either paragraph (b) or (c) of this section and sufficient clearances to permit a wheelchair or other mobility aid user to reach a seating location complying with paragraph (d) of this section.

(2) *Exception.* If portable or platform lifts, ramps or bridge plates meeting the applicable requirements of this section are provided on station platforms or other stops, the car is not required to be equipped with a car-borne device.

(b) *Car Lift*—(1) *Design load.* The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Nonworking parts, such as platform, frame, and attachment hardware which would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

(2) *Controls*—(i) *Requirements.* The controls shall be interlocked with the car brakes or propulsion system so that the car cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks are engaged. Each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

(ii) *Exception.* The brake or propulsion system interlocks requirement does not apply to platform mounted or portable lifts provided that a mechanical, electrical or other system operates to ensure that cars cannot move when the lift is in use.

(3) *Emergency operation.* The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator.

(4) *Power or equipment failure.* Platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12 inches/second or their dropping of an occupant in the event of a failure of power, chain, cable or hydraulic hose.

(5) *Platform barriers.* The lift platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the platform during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the car until the lift is in its fully raised position. Each side of the lift platform which extends beyond the car shall have a barrier a minimum 1½ inches high. Such barriers shall not interfere with entering the car. The loading-edge barrier (roll-off barrier) which functions as a loading ramp when the lift is at ground level, shall be sufficiently high when raised or closed to prevent a power wheelchair or mobility aid from riding over it and shall withstand a static load of 1,600 pounds, applied at a height of 3 inches above and parallel to the lift platform, for 5 seconds without deflecting more than 5 degrees from the unstressed position. The barrier on the outboard or loading edge of the lift shall

automatically rise or close, and remain raised or closed, at all times that the lift platform is more than 3 inches above the station platform and the lift is occupied. Alternatively, an outboard barrier may be raised, lowered, opened or closed manually provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed.

(6) *Platform surface.* The lift platform surface shall be free of any protrusions over ¼ inch high and shall be slip resistant. The lift platform shall have a minimum clear width of 30 inches measured from the lift platform surface to 30 inches above the surface and a minimum clear length of 48 inches measured from 2 inches above the surface of the platform to 30 inches above the surface. (See Fig. 1)

(7) *Platform gaps.* Any openings between the lift platform surface and the raised barriers shall not exceed ⅝ inch wide. When the lift is at car floor height with the inner barrier down or retracted, gaps between the forward lift platform edge and car floor shall not exceed ½ inch horizontally and ⅝ inch vertically.

(8) *Platform entrance ramp.* The entrance ramp, or loading-edge barrier used as a ramp, shall not exceed a slope of 1:8, for a maximum rise of 3 inches, and the transition from station platform to ramp may be vertical without edge treatment up to ¼ inch. Thresholds between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(9) *Platform deflection.* The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees in any direction between its unloaded position and its position when loaded with 600 pounds applied through a 26 inch by 26 inch test pallet at the centroid of the lift platform.

(10) *Platform movement.* No part of the lift platform shall move at a rate exceeding 6 inches/second during deployment, lowering, lifting, or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum lift horizontal and vertical acceleration shall be 0.2g.

(11) *Boarding direction.* The lift shall permit both inboard and outboard facing of wheelchairs and mobility aids.

(12) *Use by standees.* Lifts shall accommodate persons using walkers, crutches, canes or braces or who otherwise cannot use steps. The lift may be marked to indicate a preferred standing position.

(13) *Handrails.* Platforms on lifts shall be equipped with handrails, which move in tandem with the lift, on both sides which shall be graspable throughout the entire lift operation. Handrails shall have a horizontal or diagonal component at least 12 inches long with the top between 30 inches and 34 inches above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the car.

(c) *Car ramp or bridge plate*—(1) *Design load.* Ramps or bridge plates shall support a load of 600 pounds, placed at the centroid of the ramp distributed over an area of 26 inches by 26 inches, with a safety factor of at least 3 based on the ultimate strength of the material.

(2) *Ramp surface.* The ramp or bridge plate surface shall be continuous and slip resistant, shall not have protrusions from the surface greater than ¼ inch, shall have a clear width of 30 inches and shall accommodate both four-wheel and three-wheel mobility aids.

(3) *Ramp threshold.* The transition from station platform to the ramp or bridge plate and the transition from car floor to the ramp or bridge plate may be vertical without edge treatment up to ¼ inch. Changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(4) *Ramp barriers.* Each side of the ramp or bridge plate shall have barriers at least 2 inches high to prevent mobility aid wheels from slipping off.

(5) *Slope.* Where a 1:12 slope or less is infeasible, ramps or bridge plates shall have slopes no steeper than 1:8 for no more than a 3-inch rise, or no steeper than 1:10 for a 6-inch rise. The slope shall be measured when the ramp or bridge plate is deployed to its normal operating point such as the station platform. Folding or telescoping ramps or bridge plates are permitted provided they meet all structural requirements of this section.

(6) *Attachment*—(i) *Requirement.* When in use for boarding or alighting, the ramp or bridge plate shall be firmly attached to the car so that it is not subject to displacement when loading or unloading a heavy power mobility aid and that any gaps between car and ramp shall not exceed ⅝ inch.

(ii) *Exception.* Ramps or bridge plates which are attached to, and deployed from, station platforms are permitted in lieu of car devices provided they meet the displacement requirements of paragraph (c)(6)(i) of this section.

(7) *Stowage.* Ramps or bridge plates, including portable devices stowed in the passenger area, shall be stowed in such a way that they do not pose any hazard to passengers.

(8) *Handrails.* If provided, handrails shall allow persons with disabilities to grasp them from outside the vehicle while starting to board, and to continue to use them throughout the boarding process, and shall have the top between 30 inches and 34 inches above the ramp surface. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have a corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(d) *Seating*—(1) *Requirements.* All intercity rail cars required to be accessible by 111 (a) and (d) of this subpart shall provide at least one, but not more than two, mobility aid seating location(s) complying with paragraph (d)(2) of this section; and at least one, but not more than two, seating location complying with paragraph (d)(3) of this section which adjoin or overlap an accessible route with a minimum clear width of 32 inches.

(2) *Wheelchair spaces.* Spaces for persons who wish to remain in their wheelchairs or mobility aids shall have a minimum clear floor area 48 inches by 30 inches. Such space may have fold-down or removable seats for use when not occupied by a wheelchair or mobility aid user. (See Fig. 2)

(3) *Other spaces.* Spaces for individuals who wish to transfer shall include a regular coach seat or dining car booth or table seat and space to fold and store the passenger's wheelchair.

127 Sleeping Compartments

(a) Sleeping compartments required to be accessible shall be designed so as to allow a person using a wheelchair or mobility aid to enter and use such compartment. (See Fig. 5)

(b) Each accessible compartment shall contain a restroom complying with 123(a) which can be entered directly from such compartment.

(c) Controls and operating mechanisms (e.g., heating and air conditioning controls, lighting controls, call buttons, electrical outlets, etc.) shall be mounted no more than 48 inches, and no less than 15 inches, above the floor and shall have a clear floor area directly in front a minimum of 30 inches by 48 inches. Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist.

G—Vans and Small Buses

131 General

(a) New and used vehicles of GVWR less than 19,500 pounds, to be considered accessible by regulations issued by the Department of Transportation in 49 CFR part 37, shall comply with this subpart.

(b) If portions of the vehicle are modified in such a way that it affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible vehicles be retrofitted with lifts, ramps or other boarding devices.

133 Mobility aid accessibility.

(a) *General.* Vehicles covered by this section shall provide a level-change mechanism (e.g., lift or ramp) complying with paragraph (b) or (c) of this section; sufficient clearances to permit a wheelchair or other mobility aid user to reach a securement location; and at least one securement device complying with paragraph (d) of this section.

(b) *Vehicle lift*—(1) *Design load.* The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Nonworking parts, such as platform, frame, and attachment hardware which would not be expected to wear, shall

have a safety factor of at least three, based on the ultimate strength of the material.

(2) *Controls*—(i) *Requirements.* The controls shall be interlocked with the vehicle brakes or transmission, or shall provide other appropriate fail-safe mechanisms or systems, to ensure that the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks or systems are engaged. Where provided, each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

(ii) *Exception.* Where the lift is designed to deploy with its long dimension parallel to the vehicle axis and which pivots into or out of the vehicle while occupied (i.e., "rotary lift") the requirements of this paragraph prohibiting the lift from being stowed while occupied shall not apply since, in this design the stowed position is within the passenger compartment and the lift is intended to be stowed while occupied.

(3) *Emergency operation.* The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator.

(4) *Power or equipment failure.* Platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12 inches/second or their dropping of an occupant in the event of a failure of power, chain, cable or hydraulic hose.

(5) *Platform barriers.* The lift platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the platform during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the vehicle until the platform is in its fully raised position. Each side of the lift platform which extends beyond the vehicle shall have a barrier a minimum 1½ inches high. Such barriers shall not interfere with entering the vehicle. The loading-edge barrier (roll-off barrier) which functions as a loading ramp when the lift is at ground level, shall be sufficiently high when raised or closed to prevent a power wheelchair or mobility aid from riding over it and shall withstand a static load of 1,600 pounds, applied at a height of 3 inches above and parallel to the platform, for 5 seconds without deflecting more than 5 degrees from the unstressed position. The barrier on the outboard or loading edge of the lift shall automatically raise or close, and remain raised or closed, at all times that the platform is more than 3 inches above the roadway or sidewalk and the lift platform is occupied. Alternatively, a barrier may be raised, lowered, opened or closed manually provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed.

(6) *Platform surface.* The platform surface shall be free of any protrusions over ¼ inch high and shall be slip resistant. The platform shall have a minimum clear width of 30 inches measured from the platform surface to 30 inches above the platform and a minimum clear length of 48 inches measured from 2 inches above the surface of the platform to 30 inches above the surface of the platform. (See Fig. 1)

(7) *Platform gaps.* Any openings between the platform surface and the raised barriers shall not exceed ⅝ inch wide. When the platform is at vehicle floor height with the inner barrier (if applicable) down or retracted, gaps between the forward edge of the lift platform and vehicle floor shall not exceed ½ inch horizontally and ⅝ inch vertically. Platforms on semi-automatic lifts may have a hand hold not exceeding 1½ inches by 4½ inches located midway between the edge barriers.

(8) *Platform entrance ramp.* The entrance ramp, or loading-edge barrier used as a ramp, shall not exceed a slope of 1:8, for a maximum rise of 3 inches, and the transition from roadway or sidewalk to ramp may be vertical without edge treatment up to ¼ inch. Thresholds between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(9) *Platform deflection.* The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees in any direction between its unloaded position and its position when loaded with 400 pounds distributed over an area of 26 inches by 26 inches located at the centroid of the lift platform.

(10) *Platform movement.* No part of the platform shall,move at a rate exceeding 6 inches/second during deployment, lowering, lifting, or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed.

(11) *Boarding direction.* The lift shall permit both inboard and outboard facing of wheelchairs and mobility aids.

(12) *Handrails.* Platforms on lifts shall be equipped with handrail(s), which move(s) in tandem with the lift, on at least one side which shall be graspable throughout the entire lift operation. Handrails shall have a horizontal component at least 12 inches long with the top between 30 inches and 34 inches above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(c) *Vehicle ramp*—(1) *Design load.* Ramps shall support a load of 600 pounds, placed halfway up the ramp distributed over an area of 26 inches by 26 inches, with a safety factor of at least 3 based on the ultimate strength of the material.

(2) *Ramp surface.* The ramp surface shall be continuous and slip resistant, shall not have protrusions from the surface greater than ¼ inch, shall have a clear width of 30 inches and shall accommodate both four-wheel and three-wheel mobility aids.

(3) *Ramp threshold.* The transition from roadway or sidewalk and the transition from vehicle floor to the ramp may be vertical without edge treatment up to ¼ inch. Changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2.

(4) *Ramp barriers.* Each side of the ramp shall have barriers at least 2 inches high to prevent mobility aid wheels from slipping off.

(5) *Slope.* Where a slope of 1:12 is not feasible, ramps shall have slopes no steeper than 1:8 for no more than a 3-inch rise, or no steeper than 1:10 for a 6-inch rise. The slope shall be measured when the ramp is deployed to its normal operating point. Folding or telescoping ramps are permitted provided they meet all structural requirements of this section.

(6) *Attachment.* When in use for boarding or alighting, the ramp shall be firmly attached to the vehicle so that it is not subject to displacement when loading or unloading a heavy power mobility aid and that any gaps between vehicle and ramp shall not exceed ⅝ inch.

(7) *Stowage.* Ramps, including portable ramps stowed in the passenger area, shall be stowed in such a way that they do not pose any hazard to passengers.

(8) *Handrails.* If provided, handrails shall be provided in the entrance to the vehicle in a configuration which allows passengers to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding process. Handrails shall have the top between 30 inches and 34 inches above the ramp surface. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1¼ inches and 1½ inches or shall provide an equivalent grasping surface, and have corner radii of not less than ⅛ inch. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

(d) *Securement devices*—(1) *Design load.* Securement systems, and their attachments to such vehicles, shall withstand a force in a forward longitudinal direction of 2,500 pounds per securement leg or clamping mechanism and a minimum of 5,000 pounds for each mobility aid.

(2) *Location and size.* The securement system shall be placed as near to the accessible entrance as practicable and shall have a clear floor area of 30 inches by 48 inches. Not more than 6 inches of the required clear floor space may be accommodated for footrests under another seat provided there is a minimum of 9 inches from the floor to the lowest part of the seat overhanging the space. Securement areas may have fold-down seats to accommodate other passengers when a wheelchair or

mobility aid is not occupying the area provided the seats, when folded up, do not obstruct the clear floor space required. (See Fig. 2)

(3) *Mobility aids accommodated.* The securement system shall secure common wheelchairs and mobility aids and shall be either automatic or easily attached by a person familiar with the system and mobility aid and having average dexterity.

(4) *Orientation.* The securement shall be installed so that the secured wheelchair or mobility aid is facing toward the front of the vehicle.

(5) *Movement.* When the wheelchair or mobility aid is secured in accordance with manufacturer's instructions, the securement system shall limit the movement of an occupied wheelchair or mobility aid to no more than 2 inches in any direction.

(6) *Stowage.* When not being used for securement, the securement system shall not interfere with passenger movement, shall not present any hazardous condition, and shall be reasonably protected from vandalism.

135 Interior circulation, handrails and stanchions

(a) Interior handrails and stanchions shall be designed and placed to permit ample turning and maneuvering space for wheelchairs and other mobility aids to reach a securement location from the lift or ramp.

(b) Handrails and stanchions shall be provided in the entrance to the vehicle in a configuration which allows persons with disabilities to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding process. These assists shall have sufficient clearance from the driver's barrier to prevent inadvertent wedging of a passenger's arm. Where on-board fare collection devices are used, a horizontal passenger assist shall be located between boarding passengers and the fare collection device and shall prevent passengers from sustaining injuries on the fare collection device or windshield in the event of a sudden deceleration. Without restricting the vestibule space, the assist shall provide support for a boarding passenger from the door through the boarding procedure. Passengers shall be able to lean against the assist for security while paying fares.

(c) Handrails and stanchions shall be sufficient to permit safe on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(d) The diameter or width of the gripping surface of handrails and stanchions shall be 1¼ inches to 1½ inches or shall provide an equivalent gripping surface.

(e) The minimum height of the door opening at the lift and the interior height from lift to securement location shall be 56 inches.

137 Floors, steps and thresholds

(a) All floors and steps shall have slip-resistant surfaces.

(b) All step edges and thresholds shall have a band of color(s) running the full width of the step or threshold which contrasts from the step tread and riser or adjacent floor material by 70%, as determined by the formula:

Contrast = [(B1 − B2)/B1] × 100%

where

B1 = light reflectance value (LRV) of brighter area, and

B2 = light reflectance value (LRV) of darker area.

(c) The height from the ground to the first step shall not exceed [ ] inches. All stair risers shall not exceed [ ] inches and the tread depth shall not be less than [ ] inches.

139 Lighting

(a) Any stepwell, or doorway in which a lift or ramp is installed or used, shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread, lift platform or ramp surface.

(b) The vehicle doorways shall have outside light(s) which provide at least 1 foot-candle of illumination on the street surface for a distance of 3 feet from all points on the bottom step tread, lift platform or ramp edge. Such light(s) shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

H—Over-the-Road Buses and Systems

151 General

New, used and remanufactured over-the-road buses, to be considered accessible by regulations issued by the Department of Transportation in 49 CFR part 37, shall comply with this subpart.

153 Doors, steps and thresholds

(a) All floors and steps shall have slip-resistant surfaces.

(b) All step edges shall have a band of color(s) running the full width of the step which contrasts from the step tread and riser by 70%, as determined by the formula:

Contrast = [(B1 − B2)/B1] × 100

where

B1 = light reflectance value (LRV) of brighter area, and

B2 = light reflectance value (LRV) of darker area.

(c) The height from the ground to the first step shall not exceed [ ] inches. All stair risers shall not exceed [ ] inches and the tread depth shall not be less than [ ] inches. [See preamble Question 63 for options.]

(d) Doors shall have a minimum clear width when open of 32 inches. A door shall not require more than 15 lbf (66 N) to prevent it from closing at any point in the closing cycle.

155 Interior circulation, handrails and stanchions

(a) Handrails or stanchions shall be provided in the entrance to the vehicle in a configuration which allows persons with disabilities to grasp such assists from outside the vehicle while starting to board, and to continue using such assists throughout the boarding process. These assists shall have sufficient clearance from the driver's barrier to prevent inadvertent wedging of a passenger's arm.

(b) Where provided, handrails or stanchions shall be sufficient to permit safe on-board circulation, seating and standing assistance, and alighting by persons with disabilities.

(c) The diameter or width of the gripping surface of handrails and stanchions shall be 1¼ inches to 1½ inches or shall provide an equivalent gripping surface.

157 Lighting

(a) Any stepwell or doorway immediately adjacent to the driver shall have, when the door is open, at least 2 foot-candles of illumination measured on the step tread.

(b) The vehicle doorway shall have outside light(s) which provide at least 1 foot-candle of illumination on the street surface for a distance of 3 feet from all points on the bottom step tread edge. Such light(s) shall be located below window level and shielded to protect the eyes of entering and exiting passengers.

59 Mobility aid accessibility. [Reserved]

I—Other Vehicles and Systems

171 General

(a) New, used and remanufactured vehicles and conveyances for systems not covered by other subparts of this part, to be considered accessible by regulations issued by the Department of Transportation in 49 CFR part 37, shall comply with this subpart.

(b) If portions of the vehicle or conveyance are modified in such a way that it affects or could affect accessibility, each such portion shall comply, to the extent practicable, with the applicable provisions of this subpart. This provision does not require that inaccessible vehicles be retrofitted with lifts, ramps or other boarding devices.

173 Automated guideway transit vehicles and systems

(a) Automated Guideway Transit (AGT) vehicles and systems, sometimes called "people movers", shall comply with the provisions of 53 (a) through (c), and 55 through 61 for rapid rail vehicles and systems.

(b) Where the vehicle will operate in an accessible station, the design of vehicles shall be coordinated with the boarding platform design such that the horizontal gap between a vehicle door at rest and the platform shall be no greater than 1 inch and the height of the vehicle floor shall be plus or minus ½ inch of the platform height under all normal passenger load conditions. Vertical alignment may be accomplished by vehicle air suspension or other suitable means of meeting the requirement.

(c) In stations where open platforms are not protected by platform screens, a suitable device or system shall be provided to prevent individuals from stepping off the platform between cars. Acceptable devices include, but are not limited to, pantograph gates, chains, motion detectors or other appropriate devices.

175 High-speed rail cars and systems

(a) All cars for high-speed rail systems, including but not limited to those using "maglev" or "TGV" technology, operating on exclusive, dedicated rail (i.e., not used by freight trains) or guideway, in which stations are constructed for revenue service after January 26, 1993, shall be designed for high-platform, level boarding and shall comply with 111(a) for each type of car which is similar to intercity rail, 111(d), 113 (a) through

(c) and (e), 115 (a) and (b), 117 (a) and (b), 121 through 123, 125(d), and 127 (if applicable). The design of cars shall be coordinated with the boarding platform design such that the horizontal gap between a car door at rest and the platform shall be no greater than 3 inches and the height of the car floor shall be plus or minus ⅝ inch of the platform height under all normal passenger load conditions. Vertical alignment may be accomplished by car air suspension or other suitable means of meeting the requirement. All doorways shall have, when the door is open, at least 2 footcandles of illumination measured on the door threshold.

(b) All other high-speed rail cars shall comply with the similar provisions of subpart F of this part.

177 Ferries, excursion boats and other vessels

(a) *Doorways.* Doorways to all passenger areas shall have a minimum clear opening of 32 inches. Thresholds may be a maximum ¾ inch to accommodate gaskets and water seals provided they are beveled on both sides.

(b) *Seating areas.* At least one area for passengers using wheelchairs or mobility aids shall be provided as close as practicable to an accessible entrance, and adjacent to seating of other passengers, with a clear floor area 30 inches by 48 inches. Not more than 6 inches of the required clear floor space may be accommodated for footrests under another seat provided there is a minimum of 9 inches from the floor to the lowest part of the seat overhanging the space. Such areas may have fold-down seats to accommodate other passengers when a wheelchair or mobility aid is not occupying the area provided the seats, when folded up, do not obstruct the clear floor space required. (See Fig. 2)

(c) *Securement.* [Reserved]

(d) *Gangplanks.* Gangplanks and other boarding devices shall comply with 125(c).

(e) *Restrooms.* If restrooms are provided for the general public they shall comply with 123(a) (1) through (5), and shall be connected to the seating area(s) required by paragraph (b) of this section by an unobstructed route at least 32 inches wide.

(f) *Elevators.* [Reserved]

Figures

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Figures

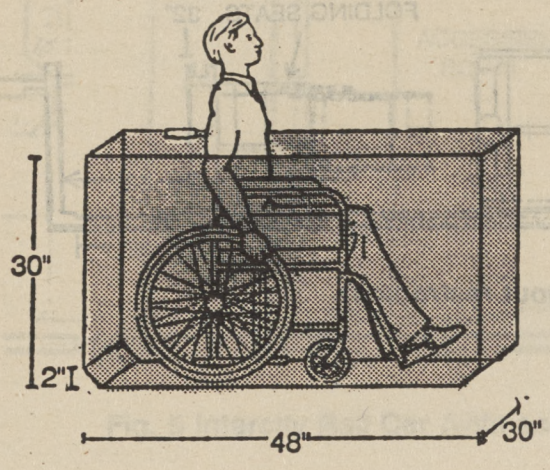


Fig. 1

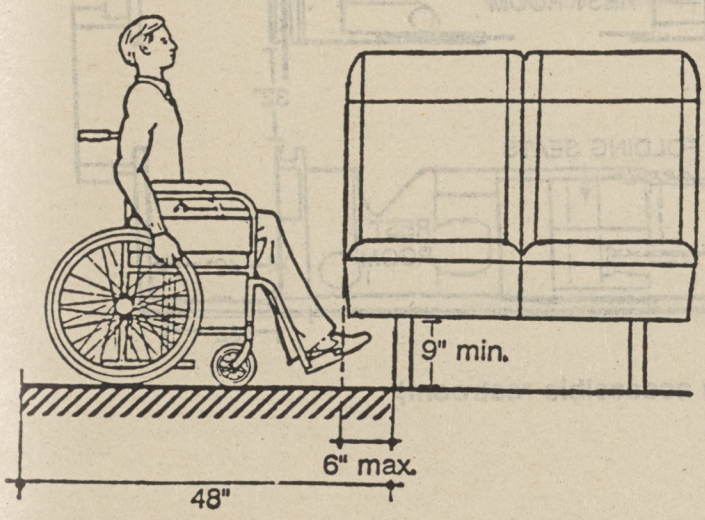


Fig. 2

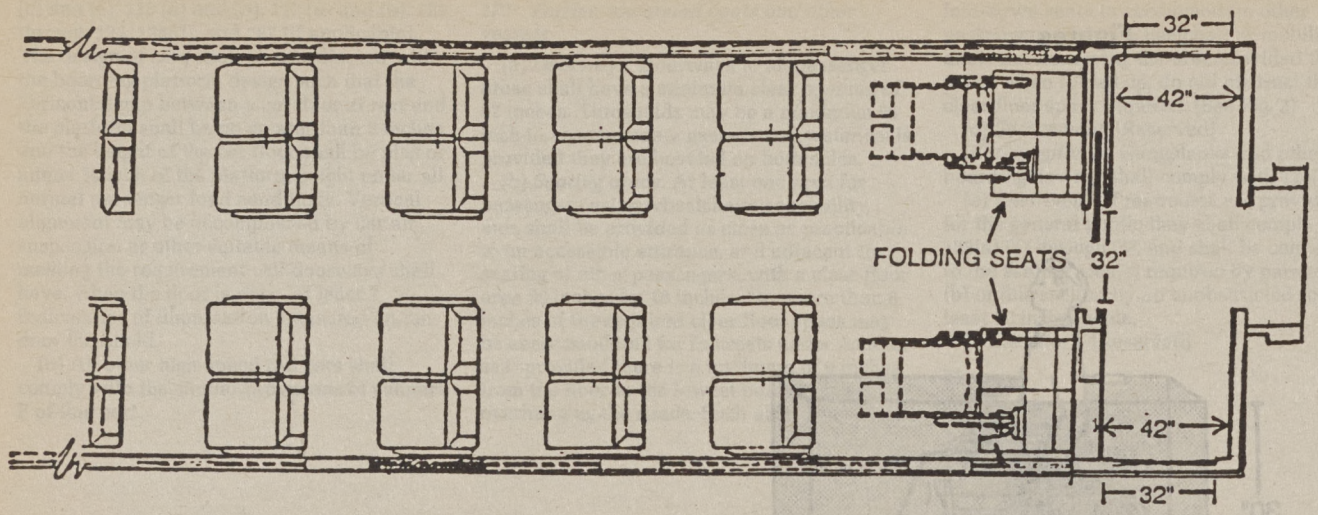


Fig. 3 Commuter Rail Car (without restrooms)

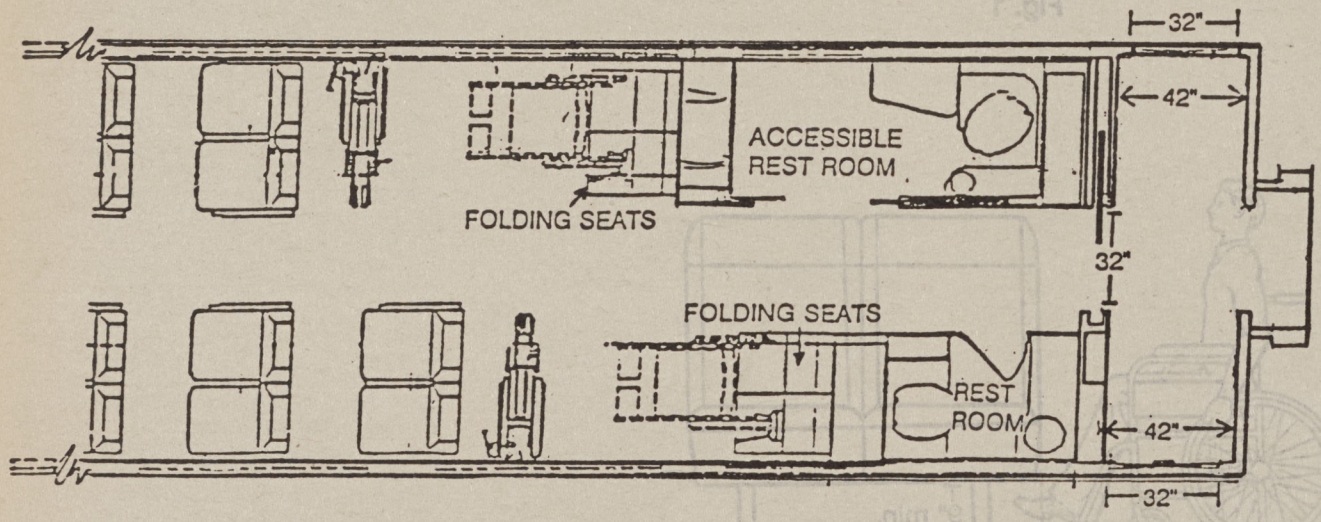


Fig. 4 Intercity Rail Car (with accessible restroom)

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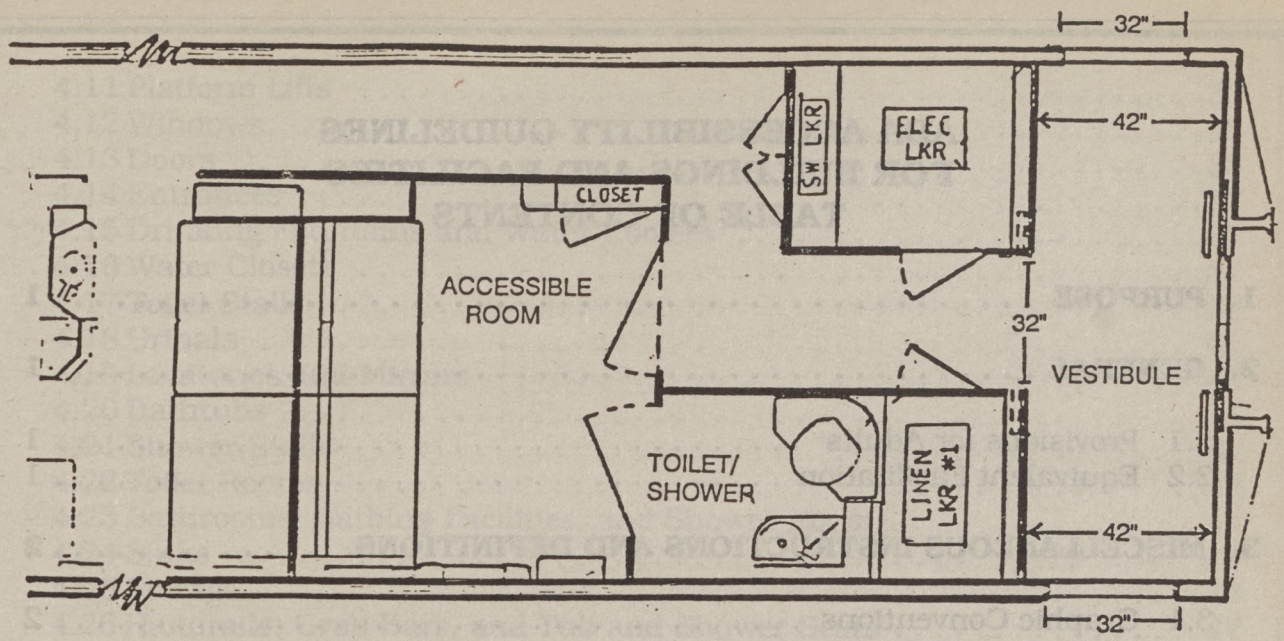


Fig. 5 Intercity Rail Car (with accessible sleeping compartment)

Appendix B to Part 37—Standards for Accessible Transportation Facilities

Note: This appendix consists of the Transit Facilities Standards of the ATBCB. The proposed ATBCB standards are set forth below:

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APPENDIX

1. PURPOSE.

This document sets guidelines for accessibility to places of public accommodation and commercial facilities by individuals with disabilities. These guidelines are to be applied during the design, construction, and alteration of such buildings and facilities to the extent required by Title III of the Americans with Disabilities Act of 1990.

The technical specifications 4.2 through 4.34, of these guidelines are the same as those of the American National Standard Institute's document A117.1-1980, except as noted in this text and on figures by italics. However, sections 4.1.1 through 4.1.7 and sections 5 through 10 are different from ANSI A117.1 in their entirety and are printed in standard type.

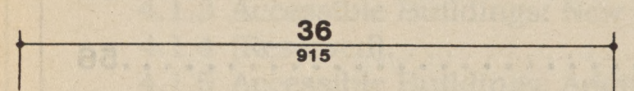
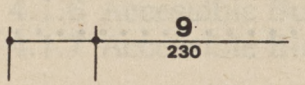
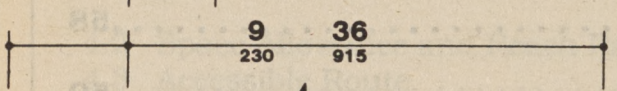
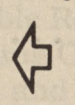
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2. GENERAL.

2.1 Provisions for Adults. *The specifications in these guidelines are based upon adult dimensions and anthropometrics.*

2.2 Equivalent facilitation. *Departures from particular technical and scoping requirements of this guideline by the use of other methods are permitted where the alternative methods used will provide substantially equivalent or greater access to and usability of the facility. Alternative methods shall permit individuals with disabilities to approach, enter, and use a site, building, facility, or portion thereof as easily, safely, conveniently, and independently as the specified method would permit.*

Table 1
Graphic Conventions

Convention	Description
	Typical dimension line showing U.S. customary units (in inches) above the line and SI units (in millimeters) below
	Dimensions for short distances indicated on extended line
	Dimension line showing alternate dimensions required
	Direction of approach
max	Maximum
min	Minimum
.....	Boundary of clear floor area
——— — ——— — ——— — ℄	Centerline

3. MISCELLANEOUS INSTRUCTIONS AND DEFINITIONS.

3.1 Graphic Conventions. Graphic conventions are shown in Table 1. Dimensions that are not marked "minimum" or "maximum" are absolute, unless otherwise indicated in the text or captions.

3.2 Dimensional Tolerances. All dimensions are subject to conventional building industry tolerances for field conditions.

3.3 Notes. The text of *these guidelines* does not contain notes or footnotes. Additional information, explanations, and advisory materials are located in the Appendix. Paragraphs marked with an asterisk have related, nonmandatory material in the Appendix. In the Appendix, the corresponding paragraph numbers are preceded by an A.

3.4 General Terminology.

comply with. Meet one or more specifications of *these guidelines.*

if, if...then. Denotes a specification that applies only when the conditions described are present.

may. Denotes an option or alternative.

shall. Denotes a mandatory specification or requirement.

should. Denotes an advisory specification or recommendation.

3.5 Definitions.

Access Aisle. An accessible pedestrian space between elements, such as parking spaces, seating, and desks, that provides clearances appropriate for use of the elements.

Accessible. Describes a site, building, facility, or portion thereof that complies with *these guidelines* and that can be approached, entered, and used by *individuals with disabilities including those affecting mobility, sensory, or cognitive functions.*

Accessible Element. *An element* specified by *these guidelines* (for example, telephone, controls, and the like).

Accessible Route. A continuous unobstructed path connecting all accessible elements and spaces in a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, *crosswalks at vehicular ways,* walks, ramps, and lifts.

Accessible Space. *Space that complies with these guidelines.*

Adaptability. The ability of certain building *spaces and* elements, such as kitchen counters, sinks, and grab bars, to be added or altered so as to accommodate the needs of *individuals with or without disabilities* or to accommodate the needs of persons with different types or degrees of disability.

Addition. *An expansion, extension, or increase in the gross floor area of a building or facility.*

Administrative Authority. A governmental agency that adopts or enforces regulations and *guidelines* for the design, construction, or *alteration* of buildings and facilities.

Alteration. *An alteration is a change to a building or facility made by, on behalf of, or for the use of a public accommodation or commercial facility, that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.*

Area of Refuge. *An area, which has direct access to an exit stairway, where people who*

are unable to use stairs may remain safely to await further instructions or assistance during emergency evacuation.

Assembly Area. A room or space accommodating *a group of* individuals for recreational, educational, political, social, or amusement purposes, or for the consumption of food and drink.

Automatic Door. A door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch (see power-assisted door).

Building. Any structure used and intended for supporting or sheltering any use or occupancy.

Circulation Path. An exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings.

Clear. Unobstructed.

Clear Floor Space. *The minimum unobstructed floor or ground space required to accommodate a single, stationary wheelchair occupant.*

Closed Circuit Telephone. *A telephone with dedicated line(s) such as a house phone, courtesy phone or phone that must be used to gain entrance to a facility.*

Common Use. Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, *occupants of a homeless shelter*, the occupants of an office building, or the guests of such occupants).

Cross Slope. The slope that is perpendicular to the direction of travel (see running slope).

Curb Ramp. A short ramp cutting through a curb or built up to it.

Detectable Warning. *A standardized surface feature built in or applied to walking surfaces or other elements to warn visually impaired people of hazards on a circulation path.*

Dwelling Unit. A single unit which provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like. A single family home *used as a transient group home is a dwelling unit, and dwelling units are to be found in such housing types as townhouses or apartment buildings used as shelters, and some hotels. For purposes of these guidelines, use of the term "Dwelling Unit" does not imply the unit is used as a residence.*

Egress, Means of. *A continuous and unobstructed way of exit travel from any point in a building or facility to a public way. A means of egress comprises vertical and horizontal travel and may include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, escalators, horizontal exits, courts and yards. An accessible means of egress is one that complies with these guidelines and does not include stairs, steps, or escalators. An area of refuge or evacuation elevators may be included as part of an accessible means of egress.*

Element. *An architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, or water closet.*

Entrance. *Any access point to a building or portion of building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s). A principal entrance of a building or facility is one through which a significant number of people enter.*

Facility. *All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.*

Ground Floor. *Any occupiable floor less than one story above or below grade with direct access to grade. A building or facility always has at least one ground floor and may have more than one ground floor as where a split level en-*

3.5 Definitions

trance has been provided or where a building is built into a hillside.

Individual With a Disability. *An individual who has a physical impairment, including a mobility, sensory, or cognitive impairment, which results in a functional limitation in access to and use of a building or facility.*

Mezzanine or Mezzanine Floor. *That portion of a story which is an intermediate floor level placed within the story and having occupiable space above and below its floor.*

Marked Crossing. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

Multifamily Dwelling. Any building containing more than two dwelling units.

Occupiable. *A room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes, or in which occupants are engaged at labor, and which is equipped with means of egress, light, and ventilation.*

Operable Part. A part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, pushbutton, handle).

Path of Travel. *(Reserved).*

Power-assisted Door. A door *used for human passage* with a mechanism that helps to open the door, or relieve the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself.

Public Use. Describes interior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned.

Ramp. A walking surface which has a running slope greater than 1:20.

Running Slope. The slope that is parallel to the direction of travel (see cross slope).

Service Entrance. An entrance intended primarily for delivery of goods or services.

Signage. *Displayed* verbal, symbolic, *tactile,* and pictorial information.

Site. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

Site Improvement. Landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and the like, added to a site.

Sleeping Accommodations. Rooms in which people sleep; for example, dormitory and hotel or motel guest rooms or suites.

Space. *A definable area, e.g., room, toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby.*

Story. *That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story for purposes of these guidelines. There may be more than one floor level within a story as in the case of a mezzanine or mezzanines.*

Tactile. Describes an object that can be perceived using the sense of touch.

Technically Infeasible. *Means, with respect to an alteration, that it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member or because site constraints prohibit modification or addition of elements, spaces, or features necessary to provide accessibility.*

Telecommunication Display Device or Telecommunication Device for the Deaf (TDD). *A telecommunications display device, also known as a telecommunications device for the deaf, employs graphic (i.e., written) communications through the transmission of coded signals across the standard telephone network.*

Transient Lodging. *A building, facility, or portion thereof, excluding inpatient medical care facilities, that contains one or more dwelling units or sleeping accommodations. Transient*

lodging may include, but is not limited to, resorts, group homes, hotels, motels, and dormitories.

Vehicular Way. A route intended for vehicular traffic, such as a street, driveway, or parking lot.

Walk. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

NOTE: Sections 4.1.1 through 4.1.7 are different from ANSI A117.1 in their entirety and are printed in standard type.

4. ACCESSIBLE ELEMENTS AND SPACES: SCOPE AND TECHNICAL REQUIREMENTS

4.1 Minimum Requirements

4.1.1 Application.

(1) General. All areas of buildings and facilities shall comply with these guidelines, 4.1 through 4.34, unless otherwise provided in this section or as modified in a special application section.

(2) Application Based on Building Use. Special application sections 5 through 9 provide additional requirements for restaurants and cafeterias, medical care facilities, business and mercantile, libraries, and accessible transient lodging. When a building or facility contains more than one use covered by a special application section, each portion shall comply with the requirements for that use.

(3) Areas Used Only by Employees as a Workstation. Areas that contain work stations that may be used by employees with disabilities shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas. These guidelines do not require that all individual work stations be constructed or equipped (e.g., with racks or shelves) to be accessible.

(4) Temporary Structures. These guidelines cover temporary buildings or facilities as well as permanent facilities. Temporary buildings and facilities are not of permanent construction but are extensively used or are essential for public use for a period of time. Examples of temporary buildings or facilities covered by these guidelines include, but are not limited to: reviewing stands, temporary classrooms, bleacher areas, exhibit areas, temporary banking facilities, temporary health screening services, or temporary safe pedestrian passageways around a construction site. Structures, sites and equipment directly associated with the actual processes of major construction, such as scaffolding, bridging, or materials hoists are not included.

(5) General Exceptions.

(a) In new construction, a person or entity is not required to meet fully the requirements of these guidelines where that person or entity can demonstrate that it is structurally impracticable to do so. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(b) Accessibility is not required to elevator pits, elevator penthouses, piping or equipment catwalks, and lookout galleries.

4.1.2 Accessible Sites and Exterior Facilities: New Construction. An accessible site shall meet the following minimum requirements:

(1) At least one accessible route complying with 4.3 shall be provided within the boundary of the site from public transportation stops, accessible parking spaces, passenger loading zones if provided, and public streets or sidewalks to an accessible building entrance.

(2) At least one accessible route complying with 4.3 shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site.

(3) All objects that protrude from surfaces or posts into circulation paths shall comply with 4.4.

4.1.2 Accessible Sites and Exterior Facilities: New Construction

(4) Ground surfaces along accessible routes and in accessible spaces shall comply with 4.5.

(5) (a) If parking spaces are provided for employees or visitors, or both, then accessible spaces complying with 4.6 shall be provided in each such parking area, as close as practicable to an accessible entrance in conformance with the following table:

Total Parking in Lot	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	[a]
1001 and over	[b]

[a] 2 percent of total.
[b] 20 plus 1 for each 100 over 1000.

EXCEPTION: If greater accessibility is achieved, the total number of accessible parking spaces may be distributed among parking lots.

(b) If passenger loading zones are provided, then at least one passenger loading zone shall comply with 4.6.5.

(c) Parking spaces for side lift vans are accessible parking spaces and may be used to meet the requirements of this paragraph.

(d) Parking spaces at transient lodging complying with 4.6 shall be provided in accordance with the following:

(i) Where parking is provided for all occupants, one accessible parking space shall be provided for each accessible unit or sleeping room; and

(ii) Where parking is provided for visitors, 2 percent of the spaces, or at least one, shall be accessible.

(e) At facilities providing medical services, parking spaces complying with 4.6 shall be provided in accordance with 4.1.1(5)(a) except as follows:

(i) Outpatient facilities: 10 percent of the total number of parking spaces provided;

(ii) Facilities that specialize in treatment or services for persons with mobility impairments, employee and visitor parking: 20 percent of the total number of parking spaces provided.

(6) If toilet facilities are provided on a site, then each such public or common use toilet facility shall comply with 4.22. If bathing facilities are provided on a site, then each such public or common use bathing facility shall comply with 4.23.

EXCEPTION: For single user portable toilet or bathing units clustered at a single location, at least one toilet unit complying with 4.22 or at least one bathing unit complying with 4.23 should be installed at each location whenever typical inaccessible units are provided. Accessible units shall be identified by the International Symbol of Accessibility.

(7) All signs shall comply with 4.30.2, 4.30.3, and 4.30.5. Signage identifying buildings and facilities and permanent identification of rooms or spaces (e.g., toilet facilities) shall also comply with 4.30.4 and 4.30.6. Elements and spaces of accessible facilities which shall be identified by the International Symbol of Accessibility and comply with 4.30.7 are:

(a) Parking spaces designated as reserved for individuals with disabilities;

(b) Accessible passenger loading zones;

(c) Accessible entrances when not all are accessible (inaccessible entrances shall have directional signage to indicate the route to the nearest accessible entrance);

(d) Accessible toilet and bathing facilities where not all are accessible.

4.1.3 Accessible Buildings: New Construction. Accessible buildings and facilities shall meet the following minimum requirements:

(1) At least one accessible route complying with 4.3 shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility.

(2) All objects that overhang or protrude into circulation paths shall comply with 4.4.

(3) Ground and floor surfaces along accessible routes and in accessible rooms and spaces shall comply with 4.5.

(4) Stairs connecting levels that are not connected by an elevator shall comply with 4.9.

(5) One passenger elevator complying with 4.10 shall serve each level, including mezzanines, in all multi-story buildings and facilities unless exempted below. If more than one elevator is provided, each elevator shall comply with 4.10.

EXCEPTION: Elevators are not required in facilities that are less than three stories or that have less than 3000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or another type of facility as determined by the Attorney General. The elevator exemption set forth in this paragraph does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in section 4.1.3. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then toilet or bathing facilities must be provided on the accessible ground floor. If a building or facility is eligible for this exemption but the building or facility nonetheless has an elevator, that elevator shall meet the requirements of 4.10 and shall serve each level in the building.

EXCEPTION: Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks are exempted from this requirement.

EXCEPTION: Accessible ramps complying with 4.8 or, if no other alternative is feasible, accessible platform lifts complying with 4.11 of this guideline and other applicable local regulations may be used in lieu of an elevator.

(6) Windows: If operable windows are provided, they shall comply with 4.12.

(7) Doors:

(a) At each accessible entrance to a building or facility, at least one door shall comply with 4.13.

(b) Within a building or facility, at least one door at each accessible space shall comply with 4.13.

(c) Each door that is an element of an accessible route shall comply with 4.13.

(d) Each door required by 4.3.10, Egress, shall comply with 4.13.

(8) At least one principal entrance at each ground floor level to a building or facility shall comply with 4.14, Entrances. When a building or facility has entrances which normally serve any of the following functions: transportation facilities, passenger loading zones, accessible parking facilities, taxi stands, public streets and sidewalks, or accessible interior vertical access, then at least one of the entrances serving each such function shall comply with 4.14, Entrances. Because entrances also serve as emergency exits, whose proximity to all parts of buildings and facilities is essential, it is preferable that all or most entrances be accessible.

(9) In multiple-story buildings and facilities where at-grade egress from each floor is impossible, either of the following is required: the provision within each story of approved fire and smoke partitions that create horizontal exits; or the provision within each floor of areas of refuge complying with 4.3.11 and approved by agencies having authority for safety. Areas of refuge shall be provided on each floor level in a number equal to that for required exits.

(10) If drinking fountains or water coolers are provided, approximately 50 percent of those provided on each floor shall comply with 4.15

4.1.3 Accessible Buildings: New Construction

and shall be on an accessible route. If only one drinking fountain or water cooler is provided on any floor, it shall comply with 4.15.

(11) Toilet Facilities: If toilet facilities are provided, then each public and common use toilet room shall comply with 4.22. Other toilet rooms shall be adaptable. If bathing facilities are provided, then each public and common use bathroom shall comply with 4.23. Accessible toilet rooms and bathing facilities shall be on an accessible route.

(12) Storage, Shelving and Display Units:

(a) If fixed or built-in storage facilities such as cabinets, shelves, closets, and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with 4.25. Additional storage may be provided outside of the dimensions shown in Fig. 38.

(b) Shelves or display units allowing self-service by customers in mercantile occupancies shall be located on an accessible route complying with 4.3.

(13) Controls and operating mechanisms in accessible spaces, along accessible routes, or as parts of accessible elements (for example, light switches and dispenser controls) shall comply with 4.27.

(14) If emergency warning systems are provided, then they shall include both audible alarms and visual alarms complying with 4.28. Sleeping accommodations required to comply with 9.3 shall have an alarm system complying with 4.28. Emergency warning systems in medical care facilities may be modified to suit standard health care alarm design practice.

(15) Detectable warnings shall be provided at hazardous conditions as specified in 4.29.

(16) If signs are provided, they shall comply with 4.30.2, 4.30.3, 4.30.5 and 4.30.8. In addition, signage that provides permanent identification of rooms and spaces shall also comply with 4.30.4 and 4.30.6.

EXCEPTION: The provisions of 4.30.4 are not mandatory for temporary information on room and space signage, such as current occupant's name, provided the permanent room or space identification, such as room number, "MEN," or "EXIT," complies with 4.30.4 and 4.30.6.

(17) Public telephones:

(a) If public pay telephones, public closed circuit telephones, or other public telephones are provided, then they shall comply with 4.31, Telephones, to the extent required by the following table:

Number of each type of telephone provided on each floor	Number of telephones required to be accessible[a]
1 or more single unit installations	1 per floor
1 bank[b]	1 per floor
2 or more banks[b]	1 per bank. Accessible unit may be installed as a single unit in proximity (either visible or with signage) to the bank. At least one public telephone per floor shall meet the requirements for a forward reach telephone.[c]

[a] Additional public telephones may be installed at any height. Unless otherwise specified, accessible telephones may be either forward or side reach telephones.

[b] A bank consists of two or more adjacent public telephones, often installed as a unit.

[c] EXCEPTION: For exterior installations only, if dial tone first service is not available, then a side reach telephone may be installed instead of the required forward reach telephone (i.e., one telephone in proximity to each bank shall comply with 4.31).

(b) All telephones required to be accessible and complying with 4.31 shall be equipped with a volume control. In addition, 25 percent, but never less than one, of all other public telephones provided shall be equipped with a volume control and shall be dispersed among all types of public telephones, including closed circuit telephones, throughout the building or facility. The installation of additional volume controls is encouraged and these may be installed on any public telephone provided.

Signage complying with applicable provisions of 4.30.7 shall be provided.

(c) In addition to the requirements of (a) and (b) above, if public pay telephones are provided in a building or facility that has a total of six or more public pay telephones, at least one public pay telephone shall be equipped with a TDD. A public TDD shall be located on an accessible route complying with 4.3 and shall be provided with signage complying with 4.30.7.

(18) If fixed or built-in seating or tables are provided in accessible spaces, at least 5 percent, but always at least one, of the fixed or built-in seating spaces or tables shall comply with 4.32. An accessible route shall lead to and through such fixed or built-in seating, tables or work surfaces.

(19) Assembly areas:

(a) If places of assembly are provided, they shall comply with the following table:

Capacity of Seating in Assembly Areas	Number of Required Wheelchair Locations
50 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	[a]
over 1000	[b]

[a] 2 percent of total
[b] 20 plus 1 for each 100 over 1000

(b) This paragraph applies to indoor assembly areas where audible communications are integral to the use of the space (e.g., concert halls, theaters, meeting rooms, etc.). Such assembly areas, if they accommodate 50 or more persons, or if they have audio-amplification systems, or if they are used regularly as meeting or conference rooms, shall have a permanently installed assistive listening system complying with 4.33. For other assembly areas, a permanently installed assistive listening system, or wiring for a portable assistive listening system shall be provided. The minimum number of receivers to be provided shall be equal to 4 percent of the total number of seats, but in no case less than two. Signage complying with 4.30 shall be installed to notify patrons of the availability of a listening system.

(20) Where automated teller machines are provided, at least one machine shall comply with the requirements of 4.34.

EXCEPTION: Drive-up-only automated teller machines are not required to comply with 4.34.2 and 4.34.3.

4.1.4 (Reserved).

4.1.5 Accessible Buildings: Additions. Each addition to an existing building or facility shall be regarded as an alteration and shall comply with 4.1.1 to 4.1.3 and 4.1.6 of 4.1, Minimum Requirements, and the applicable technical specifications of 4.2 through 4.34 and sections 5 through 9.

4.1.6 Accessible Buildings: Alterations.

(1) General. Alterations to existing buildings and facilities shall comply with the following:

(a) No alteration which decreases or has the effect of decreasing accessibility or usability of a building or facility may be undertaken.

(b) If existing elements, spaces, or common areas are altered, then each such altered element, space, feature, or area shall comply with the applicable provisions of 4.1.1 to 4.1.3 of 4.1, Minimum Requirements (for New Construction).

(c) If an escalator or stair is planned or installed where none existed previously and major structural modifications are necessary for such installation, then a means of accessible vertical access shall be provided that complies with the applicable provisions of 4.7, 4.8, 4.10, or 4.11.

(d) If alterations of single elements, when considered together, amount to an alteration of a room or space in a building or facility, the entire space shall be made accessible.

4.1.6 Accessible Buildings: Alterations

(e) No alteration of an existing element, space, or area of a building or facility shall impose a requirement for greater accessibility than that which would be required for new construction. For example, if the elevators and stairs in a building are being altered and the elevators are, in turn, being made accessible, then no accessibility modifications are required to the stairs connecting levels connected by the elevator. If stair modifications to correct unsafe conditions are required by other codes, the modifications shall be done in compliance with these guidelines unless technically infeasible.

(f) If the alteration work is limited solely to the electrical, mechanical, or plumbing system, or to asbestos removal, and does not involve the alteration of any elements or spaces required to be accessible under these guidelines, then 4.1.6(2) does not apply.

(g) EXCEPTION: In alteration work, if compliance is technically infeasible, the alteration shall provide accessibility to the maximum extent feasible. Any elements or features of the building or facility that can be made accessible shall be made accessible.

(h) EXCEPTION:

(i) These guidelines do not require the installation of an elevator in an altered facility that is less than three stories or has less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, the professional office of a health care provider, or another type of facility as determined by the Attorney General.

(ii) The exemption provided in paragraph (i) does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in these guidelines. For example, alterations to floors above or below the ground floor must be accessible regardless of whether the altered facility has an elevator. If a facility subject to the elevator exemption set forth in paragraph (i) nonetheless has an elevator, that elevator shall meet, to the maximum extent feasible, the accessibility requirements of these guidelines.

(2) Alterations to an Area Containing a Primary Function: In addition to the requirements of 4.1.6(1), an alteration that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(3) Special Technical Provisions for Alterations to Existing Buildings and Facilities:

(a) Ramps: Curb ramps and interior or exterior ramps to be constructed on sites or in existing buildings or facilities where space limitations prohibit the use of a 1:12 slope or less may have slopes and rises as follows:

(i) A slope between 1:10 and 1:12 is allowed for a **maximum rise of 6 inches.**

(ii) A slope between 1:8 and 1:10 is allowed for a **maximum rise of 3 inches.**

A slope steeper than 1:8 is not allowed.

(b) Stairs: Full extension of handrails at stairs shall not be required in alterations where such extensions would be hazardous or impossible due to plan configuration.

(c) Elevators:

(i) If safety door edges are provided in existing automatic elevators, automatic door reopening devices may be omitted (see 4.10.6).

(ii) Where existing shaft configuration or technical infeasibility prohibits strict compliance with 4.10.9, the minimum car plan dimensions may be reduced by the minimum amount necessary, but in no case shall the inside car dimensions be less than 48 in by 48 in.

(d) Doors:

(i) Where it is technically infeasible to comply with clear opening width requirements of 4.13.5, a projection of 5/8 in maximum will be permitted for the latch side stop.

(ii) If existing thresholds are 3/4 in high or less, and have (or are modified to have) a beveled edge on each side, they may remain.

(e) Toilet Rooms:

(i) Where it is technically infeasible to comply with 4.22 and 4.23, the installation of at least one unisex toilet per floor, located in the same area as existing toilet facilities, will be permitted in lieu of modifying existing toilet facilities to be accessible. Each unisex toilet room shall contain one water closet complying with 4.16 and one lavatory complying with 4.19, and the door shall have a privacy latch.

(ii) Where it is technically infeasible to install a required standard stall, or where other codes prohibit reduction of the fixture count (i.e., removal of a water closet in order to create a double-wide stall), either alternate stall (Fig.30(b)) may be provided in lieu of the standard stall.

(f) Signage:

(i) Where it is technically infeasible to comply with 4.1.3(7) but an entrance (or entrances) other than a principal entrance is made accessible, appropriate accessible signage indicating the location of the nearest accessible entrance(s) shall be installed at or near the inaccessible entrance such that a person with disabilities will not be required to retrace the approach route from the inaccessible entrance.

(ii) When inaccessible toilet or bathing facilities are allowed to remain in an existing building or facility, signage complying with 4.30, except for 4.30.4, shall be provided indicating the location of the nearest accessible toilet or bathing facility.

(g) Assembly Areas:

(i) Where it is technically infeasible to disperse accessible seating throughout an altered assembly area, accessible seating areas may be clustered. Each accessible seating area shall have provisions for companion seating and shall be located on an accessible route that also serves as a means of emergency egress.

(ii) Where it is technically infeasible to alter all performing areas to be on an accessible route, at least one of each type of performing area shall be made accessible.

4.1.7 Accessible Buildings: Historic Preservation.

(1) Applicability.

(a) As a general rule, the accessibility provisions of part 4 shall be applied to alterations to "qualified" historic buildings and facilities. "Qualified" buildings or facilities are those buildings and facilities that are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate state or local government body. Comments of the Advisory Council on Historic Preservation shall be obtained when required by Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 and 36 CFR Part 800, before any alteration to a qualified historic building is undertaken.

(b) The Advisory Council shall determine, on a case-by-case basis, whether provisions required by part 4 for accessible routes (exterior and interior), ramps, entrances, toilets, parking, and displays and signage, would threaten or destroy the historic significance of the building or facility.

(c) If the Advisory Council determines that any of the accessibility requirements for features listed in 4.1.7(1) would threaten or destroy the historic significance of a building or facility, then the special application provisions of 4.1.7(2) for that feature may be utilized. The special application provisions listed under 4.1.7(2) may only be utilized following a written determination by the Advisory Council that application of a requirement contained in part 4 would threaten or destroy the historic integrity of a qualified building or facility.

(2) Historic Preservation: Minimum Requirements.

(a) At least one accessible route complying with 4.3 from a site access point to an accessible entrance shall be provided.

4.2 Space Allowance and Reach Ranges

EXCEPTION: A ramp with a slope no greater than 1:6 for a run not to exceed 2 ft (610 mm) may be used as part of an accessible route at an entrance.

(b) At least one accessible entrance which is used by the public complying with 4.14 shall be provided.

EXCEPTION: If it is determined that no entrance used by the public can comply with 4.14, then access at any entrance not used by the general public but open (unlocked) with directional signage at the primary entrance may be used.

(c) If toilets are provided, then at least one toilet facility complying with 4.22 and 4.1.6 shall be provided along an accessible route that complies with 4.3. Such toilet facility may be unisex in design.

(d) Accessible routes from an accessible entrance to all publicly used spaces on at least the level of the accessible entrance shall be provided. Access shall be provided to all levels of a building or facility in compliance with 4.1 whenever practical.

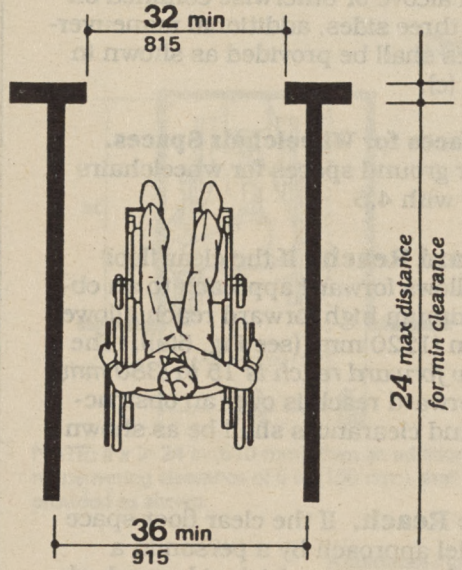


Fig. 1
Minimum Clear Width
for Single Wheelchair

(e) Displays and written information, documents, etc., shall be located where they can be seen by a seated person. Exhibits and signage displayed horizontally (e.g., open books), shall be no higher than 44 in (1120 mm) above the floor surface.

NOTE: The technical provisions of sections 4.2 through 4.34 are the same as those of the American National Standard Institutes' document A117.1 — 1980, except as noted in the text and on figures in italics.

4.2 Space Allowance and Reach Ranges

4.2.1* Wheelchair Passage Width. The minimum clear width for single wheelchair passage shall be 32 in (815 mm) at a point and 36 in (915 mm) continuously (see Fig. 1 *and 24(e)*).

4.2.2 Width for Wheelchair Passing. The minimum width for two wheelchairs to pass is 60 in (1525 mm) (see Fig. 2).

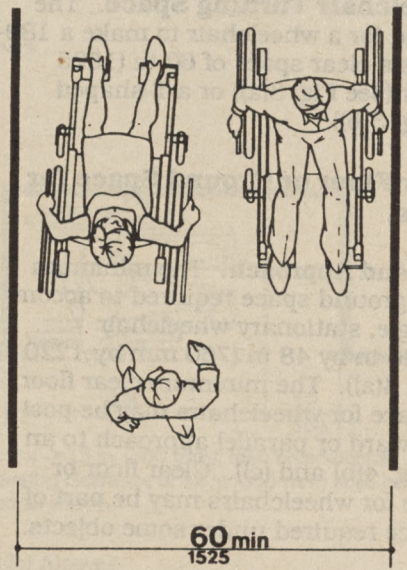
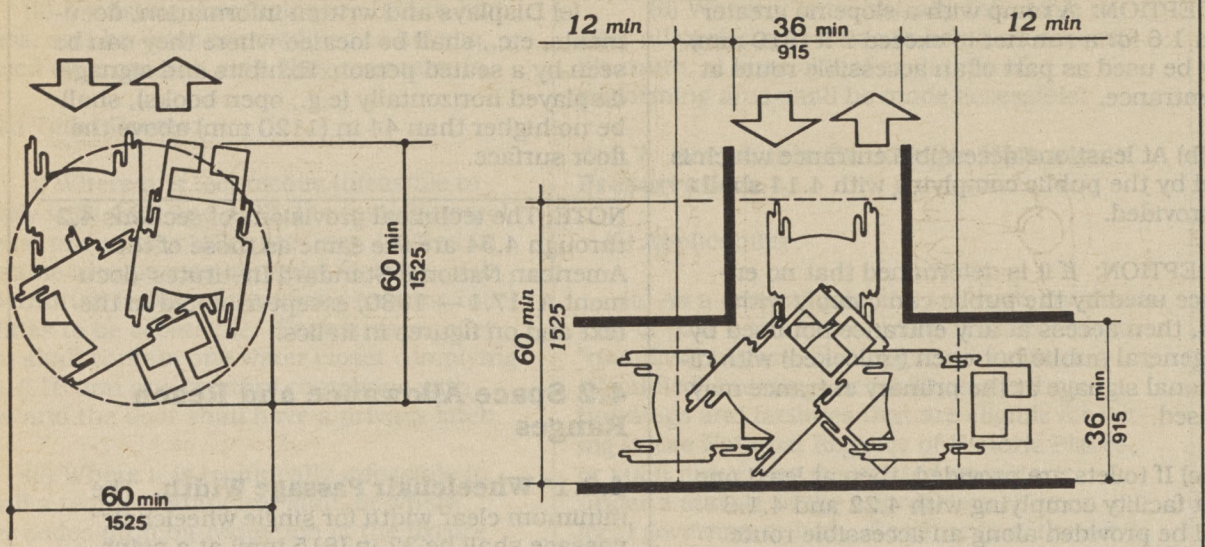


Fig. 2
Minimum Clear Width
for Two Wheelchairs



(a)
60-in (1525-mm)-Diameter Space

(b)
T-Shaped Space for 180° Turns

Fig. 3
Wheelchair Turning Space

4.2.3* Wheelchair Turning Space. The space required for a wheelchair to make a 180-degree turn is a clear space of 60 in (1525 mm) diameter (see Fig. 3(a)) or a T-shaped space (see Fig. 3(b)).

4.2.4* Clear Floor or Ground Space for Wheelchairs.

4.2.4.1 Size and Approach. The minimum clear floor or ground space required to accommodate a single, stationary wheelchair occupant is 30 in by 48 in (760 mm by 1220 mm) (see Fig. 4(a)). The minimum clear floor or ground space for wheelchairs may be positioned for forward or parallel approach to an object (see Fig. 4(b) and (c)). Clear floor or ground space for wheelchairs may be part of the knee space required under some objects.

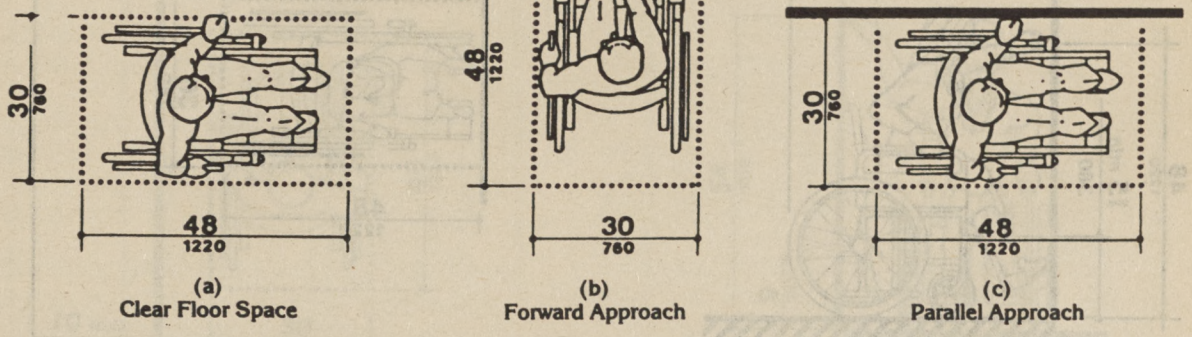
4.2.4.2 Relationship of Maneuvering Clearance to Wheelchair Spaces. One full unobstructed side of the clear floor or ground space for a wheelchair shall adjoin or overlap an accessible route or adjoin another wheelchair clear floor space. If a clear floor space is located in an alcove or otherwise confined on all or part of three sides, additional maneuvering clearances shall be provided as shown in Fig. 4(d) and (e).

4.2.4.3 Surfaces for Wheelchair Spaces. Clear floor or ground spaces for wheelchairs shall comply with 4.5.

4.2.5 Forward Reach. If the clear floor space only allows forward approach to an object, the maximum high forward reach allowed shall be 48 in (1220 mm) (see Fig. 5(a)). The *minimum low forward reach is 15 in (380 mm).* If the high forward reach is over an obstruction, reach and clearances shall be as shown in Fig. 5(b).

4.2.6* Side Reach. If the clear floor space allows parallel approach by a person in a wheelchair, the maximum high side reach allowed shall be 54 in (1370 mm) and the low side reach shall be no less than 9 in (230 mm) above the floor (Fig. 6(a) and (b)). If the side reach is over an obstruction, the reach and clearances shall be as shown in Fig 6(c).

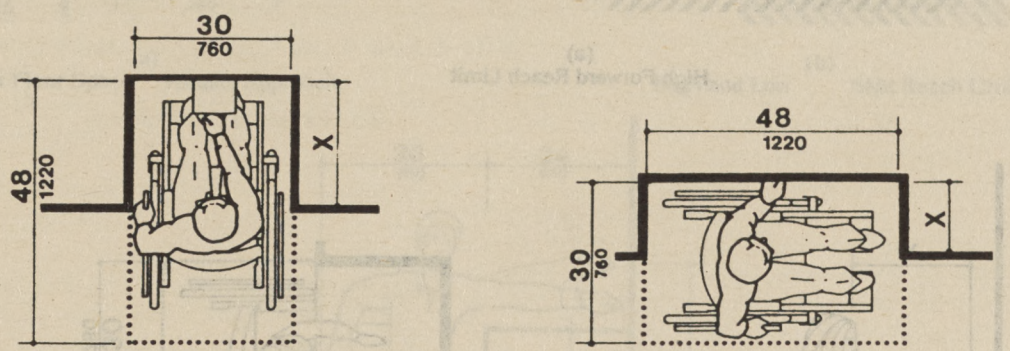
4.2 Space Allowance and Reach Ranges



(a) Clear Floor Space

(b) Forward Approach

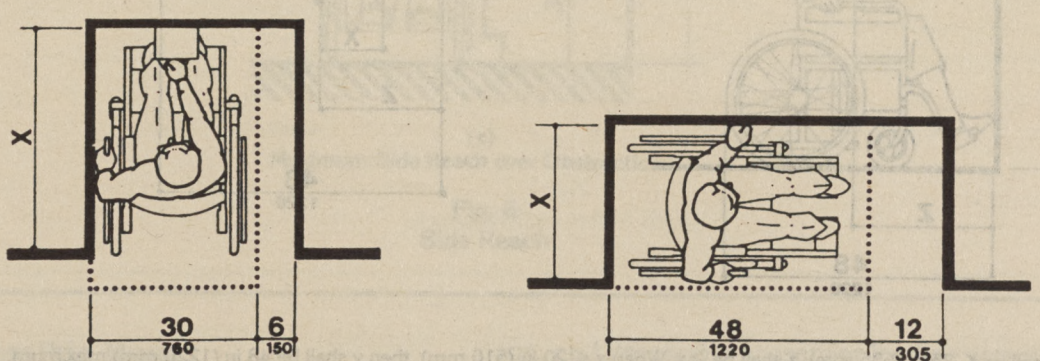
(c) Parallel Approach



NOTE: x ≤ 24 in (610 mm).

NOTE: x ≤ 15 in (380 mm).

(d) Clear Floor Space in Alcoves



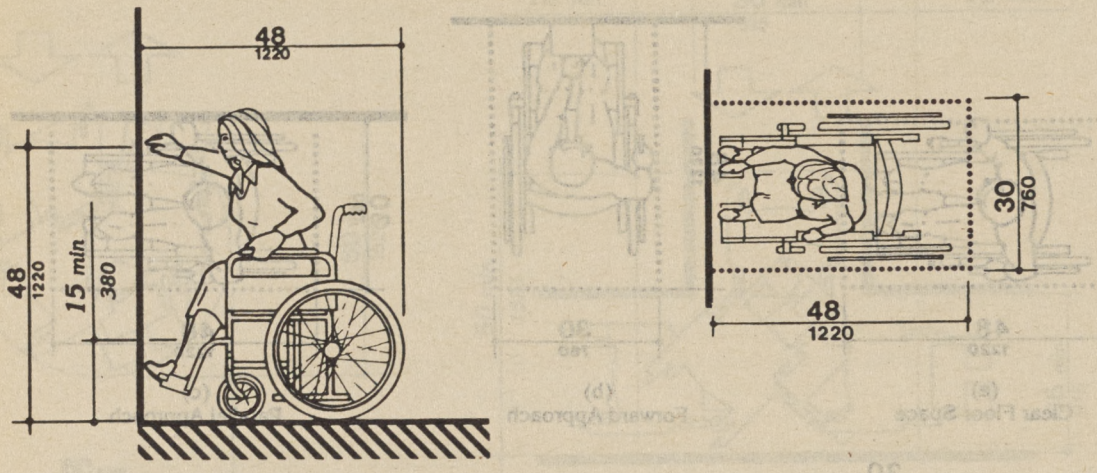
NOTE: If x > 24 in (610 mm), then an additional maneuvering clearance of 6 in (150 mm) shall be provided as shown.

NOTE: If x > 15 in (380 mm), then an additional maneuvering clearance of 12 in (305 mm) shall be provided as shown.

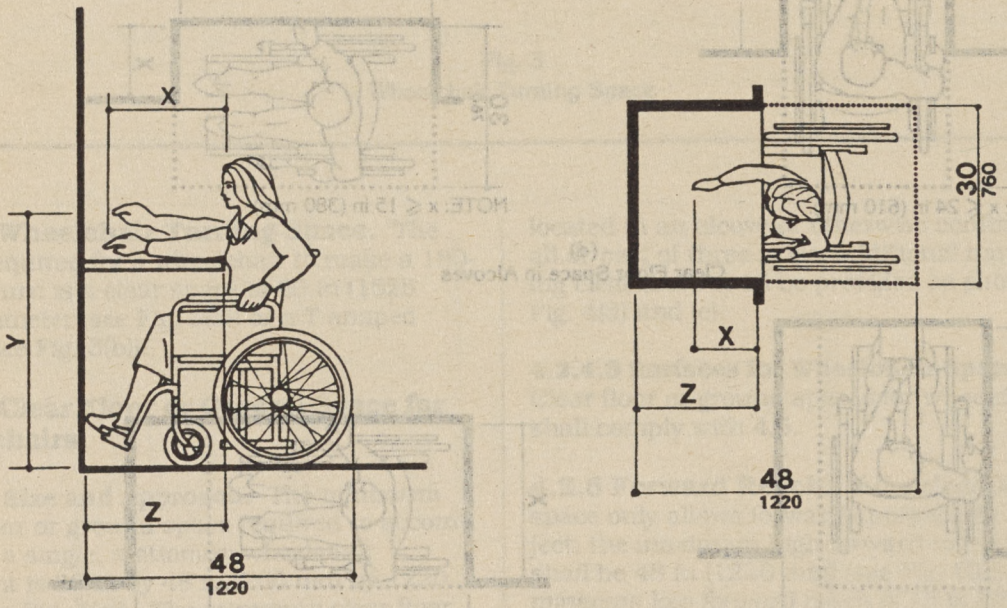
(e) Additional Maneuvering Clearances for Alcoves

Fig. 4
Minimum Clear Floor Space for Wheelchairs

4.2 Space Allowance and Reach Ranges



(a)
High Forward Reach Limit



NOTE: x shall be ⩽ 25 in (635 mm); z shall be ⩾ x. When x < 20 in (510 mm), then y shall be 48 in (1220 mm) maximum. When x is 20 to 25 in (510 to 635 mm), then y shall be 44 in (1120 mm) maximum.

(b)
Maximum Forward Reach over an Obstruction

Fig. 5
Forward Reach

4.3 Accessible Route

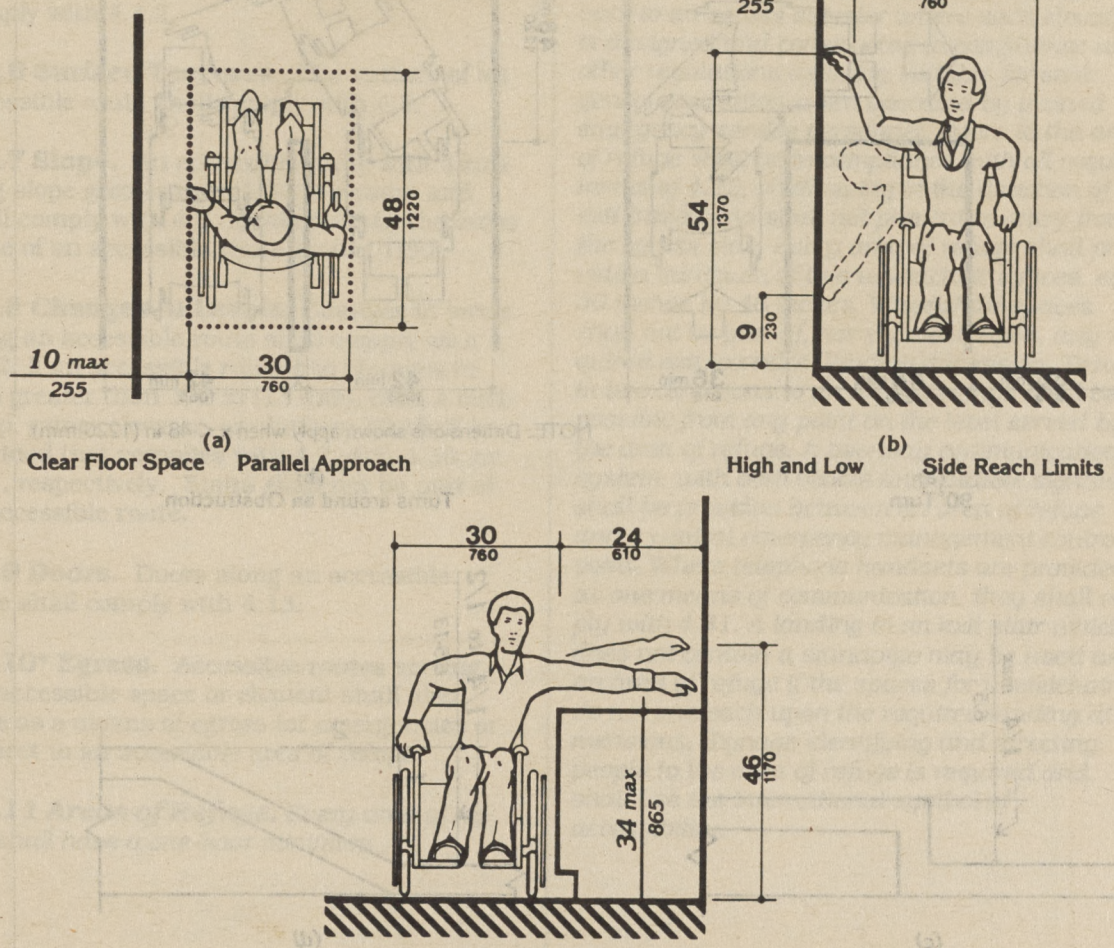


Fig. 6
Side Reach

4.3 Accessible Route

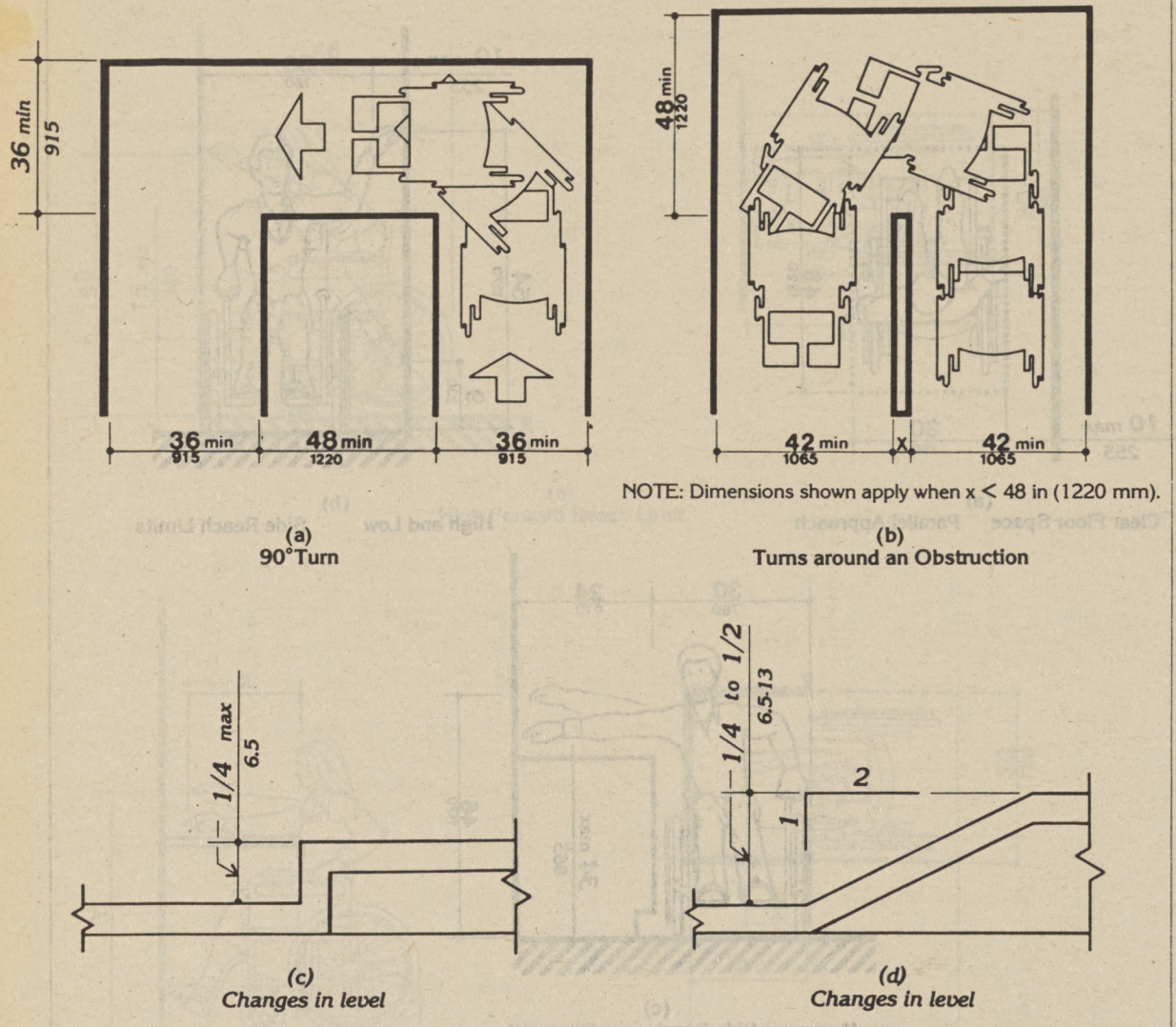
4.3.1* General. All walks, halls, corridors, aisles, and other spaces that are part of an accessible route shall comply with 4.3.

4.3.2 Location.

(1) At least one accessible route *within the boundary of the site* shall be provided from public transportation stops, accessible parking, and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve.

(2) At least one accessible route shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

(3) At least one accessible route shall connect accessible building or facility entrances with all accessible spaces and



NOTE: Dimensions shown apply when x < 48 in (1220 mm).

(a)
90° Turn

(b)
Turns around an Obstruction

(c)
Changes in level

(d)
Changes in level

Fig. 7
Width of Accessible Route

elements and with all accessible dwelling units within the building or facility.

(4) An accessible route shall connect at least one accessible entrance of each accessible dwelling unit with those exterior and interior spaces and facilities that serve the accessible dwelling unit

4.3.3 Width. The minimum clear width of an accessible route shall be 36 in (915 mm) except at doors (see 4.13.5). If a person in a wheelchair must make a turn around an obstruction, the minimum clear width of the accessible route shall be as shown in Fig. 7.

4.3.4 Passing Space. If an accessible route has less than 60 in (1525 mm) clear width, then passing spaces at least 60 in by 60 in (1525 mm by 1525 mm) shall be located at reasonable intervals not to exceed 200 ft (61 m).

4.3 Accessible Route

A T-intersection of two corridors or walks is an acceptable passing place.

4.3.5 Head Room. Accessible routes shall comply with 4.4.2.

4.3.6 Surface Textures. The surface of an accessible route shall comply with 4.5.

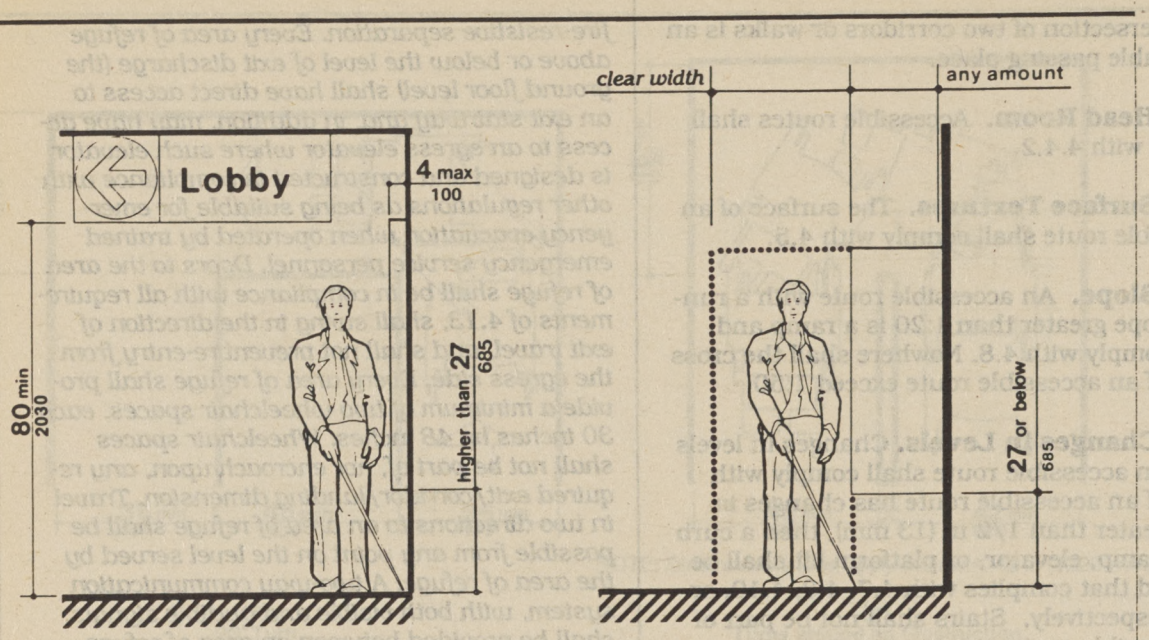
4.3.7 Slope. An accessible route with a running slope greater than 1:20 is a ramp and shall comply with 4.8. Nowhere shall the cross slope of an accessible route exceed 1:50.

4.3.8 Changes in Levels. Changes in levels along an accessible route shall comply with 4.5.2. If an accessible route has changes in level greater than 1/2 in (13 mm), then a curb ramp, ramp, elevator, or platform lift shall be provided that complies with 4.7, 4.8, 4.10, or 4.11, respectively. Stairs shall not be part of an accessible route.

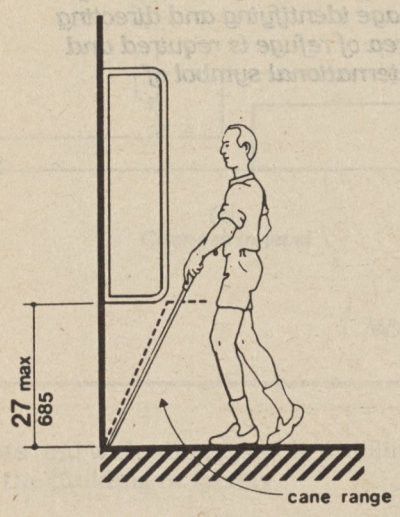
4.3.9 Doors. Doors along an accessible route shall comply with 4.13.

4.3.10* Egress. Accessible routes serving any accessible space or element shall also serve as a means of egress for emergencies or connect to an accessible area of refuge.

4.3.11 Areas of Refuge. *Every area of refuge shall have a one-hour minimum fire-resistive separation. Every area of refuge above or below the level of exit discharge (the ground floor level) shall have direct access to an exit stairway and, in addition, may have access to an egress elevator where such elevator is designed and constructed in compliance with other regulations as being suitable for emergency evacuation when operated by trained emergency service personnel. Doors to the area of refuge shall be in compliance with all requirements of 4.13, shall swing in the direction of exit travel, and shall not prevent re-entry from the egress side. Every area of refuge shall provide a minimum of two wheelchair spaces, each 30 inches by 48 inches. Wheelchair spaces shall not be part of, nor encroach upon, any required exit/corridor/landing dimension. Travel in two directions to an area of refuge shall be possible from any point on the level served by the area of refuge. A two-way communication system, with both visible and audible signals, shall be provided between an area of refuge and a central emergency management control point. Where telephone handsets are provided as one means of communication, they shall comply with 4.31. A landing in an exit stair which does not contain a standpipe may be used as an area of refuge if the spaces for wheelchairs do not encroach upon the required landing dimensions. Signage identifying and directing people to the area of refuge is required and shall use the international symbol of accessibility.*



(a)
Walking Parallel to a Wall



(b)
Walking Perpendicular to a Wall

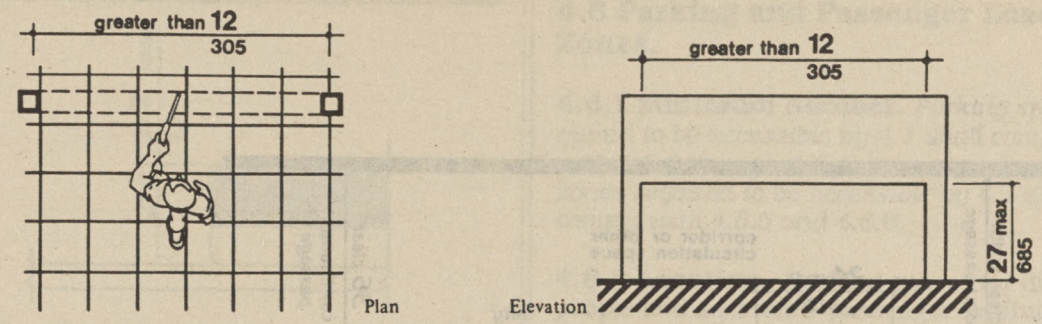
Fig. 8
Protruding Objects

4.4 Protruding Objects.

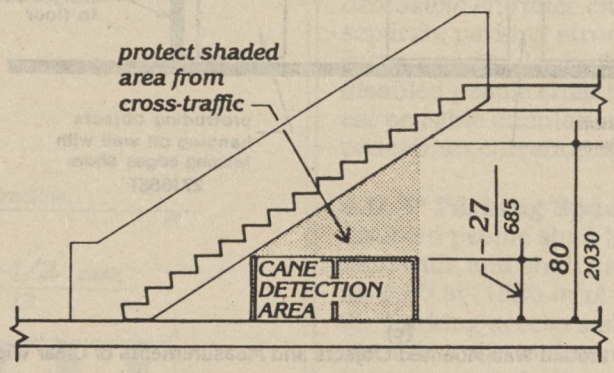
4.4.1* General. Objects projecting from walls (for example, telephones) with their leading edges between 27 in and 80 in (685 mm and 2030 mm) above the finished floor shall protrude no more than 4 in (100 mm) into walks, halls, corridors, passageways, or aisles (see Fig. 8(a)). Objects mounted with their leading edges at or below 27 in (685 mm) above the finished floor may protrude any amount (see Fig. 8(a) and (b)). Free-standing objects mounted on posts or pylons may overhang 12 in (305 mm) maximum from 27 in to 80 in (685 mm to 2030 mm) above the ground or finished floor (see Fig. 8(c) and (d)). Protruding objects shall not reduce the clear width of an accessible route or maneuvering space (see Fig. 8(e)).

4.4.2 Head Room. Walks, halls, corridors, passageways, aisles, or other circulation spaces shall have 80 in (2030 mm) minimum clear head room (see Fig. 8(a)). *If vertical clearance of an area adjoining an accessible route is reduced to less than 80 in (nominal dimension), a barrier to warn blind or visually-impaired persons shall be provided (see Fig. 8(c)).*

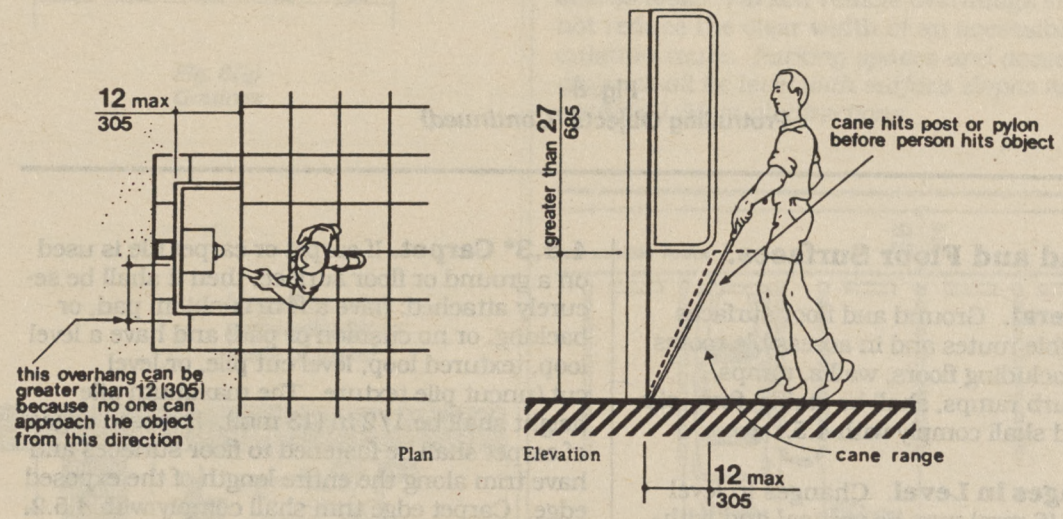
4.4 Protruding Objects



(c) Free-Standing Overhanging Objects

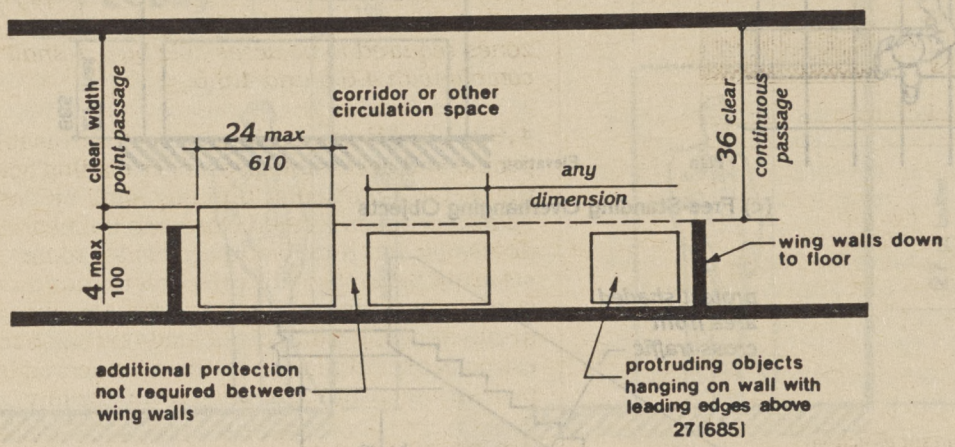


(c) Overhead Hazards



(d)
Objects Mounted on Posts or Pylons

Fig. 8
Protruding Objects *(Continued)*



(e)
Example of Protection around Wall-Mounted Objects and Measurements of Clear Widths

Fig. 8
Protruding Objects *(Continued)*

4.5 Ground and Floor Surfaces.

4.5.1* General. Ground and floor surfaces along accessible routes and in accessible rooms and spaces including floors, walks, ramps, stairs, and curb ramps, shall be stable, firm, *slip-resistant*, and shall comply with 4.5.

4.5.2 Changes in Level. Changes in level up to 1/4 in (6 mm) may be vertical and without edge treatment *(see Fig. 7(c))*. Changes in level between 1/4 in and 1/2 in (6 mm and 13 mm) shall be beveled with a slope no greater than 1:2 *(see Fig. 7(d))*. Changes in level greater than 1/2 in (13 mm) shall be accomplished by means of a ramp that complies with 4.7 or 4.8.

4.5.3* Carpet. If carpet or carpet tile is used on a ground or floor surface, then it shall be securely attached; have a firm cushion, pad, or backing, or no cushion or pad; and have a level loop, textured loop, level cut pile, or level cut/uncut pile texture. The maximum pile height shall be 1/2 in (13 mm). Exposed edges of carpet shall be fastened to floor surfaces and have trim along the entire length of the exposed edge. Carpet edge trim shall comply with 4.5.2.

4.5.4 Gratings. If gratings are located in walking surfaces, then they shall have spaces no greater than 1/2 in (13 mm) wide in one direction *(see Fig. 8(g))*. If gratings have elongated openings, then they shall be placed so that the long dimension is perpendicular to the dominant direction of travel *(see Fig. 8(h))*.

4.6 Parking and Passenger Loading Zones

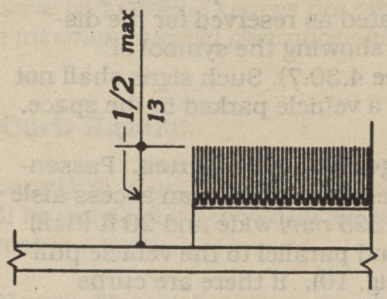


Fig. 8(f)
Carpet Tile Thickness

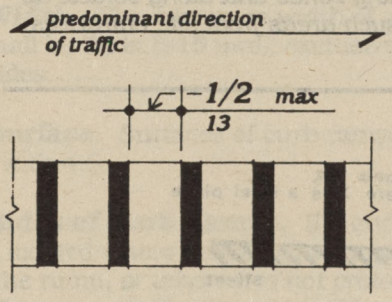


Fig. 8(g)
Gratings

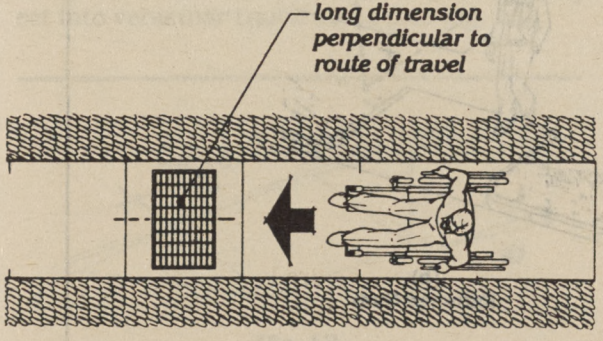


Fig. 8(h)
Grating Orientation

4.6 Parking and Passenger Loading Zones.

4.6.1 Minimum Number. *Parking spaces required to be accessible by 4.1 shall comply with 4.6.2 through 4.6.4. Passenger loading zones required to be accessible by 4.1 shall comply with 4.6.5 and 4.6.6.*

4.6.2 Location. Parking spaces for disabled people and accessible passenger loading zones that serve a particular building shall be *the spaces or zones located closest to the nearest accessible entrance on an accessible route.* In separate parking structures or lots that do not serve a particular building, parking spaces for disabled people shall be located on the shortest possible circulation route to an accessible pedestrian entrance of the parking facility.

4.6.3* Parking Spaces. Parking spaces for disabled people shall be at least 96 in (2440 mm) wide and shall have an adjacent access aisle 60 in (1525 mm) wide minimum (see Fig. 9). Parking access aisles shall be part of an accessible route to the building or facility entrance and shall comply with 4.3. Two accessible parking spaces may share a common access aisle. Parked vehicle overhangs shall not reduce the clear width of an accessible circulation route. *Parking spaces and access aisles shall be level with surface slopes not exceeding 1:50 in all directions.*

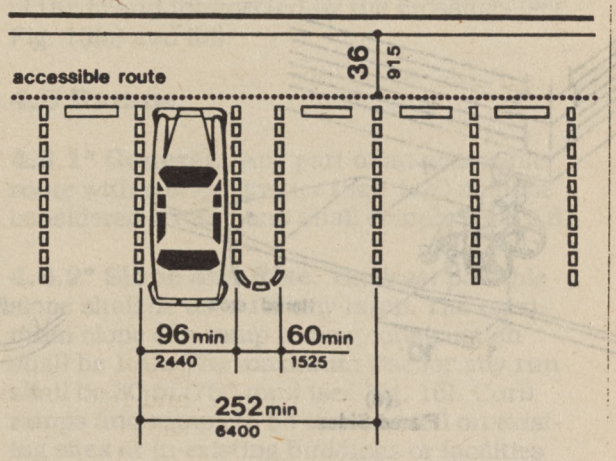


Fig. 9
Dimensions of Parking Spaces

EXCEPTION. If accessible parking spaces for vans designed for handicapped persons are provided, each should have an adjacent access aisle at least 96 in (2440 mm) wide complying with 4.5, Ground and Floor Surfaces.

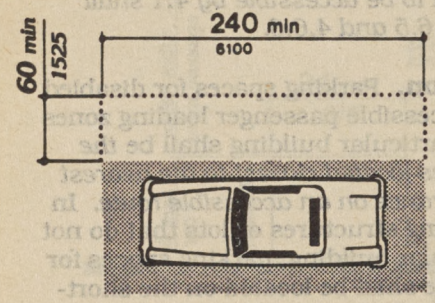


Fig. 10
Access Aisle at Passenger Loading Zones

4.6.4* Signage. Accessible parking spaces shall be designated as reserved for the disabled by a sign showing the symbol of accessibility (see 4.30.7). Such signs shall not be obscured by a vehicle parked in the space.

4.6.5 Passenger Loading Zones. Passenger loading zones shall provide an access aisle at least *60 in (1525 mm)* wide and 20 ft (6 m) long adjacent and parallel to the vehicle pull-up space (see Fig. 10). If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with 4.7 shall be provided. *Vehicle standing spaces and access aisles shall be level with surface slopes not exceeding 1:50 in all directions.*

4.6.6 Vertical Clearance. *Provide minimum vertical clearance of 114 in at accessible passenger loading zones and along vehicle access routes to such areas from site entrances.*

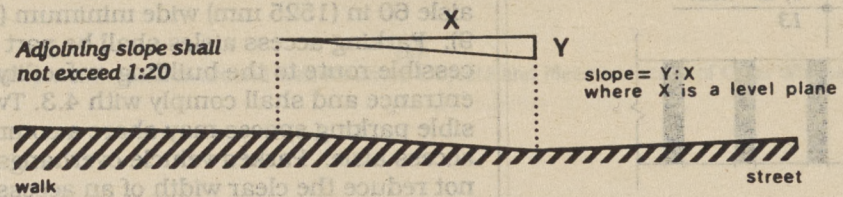
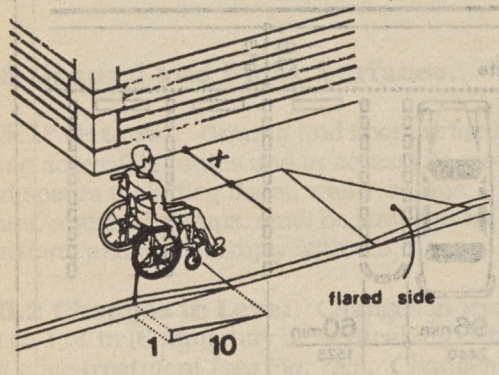
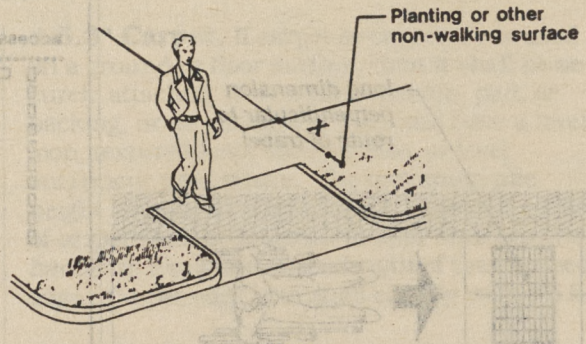


Fig. 11
Measurement of Curb Ramp Slopes



(a)
Flared Sides

If X is less than 48 in, then the slope of the flared side shall not exceed 1:12.



(b)
Returned Curb

Fig. 12
Sides of Curb Ramps

4.7 Curb Ramps

If accessible van parking spaces are provided, then the minimum vertical clearance should be 114 in.

4.7 Curb Ramps.

4.7.1 Location. Curb ramps complying with 4.7 shall be provided wherever an accessible route crosses a curb.

4.7.2 Slope. Slopes of curb ramps shall comply with 4.8.2. The slope shall be measured as shown in Fig. 11. *Transitions from ramps to walks, gutters, or streets shall be flush and free of abrupt changes. Maximum slopes of adjoining gutters, road surface immediately adjacent to the curb ramp, or accessible route shall not exceed 1:20.*

4.7.3 Width. The minimum width of a curb ramp shall be 36 in (915 mm), exclusive of flared sides.

4.7.4 Surface. Surfaces of curb ramps shall comply with 4.5.

4.7.5 Sides of Curb Ramps. If a curb ramp is located where pedestrians must walk across the ramp, *or where it is not protected by handrails or guardrails,* then it shall have flared sides; the maximum slope of the flare shall be 1:10 (see Fig. 12(a)). Curb ramps with returned curbs may be used where pedestrians would not normally walk across the ramp (see Fig. 12(b)).

4.7.6 Built-up Curb Ramps. Built-up curb ramps shall be located so that they do not project into vehicular traffic lanes (see Fig. 13).

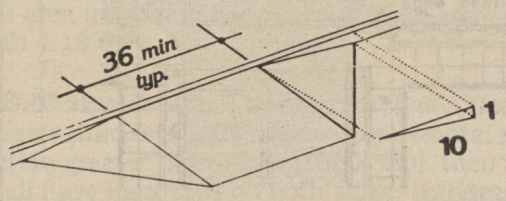


Fig. 13
Built-Up Curb Ramp

4.7.7 *Detectable Warnings.* A curb ramp shall have a detectable warning complying with *4.29.2.* The detectable warning shall extend the full width and depth of the curb ramp.

4.7.8 Obstructions. Curb ramps shall be located or protected to prevent their obstruction by parked vehicles.

4.7.9 Location at Marked Crossings. Curb ramps at marked crossings shall be wholly contained within the markings, excluding any flared sides (see Fig. 15)

4.7.10 Diagonal Curb Ramps. If diagonal (or corner type) curb ramps have returned curbs or other well-defined edges, such edges shall be parallel to the direction of pedestrian flow. The bottom of diagonal curb ramps shall have 48 in (1220 mm) minimum clear space as shown in Fig. 15(c) and (d). If diagonal curb ramps are provided at marked crossings, the 48 in (1220 mm) clear space shall be within the markings (see Fig. 15(c) and (d)). If diagonal curb ramps have flared sides, they shall also have at least a 24 in (610 mm) long segment of straight curb located on each side of the curb ramp and within the marked crossing (see Fig. 15(c)).

4.7.11 Islands. Any raised islands in crossings shall be cut through level with the street or have curb ramps at both sides and a level area at least 48 in (1220 mm) long in the part of the island intersected by the crossings (see Fig. 15(a) and (b)).

4.8 Ramps.

4.8.1* General. Any part of an accessible route with a slope greater than 1:20 shall be considered a ramp and shall comply with 4.8.

4.8.2* Slope and Rise. The least possible slope shall be used for any ramp. The maximum slope of a ramp in new construction shall be 1:12. The maximum rise for any run shall be 30 in (760 mm) (see Fig. 16). Curb ramps and ramps to be constructed on existing sites or in existing buildings or facilities may have slopes and rises as shown in *4.1.6(3)(a)* if space limitations prohibit the use of a 1:12 slope or less.

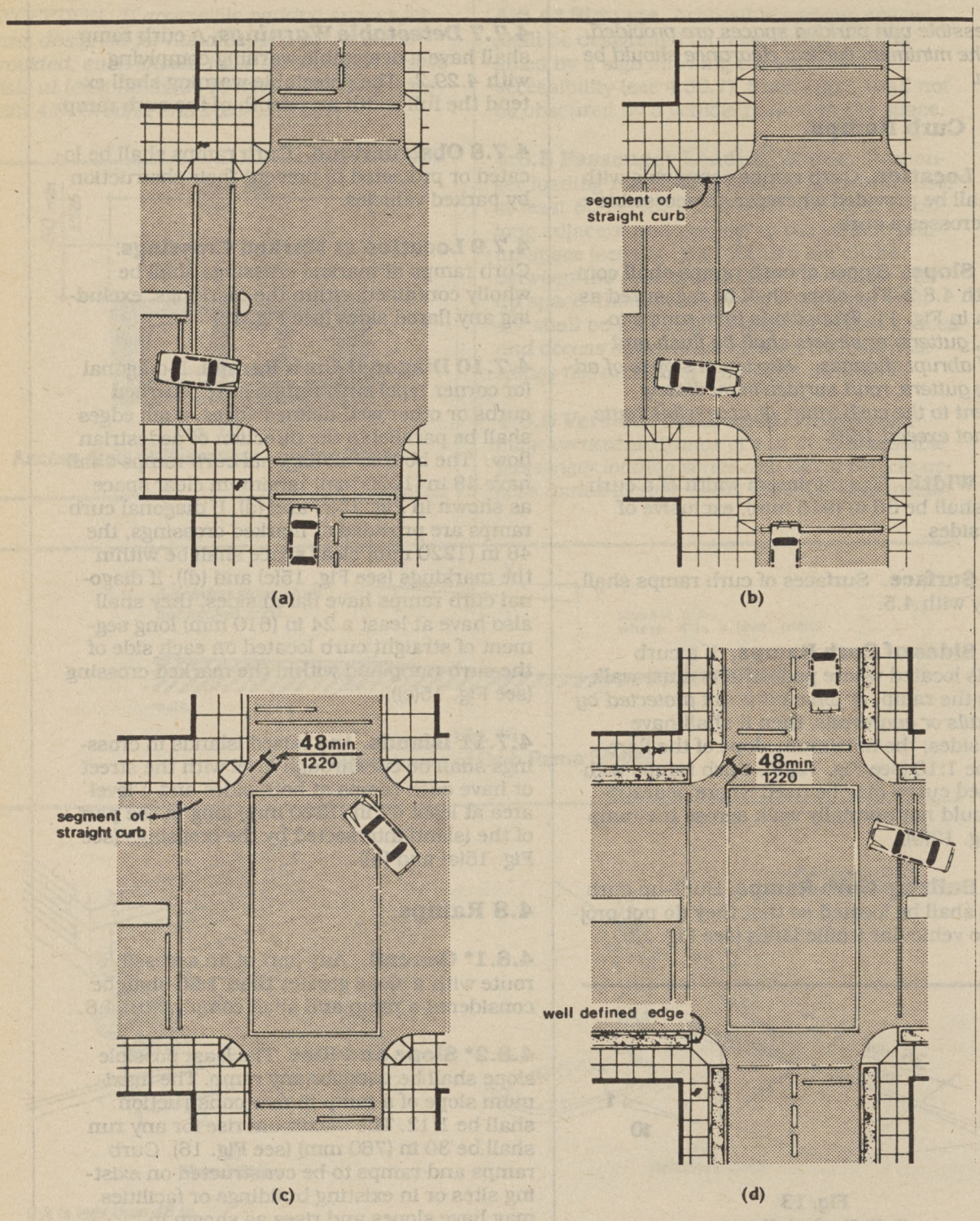
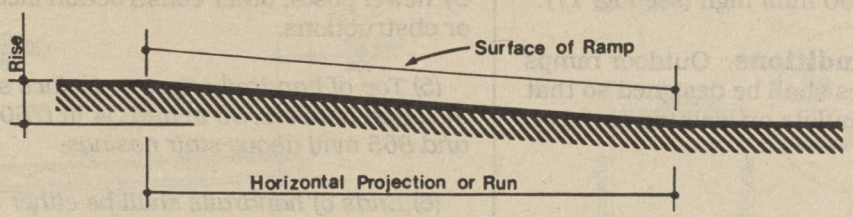


Fig. 15
Curb Ramps at Marked Crossings

4.8 Ramps



Slope	Maximum Rise in	Maximum Rise mm	Maximum Horizontal Projection ft	Maximum Horizontal Projection m
1:12 to < 1:16	30	760	30	9
1:16 to < 1:20	30	760	40	12

Fig. 16
Components of a Single Ramp Run and Sample Ramp Dimensions

4.8.3 Clear Width. The minimum clear width of a ramp shall be 36 in (915 mm).

4.8.4 Landings. Ramps shall have level landings at bottom and top of each run. Landings shall have the following features:

(1) The landing shall be at least as wide as the ramp run leading to it.

(2) The landing length shall be a minimum of 60 in (1525 mm) clear.

(3) If ramps change direction at landings, the minimum landing size shall be 60 in by 60 in (1525 mm by 1525 mm).

(4) If a doorway is located at a landing, then the area in front of the doorway shall comply with 4.13.6.

4.8.5* Handrails. If a ramp run has a rise greater than 6 in (152 mm) or a horizontal projection greater than 72 in (1830 mm), then it shall have handrails on both sides. Handrails are not required on curb ramps. Handrails shall comply with 4.26 and shall have the following features:

(1) Handrails shall be provided along both sides of ramp segments. The inside handrail on switchback or dogleg ramps shall always be continuous.

(2) If handrails are not continuous, they shall extend at least 12 in (305 mm) beyond the top and bottom of the ramp segment and shall be parallel with the floor or ground surface.

(3) The clear space between the handrail and the wall shall 1 - 1/2 in (38 mm).

(4) Gripping surfaces shall be continuous.

(5) Top of handrail gripping surfaces shall be mounted between 30 in and 34 in (760 mm and 865 mm) above ramp surfaces.

(6) Ends of handrails shall be either rounded or returned smoothly to floor, wall, or post.

(7) Handrails shall not rotate within their fittings.

4.8.6 Cross Slope and Surfaces. The cross slope of ramp surfaces shall be no greater than 1:50. Ramp surfaces shall comply with 4.5.

4.8.7 Edge Protection. Ramps and landings with drop-offs shall have curbs, walls, railings, or projecting surfaces that prevent peo-

ple from slipping off the ramp. Curbs shall be a minimum of 2 in (50 mm) high (see Fig. 17).

4.8.8 Outdoor Conditions. Outdoor ramps and their approaches shall be designed so that water will not accumulate on walking surfaces.

4.9 Stairs.

4.9.1 Minimum Number. Stairs *required to be accessible by 4.1 shall comply with 4.9.*

4.9.2 Treads and Risers. On any given flight of stairs, all steps shall have uniform riser heights and uniform tread widths. Stair treads shall be no less than 11 in (280 mm) wide, measured from riser to riser (see Fig. 18(a)). *Open risers are not permitted.*

4.9.3 Nosings. The undersides of nosings shall not be abrupt. The radius of curvature at the leading edge of the tread shall be no greater than 1/2 in (13 mm). Risers shall be sloped or the underside of the nosing shall have an angle not less than 60 degrees from the horizontal. Nosings shall project no more than 1-1/2 in (38 mm) (see Fig. 18).

4.9.4 Handrails. Stairways shall have handrails at both sides of all stairs. Handrails shall comply with 4.26 and shall have the following features:

(1) Handrails shall be continuous along both sides of stairs. The inside handrail on switchback or dogleg stairs shall always be continuous (see Fig. 19(a) and (b)).

(2) If handrails are not continuous, they shall extend at least 12 in (305 mm) beyond the top riser and at least 12 in (305 mm) plus the width of one tread beyond the bottom riser. At the top, the extension shall be parallel with the floor or ground surface. At the bottom, the handrail shall continue to slope for a distance of the width of one tread from the bottom riser; the remainder of the extension shall be horizontal (see Fig. 19(c) and (d)). Handrail extensions shall comply with 4.4.

(3) The clear space between handrails and wall shall be 1-1/2 in (38 mm).

(4) Gripping surfaces shall be uninterrupted by newel posts, other construction elements, or obstructions.

(5) Top of handrail gripping surface shall be mounted between 30 in and 34 in (760 mm and 865 mm) above stair nosings.

(6) Ends of handrails shall be either rounded or returned smoothly to floor, wall or post.

(7) Handrails shall not rotate within their fittings.

4.9.5 *Detectable* Warnings at Stairs. *Detectable* warnings at stairs shall comply with 4.29.4.

4.9.6 Outdoor Conditions. Outdoor stairs and their approaches shall be designed so that water will not accumulate on walking surfaces.

4.10 Elevators.

4.10.1 General. *Accessible* elevators shall be on an accessible route and shall comply with 4.10 and with the *ANSI/ASME A17.1-1984, Safety Code for Elevators and Escalators (including supplement ANSI/ASME A17.1a-1985).* This standard does not preclude the use of residential or fully enclosed wheelchair lifts when appropriate and approved by administrative authorities. *Freight elevators shall not be considered as meeting the requirements of this section unless the only elevators provided are used as combination passenger and freight elevators for the public and employees.*

4.10.2 Automatic Operation. Elevator operation shall be automatic. Each car shall be equipped with a self-leveling feature that will automatically bring the car to floor landings within a tolerance of 1/2 in (13 mm) under rated loading to zero loading conditions. This self-leveling feature shall be automatic and independent of the operating device and shall correct the overtravel or undertravel.

4.10.3 Hall Call Buttons. Call buttons in elevator lobbies and halls shall be centered at 42 in (1065 mm) above the floor. Such call buttons shall have visual signals to indicate when each call is registered and when each call is answered. Call buttons shall be a minimum of 3/4 in (19 mm) in the smallest

4.9 Stairs

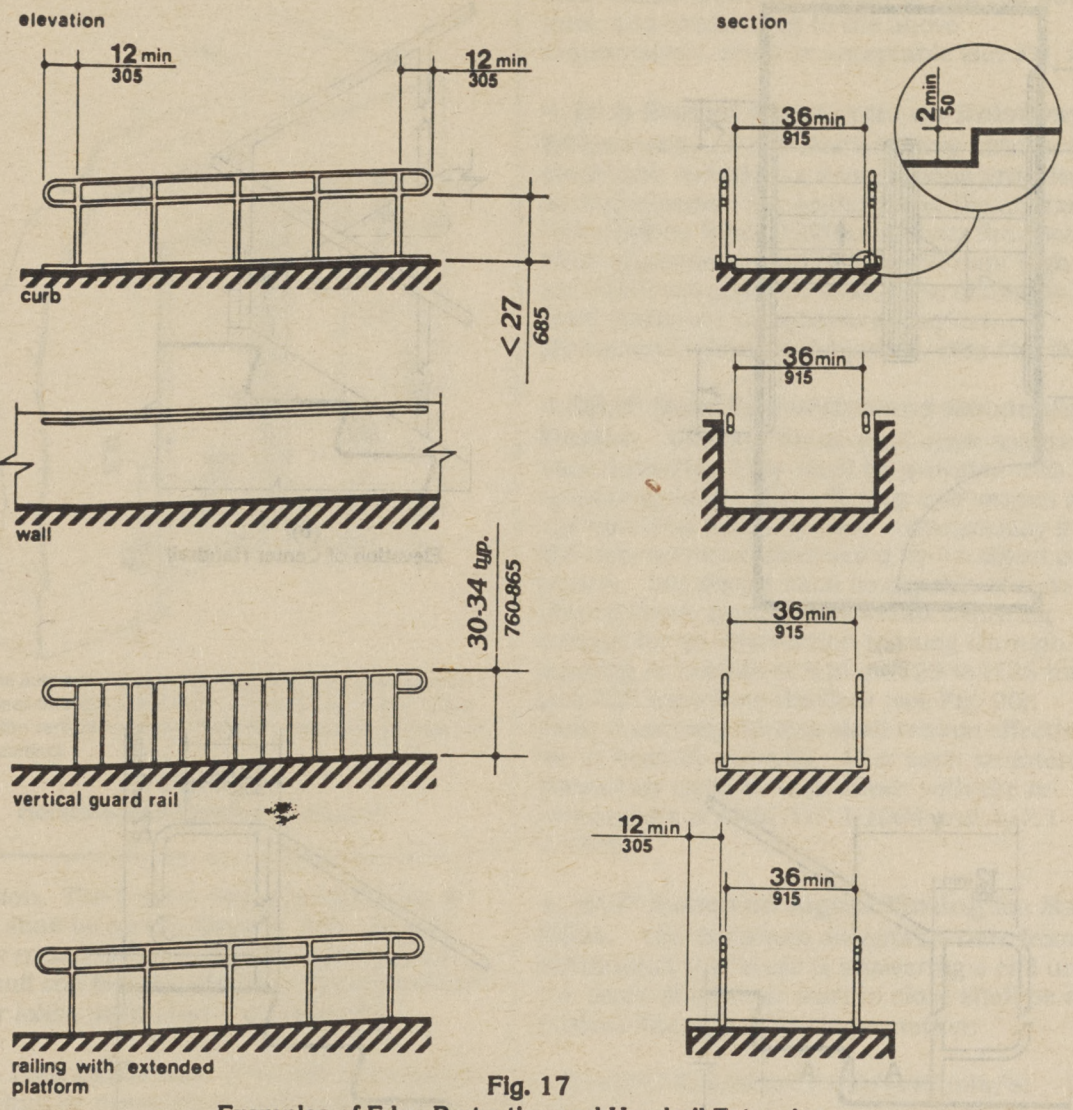


Fig. 17
Examples of Edge Protection and Handrail Extensions

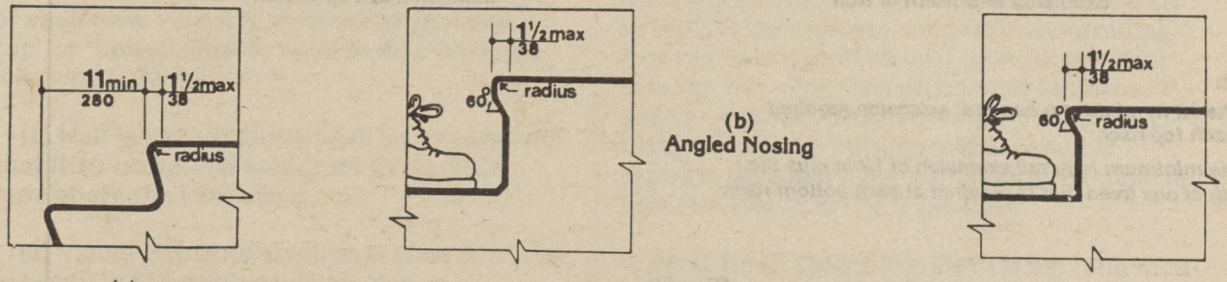
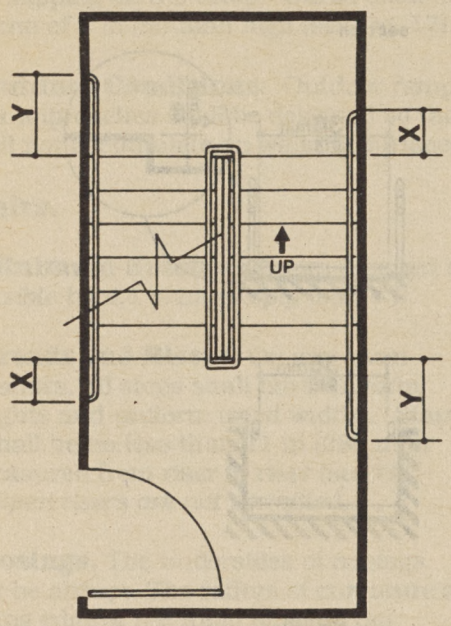
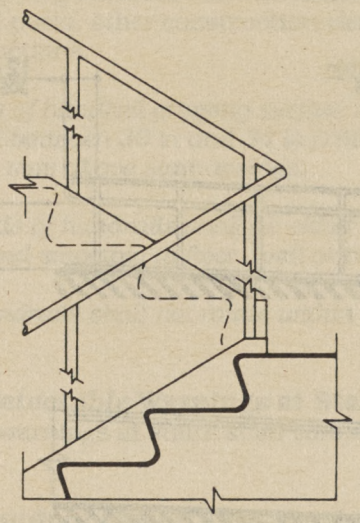


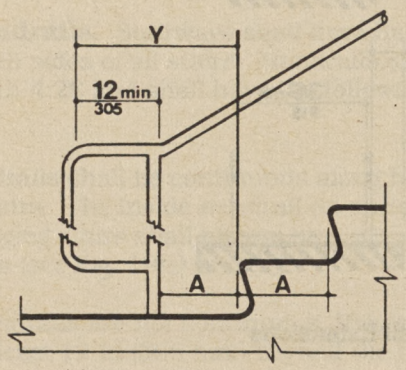
Fig. 18
Usable Tread Width and Examples of Acceptable Nosings



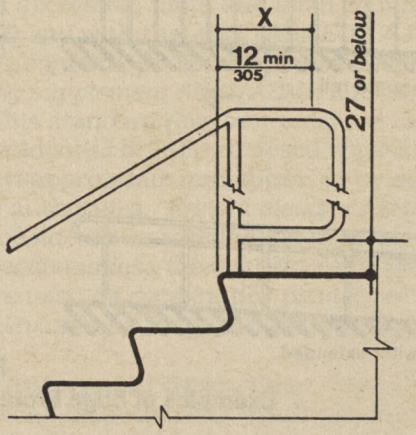
(a)
Plan



(b)
Elevation of Center Handrail



(c)
Extension at Bottom of Run



(d)
Extension at Top of Run

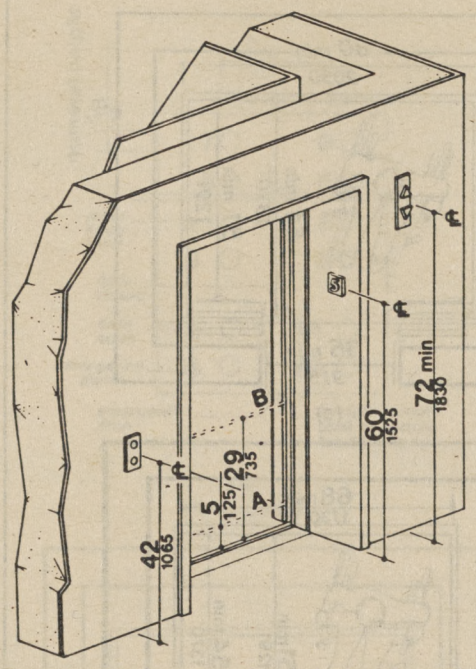
NOTE:

X is the 12 in minimum handrail extension required at each top riser.

Y is the minimum handrail extension of 12 in plus the width of one tread that is required at each bottom riser.

Fig. 19
Stair Handrails

4.10 Elevators



NOTE: The automatic door reopening device is activated if an object passes through either line A or line B. Line A and line B represent the vertical locations of the door reopening device not requiring contact.

Fig. 20
Hoistway and Elevator Entrances

dimension. The button designating the up direction shall be on top (see Fig. 20). *Buttons shall be raised or flush. Objects mounted beneath hall call buttons shall not project into the elevator lobby more than 4 in (100 mm)*

4.10.4 Hall Lanterns. A visible and audible signal shall be provided at each hoistway entrance to indicate which car is answering a call. Audible signals shall sound once for the up direction and twice for the down direction or shall have verbal annunciators that say "up" or "down." Visible signals shall have the following features:

(1) Hall lantern fixtures shall be mounted so that their centerline is at least 72 in (1830 mm) above the lobby floor.

(2) Visual elements shall be at least 2-1/2 in (64 mm) in the smallest dimension.

(3) Signals shall be visible from the vicinity of the hall call button. In-car lanterns located in cars, visible from the vicinity of hall call buttons, and conforming to the above requirements, shall be acceptable (see Fig. 20).

4.10.5 *Raised* Characters on Hoistway Entrances. All elevator hoistway entrances shall have *raised* floor designations provided on both jambs. The centerline of the characters shall be 60 in (1525 mm) from the floor. Such characters shall be 2 in (50 mm) high and shall comply with 4.30.4. Permanently applied plates are acceptable if they are permanently fixed to the jambs. (See Fig. 20).

4.10.6* Door Protective and Reopening Device. Elevator doors shall open and close automatically. They shall be provided with a reopening device that will stop and reopen a car door and hoistway door automatically if the door becomes obstructed by an object or person. The device shall be capable of completing these operations without requiring contact for an obstruction passing through the opening at heights of 5 in and 29 in (125 mm and 735 mm) from the floor (see Fig. 20). Door reopening devices shall remain effective for at least 20 seconds. After such an interval, doors may close in accordance with the requirements of *ANSI A17.1-1984 and A17.1 a-1985.*

4.10.7* Door and Signal Timing for Hall Calls. The minimum acceptable time from notification that a car is answering a call until the doors of that car start to close shall be calculated from the following equation:

$$T = D/(1.5 \text{ ft/s}) \quad \text{or} \quad T = D/(445 \text{ mm/s})$$

where T = total time in seconds and D = distance (in feet or millimeters) from a point in the lobby or corridor 60 in (1525 mm) directly in front of the farthest call button controlling that car to the centerline of its hoistway door (see Fig. 21). For cars with in-car lanterns, T begins when the lantern is visible from the vicinity of hall call buttons and an audible signal is sounded. *The minimum acceptable notification time shall be 5 seconds.*

4.10.8 Door Delay for Car Calls. The minimum time for elevator doors to remain fully open in response to a car call shall be 3 seconds.

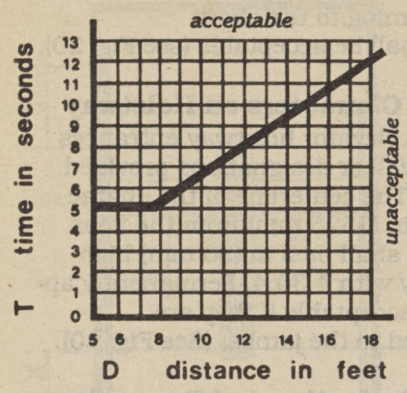


Fig. 21
Graph of Timing Equation

4.10.9 Floor Plan of Elevator Cars. The floor area of elevator cars shall provide space for wheelchair users to enter the car, maneuver within reach of controls, and exit from the car. Acceptable door opening and inside dimensions shall be as shown in Fig. 22. The clearance between the car platform sill and the edge of any hoistway landing shall be no greater than 1-1/4 in (32 mm).

4.10.10 Floor Surfaces. Floor surfaces shall comply with 4.5.

4.10.11 Illumination Levels. The level of illumination at the car controls, platform, and car threshold and landing sill shall be at least 5 footcandles (53.8 lux).

4.10.12* Car Controls. Elevator control panels shall have the following features:

(1) Buttons. All control buttons shall be at least 3/4 in (19 mm) in their smallest dimension. They may be *raised* or flush.

(2) Tactile and Visual Control Indicators. All control buttons shall be designated by *raised* standard alphabet characters for letters, arabic characters for numerals, or standard symbols as shown in Fig. 23(a), and as required in *ANSI A17.1-1984 and A17.1a-1985*. Raised characters and symbols shall comply with 4.30.4. The call button for the main entry floor shall be designated by a *raised* star at the left of the floor designation (see Fig. 23(a)). All *raised* designations for control buttons shall be placed immediately to the left of the button to which they apply. Applied plates, permanently attached, are an acceptable means to provide *raised* control designations. Floor buttons shall be provided with visual indicators to show when each call is registered. The visual indicators shall be extinguished when each call is answered.

(3) Height. All floor buttons shall be no higher than *48 in (1220 mm), unless there is a substantial increase in cost in which case the maximum mounting height may be increased to 54 in (1370 mm)*, above the floor. Emergency controls, including the emergency alarm and emergency stop, shall be grouped at the bottom of the panel and shall have their

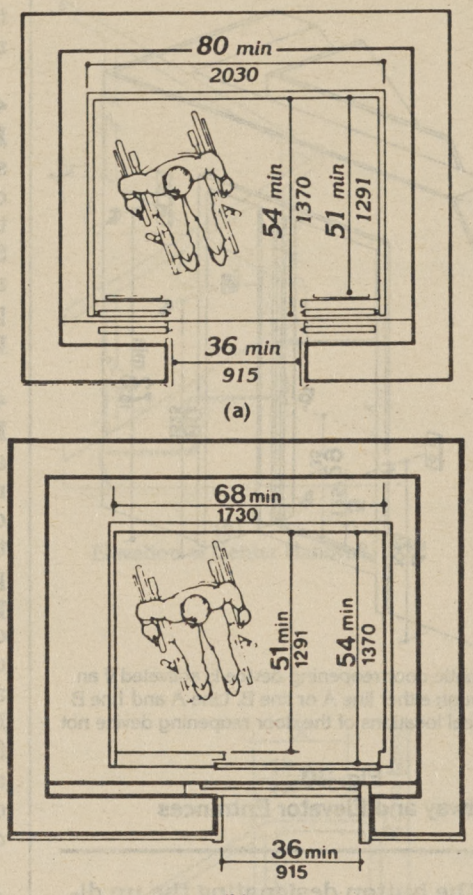
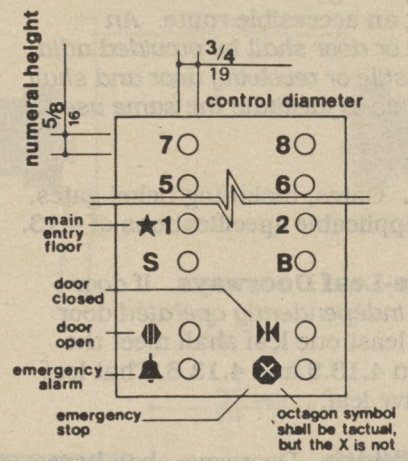
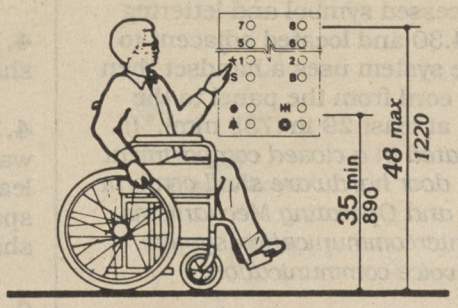


Fig. 22
Minimum Dimensions of Elevator Cars

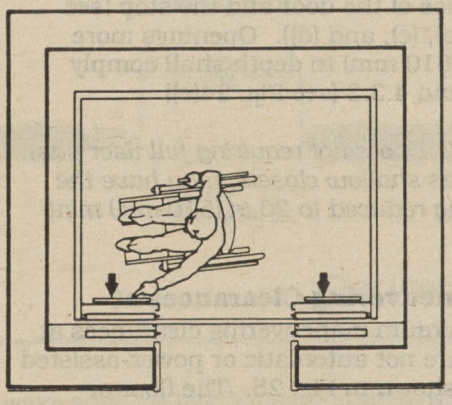
4.10 Elevators



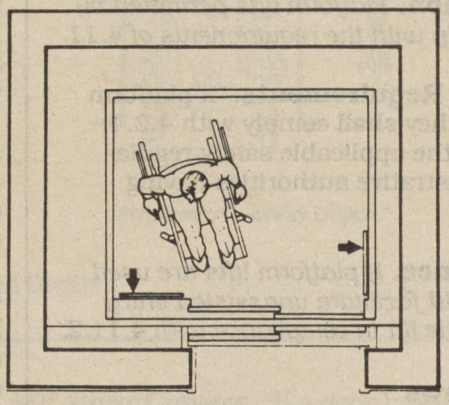
(a)
Panel Detail



(b)
Control Height



(c)
Alternate Locations of Panel with Center Opening Door



(d)
Alternate Locations of Panel with Side Opening Door

Fig. 23
Car Controls

centerlines no less than 35 in (890 mm) above the floor (see Fig. 23(a) and (b)).

(4) Location. Controls shall be located on a front wall if cars have center opening doors, and at the side wall or at the front wall next to the door if cars have side opening doors (see Fig. 23(c) and (d)).

4.10.13* Car Position Indicators. In elevator cars, a visual car position indicator shall be provided above the car control panel or over the door to show the position of the elevator in the hoistway. As the car passes or stops at a floor served by the elevators, the corresponding numerals shall illuminate, and an audible signal shall sound. Numerals shall be a minimum of 1/2 in (13 mm) high. The audible signal shall be no less than 20 decibels with a frequency no higher than 1500 Hz. An automatic verbal announcement of the floor number at which a car stops or which a car passes may be substituted for the audible signal.

4.10.14* Emergency Communications. If provided, emergency two-way communica-

tion systems between the elevator and a point outside the hoistway shall comply with *ANSI A17.1-1984 and A17.1 a-1985.* The highest operable part of a two-way communication system shall be a maximum of 48 in (1220 mm) from the floor of the car. It shall be identified by a raised or recessed symbol and lettering complying with 4.30 and located adjacent to the device. If the system uses a handset then the length of the cord from the panel to the handset shall be at least 29 in (735 mm). *If the system is located in a closed compartment the compartment door hardware shall conform to 4.27, Controls and Operating Mechanisms. The emergency intercommunication system shall not require voice communication.*

4.11* Platform Lifts.

4.11.1 Location. *Platform lifts permitted by 4.1 shall comply with the requirements of 4.11.*

4.11.2 Other Requirements. If platform lifts are used, they shall comply with 4.2.4, 4.5, 4.27, and the applicable safety regulations of administrative authorities having jurisdiction.

4.11.3 Entrance. *If platform lifts are used then they should facilitate unassisted entry and exit from the lift in compliance with 4.11.2.*

4.12 Windows

4.12.1 General. Windows intended to be operated by occupants in accessible spaces shall comply with 4.12.

4.12.2 Window Hardware. Windows requiring pushing, pulling, or lifting to open (for example, double-hung, sliding, or casement and awning units without cranks) shall require no more than 5 lbf (22.2 N) to open or close. Locks, cranks, and other window hardware shall comply with 4.27.

4.13 Doors.

4.13.1 General. *Doors required to be accessible by 4.1 shall comply with the requirements of 4.13.*

4.13.2 Revolving Doors and Turnstiles. Revolving doors or turnstiles shall not be the only means of passage at an accessible entrance or along an accessible route. *An accessible gate or door shall be provided adjacent to the turnstile or revolving door and shall be so designed as to facilitate the same use pattern.*

4.13.3 Gates. Gates, including ticket gates, shall meet all applicable specifications of 4.13.

4.13.4 Double-Leaf Doorways. If doorways have two *independently operated* door leaves, then at least one leaf shall meet the specifications in 4.13.5 and 4.13.6. That leaf shall be an active leaf.

4.13.5 Clear Width. Doorways shall have a minimum clear opening of 32 in (815 mm) with the door open 90 degrees, measured between the face of the door and the stop (see Fig. 24(a), (b), (c), and (d)). Openings more than 24 in (610 mm) in depth shall comply with 4.2.1 and 4.3.3 (see Fig. 24(e)).

EXCEPTION: Doors not requiring full user passage, such as shallow closets, may have the clear opening reduced to 20 in (510 mm) minimum.

4.13.6 Maneuvering Clearances at Doors. Minimum maneuvering clearances at doors that are not automatic or power-assisted shall be as shown in Fig. 25. The floor or ground area within the required clearances shall be level and clear. Entry doors to acute care hospital bedrooms for in-patients shall be exempted from the requirement for space at the latch side of the door (see dimension "x" in Fig. 25) if the door is at least 44 in (1120 mm) wide.

4.13.7 Two Doors in Series. The minimum space between two hinged or pivoted doors in series shall be 48 in (1220 mm) plus the width of any door swinging into the space. Doors in series shall swing either in the same direction or away from the space between the doors (see Fig. 26).

4.13.8* Thresholds at Doorways. Thresholds at doorways shall not exceed 3/4 in (19 mm) in height for exterior sliding doors or 1/2 in (13 mm) for other types of doors. Raised thresholds and floor level changes at accessi-

4.13 Doors

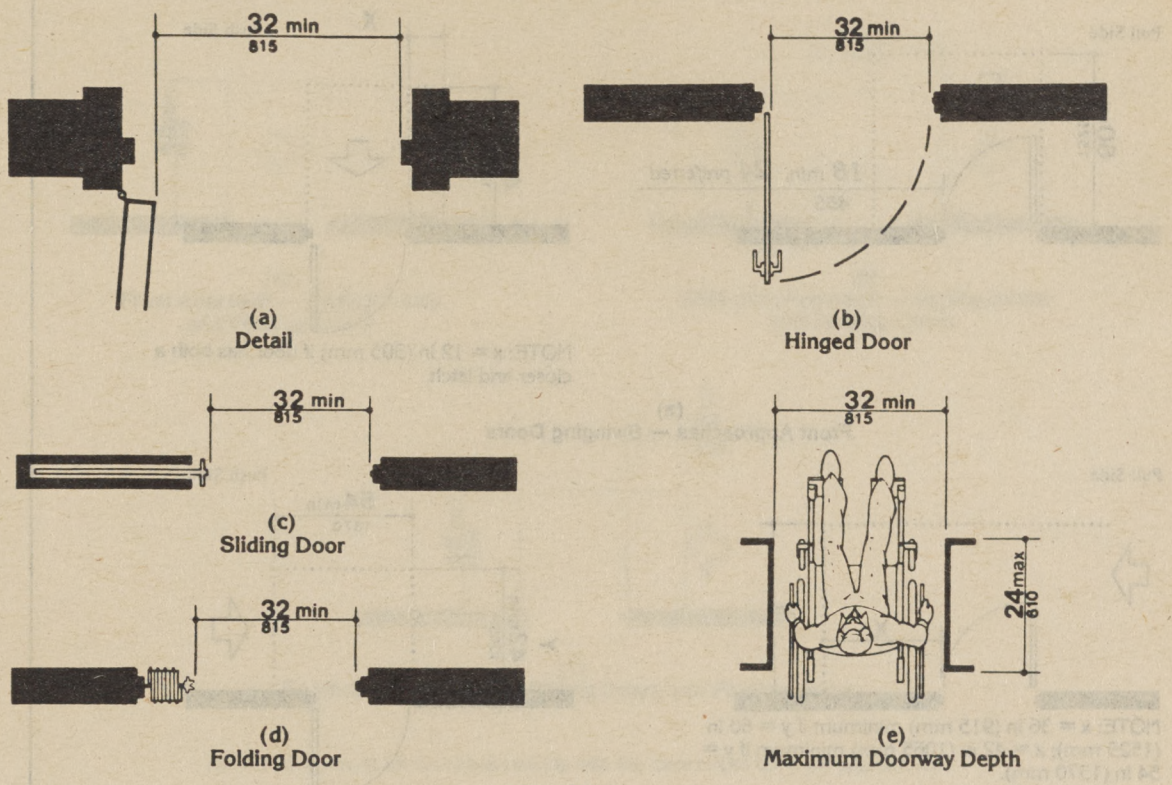


Fig. 24
Clear Doorway Width and Depth

ble doorways shall be beveled with a slope no greater than 1:2 (see 4.5.2).

4.13.9* Door Hardware. Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. Lever-operated mechanisms, push-type mechanisms, and U-shaped handles are acceptable designs. When sliding doors are fully open, operating hardware shall be exposed and usable from both sides. In dwelling units, only doors at accessible entrances to the unit itself shall comply with the requirements of this paragraph. Doors to hazardous areas shall have hardware complying with 4.29.3. *Mount no hardware required for accessible door passage higher than 48 in (1220 mm) above finished floor.*

4.13.10* Door Closers. If a door has a closer, then the sweep period of the closer shall be adjusted so that from an open position of 70 degrees, the door will take at least 3 seconds to move to a point 3 in (75 mm) from the latch, measured to the leading edge of the door.

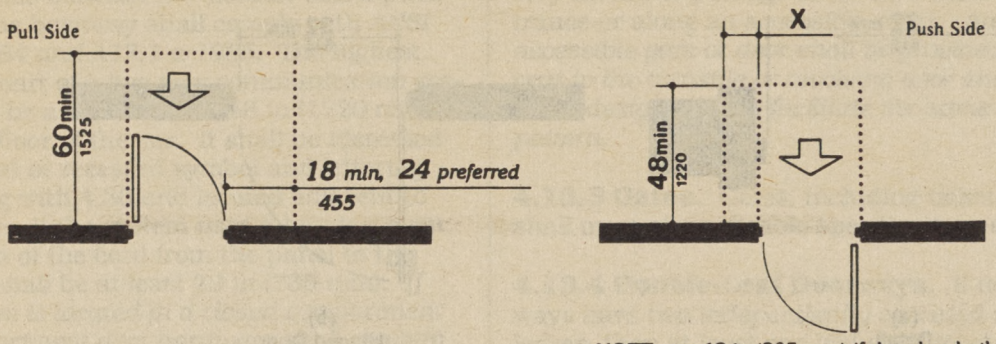
4.13.11* Door Opening Force. The maximum force for pushing or pulling open a door shall be as follows:

(1) Fire doors shall have the minimum opening force allowable by the appropriate administrative authority.

(2) Other doors.

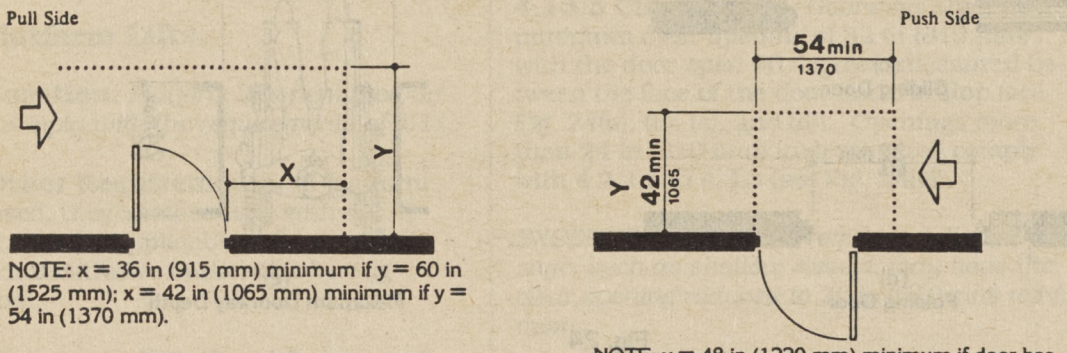
(a) exterior hinged doors: *(Reserved).*

(b) interior hinged doors: 5 lbf (22.2N)



NOTE: x = 12 in (305 mm) if door has both a closer and latch.

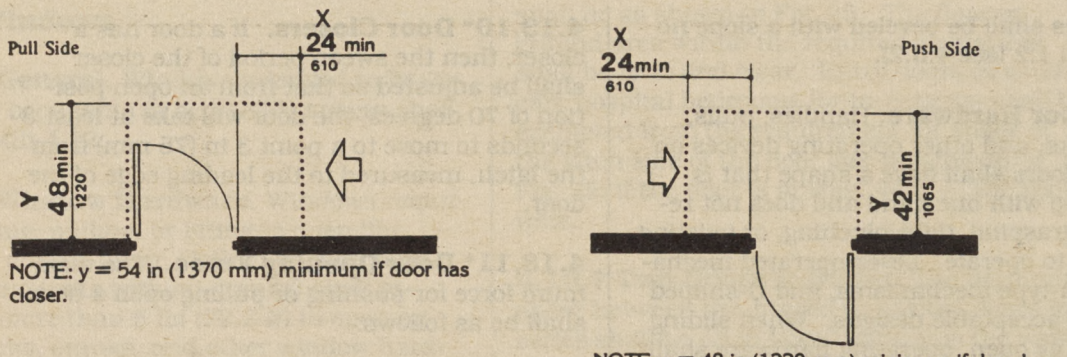
(a)
Front Approaches — Swinging Doors



NOTE: x = 36 in (915 mm) minimum if y = 60 in (1525 mm); x = 42 in (1065 mm) minimum if y = 54 in (1370 mm).

NOTE: y = 48 in (1220 mm) minimum if door has both a latch and closer.

(b)
Hinge Side Approaches — Swinging Doors



NOTE: y = 54 in (1370 mm) minimum if door has closer.

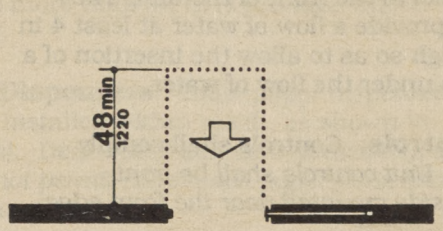
NOTE: y = 48 in (1220 mm) minimum if door has closer.

(c)
Latch Side Approaches — Swinging Doors

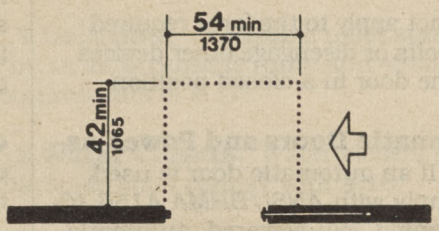
NOTE: All doors in alcoves shall comply with the clearances for front approaches.

Fig. 25
Maneuvering Clearances at Doors

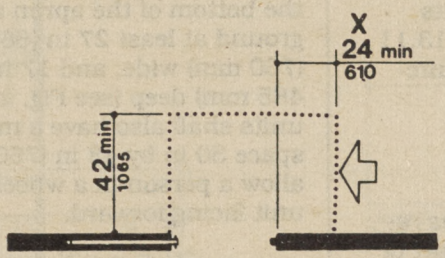
4.13 Doors



(d)
Front Approach — Sliding Doors *and Folding Doors*



(e)
Slide Side Approach — Sliding Doors *and Folding Doors*



(f)
Latch Side Approach — Sliding Doors *and Folding Doors*

NOTE: All doors in alcoves shall comply with the clearances for front approaches.

Fig. 25
Maneuvering Clearances at Doors *(Continued)*

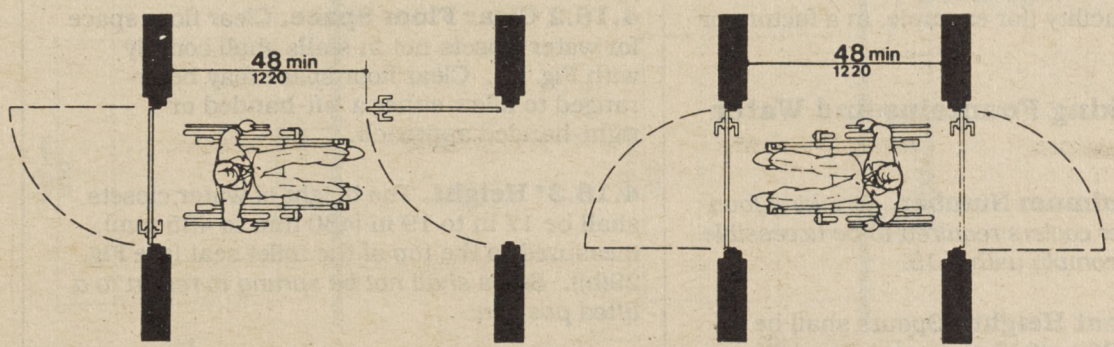


Fig. 26
Two Hinged Doors in Series

(c) sliding or folding doors: 5 lbf (22.2N)

These forces do not apply to the force required to retract latch bolts or disengage other devices that may hold the door in a closed position.

4.13.12* Automatic Doors and Power-Assisted Doors. If an automatic door is used, then it shall comply with *ANSI/BHMA A156.10-1985.* Slowly opening, low-powered, automatic doors shall *comply with ANSI A156.19-1984.* Such doors shall not open to back check faster than 3 seconds and shall require no more than 15 lbf (66.6N) to stop door movement. If a power-assisted door is used, its door-opening force shall comply with 4.13.11 and its closing shall conform to the requirements in *ANSI A156.19-1984.*

4.14 Entrances.

4.14.1 Minimum Number. *Entrances required to be accessible by 4.1* shall be part of an accessible route and shall comply with 4.3. Such entrances shall be connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks if available (see 4.3.2(1)). They shall also be connected by an accessible route to all accessible spaces or elements within the building or facility.

4.14.2 Service Entrances. A service entrance shall not be the sole accessible entrance unless it is the only entrance to a building or facility (for example, in a factory or garage).

4.15 Drinking Fountains and Water Coolers.

4.15.1* Minimum Number. *Drinking fountains or water coolers required to be accessible by 4.1 shall comply with 4.15.*

4.15.2* Spout Height. Spouts shall be no higher than 36 in (915 mm), measured from the floor or ground surfaces to the spout outlet (see Fig. 27(a)).

4.15.3 Spout Location. The spouts of drinking fountains and water coolers shall be at the front of the unit and shall direct the water flow in a trajectory that is parallel or nearly parallel to the front of the unit. The spout shall provide a flow of water at least 4 in (100 mm) high so as to allow the insertion of a cup or glass under the flow of water.

4.15.4 Controls. Controls shall comply with 4.27.4. *Unit controls shall be front mounted or side mounted near the front edge.*

4.15.5 Clearances.

(1) Wall- and post-mounted cantilevered units shall have a clear knee space between the bottom of the apron and the floor or ground at least 27 in (685 mm) high, 30 in (760 mm) wide, and 17 in to 19 in (430 mm to 485 mm) deep (see Fig. 27(a) and (b)). Such units shall also have a minimum clear floor space 30 in by 48 in (760 mm by 1220 mm) to allow a person in a wheelchair to approach the unit facing forward.

(2) Free-standing or built-in units not having a clear space under them shall have a clear floor space at least 30 in by 48 in (760 mm by 1220 mm) that allows a person in a wheelchair to make a parallel approach to the unit (see Fig. 27(c) and (d)). This clear floor space shall comply with 4.2.4.

4.16 Water Closets.

4.16.1 General. Accessible water closets shall comply with 4.16.

4.16.2 Clear Floor Space. Clear floor space for water closets not in stalls shall comply with Fig. 28. Clear floor space may be arranged to allow either a left-handed or right-handed approach.

4.16.3* Height. The height of water closets shall be 17 in to 19 in (430 mm to 485 mm), measured to the top of the toilet seat (see Fig. 29(b)). *Seats shall not be sprung to return to a lifted position.*

4.16.4* Grab Bars. Grab bars for water closets not located in stalls shall comply with Fig. 29 and 4.26.

4.16.5* Flush Controls. Flush controls shall be hand operated *or automatic* and shall comply with 4.27.4. Controls for flush valves

4.17 Toilet Stalls

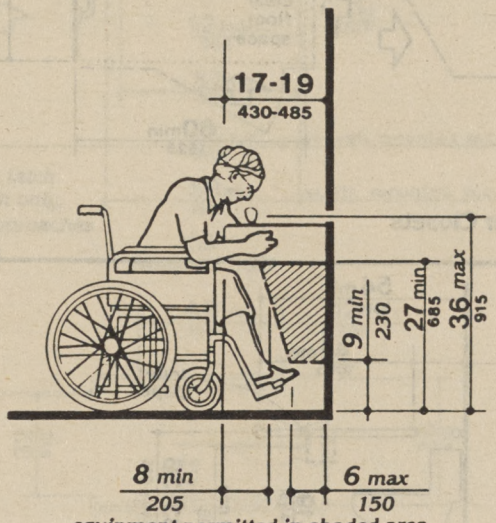
shall be mounted on the wide side of toilet areas no more than 44 in (1120 mm) above the floor.

4.16.6 Dispensers. Toilet paper dispensers shall be installed within reach, as shown in Fig. 29(b). *Dispensers that control delivery, or that do not permit continuous paper flow, shall not be used.*

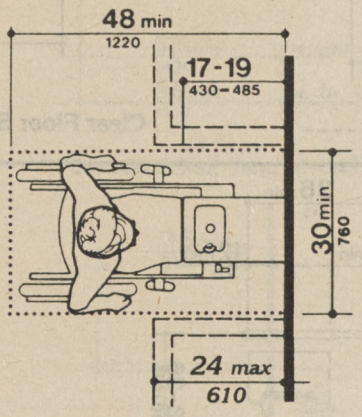
4.17 Toilet Stalls.

4.17.1 Location. Accessible toilet stalls shall be on an accessible route and shall meet the requirements of 4.17.

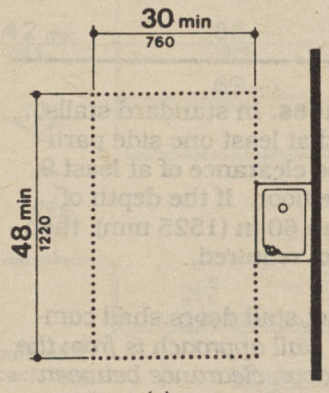
4.17.2 Water Closets. Water closets in *accessible* stalls shall comply with 4.16.



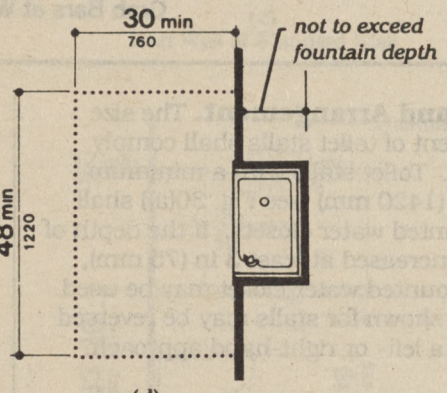
(a)
Spout Height and
Knee Clearance



(b)
Clear Floor Space



(c)
Free-Standing
Fountain or Cooler



(d)
Built-In
Fountain or Cooler

Fig. 27
Drinking Fountains and Water Coolers

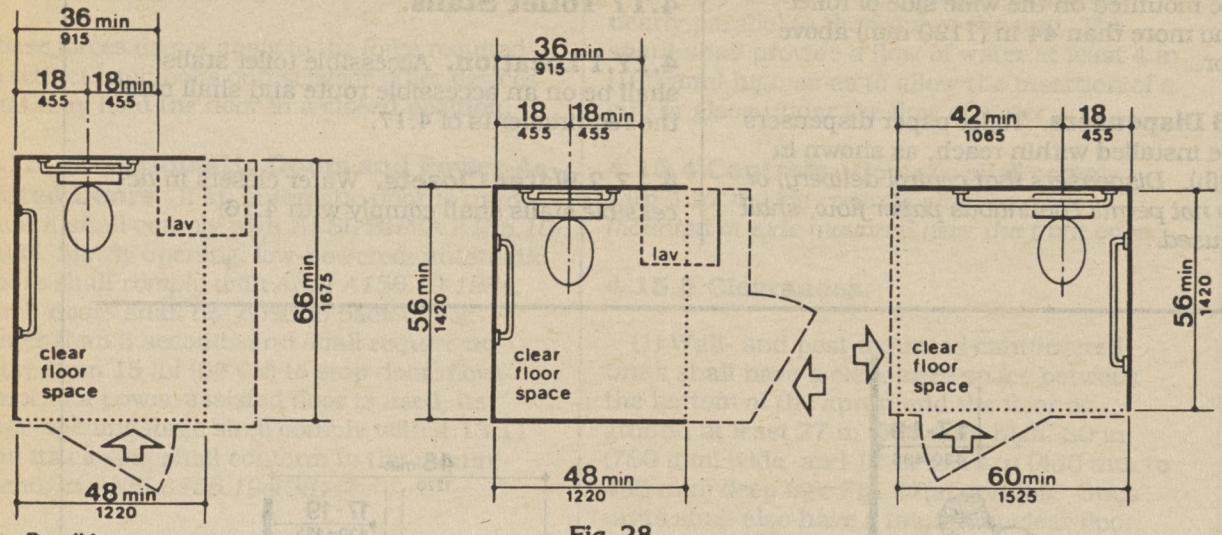


Fig. 28
Clear Floor Space at Water Closets

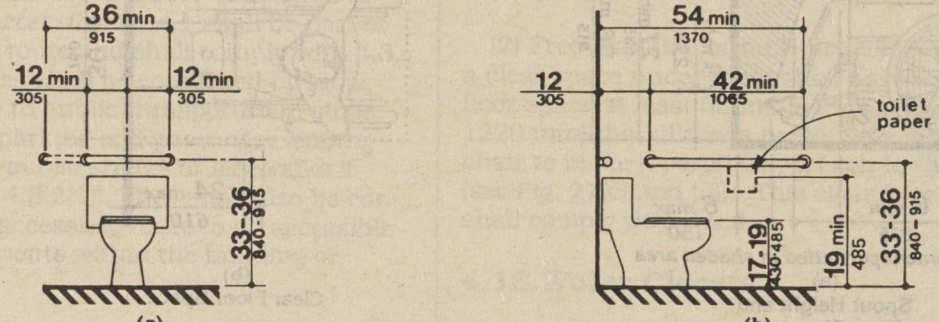


Fig. 29
Grab Bars at Water Closets

4.17.3 Size and Arrangement. The size and arrangement of toilet stalls shall comply with Fig. 30(a). Toilet stalls with a minimum depth of 56 in (1420 mm) (see Fig. 30(a)) shall have wall-mounted water closets. If the depth of toilet stalls is increased at least 3 in (75 mm), then a floor-mounted water closet may be used. Arrangements shown for stalls may be reversed to allow either a left- or right-hand approach.

EXCEPTION: In instances of alteration work where provision of a standard stall (Fig. 30(a)) is technically infeasible or where plumbing code requirements prevent combining existing stalls to provide space, an alternate stall (Fig. 30(b)) may be provided in lieu of the standard stall.

4.17.4 Toe Clearances. In standard stalls, the front partition and at least one side partition shall provide a toe clearance of at least 9 in (230 mm) above the floor. If the depth of the stall is greater than 60 in (1525 mm), then the toe clearance is not required.

4.17.5* Doors. Toilet stall doors shall comply with 4.13. *If toilet stall approach is from the latch side of the stall door, clearance between the door side of the stall and any obstruction may be reduced to a minimum of 42 in (1065 mm).*

4.17.6 Grab Bars. Grab bars complying with the length and positioning shown in Fig. 30(a), (b), (c), and (d) shall be provided. Grab bars may be mounted with any desired

4.17 Toilet Stalls

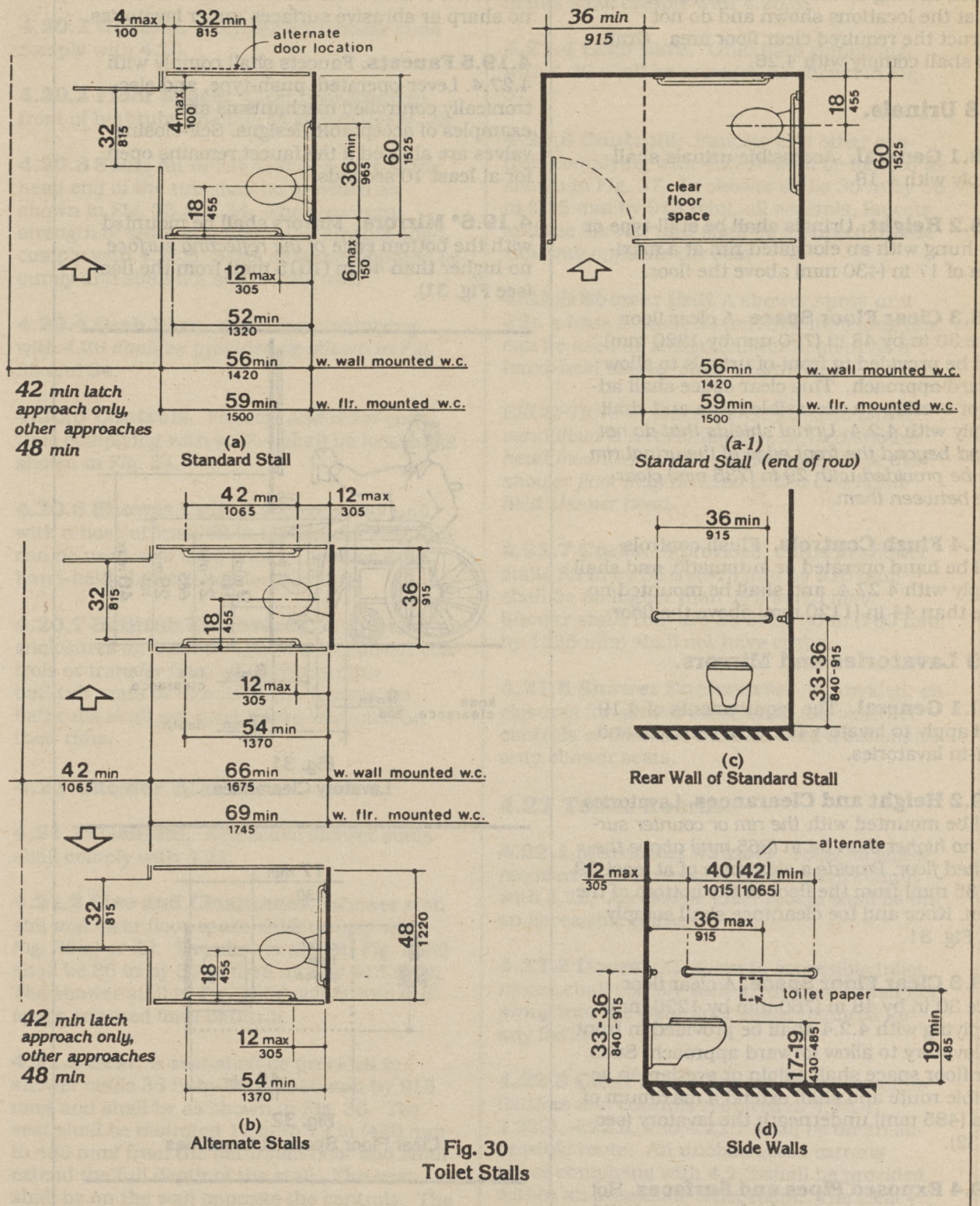


Fig. 30
Toilet Stalls

method as long as they have a gripping surface at the locations shown and do not obstruct the required clear floor area. Grab bars shall comply with 4.26.

4.18 Urinals.

4.18.1 General. Accessible urinals shall comply with 4.18.

4.18.2 Height. Urinals shall be stall-type or wall-hung with an elongated rim at a maximum of 17 in (430 mm) above the floor.

4.18.3 Clear Floor Space. A clear floor space 30 in by 48 in (760 mm by 1220 mm) shall be provided in front of urinals to allow forward approach. This clear space shall adjoin or overlap an accessible route and shall comply with 4.2.4. *Urinal shields that do not extend beyond the front edge of the urinal rim may be provided with 29 in (735 mm) clearance between them.*

4.18.4 Flush Controls. Flush controls shall be hand operated or automatic, and shall comply with 4.27.4, and shall be mounted no more than 44 in (1120 mm) above the floor.

4.19 Lavatories and Mirrors.

4.19.1 General. The requirements of 4.19 shall apply to lavatory fixtures, vanities, and built-in lavatories.

4.19.2 Height and Clearances. Lavatories shall be mounted with *the rim or counter surface no higher than 34 in (865 mm) above the finished floor. Provide* a clearance of at least 29 in (735 mm) from the floor to the bottom of the apron. Knee and toe clearance shall comply with Fig. 31.

4.19.3 Clear Floor Space. A clear floor space 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 shall be provided in front of a lavatory to allow forward approach. Such clear floor space shall adjoin or overlap an accessible route and shall extend a maximum of 19 in (485 mm) underneath the lavatory (see Fig. 32).

4.19.4 Exposed Pipes and Surfaces. Hot water and drain pipes under lavatories shall be insulated or otherwise covered. There shall be no sharp or abrasive surfaces under lavatories.

4.19.5 Faucets. Faucets shall comply with 4.27.4. Lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs. Self-closing valves are allowed if the faucet remains open for at least 10 seconds.

4.19.6* Mirrors. Mirrors shall be mounted with the bottom edge *of the reflecting surface* no higher than 40 in (1015 mm) from the floor (see Fig. 31).

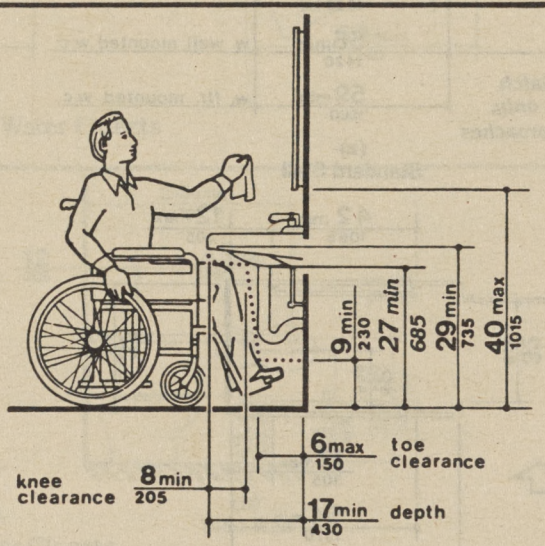


Fig. 31
Lavatory Clearances

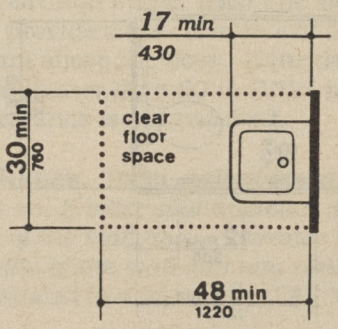


Fig. 32
Clear Floor Space at Lavatories

4.20 Bathtubs

4.20 Bathtubs.

4.20.1 General. Accessible bathtubs shall comply with 4.20.

4.20.2 Floor Space. Clear floor space in front of bathtubs shall be as shown in Fig. 33.

4.20.3 Seat. An in-tub seat or a seat at the head end of the tub shall be provided as shown in Fig. 33 and 34. The structural strength of seats and their attachments shall comply with 4.26.3. Seats shall be mounted securely and shall not slip during use.

4.20.4 Grab Bars. Grab bars complying with 4.26 shall be provided as shown in Fig. 33 and 34.

4.20.5 Controls. Faucets and other controls complying with 4.27.4 shall be located as shown in Fig. 34.

4.20.6 Shower Unit. A shower spray unit with a hose at least 60 in (1525 mm) long that can be used as a fixed shower head or as a hand-held shower shall be provided.

4.20.7 Bathtub Enclosures. If provided, enclosures for bathtubs shall not obstruct controls or transfer from wheelchairs onto bathtub seats or into tubs. Enclosures on bathtubs shall not have tracks mounted on their rims.

4.21 Shower Stalls.

4.21.1* General. Accessible shower stalls shall comply with 4.21.

4.21.2 Size and Clearances. Shower stall size and clear floor space shall comply with Fig. 35(a) or (b). The shower stall in Fig. 35(a) shall be 36 in by 36 in (915 mm by 915 mm). The shower stall in Fig. 35(b) will fit into the space required for a bathtub.

4.21.3 Seat. A seat shall be provided in shower stalls 36 in by 36 in (915 mm by 915 mm) and shall be as shown in Fig. 36. The seat shall be mounted 17 in to 19 in (430 mm to 485 mm) from the bathroom floor and shall extend the full depth of the stall. The seat shall be on the wall opposite the controls. The structural strength of seats and their attachments shall comply with 4.26.3.

4.21.4 Grab Bars. Grab bars complying with 4.26 shall be provided as shown in Fig. 37.

4.21.5 Controls. Faucets and other controls complying with 4.27.4 shall be located as shown in Fig. 37. In shower stalls 36 in by 36 in (915 mm by 915 mm), all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat

4.21.6 Shower Unit A shower spray unit with a hose at least 60 in (1525 mm) long that can be used as a fixed shower head or as a hand-held shower shall be provided.

EXCEPTION: In unmonitored facilities where vandalism is a consideration, a fixed shower head mounted at 48 in (1220 mm) above the shower floor may be used in lieu of a hand-held shower head.

4.21.7 Curbs. If provided, curbs in shower stalls 36 in by 36 in (915 mm by 915 mm) shall be no higher than *1/2 in (13 mm).* Shower stalls that are 30 in by 60 in (760 mm by 1525 mm) shall not have curbs.

4.21.8 Shower Enclosures. If provided, enclosures for shower stalls shall not obstruct controls or obstruct transfer from wheelchairs onto shower seats.

4.22 Toilet Rooms.

4.22.1 Minimum Number. *Toilet facilities required to be accessible by 4.1* shall comply with 4.22. Accessible toilet rooms shall be on an accessible route.

4.22.2 Doors. All doors to accessible toilet rooms shall comply with 4.13. Doors shall not swing into the clear floor space required for any fixture.

4.22.3 Clear Floor Space. The accessible fixtures and controls required in 4.22.4, 4.22.5, 4.22.6, and 4.22.7 shall be on an accessible route. An unobstructed turning space complying with 4.2.3 shall be provided within an accessible toilet room. The clear

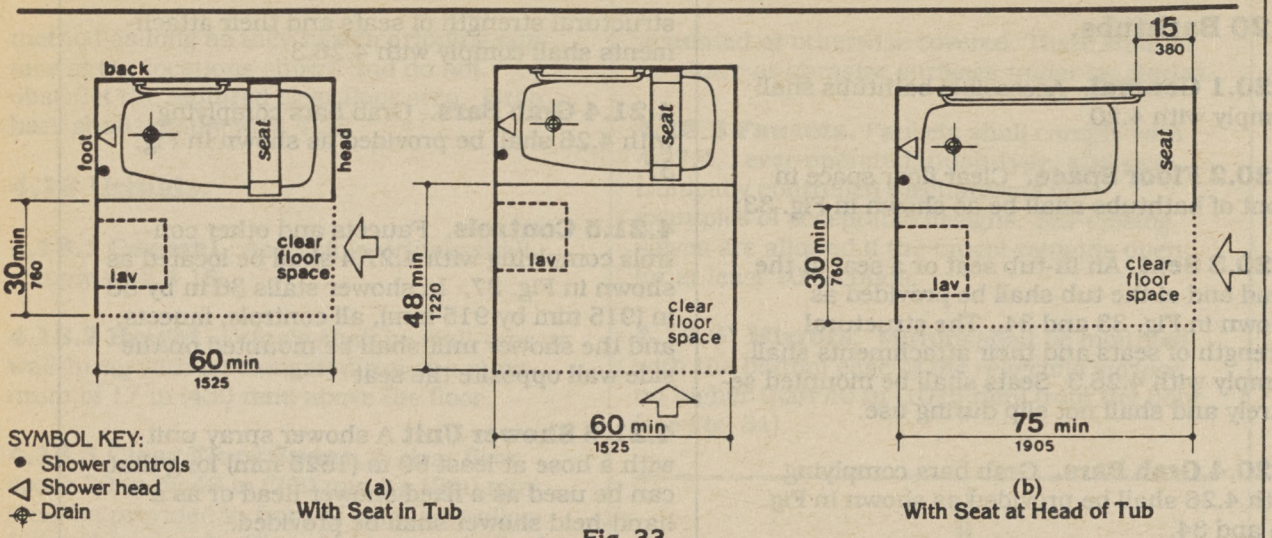


Fig. 33
Clear Floor Space at Bathtubs

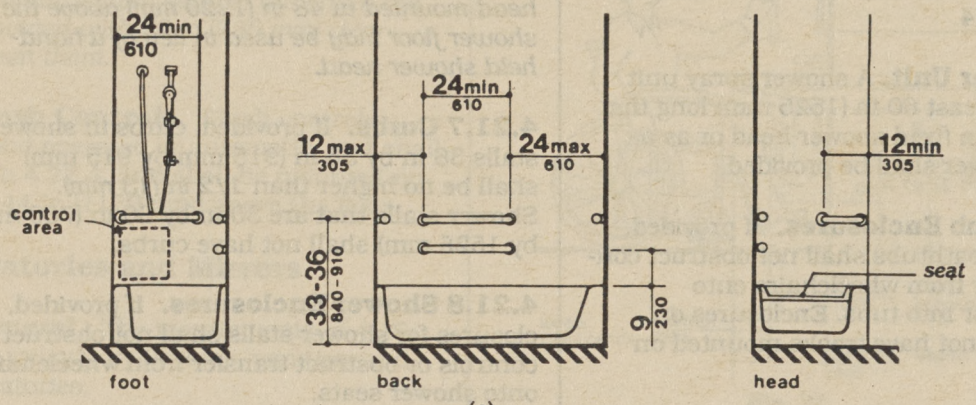


Fig. 34
Grab Bars at Bathtubs

4.23 Bathrooms, Bathing Facilities, and Shower Rooms

floor space at fixtures and controls, the accessible route, and the turning space may overlap.

4.22.4 Water Closets. If toilet stalls are provided, then at least one shall comply with 4.17; its water closet shall comply with 4.16. If water closets are not in stalls, then at least one shall comply with 4.16.

4.22.5 Urinals. If urinals are provided, *then* at least one shall comply with 4.18.

4.22.6 Lavatories and Mirrors. If lavatories and mirrors are provided, *then* at least one of each shall comply with 4.19.

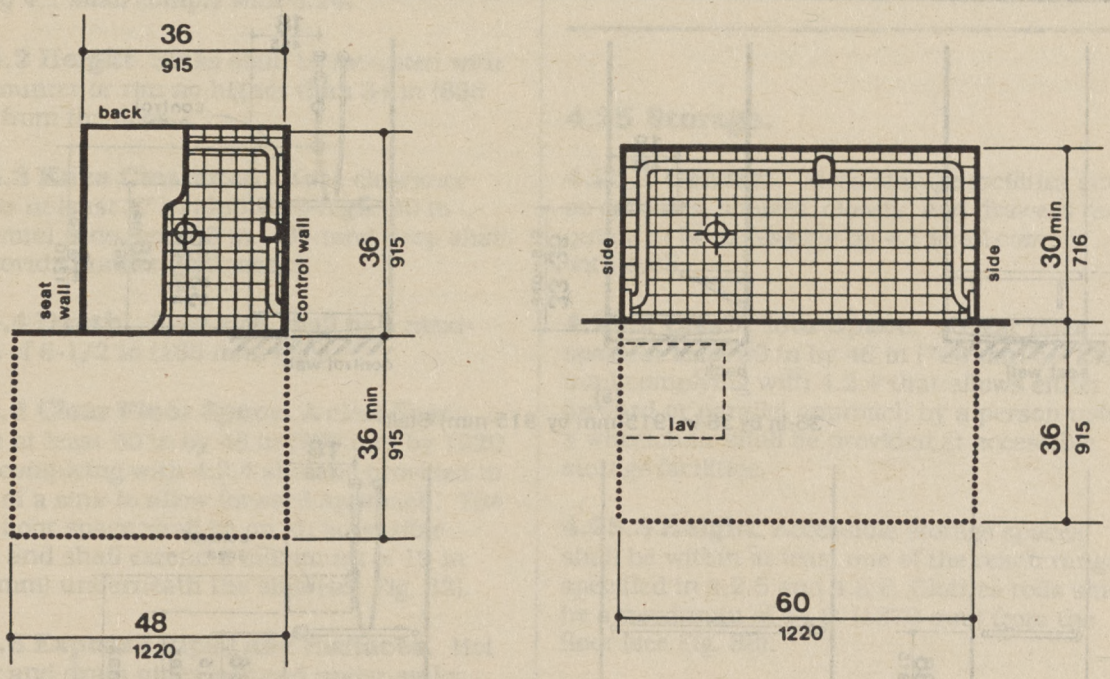
4.22.7 Controls and Dispensers. If controls, dispensers, receptacles, or other equipment are provided, *then* at least one of each shall be on an accessible route and shall comply with 4.27.

4.23 Bathrooms, Bathing Facilities, and Shower Rooms.

4.23.1 Minimum Number. Bathrooms, bathing facilities, or shower rooms *required to be accessible by 4.1* shall comply with 4.23 and shall be on an accessible route.

4.23.2 Doors. Doors to accessible bathrooms shall comply with 4.13. Doors shall not swing into the floor space required for any fixture.

4.23.3 Clear Floor Space. The accessible fixtures and controls required in 4.23.4, 4.23.5, 4.23.6, 4.23.7, 4.23.8, and 4.23.9 shall be on an accessible route. An unob-



(a)
36-in by 36-in
(915-mm by 915-mm) Stall

(b)
30-in by 60-in
(760-mm by 1525-mm) Stall

Fig. 35
Shower Size and Clearances

4.23 Bathrooms, Bathing Facilities, and Shower Rooms

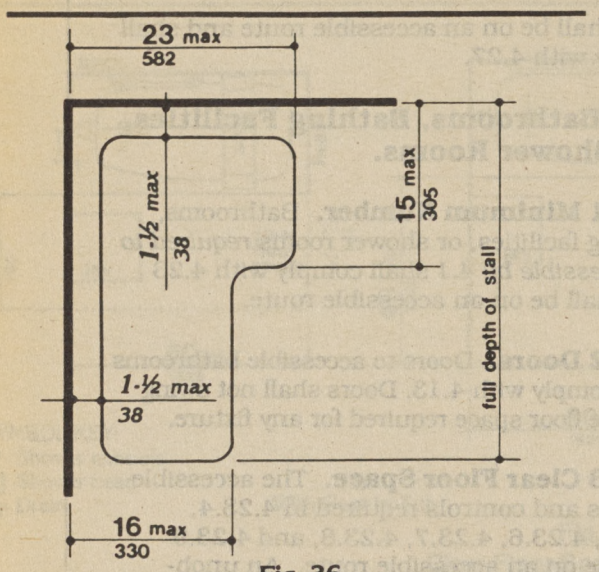


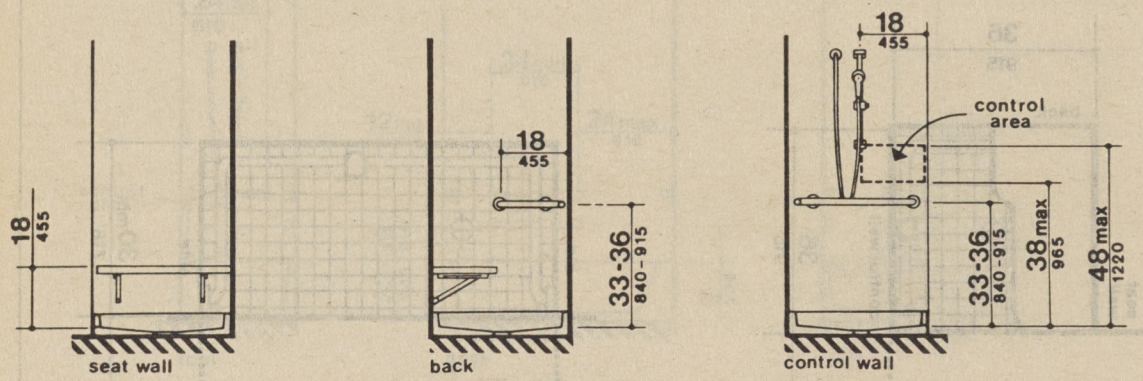
Fig. 36
Shower Seat Design

structed turning space complying with 4.2.3 shall be provided within an accessible bathroom. The clear floor spaces at futures and controls, the accessible route, and the turning space may overlap.

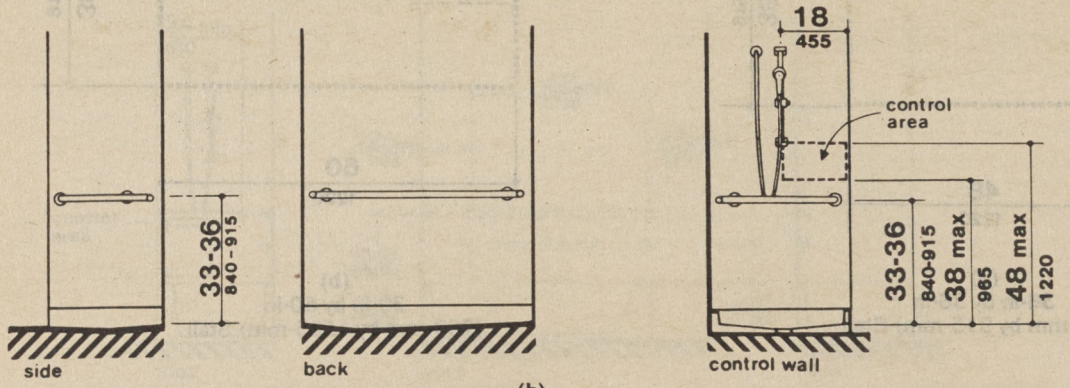
4.23.4 Water Closets. If toilet stalls are provided, then at least one shall comply with 4.17; its water closet shall comply with 4.16. If water closets are not in stalls, then at least one shall comply with 4.16.

4.23.5 Urinals. If urinals are provided, then at least one shall comply with 4.18.

4.23.6 Lavatories and Mirrors. If lavatories and mirrors are provided, then at least one of each shall comply with 4.19.



(a)
36-in by 36-in (915-mm by 915-mm) Stall



(b)
30-in by 60-in (760-mm by 1525-mm) Stall

Fig. 37
Grab Bars at Shower Stalls

4.25 Storage

4.23.7 Controls and Dispensers. If controls, dispensers, receptacles, or other equipment are provided, *then* at least one of each shall be on an accessible route and shall comply with 4.27.

4.23.8 Bathing and Shower Facilities. If tubs or showers are provided, then at least one accessible tub that complies with 4.20 or at least one accessible shower that complies with 4.21 shall be provided.

4.23.9* Medicine Cabinets. If medicine cabinets are provided, at least one shall be located with a usable shelf no higher than 44 in (1120 mm) above the floor space. The floor space shall comply with 4.2.4.

4.24 Sinks.

4.24.1 General. *Sinks required to be accessible by 4.1* shall comply with 4.24.

4.24.2 Height. Sinks shall be mounted with the counter or rim no higher than 34 in (865 mm) from the floor.

4.24.3 Knee Clearance. Knee clearance that is *at least* 27 in (685 mm) high, 30 in (760 mm) wide, and 19 in (485 mm) deep shall be provided underneath sinks.

4.24.4 Depth. Each sink shall be a maximum of 6-1/2 in (165 mm) deep.

4.24.5 Clear Floor Space. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 shall be provided in front of a sink to allow forward approach. The clear floor space shall be on an accessible route and shall extend a maximum of 19 in (485 mm) underneath the sink (see Fig. 32).

4.24.6 Exposed Pipes and Surfaces. Hot water and drain pipes exposed under sinks shall be insulated or otherwise covered. There shall be no sharp or abrasive surfaces under sinks.

4.24.7 Faucets. Faucets shall comply with 4.27.4. Lever-operated, push-type, touch-type, or electronically controlled mechanisms are acceptable designs.

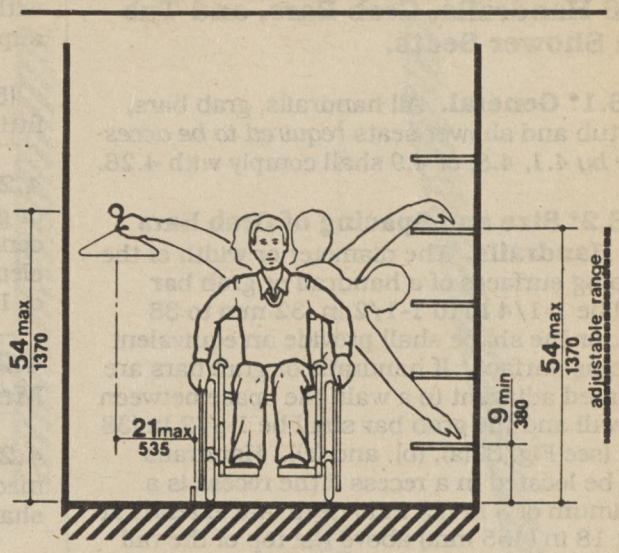


Fig. 38
Storage Shelves and Closets

4.25 Storage.

4.25.1 General. *Fixed* storage facilities such as cabinets, shelves, closets, and drawers *required to be accessible by 4.1* shall comply with 4.25.

4.25.2 Clear Floor Space. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 that allows either a forward or parallel approach by a person using a wheelchair shall be provided at accessible storage facilities.

4.25.3 Height. Accessible storage spaces shall be within at least one of the reach ranges specified in 4.2.5 and 4.2.6. Clothes rods shall be a maximum of 54 in (1370 mm) from the floor (see Fig. 38).

4.25.4 Hardware. Hardware for accessible storage facilities shall comply with 4.27.4. Touch latches and U-shaped pulls are acceptable.

4.26 Handrails, Grab Bars, and Tub and Shower Seats.

4.26.1* General. All handrails, grab bars, and tub and shower seats *required to be accessible by 4.1, 4.8, or 4.9* shall comply with 4.26.

4.26.2* Size and Spacing of Grab Bars and Handrails. The diameter or width of the gripping surfaces of a handrail or grab bar shall be 1-1/4 in to 1-1/2 in (32 mm to 38 mm), or the shape shall provide an equivalent gripping surface. If handrails or grab bars are mounted adjacent to a wall, the space between the wall and the grab bar shall be 1-1/2 in (38 mm) (see Fig. 39(a), (b), and (c)). Handrails may be located in a recess if the recess is a maximum of 3 in (75 mm) deep and extends at least 18 in (455 mm) above the top of the rail (see Fig. 39(d)).

4.26.3 Structural Strength. The structural strength of grab bars, tub and shower seats, fasteners, and mounting devices shall meet the following specification:

(1) Bending stress in a grab bar or seat induced by the maximum bending moment from the application of 250 lbf (1112N) shall be less than the allowable stress for the material of the grab bar or seat.

(2) Shear stress induced in a grab bar or seat by the application of 250 lbf (1112N) shall be less than the allowable shear stress for the material of the grab bar or seat. If the connection between the grab bar or seat and its mounting bracket or other support is considered to be fully restrained, then direct and torsional shear stresses shall be totaled for the combined shear stress, which shall not exceed the allowable shear stress.

(3) Shear force induced in a fastener or mounting device from the application of 250 lbf (1112N) shall be less than the allowable lateral load of either the fastener or mounting device or the supporting structure, whichever is the smaller allowable load.

(4) Tensile force induced in a fastener by a direct tension force of 250 lbf (1112N) plus the maximum moment from the application of 250 lbf (1112N) shall be less than the allowable withdrawal load between the fastener and the supporting structure.

(5) Grab bars shall not rotate within their fittings.

4.26.4 Eliminating Hazards. A handrail or grab bar and any wall or other surface adjacent to it shall be free of any sharp or abrasive elements. Edges shall have a minimum radius of 1/8 in (3.2 mm).

4.27 Controls and Operating Mechanisms.

4.27.1 General. Controls and operating mechanisms *required to be accessible by 4.1* shall comply with 4.27.

4.27.2 Clear Floor Space. Clear floor space complying with 4.2.4 that allows a forward or a parallel approach by a person using a wheelchair shall be provided at controls, dispensers, receptacles, and other operable equipment.

4.27.3* Height. The highest operable part of controls, dispensers, receptacles, and other operable equipment shall be placed within at least one of the reach ranges specified in 4.2.5 and 4.2.6. Except where the use of special equipment dictates otherwise, electrical and communications system receptacles on walls shall be mounted no less than 15 in (380 mm) above the floor.

4.27.4 Operation. Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2 N).

4.28 Alarms

4.28.1 General. *Alarm systems required to be accessible by 4.1 shall comply with 4.28. Visual signal appliances shall be provided, at a minimum, in each of the following areas: restrooms and any other general usage areas (e.g., copier rooms), hallways, lobbies, or any other area for common use.*

4.28.2* Audible Alarms. If provided, audible emergency alarms shall produce a sound

4.28 Alarms

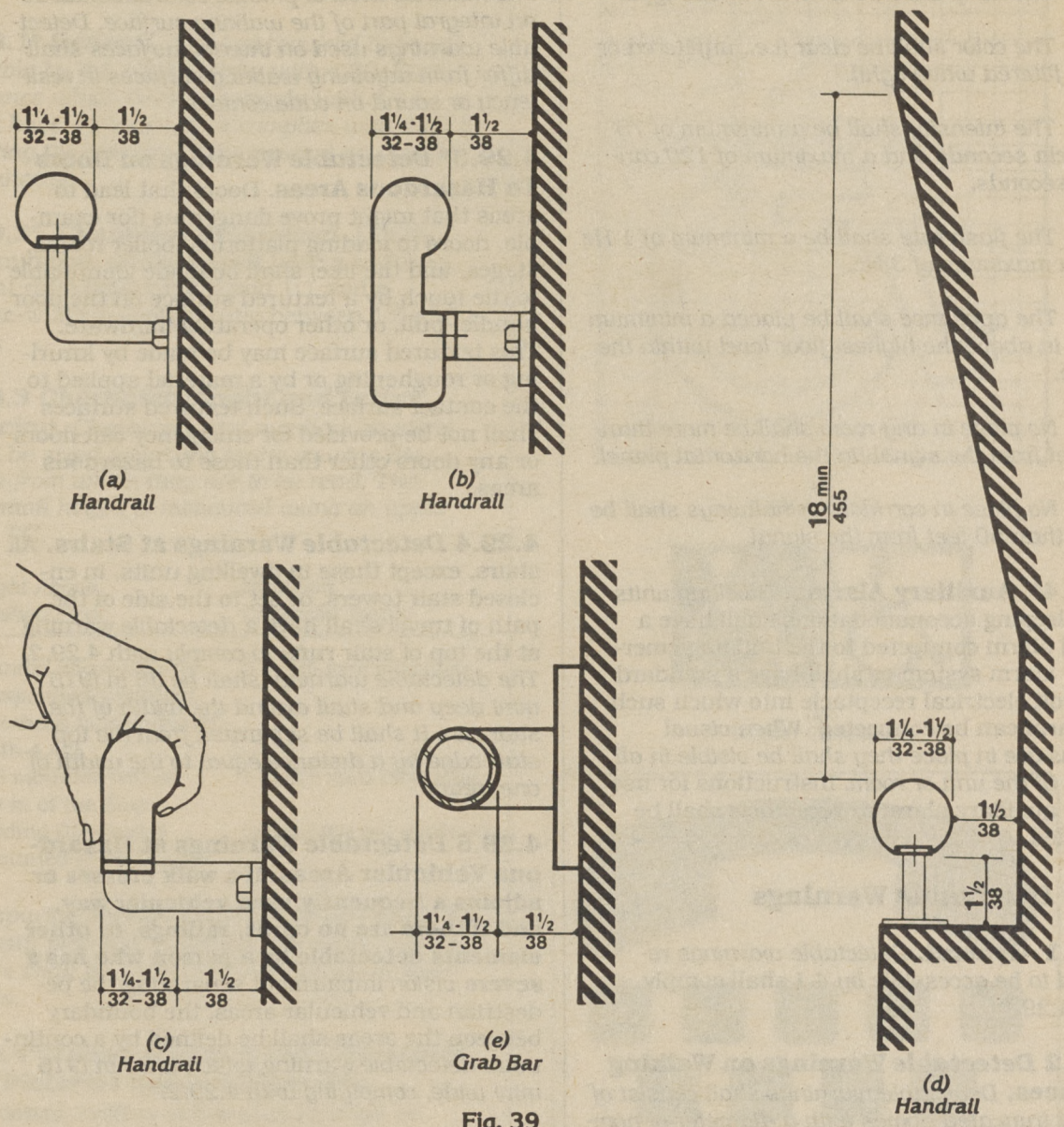


Fig. 39
Size and Spacing of Handrails and Grab Bars

that exceeds the prevailing equivalent sound level in the room or space by at least 15 decibels or exceeds any maximum sound level with a duration of 30 seconds by 5 decibels, whichever is louder. Sound levels for alarm signals shall not exceed 120 decibels.

4.28.3* Visual Alarms. *Visual alarm signal appliances shall be integrated into the building or facility alarm system. If single station audible alarms are provided then single station visual alarm signals shall be provided. Visual alarm signals shall have the following minimum photometric and location features:*

(1) The lamp shall be a xenon strobe type.

(2) The color shall be clear (i.e., unfiltered or clear filtered white light).

(3) The intensity shall be a minimum of 75 candela seconds and a maximum of 120 candela seconds.

(4) The flash rate shall be a minimum of 1 Hz and a maximum of 3 Hz.

(5) The appliance shall be placed a minimum of 80 in above the highest floor level within the space.

(6) No place in any room shall be more than 50 feet from the signal (in the horizontal plane).

(7) No place in corridors or hallways shall be more than 50 feet from the signal.

4.28.4* Auxiliary Alarms. *Dwelling units and* sleeping accommodations shall have a visual alarm connected to the building emergency alarm system or shall have a standard 110-volt electrical receptacle into which such an alarm can be connected. *When visual alarms are in place they shall be visible in all areas of the unit or room.* Instructions for use of the auxiliary alarm or *receptacle* shall be provided.

4.29 *Detectable* Warnings

4.29.1 General. *Detectable warnings required to be accessible by 4.1* shall comply with 4.29.

4.29.2 *Detectable* Warnings on Walking Surfaces. *Detectable warnings shall consist of raised truncated domes with a diameter of nominal 0.9 in (23 mm), a height of nominal 0.2 in (5 mm) and a center-to-center spacing of nominal 2.35 in (60 mm) and shall contrast visually by 70 percent with adjoining surfaces. Contrast in percent shall be determined by:*

$$Contrast = [(B_1 - B_2)/B_1] \times 100$$

where B_1 = light reflectance value (LRV) of the lighter area
and B_2 = light reflectance value (LRV) of the darker area.

The material used to provide contrast shall be an integral part of the walking surface. Detectable warnings used on interior surfaces shall differ from adjoining walking surfaces in resiliency or sound-on-cane contact.

4.29.3* *Detectable* Warnings on Doors To Hazardous Areas. Doors that lead to areas that might prove dangerous (for example, doors to loading platforms, boiler rooms, stages, and the like) shall be made identifiable to the touch by a textured surface on the door handle, pull, or other operating hardware. This textured surface may be made by knurling or roughening or by a material applied to the contact surface. Such textured surfaces shall not be provided for emergency exit doors or any doors other than those to hazardous areas.

4.29.4 *Detectable* Warnings at Stairs. All stairs, except those in dwelling units, in enclosed stair towers, or set to the side of the path of travel shall have a *detectable* warning at the top of stair runs *to comply with 4.29.2. The detectable warning shall be 36 in (915 mm) deep and shall extend the width of the stair run. It shall be separated from the top stair edge by a distance equal to the width of one tread.*

4.29.5 *Detectable* Warnings at Hazardous Vehicular Areas. If a walk crosses or adjoins a frequently used vehicular way, and if there are no curbs, railings, or other elements detectable by a person who has a severe *vision* impairment separating the pedestrian and vehicular areas, the boundary between the areas shall be defined by a continuous *detectable* warning *which is 36 in (915 mm) wide, complying with 4.29.2.*

4.29.6 *Detectable* Warnings at Reflecting Pools. The edges of reflecting pools shall be protected by railings, walls, curbs, or *detectable* warnings complying with 4.29.2.

4.29.7* Standardization. Textured surfaces for *detectable* door warnings shall be consistent within a building, facility, site, or complex of buildings.

4.30 Signage

4.30 Signage.

4.30.1* General. *Signage required to be accessible by 4.1 shall comply with 4.30. Each entrance which does not comply with 4.14 shall have signage which complies with 4.30 indicating the location of the nearest accessible entrance(s).*

4.30.2* Character Proportion. Letters and numbers on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke-width-to-height ratio between 1:5 and 1:10.

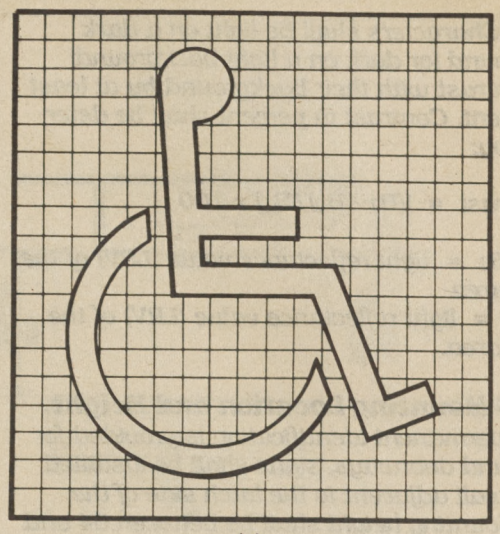
4.30.3 *Character Height and Letter Spacing.* *Characters and numbers on signs shall be sized according to the viewing distance from which they are to be read. The minimum height is measured using an upper case "X".*

Height Above Finished Floor	*Minimum Character Height*
Mounted above 66 in or suspended/projected overhead in compliance with 4.4.2	*3 in (75 mm) minimum*
Wall mounted within 66 in of the floor	1 in (25 mm) minimum
Building Directories mounted at any height	5/8 in (16 mm) minimum

The spacing between letters shall be "wide" by industry practice; generally, the space between letters shall be 1/16 the height of upper case letters.

4.30.4* Raised *and Brailled* Characters *and Pictorial Symbol Signs (Pictograms).* Letters and numerals shall be raised 1/32 in, *upper case,* sans serif *or simple serif type and shall be accompanied with Grade 2 Braille.* Raised characters shall be at least 5/8 in (16 mm) high, but no higher than 2 in (50 mm). *Pictograms shall be accompanied by the equivalent verbal description placed directly below the pictogram. The border dimension of the pictogram shall be 6 in (152 mm) minimum in height.*

4.30.5* *Finish and Contrast.* *The characters and background of signs shall be eggshell (11 to 19 degree gloss on 60 degree glossi-*



(a)
Proportions



(b)
Display Conditions



(c)
International TDD Symbol

Fig. 43
International Symbol of Accessibility
and
International TDD Symbol

meter). Characters shall be light on a dark background (or dark on a light background) and contrast with their background by at least 70 percent. Contrast in percent shall be determined by:

$$Contrast = [(B_1 - B_2)/B_1] \times 100$$

where B_1 = light reflectance value (LRV) of the lighter area
and B_2 = light reflectance value (LRV) of the darker area.

4.30.6 *Mounting Location and Height.* *Where permanent identification is provided for rooms and doorways, signs shall be installed on the wall adjacent to the latch side of the door. Mounting height shall be between 54 and 66 in. Mounting location for such signage shall be such that a person may approach within 3 in of signage without encountering protruding objects or standing within the swing of a door.*

4.30.7 Symbols of Accessibility. *Accessible facilities required to be identified by 4.1 shall use the international symbol of accessibility.* The symbol shall be displayed as shown in Fig. 43(a). *Telephones required to be accessible by 4.1.3(17)(b) shall be identified by a sign containing a depiction of a telephone handset with radiating sound waves. Telephones required to be accessible by 4.1.3 (17)(c) shall be identified by the international TDD symbol (Fig 43(c)). Where TDDs are required, directional signage indicating the location of the nearest TDD telephone shall be placed adjacent to all single user or banks of telephones which do not contain a TDD. Such directional signage shall include the international TDD symbol.*

4.30.8 *Illumination Levels.* *Illumination levels on the sign surface shall be in the 100 to 300 lux range (10 to 30 footcandles) and shall be uniform over the sign surface. Signs shall be located such that the illumination level on the surface of the sign is not significantly exceeded by the ambient light or visible bright lighting source behind or in front of the sign.*

4.31 Telephones.

4.31.1 General. *Public telephones required to be accessible by 4.1 shall comply with 4.31.*

4.31.2 Clear Floor or Ground Space. A clear floor or ground space at least 30 in by 48 in (760 mm by 1220 mm) that allows either a forward or parallel approach by a person using a wheelchair shall be provided at telephones (see Fig. 44). The clear floor or ground space shall comply with 4.2.4. Bases, enclosures, and fixed seats shall not impede approaches to telephones by people who use wheelchairs.

4.31.3* Mounting Height. The highest operable part of the telephone shall be within the reach ranges specified in 4.2.5 or 4.2.6.

4.31.4 *Protruding Objects.* *Telephones shall comply with 4.4.*

4.31.5* Equipment for Hearing Impaired People. Telephones shall be equipped with a receiver that generates a magnetic field in the area of the receiver cap. *Volume controls shall be provided in accordance with 4.1.3.*

4.31.6 Controls. Telephones shall have pushbutton controls where service for such equipment is available.

4.31.7 Telephone Books. Telephone books, if provided, shall be located *in a position that complies with the reach ranges specified in 4.2.5 and 4.2.6.*

4.31.8 Cord Length. The cord from the telephone to the handset shall be at least 29 in (735 mm) long.

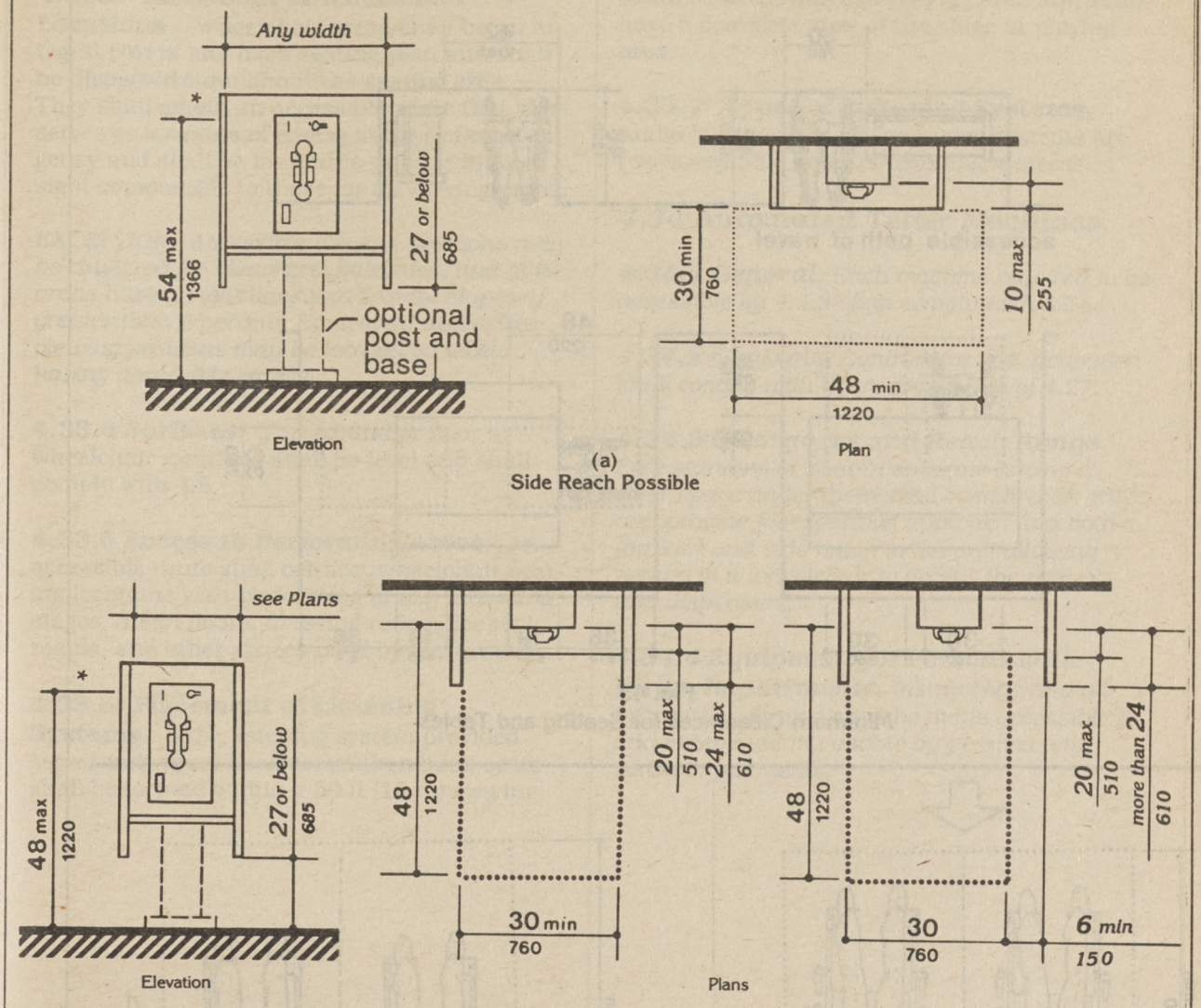
4.32 Seating, Tables, and Work Surfaces.

4.32.1 Minimum Number. Fixed or built-in seating, tables, or work surfaces *required to be accessible by 4.1 shall comply with 4.32.*

4.32.2 Seating. If seating spaces for people in wheelchairs are provided at tables, counters, or work surfaces, clear floor space complying with 4.2.4 shall be provided. Such clear floor space shall not overlap knee space by more than 19 in (485 mm) (see Fig. 45).

4.32.3 Knee Clearances. If seating for people in wheelchairs is provided at tables, counters, and work surfaces, knee spaces at least 27 in (685 mm) high, 30 in (760 mm)

4.31 Telephones



*Height to highest operable parts which are essential to basic operation of telephone.

Fig. 44
Mounting Heights and Clearances for Telephones

wide, and 19 in (485 mm) deep shall be provided (see Fig. 45).

4.32.4* Height of Work Surfaces. The tops of tables and work surfaces shall be from 28 in to 34 in (710 mm to 865 mm) from the floor or ground.

4.33 Assembly Areas.

4.33.1 Minimum Number. Assembly *and associated areas required to be accessible by 4.1 shall comply with 4.33.*

4.33.2* Size of Wheelchair Locations. Each wheelchair location shall provide minimum clear ground or floor spaces as shown in Fig. 46.

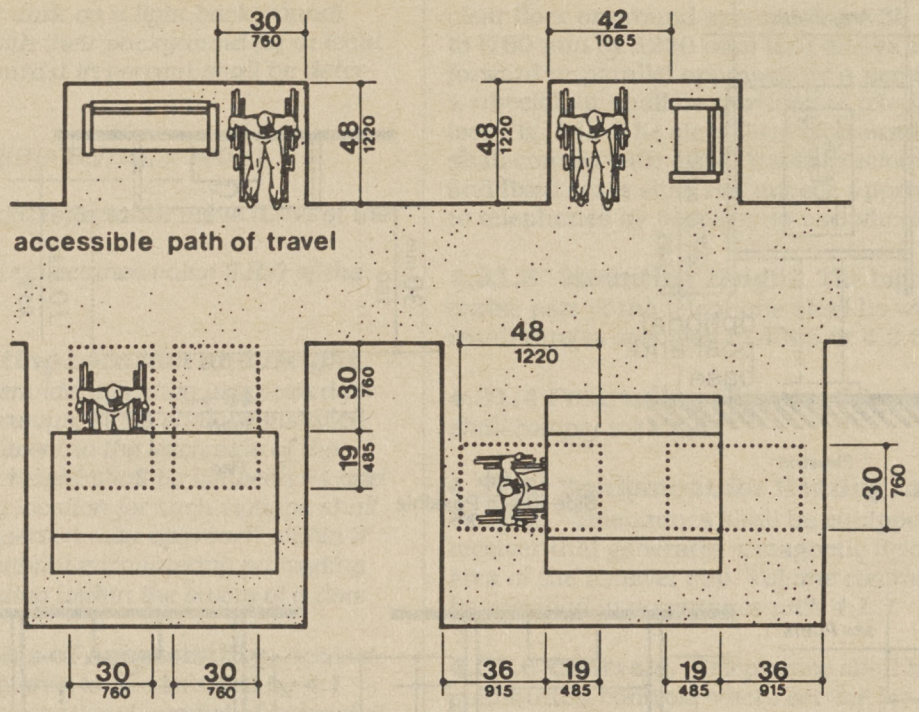


Fig. 45
Minimum Clearances for Seating and Tables

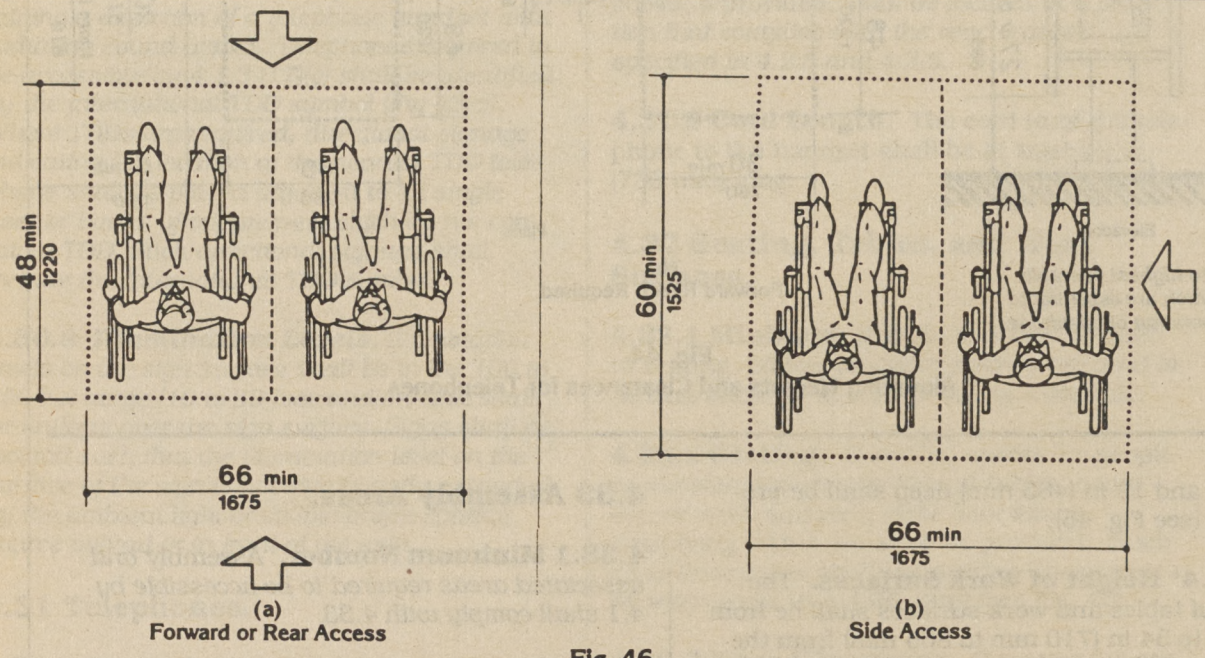


Fig. 46
Space Requirements for Wheelchair
Seating Spaces in Series

4.34 Automated Teller Machines.

4.33.3* Placement of Wheelchair Locations. Wheelchair areas shall be an integral part of any fixed seating plan and shall be dispersed throughout the seating area. They shall adjoin an accessible route that also serves as a means of egress in case of emergency and shall be located to provide lines of sight comparable to those for all viewing areas.

EXCEPTION: Accessible viewing positions may be clustered for bleachers, balconies, and other areas having sight lines that require slopes of greater than 5 percent. Equivalent accessible viewing positions may be located on levels having accessible egress.

4.33.4 Surfaces. The ground or floor at wheelchair locations shall be level and shall comply with 4.5.

4.33.5 Access to Performing Areas. An accessible route shall connect wheelchair seating locations with performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers.

4.33.6* Placement of Listening Systems. If the listening system provided serves individual fixed seats, then such seats shall be located within a 50 ft (15 m) viewing distance of the stage or playing area and shall have a complete view of the stage or playing area.

4.33.7* Types of Listening Systems. Audio loops and radio frequency systems are two acceptable types of listening systems.

4.34 Automated Teller Machines.

4.34.1 General. *Each machine required to be accessible by 4.1.3 shall comply with 4.34.*

4.34.2 Controls. *Controls for user activation shall comply with the requirements of 4.27.*

4.34.3 Clearances and Reach Range. *Free standing or built-in units not having a clear space under them shall comply with 4.27 and provide for a parallel approach and both a forward and side reach to the unit allowing a person in a wheelchair to access the controls and dispensers.*

4.34.4 Equipment for Persons with Vision Impairments. *Instructions and all information for use shall be made accessible to and independently usable by persons with vision impairments.*

NOTE: Sections 4.1.1 through 4.1.7 and sections 5 through 10 are different from ANSI A117.1 in their entirety and are printed in standard type.

5. Restaurants and Cafeterias

5.1 General. Where fixed tables are provided, in addition to the requirements of 4.1 to 4.34, at least 5 percent, but no less than one, of the fixed tables shall be accessible and shall comply with 4.32. In establishments where separate areas are designated for smoking and non-smoking patrons, the required number of accessible fixed tables shall be proportionally distributed between the smoking and non-smoking areas. In new construction, and where practicable in alterations, accessible fixed tables shall be distributed throughout the space or facility.

5.2 Dining Areas. In new construction, raised or sunken dining areas, loggias, and outdoor seating areas shall be accessible. In non-elevator buildings, if the area of mezzanine seating measures no more than 33 percent of the area of the accessible seating area, an accessible means of vertical access to the mezzanine is not required provided that the same services and decorative character are provided in an accessible space usable by the general public and not restricted to use by people with disabilities. In alterations, accessibility to raised or sunken dining areas, or to all parts of outdoor seating areas is not required provided that the same services and decorative character are provided in an accessible space usable by the general public and not restricted to use by people with disabilities.

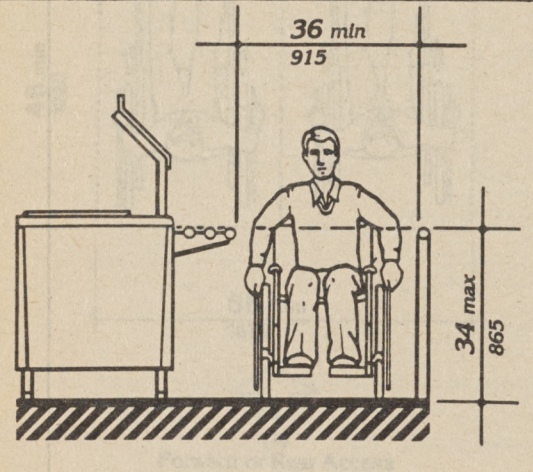


Fig. 53
Food Service Lines

5.3 Access Aisles. All accessible fixed tables shall be accessible by means of an access aisle at least 36 in clear between parallel edges of tables or between a wall and the table edges.

5.4 Food Service Lines. Food service lines shall have a minimum clear width of 36 in, with a preferred clear width of 42 in to allow passage around a person using a wheelchair. Tray slides shall be mounted no higher than 34 in above the floor. If self-service shelves are provided, at least 50 percent of each type must be within reach ranges specified in 4.2.5 and 4.2.6.

5.5 Counters and Bars. Where service of food or drink is provided at counters exceeding 34 in. in height to customers seated on stools or standing, a portion of the main counter shall be provided in compliance with 4.32 or service shall be available at accessible tables within the same area.

5.6 Tableware and Condiment Areas. Self-service shelves and dispensing devices for tableware, dishware, condiments, food and beverages shall be installed to comply with 4.2.

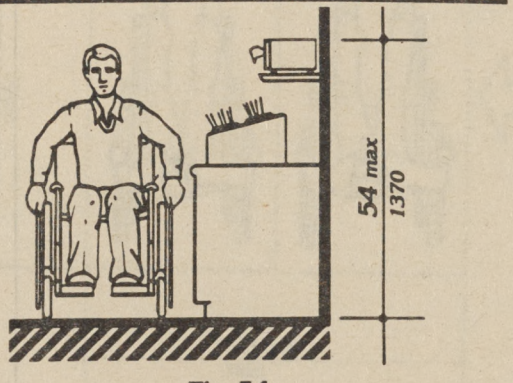


Fig. 54
Tableware Areas

5.7 Raised Platforms. In banquet rooms or spaces where the head table or speaker's lectern is located on a raised platform, the platform shall be accessible in compliance with 4.8 or 4.11. Open edges of a raised platform shall be protected by placement of tables or by a curb.

5.8 Vending Machines and Other Equipment. Locations for vending machines and other equipment shall be installed to comply with 4.2 and 4.27 and shall be located on an accessible route.

6. Medical Care Facilities

6.1 General. Medical care facilities included in this section are those in which people have physical or medical treatment or care and where persons may need assistance in responding to an emergency and where the period of residence may exceed twenty-four hours. In addition to the requirements of 4.1 through 4.34, medical care facilities and buildings shall comply with 6.

hospitals general purpose hospitals psychiatric facilities detoxification facilities	At least 10 percent of patient bedrooms and toilets, all public use, common use, and employee use areas are required to be designed and constructed to be accessible.
hospitals that specialize in treating conditions that affect mobility	ALL patient bedrooms and toilets, all public use, common use, and employee use areas are required to be designed and constructed to be accessible.
long term care facilities nursing homes	At least 50 percent of patient bedrooms and toilets, all public use, common use, and employee use areas are required to be designed and constructed to be accessible.

6.2 Entrances. At least one accessible entrance that complies with 4.14 shall be protected from the weather by canopy or roof overhang. Such entrances shall incorporate a passenger loading zone that complies with 4.6.5.

6.3 Patient Bedrooms. Provide accessible patient bedrooms in compliance with 4.1 through 4.34. Accessible patient bedrooms shall comply with the following:

(1) Each bedroom shall have a turning space that complies with 4.2.3, and preferably that is located near the entrance.

(2) Each one-bed room shall have a minimum clear floor space of 36 in (915 mm) along each side of the bed and 42 in (1065 mm) between the foot of the bed and the wall.

(3) Each two-bed room shall have a minimum clear floor space of 42 in (1065 mm), preferably 48 in (1220 mm), between the foot of the bed and the wall, 36 in (915 mm) between the side of the bed and the wall, and 48 in (1220 mm) between beds.

(4) Each four-bed room shall have a minimum clear floor space of 48 in (1220 mm) from the foot of the bed to the foot of the opposing bed; 36 in (915 mm) between the side of the bed and the wall; and 48 in (1220 mm) between beds.

(5) Each bedroom shall have a door that complies with 4.13.

6.4 Patient Toilet Rooms. Provide each patient bedroom that is required to be accessible with an accessible toilet room that complies with 4.22 or 4.23.

7. Business and Mercantile

7.1 General. In addition to the requirements of 4.1 to 4.34, the design of all areas used for business transactions with the public shall comply with 7.

7.2 Sales and Service Counters, Teller Windows, Information Counters. Where counters exceeding 36 in (915 mm) in height

are provided for sales or distribution of goods or services to the public, a portion of the main counter shall be provided with a maximum height of between 28 in to 34 in (710 mm to 865 mm) above the floor in compliance with 4.32. In alterations, where it is technically infeasible to provide an accessible portion of the main counter, an auxiliary counter meeting these requirements may be provided.

7.3 Check-out Aisles. All check-out aisles shall be accessible. Clear aisle width shall comply with 4.2.1 and maximum adjoining counter height shall not exceed 36 in (915 mm) above the floor.

7.4 Security Bollards. Any device used to prevent the removal of shopping carts from store premises shall not prevent access or egress to those in wheelchairs. An alternate entry that is equally convenient to that provided for the ambulatory population is acceptable.

8. Libraries

8.1 General. In addition to the requirements of 4.1 to 4.34, the design of all public areas of a library shall comply with 8, including reading and study areas, stacks, reference rooms, reserve areas, and special facilities or collections. As provided elements such as public toilet rooms, telephones, and parking shall be accessible.

8.2 Reading and Study Areas. At least 5 percent or a minimum of one of each element of fixed seating, tables, or study carrels shall comply with 4.2 and 4.32. Clearances between fixed accessible tables and study carrels shall comply with 4.3.

8.3 Check-Out Areas. At least one lane at each check-out area shall comply with 4.32. Any traffic control or book security gates or turnstiles shall comply with 4.13.

8.4 Card Catalogs. Minimum clear aisle space at card catalogs, magazine displays, or reference stacks shall comply with Fig. 55. Maximum reach height shall comply with 4.2, with a height of 48 in (1220 mm) preferred irrespective of reach allowed.

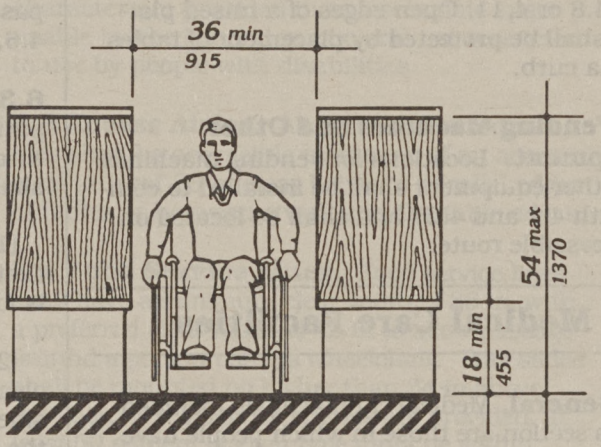


Fig. 55
Card Catalog

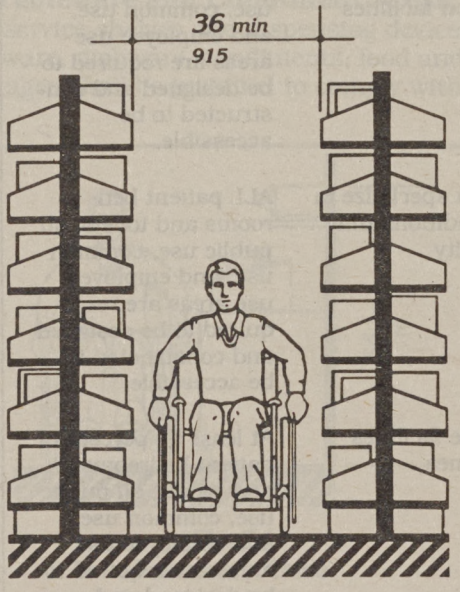


Fig. 56
Stacks

8.5 Stacks. Minimum clear aisle width between stacks shall comply with 4.3, with a minimum clear aisle width of 42 in (1065 mm) preferred where possible. Shelf height in stack areas is unrestricted (see Fig. 56).

9. Accessible Transient Lodging

9.0 Accessible Transient Lodging. (1) Except as reserved below, accessible transient lodging shall comply with the appicable requirements of 4.1 through 4.34 and sections 5, and 7. Transient lodging includes facilities or portions thereof, used for sleeping accommodations, when not classed as a medical care facility.

9.1 Hotels, Motels, Inns, Boarding Houses, Dormitories, Resorts and Other Similar Places of Transient Lodging. All public use and common use areas and five percent, but never fewer than one, of each class of sleeping rooms or suites are required to be designed and constructed to comply with section 4 and sections 9.2 through 9.3. An additional five percent of each class of sleeping rooms or suites, but never fewer than one, shall comply with 9.3 (sleeping accommodations for persons with hearing impairments). All other rooms or suites shall comply with 9.4 and shall be on an accessible route.

EXCEPTION: Section 9 does not apply to an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor.

9.2 Accessible Units, Sleeping Rooms and Suites.

9.2.1 General. Units, sleeping rooms and suites required to be accessible by 9.1 shall comply with 9.2.

9.2.2 Minimum Requirements. An accessible unit, sleeping room or suite shall be on an accessible route complying with 4.3 and have the following accessible elements and spaces.

(1) Accessible sleeping rooms shall have maneuvering space complying with 4.2.3 located along side of at least one side of at least one bed.

(2) An accessible route complying with 4.3 shall connect all accessible spaces and elements including telephones within the unit, sleeping room or suite.

(3) Doors and doorways designed to allow passage into and within all sleeping rooms, suites or other covered units shall comply with 4.13.

(4) Storage in accessible units, sleeping rooms or suites, including cabinets, shelves, closets and drawers, shall comply with 4.25.

(5) All controls in accessible units, sleeping rooms and suites shall comply with 4.27.

(6) Where provided as part of an accessible unit, sleeping room or suite, the following spaces shall be accessible and shall be on an accessible route.

(a) the living area

(b) the dining area

(c) at least one sleeping area

(d) patios, terraces, balconies, carports, garages or parking spaces

(e) at least one full bathroom (i.e., one with a water closet, a lavatory, and a bathtub or shower)

(f) if only half baths are provided, at least one half bath.

(7) Kitchens, Kitchenettes, or Wet Bars. When provided as accessory to a sleeping room or suite, kitchens, kitchenettes, wet bars, or similar amenities shall be accessible. Clear floor space for a front or parallel approach to cabinets, counters, sinks, and appliances shall be provided to comply with 4.2.4. Countertops and sinks shall be mounted at a maximum height of 34 in (865 mm) above the floor. At least fifty percent of shelf space in cabinets or

refrigerator/freezers shall be within the reach ranges of 4.2.5 or 4.2.6 and space shall be designed to allow for the operation of cabinet and/or appliance doors so that all cabinets and appliances are accessible and usable. Controls and operating mechanisms shall comply with 4.27.

(8) Sleeping room accommodations for persons with hearing impairments required by 9.1 and complying with 9.3 shall be provided in the accessible sleeping room or suite.

9.3 Sleeping Room Accommodations for Persons with Hearing Impairments. In sleeping rooms required to comply with this section, visual alarms shall be provided and shall comply with 4.28.4. Visual notification devices shall also be provided in sleeping rooms and suites to alert room occupants of incoming telephone calls and a door knock or bell. Notification devices shall not be connected to visual alarm signal appliances. Permanently installed telephones shall have volume controls.

9.4 Other Sleeping Rooms and Suites. Doors and doorways designed to allow passage into and within all sleeping units or other covered units shall comply with 4.13.5.

9.5 Transient Lodging in Homeless Shelters, Halfway Houses, Transient Group Homes, and Other Social Service Establishments.

9.5.1 New Construction. In new construction all public use and common use areas are required to be designed and constructed to comply with section 4. At least one of each type of amenity (such as washers, dryers and similar equipment installed for the use of occupants) in each common area shall be accessible and shall be located on an accessible route to any accessible unit or sleeping accommodation.

9.5.2 Alterations. (Reserved).

9.5.3. Accessible Sleeping Accommodations. (Reserved).

10. Transportation Facilities.

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10.1 General.

Every station, bus stop, bus stop pad, terminal, building or other fixed transportation facility, shall comply with the applicable provisions of 4.1 through 4.34, and the applicable provisions of this section.

Exception: The elevator exception in 4.1.3(5) does not apply to transportation facilities covered by title II of the ADA.

10.2 Bus Stops and Terminals.

10.2.1 New Construction.

(1) Bus stops, bays and other areas were a lift or ramp is to be deployed shall have a pad with a firm, stable surface; a minimum clear length of 72 inches, measured from the curb or vehicle roadway edge; and minimum clear width of 42 inches, measured parallel to the vehicle roadway; and shall be connected to the public way by an accessible route complying with 4.3 and 4.4

(2) Where provided, bus shelters shall be installed or positioned so as to permit a wheelchair or mobility aid user to enter from the public way and to reach a location, having a minimum clear floor area of 30 inches by 48 inches, entirely within the perimeter of the shelter. Such shelter shall be connected by an accessible route to the boarding area required by paragraph (1) of this section.

(3) Where provided, at least one route identification sign and permanent information for the use of the transportation system shall comply with 4.30.2, 4.30.3, and 4.30.5.

10.2.2 Bus Stop Positioning.

(1) Bus stop sites shall be chosen such that, to the maximum extent feasible, the area where lifts or ramps are to be deployed comply with section 10.2.1.

(2) If new route identification signs are provided, at least one shall comply with 4.30.2, 4.30.3, and 4.30.5.

10.3 Fixed Facilities and Stations.

10.3.1 New Construction.

New rapid rail, light rail, commuter rail, intercity bus, intercity rail, and automated guideway transit stations shall comply with the following provisions, as applicable:

(1) Elements such as ramps, elevators or other vertical circulation devices, fare vending or ticketing areas, and fare collection areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public.

(2) The circulation path, including an accessible entrance and an accessible route, for persons with disabilities shall, to the maximum extent feasible, coincide with the circulation path for the general public. Where the circulation path is different, signage shall be provided to show the accessible entrance and accessible route. Fare collection systems shall be on an accessible route.

(3) *Option 1:* Entrances to a station serving different transportation fixed routes or groups of fixed-routes shall also be accessible.

Option 2: Each entrance to a station which is more than 400 feet from an accessible entrance shall also be accessible.

Option 3: All entrances to stations shall be accessible.

Option 4: In lieu of compliance with 4.1, at least one entrance to each station shall be accessible.

(4) When direct connections to commercial, retail, or residential facilities are provided, the transportation entity shall provide an accessible entrance complying with 4.14 to each such direct connection and an accessible route complying with 4.3 to and from boarding platforms and each such direct connection, including all transportation system elements used by the public.

(5) Each entrance to a station shall have at least one sign identifying the station and the route or routes served, if applicable, complying with 4.30.4 and 4.30.6.

(6) Rapid rail, light rail, commuter rail, intercity rail and automated guideway transit stations shall have identification signs, complying with 4.30.2, 4.30.3, 4.30.5, and 4.30.8, at frequent intervals and clearly visible from within the vehicle on both sides. Station identification signs placed close to vehicle windows (i.e., on the side opposite from boarding) shall have the top of the highest letter or symbol below the top of the vehicle window and the bottom of the lowest letter or symbol above the horizontal mid-line of the vehicle window.

(7) Lists of stations, routes, or destinations served by the station and located on boarding areas and platforms or mezzanines shall comply with 4.30.2, 4.30.3, 4.30.5, and 4.30.8. Signs on platforms or boarding areas identifying the specific station shall comply with 4.30.4.

(8) Automatic fare vending, collection and adjustment (e.g., add-fare) systems shall permit utilization of the transportation system by persons with disabilities; shall comply with 4.34; and shall have control identification signage complying with 4.30.4. If self-service fare collection devices are provided for the general public, at least one such device for entering, and at least one such device for exiting, unless one device serves both functions, at each accessible entrance shall have a minimum clear opening of 32 inches wide; shall permit passage of a wheelchair; and shall have coin or card slots, and controls necessary for its operation complying with 4.27. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor.

(9) Boarding area and platform edges bordering a drop-off, not protected by platform screens, shall have a detectable warning, complying with 4.29, at least 36 inches wide, or ⅓ the width of the platform, whichever is less, running the full length of the platform drop-off. In interior stations, the detectable warning shall differ in resiliency or sound-on-cane-contact from the adjacent platform material.

(10) For rapid rail, light rail, commuter rail, intercity rail and automated guideway transit systems, the rail-to-platform height shall be coordinated with the vehicle floor height so that the vertical difference, measured when the vehicle is at rest, is within plus or minus ⅝ inch under all normal passenger load conditions. For rapid rail, light rail, commuter rail and intercity rail systems, the horizontal gap, measured when the vehicle is at rest, shall be no greater than 3 inches. For automated guideway transit systems, the horizontal gap shall be no greater than 1 inch.

Exception: In light rail systems operating on streets or pedestrian malls, and in commuter rail and intercity rail systems where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference requirements, mini-high platforms, car-borne or platform-mounted lifts, ramps or bridge plates, or similar manually deployed devices, meeting the applicable requirements of 34 CFR 1192.83, 1192.95 or 1192.125 [proposed elsewhere in this issue of the **Federal Register**] shall suffice.

(11) Stations shall not be designed or constructed so as to require persons with disabilities to board and alight a vehicle at a location other than the one used by the general public.

(12) Illumination levels in the areas where signage is located shall comply with 4.30.8. Lighting along accessible routes and in accessible spaces shall be of a type and configuration to provide uniform illumination.

(13) Where public telephones are provided, in addition to the requirements of 4.31, a public telecommunications display device or telecommunications device for the deaf

(TDD) shall be provided at each entrance. Where mezzanines and boarding platforms are on different levels, it is recommended that at least one accessible public telephone be provided on each.

(14) Where crossing tracks is necessary to reach boarding platforms, the route surface shall be level and flush with the rail top at the outer edge and shall have only the minimum feasible gap on the inner edge of each rail to permit passage of wheel flanges. Where this is not feasible, an above-grade or below-grade accessible route shall be provided.

(15) Where public address systems are provided to convey information to persons in terminals, stations, or fixed facilities, a means of conveying the same or equivalent information to persons who are deaf or hearing impaired shall be provided.

(16) Where clocks are provided they shall comply with 4.30.1, 4.30.2, 4.30.3, 4.30.5, and 4.30.8.

(17) Where provided in subways, escalators shall have a minimum clear width of 32 inches. At the top and bottom of each escalator run, at least two contiguous treads shall be level beyond the comb plate, before risersd begin to form. Each tread shall have a visually contrasting band defining the edge of the tread. The edge of the tread shall be apparent from both ascending and descending directions.

(18) Where provided, elevators shall be glazed or have transparent panels to allow an unobstructed view both in to and out of the car. Elevators shall comply with 4.10.

Exception: Elevator cars with a clear floor area in which a 60 inch diameter circle can be inscribed may be substituted for the minimum car dimensions of 4.10, Fig. 22.

(19) Where provided, ticketing areas shall permit persons with disabilities to obtain a ticket and check baggage. Space in front of counters shall comply with 4.2 and 4.3 and counters shall comply with 7.2.

(20) Where provided, baggage check-in and retrieval systems shall be on an accessible route complying with 4.3, and shall have space immediately adjacent complying with 4.2. If unattended security barriers are provided, at least one gate shall comply with 4.13. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor.

10.3.2 Existing Facilities: Key Stations.

(1) Rapid, light and commuter rail key stations, as defined under criteria established by the Department of Transportation in 49 CFR part 37, and intercity rail stations shall provide at least one accessible route from an accessible entrance to those areas necessary for use of the transportation system.

(2) The accessible route required by 10.3.2(1) shall include the features specified in 10.3.1(1)–(2), (5)–(9), (12)–(16), and (18)–(20).

(3) Where technical infeasibility in existing stations requires the accessible route to lead from the public way to a paid area of the transit system, an accessible fare collection system, complying with 10.3.1(8), shall be provided along such accessible route.

(4) New direct connections to commercial or retail facilities shall comply with 10.3.1(4).

10.3.3 Existing Facilities: Alterations. [Reserved]

10.4 Airports.

10.4.1 New Construction.

(1) Elements such as ramps, elevators or other vertical circulation devices, ticketing areas, security checkpoints, or passenger waiting areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public.

(2) The circulation path, including an accessible entrance and an accessible route, for persons with disabilities shall, to the maximum extent feasible, coincide with the circulation path for the general public. Where the circulation path is different, signage shall be provided to show the accessible entrance and accessible route.

(3) Ticketing areas shall permit persons with disabilities to obtain a ticket and check baggage. Space in front of counters shall comply with 4.2 and 4.3 and counters shall comply with 7.2.

(4) Where public telephones are provided, TDDs shall be provided in compliance with 4.1.3(17)(c) or one per concourse, whichever is greater.

(5) Baggage check-in and retrieval systems shall be on an accessible route complying with 4.3, and shall have space immediately adjacent complying with 4.2. If unattended security barriers are provided, at least one gate shall comply with 4.13. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor.

(6) Terminal information systems which broadcast information to the general public through a public address system shall provide a means to provide the same or equivalent information to persons who are deaf or hearing impaired. Such methods may include, but are not limited to, an assistive listening device complying with 4.33 and visual paging systems using video monitors and computer technology.

(7) Security Systems. [Reserved]

10.4.2 Existing Airports.

(1) When required by regulations issued by the Department of Transportation, existing airports shall provide at least one accessible route from an accessible entrance to those areas in which each carrier conducts activities related to the provision of air transportation.

(2) The accessible route required by 10.4.2(1) above shall include the features specified in 10.4.1 and at least one accessible restroom for each sex, or one unisex restroom, complying with 4.22 and 4.23.

10.5 Boat and Ferry Docks. [Reserved]

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APPENDIX

This appendix contains additional information that should help the designer to understand the minimum requirements of the standard or to design buildings or facilities for greater accessibility. The paragraph numbers correspond to the sections or paragraphs of the standard to which the material relates and are therefore not consecutive (for example, A4.2.1 contains additional information relevant to 4.2.1). Sections for which additional material appears in this appendix have been indicated by an asterisk.

A4.2 Space Allowances and Reach Ranges.

A4.2.1 Wheelchair Passage Width.

(1) Space Requirements for Wheelchairs. Most wheelchair users need a 30 in (760 mm) clear opening width for doorways, gates, and the like, when the latter are entered head-on. If the wheelchair user is unfamiliar with a building, if competing traffic is heavy, if sudden or frequent movements are needed, or if the wheelchair must be turned at an opening, then greater clear widths are needed. For most situations, the addition of an inch of leeway on either side is sufficient. Thus, a minimum clear width of 32 in (815 mm) will provide adequate clearance. However, when an opening or a restriction in a passageway is more than 24 in (610 mm) long, it is essentially a passageway and must be at least 36 in (915 mm) wide.

(2) Space Requirements for Use of Walking Aids. Although people who use walking aids can maneuver through clear width openings of 32 in (815 mm), they need 36 in (915 mm) wide passageways and walks for comfortable gaits. Crutch tips, often extending down at a wide angle, are a hazard in narrow passageways where they might not be seen by other pedestrians. Thus, the 36 in (915 mm) width provides a safety allowance both for the disabled person and for others.

(3) Space Requirements for Passing. Able-bodied people in winter clothing, walking straight ahead with arms swinging, need 32 in (815 mm) of width, which includes 2 in (50 mm) on either side for sway, and another 1 in (25 mm) tolerance on either side for clearing nearby objects or other pedestrians. Almost all wheelchair users and those who use walking aids can also manage within this 32 in (815 mm) width for short distances. Thus, two streams of traffic can pass in 64 in (1625 mm) in a comfortable flow. Sixty inches (1525 mm) provide a minimum width for a somewhat more restricted flow. If the clear width is less than 60 in (1525 mm), two wheelchair users will not be able to pass but will have to seek a wider place for passing. Forty-eight inches (1220 mm) is the minimum width needed for an ambulatory person to pass a nonambulatory or semiambulatory person. Within this 48 in (1220 mm) width, the ambulatory person will have to twist to pass a wheelchair user, a person with a *service animal* or a semiambulatory person. There will be little leeway for swaying or missteps (see Fig. A1).

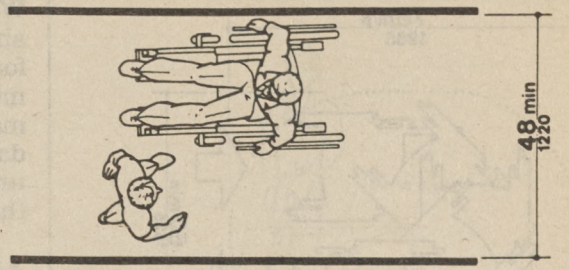


Fig. A1
Minimum Passage Width for One Wheelchair and One Ambulatory Person

A4.2.3 Wheelchair Turning Space. *These guidelines specify* a minimum space of 60 in (1525 mm) diameter for a pivoting 180-degree turn of a wheelchair. This space is usually satisfactory for turning around, but many people will not be able to turn without repeated tries and bumping into surrounding objects. The space shown in Fig. A2 will allow most wheelchair users to complete U-turns without difficulty.

A4.2 Space Allowances and Reach Ranges

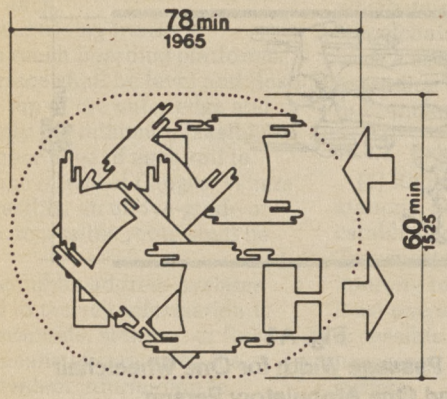
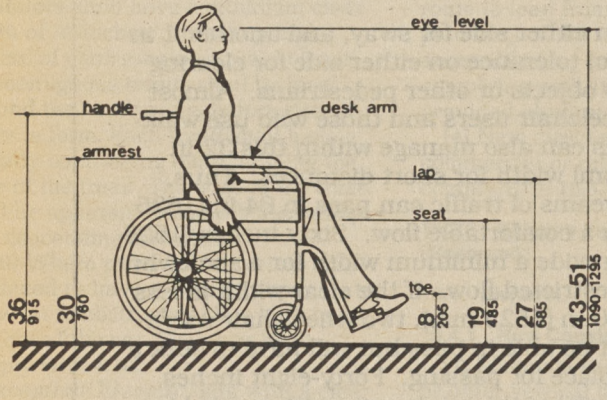
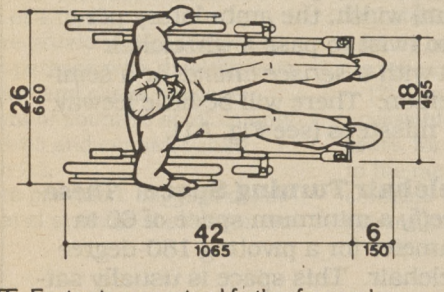


Fig. A2
Space Needed for Smooth U-Turn in a Wheelchair





NOTE: Footrests may extend further for very large people.

Fig. A3
Dimensions of Adult-Sized Wheelchairs

A4.2.4 Clear Floor or Ground Space for Wheelchairs. The wheelchair and user shown in Fig. A3 represent typical dimensions for a large adult male. The space requirements in this *guideline* are based upon maneuvering clearances that will accommodate most wheelchairs. Fig. A3 provides a uniform reference for design not covered by this standard.

A4.2.5 & A4.2.6 Reach. *Reach ranges for persons seated in wheelchairs may be further clarified by Fig. A3(a). These drawings approximate in the plan view information shown in Fig. 4, 5, and 6 in other views.*

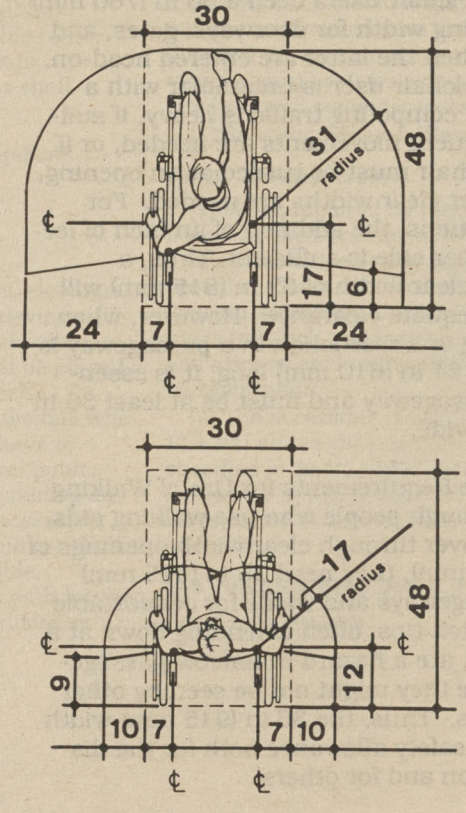


Fig. A3 (a)

A4.3 Accessible Route.

A4.3.1 General.

(1) Travel Distances. Many disabled people can move at only very slow speeds; for many, traveling 200 ft (61 m) could take about 2 minutes. This assumes a rate of about 1.5 ft/s (455 mm/s) on level ground. It also assumes that the traveler would move continuously. However, on trips over 100 ft (30 m), disabled people are apt to rest frequently, which substantially increases their trip times. Resting periods of 2 minutes for every 100 ft (30 m) can be used to estimate travel times for people with severely limited stamina. In inclement weather, slow progress and resting can greatly increase a disabled person's exposure to the elements.

(2) Sites. Level, indirect routes or those with running slopes lower than 1:20 can sometimes provide more convenience than direct routes with maximum allowable slopes or with ramps.

A4.3.10 Egress. In buildings where people *with disabilities* are regularly employed or are residents, an emergency management plan for their evacuation also plays an essential role in fire safety.

A4.4 Protruding Objects.

A4.4.1 General. *Service animals* are trained to recognize and avoid hazards. However, most people with severe impairments of vision use the long cane as an aid to mobility. The two principal cane techniques are the touch technique, where the cane arcs from side to side and touches points outside both shoulders; and the diagonal technique, where the cane is held in a stationary position diagonally across the body with the cane tip touching or just above the ground at a point outside one shoulder and the handle or grip extending to a point outside the other shoulder. The touch technique is used primarily in uncontrolled areas, while the diagonal technique is used primarily in certain limited, controlled, and familiar environments. Cane users are often trained to use both techniques.

Potential hazardous objects are noticed only if they fall within the detection range of canes (see Fig. A4). Visually impaired people walking toward an object can detect an overhang if its lowest surface is not higher than 27 in (685 mm). When walking alongside projecting objects, they cannot detect overhangs. Since proper cane and *service animal* techniques keep people away from the edge of a path or from walks, a slight overhang of no more than 4 in (100 mm) is not hazardous.

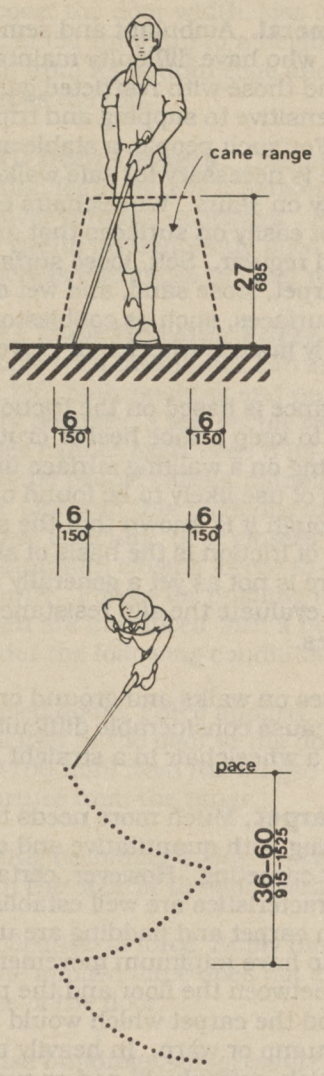


Fig. A4
Cane Technique

A4.5 Ground and Floor Surfaces.

A4.5.1 General. Ambulant and semiambulant people who have difficulty maintaining balance and those with restricted gaits are particularly sensitive to slipping and tripping hazards. For such people, a stable and regular surface is necessary for safe walking, particularly on stairs. Wheelchairs can be propelled most easily on surfaces that are hard, stable, and regular. Soft, loose surfaces such as shag carpet, loose sand, and wet clay, and irregular surfaces, such as cobblestones, can significantly impede wheelchair movement.

Slip resistance is based on the frictional force necessary to keep a shoe heel or crutch tip from slipping on a walking surface under the conditions of use likely to be found on the surface. Although it is known that the static coefficient of friction is the basis of slip resistance, there is not as yet a generally accepted method to evaluate the slip resistance of walking surfaces.

Cross slopes on walks and ground or floor surfaces can cause considerable difficulty in propelling a wheelchair in a straight line.

A4.5.3 Carpet. Much more needs to be done in developing both quantitative and qualitative criteria for carpeting. However, certain functional characteristics are well established. When both carpet and padding are used, it is desirable to have minimum movement (preferably none) between the floor and the pad and the pad and the carpet which would allow the carpet to hump or warp. In heavily trafficked areas, a thick, soft (plush) pad or cushion, particularly in combination with long carpet pile, makes it difficult for individuals in wheelchairs and those with other ambulatory disabilities to get about. This should not preclude their use in specific areas where traffic is light. Firm carpeting can be achieved through proper selection and combination of pad and carpet sometimes with the elimination of the pad or cushion, and with proper installation.

A4.6 Parking and Passenger Loading Zones.

A4.6.3 Parking Spaces. High-top vans, which disabled people or transportation services often use, require higher clearances in parking garages than automobiles. *When optional van spaces are provided within a garage, only the spaces themselves and a vehicle route to them require the specified clearances.*

A4.6.4 Signage. Signs designating parking places for disabled people can be seen from a driver's seat if the signs are mounted high enough above the ground and located at the front of a parking space.

A4.8 Ramps.

A4.8.1 General. Ramps are essential for wheelchair users if elevators or lifts are not available to connect different levels. However, some people who use walking aids have difficulty with ramps and prefer stairs.

A4.8.2 Slope and Rise. The ability to manage an incline is related to both its slope and its length. Wheelchair users with disabilities affecting arms or with low stamina have serious difficulty using inclines. Most ambulatory people and most people who use wheelchairs can manage a slope of 1:16. Many people cannot manage a slope of 1:12 for 30 ft (9 m). Many people who have difficulty negotiating very long ramps at relatively shallow slopes can manage very short ramps at steeper slopes.

A4.8.5 Handrails. The requirements for stair and ramp handrails in this standard are for adults. When children are principal users in a building or facility, a second set of handrails at an appropriate height can assist them and aid in preventing accidents.

A4.10 Elevators.

A4.10.6 Door Protective and Reopening Device. The required door reopening device would hold the door open for 20 seconds if the doorway remains obstructed. After 20 seconds, the door may begin to close. However, if designed in accordance with *ANSI/ASME A17.1-1984*, the door closing movement could still be stopped if a person or object exerts sufficient force at any point on the door edge.

A4.13 Doors

A4.10.7 Door and Signal Timing for Hall Calls. This paragraph allows variation in the location of call buttons, advance time for warning signals, and the door-holding period used to meet the time requirement

A4.10.12 Car Controls. Industry-wide standardization of elevator control panel design would make all elevators significantly more convenient for use by people with severe visual impairments.

In many cases, it will be possible to locate the highest control on elevator panels within 48 in (1220 mm) from the floor.

A4.10.13 Car Position Indicators. A special button may be provided that would activate the audible signal within the given elevator only for the desired trip, rather than maintaining the audible signal in constant operation.

A4.10.14 Emergency Communications. A device that requires no handset is easier to use by people who have difficulty reaching.

A4.11 Platform Lifts.

Platform lifts include porch lifts and other devices used for short-distance, vertical transportation of people in wheelchairs. At the present time, generally recognized safety standards for such lifts have not been developed. Care should be taken in selecting and installing lifts to ensure that they are free from hazards to users or to other individuals who may be in the vicinity where they are being operated.

A4.13 Doors.

A4.13.8 Thresholds at Doorways. Thresholds and surface height changes in doorways are particularly inconvenient for wheelchair users who also have low stamina or restrictions in arm movement because complex maneuvering is required to get over the level change while operating the door.

A4.13.9 Door Hardware. Some disabled persons must push against a door with their chair or walker to open it. Applied kickplates on doors with closers can reduce required maintenance by withstanding abuse from wheelchairs and canes. To be effective, they should cover the door width, less approximately 2 in (51 mm), up to a height of 16 in (405 mm) from its bottom edge and be centered across the top.

A4.13.10 Door Closers. Closers with delayed action features give a person more time to maneuver through doorways. They are particularly useful on frequently used interior doors such as entrances to toilet rooms.

A4.13.11 Door Opening Force. Although most people with disabilities can exert at least 5 lbf (22.2N), both pushing and pulling from a stationary position, a few people with severe disabilities cannot exert even 3 lbf (13.3N). Although some people cannot manage the allowable forces in this *guideline* and many others have difficulty, door closers must have certain minimum closing forces to close doors satisfactorily. Forces for pushing or pulling doors open are measured with a push-pull scale under the following conditions:

(1) Hinged doors: Force applied perpendicular to the door at the door opener or 30 in (760 mm) from the hinged side, whichever is farther from the hinge.

(2) Sliding or folding doors: Force applied parallel to the door at the door pull or latch.

(3) Application of force: Apply force gradually so that the applied force does not exceed the resistance of the door.

In high-rise buildings, air-pressure differentials may require a modification of this specification in order to meet the functional intent.

A4.13.12 Automatic Doors and Power-Assisted Doors. Sliding automatic doors do not need guard rails and are more convenient for wheelchair users and visually impaired people to use. If slowly opening automatic doors can be reactuated before their closing cycle is completed, they will be more convenient in busy doorways.

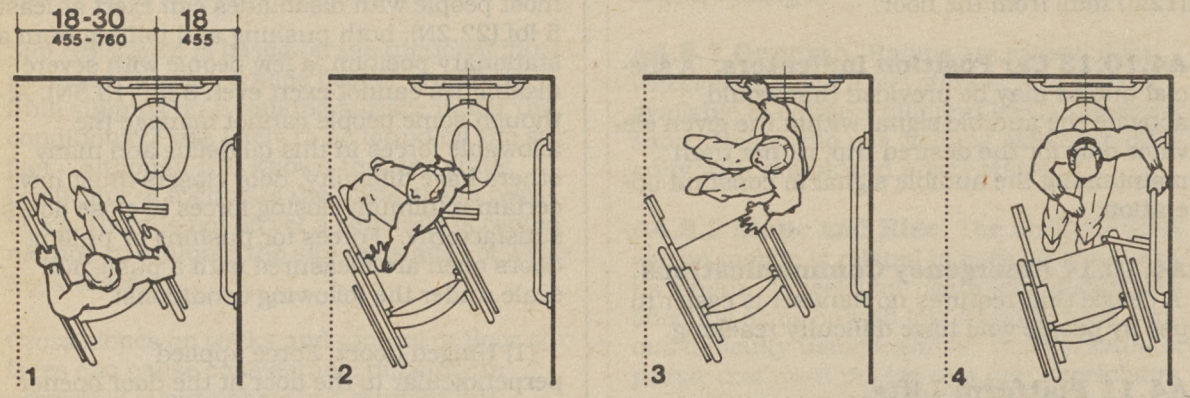
A4.15 Drinking Fountains and Water Coolers.

A4.15.2 Drinking fountains with two spouts can assist both handicapped people and those people who find it difficult to bend over.

A4.16 Water Closets.

A4.16.3 Height Preferences for toilet seat heights vary considerably among disabled people. Higher seat heights may be an advantage to some ambulatory disabled people but a disadvantage for wheelchair users and others. Toilet seats 18 in (455 mm) high seem to be a reasonable compromise. Thick seats and filler rings are available to adapt standard fixtures to these requirements.

A4.16.4 Grab Bars. Fig. A5(a) and (b) show the diagonal and side approaches most commonly used to transfer from a wheelchair to a



Takes transfer position, swings footrest out of the way, sets brakes.

Removes armrest, transfers.

Moves wheelchair out of the way, changes position (some people fold chair or pivot it 90° to the toilet).

Positions on toilet, releases brake.

(a)
Diagonal Approach



Takes transfer position, removes armrest, sets brakes.

Transfers.

Positions on toilet.

(b)
Side Approach

Fig. A5
Wheelchair Transfers

A 4.27 Controls and Operating Mechanisms

water closet Some wheelchair users can transfer from the front of the toilet while others use a 90-degree approach. Most people who use the two additional approaches can also use either the diagonal approach or the side approach.

A4.16.5 Flush Controls. Flush valves and related plumbing can be located behind walls or to the side of the toilet, or a toilet seat lid can be provided if plumbing fittings are directly behind the toilet seat Such designs reduce the chance of injury and imbalance caused by leaning back against the fittings. Flush controls for tank-type toilets have a standardized mounting location on the left side of the tank (facing the tank). Tanks can be obtained by special order with controls mounted on the right side. If administrative authorities require flush controls for flush valves to be located in a position that conflicts with the location of the rear grab bar, then that bar may be split or shifted toward the wide side of the toilet area.

A4.17 Toilet Stalls.

A4.17.5 Doors. To make it easier for wheelchair users to close toilet stall doors, doors can be provided with closers, spring hinges, or a pull bar mounted on the inside surface of the door near the hinge side.

A4.19 Lavatories and Mirrors.

A4.19.6 Mirrors. If mirrors are to be used by both ambulatory people and wheelchair users, then they must be at least 74 in (1880 mm) high at their topmost edge. A single full length mirror can accommodate all people, including children.

A4.21 Shower Stalls.

A4.21. 1 General. Shower stalls that are 36 in by 36 in (915 mm by 915 mm) wide provide additional safety to people who have difficulty maintaining balance because all grab bars and walls are within easy reach. Seated people use the walls of 36 in by 36 in (915 mm by 915 mm) showers for back support. Shower stalls that are 60 in (1525 mm) wide and have no curb may increase usability of a bathroom by wheelchair users because the shower area provides additional maneuvering space.

A4.23 Bathrooms, Bathing Facilities, and Shower Rooms.

A4.23.9 Medicine Cabinets. Other alternatives for storing medical and personal care items are very useful to disabled people. Shelves, drawers, and floormounted cabinets can be provided within the reach ranges of disabled people.

A4.26 Handrails, Grab Bars, and Tub and Shower Seats.

A4.26.1 General. Many disabled people rely heavily upon grab bars and handrails to maintain balance and prevent serious falls. Many people brace their forearms between supports and walls to give them more leverage and stability in maintaining balance or for lifting. The grab bar clearance of 1-1/2 in (38 mm) required in this *guideline* is a safety clearance to prevent injuries from arms slipping through the opening. It also provides adequate gripping room.

A4.26.2 Size and Spacing of Grab Bars and Handrails. This specification allows for alternate shapes of handrails as long as they allow an opposing grip similar to that provided by a circular section of 1-1/4 in to 1-1/2 in (32 mm to 38 mm).

A4.27 Controls and Operating Mechanisms.

A4.27.3 Height. *Fig. A6 further illustrates mandatory and advisory control mounting height provisions for typical equipment. Note distinction between built-in equipment (considered real property) and movable equipment (considered chattel and not covered by the Architectural Barriers Act of 1968).*

A4.28 Alarms.

A4.28.2 Audible Alarms. Audible emergency signals must have an intensity and frequency that can attract the attention of individuals who have partial hearing loss. People over 60 years of age generally have difficulty perceiving frequencies higher than 10,000 Hz.

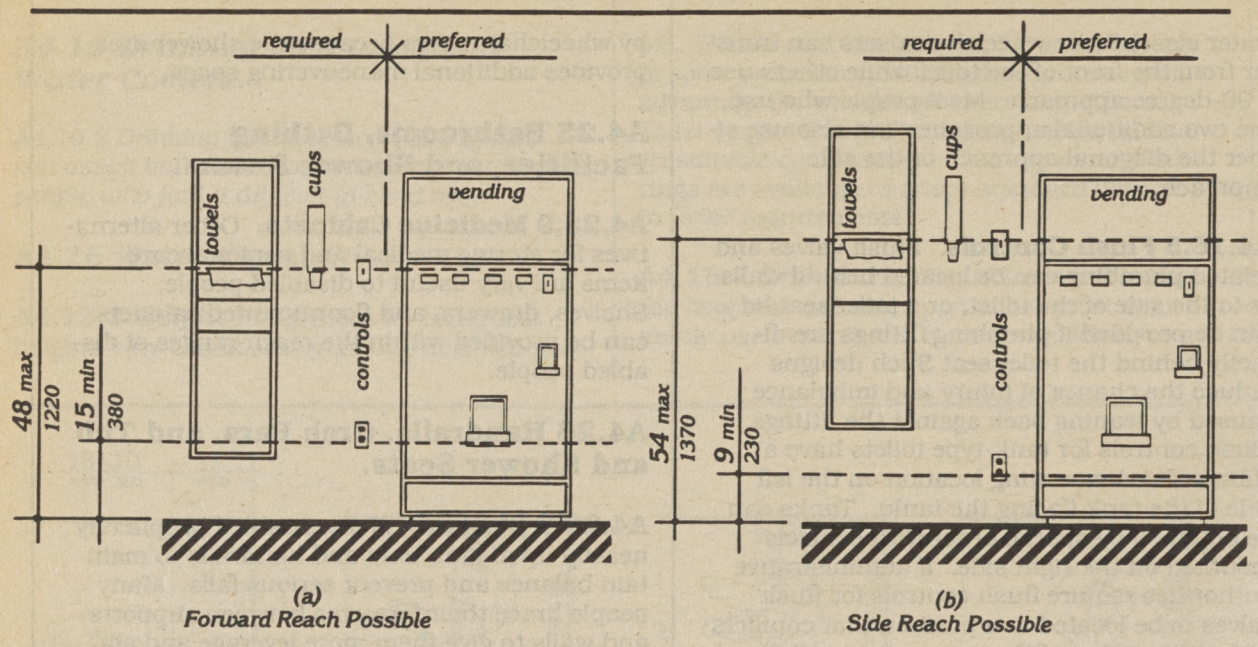


Fig. A6
Control Reach Limitations

A4.28.3 Visual Alarms. The specifications in this section do not preclude the use of zoned or coded alarm systems.

A4.28.4 Auxiliary Alarms. Locating visual emergency alarms in rooms where deaf individuals may work or reside alone can ensure that they will always be warned when an emergency alarm is activated. To be effective, such devices must be located and oriented so that they will spread signals and reflections throughout a space or raise the overall light level sharply.

A4.29 *Detectable* Warnings.

A4.29.3 *Detectable* Warnings on Doors to Hazardous Areas. Tactile signals for hand reception are useful if it is certain that the signals will be touched.

A4.29.7 Standardization. Too many tactile warnings or lack of standardization weakens their usefulness. Tactile signals can also be visual signals to *service animals*, since *animals* can be trained to respond to a large variety of visual cues.

A4.30 Signage.

A4.30.1 General. In building complexes where finding locations independently on a routine basis may be a necessity (for example, college campuses), tactile maps or prerecorded instructions can be very helpful to visually impaired people. Several maps and auditory instructions have been developed and tested for specific applications. The type of map or instructions used must be based on the information to be communicated, which depends highly on the type of buildings or users.

Landmarks that can easily be distinguished by visually impaired individuals are useful as orientation cues.

Such cues include changes in illumination level; bright colors, unique patterns, wall murals, location of special equipment or other architectural features (for example, an exterior view).

Many people with disabilities have limitations in movement of their heads and reduced peripheral vision.

A4.30 Signage

Thus, signage positioned perpendicular to the path of travel is easiest for them to notice. People can generally distinguish signage within an angle of 30 degrees to either side of the centerlines of their faces without moving their head.

A4.30.2 Character Proportion. The legibility of printed characters is a function of the viewing distance, character height the ratio of the stroke width to the height of the character, the contrast of color between character and background, and print font The size of characters must be based upon the intended viewing distance. A severely nearsighted person may have to be much closer to see a character of a given size accurately than a person with normal visual acuity.

A.4.30.4 Raised *and Brailled* Characters and *Pictorial Symbol Signs (Pictograms).* *The standard dimensions for literary Braille are as follows:*

Dot diameter	*.059 in.*
Inter-dot spacing	*.090 in.*
Horizontal separation between cells	*.241 in.*
Vertical separation between cells	*.395 in.*

Raised borders around raised characters may make them confusing to read unless the border is set far away from the characters. Accessible signage with descriptive materials about public buildings, monuments, and objects of cultural interest may not provide sufficiently detailed and meaningful information. Interpretive guides, audio tape devices, or other methods may be more effective in presenting such information.

A4.30.5 Finish and Contrast. The greatest readability is usually achieved through the use of light-colored characters or symbols on a dark background.

A4.31 Telephones.

A4.31.3 Mounting Height. In localities where the dial-tone first system is in operation, calls can be placed at a coin telephone through the operator without inserting coins. The operator button is located at a height of 46 in (1170 mm) if the coin slot of the telephone is at 54 in (1370 mm).

A generally available public telephone with a coin slot mounted lower on the equipment would allow universal installation of telephones at a height of 48 in (1220 mm) or less to all operable parts.

A4.31.5 Equipment for Hearing Impaired People. Other aids for people with hearing impairments are telephones, teleprinter, and other telephonic devices that can be used to transmit printed messages through telephone lines to a *TDD.*

A4.32 Seating, Tables, and Work Surfaces.

A4.32.4 Height of Work Surfaces. Different types of work require different work surface heights for comfort and optimal performance. Light detailed work such as writing requires a work surface close to elbow height for a standing person. Heavy manual work such as rolling dough requires a work surface height about 10 in (255 mm) below elbow height for a standing person. The principle of a high work surface height for light detailed work and a low work surface for heavy manual work also applies for seated persons; however, the limiting condition for seated manual work is clearance under the work surface.

Table A1 shows convenient work surface heights for seated persons. The great variety of heights for comfort and optimal performance indicates a need for alternatives or a compromise in height if people who stand and people who sit will be using the same counter area.

A4.33 Assembly Areas.

A4.33.2 Size of Wheelchair Locations. Spaces large enough for two wheelchairs allow people who are coming to a performance together to sit together.

A4.33.3 Placement of Wheelchair Locations. The location of wheelchair areas can be planned so that a variety of positions within the seating area are provided. This will allow choice in viewing and price categories.

A4.33.6 Placement of Listening Systems. A distance of 50 ft (15 m) allows a person to distinguish performers' facial expressions.

A4.33.7 Types of Listening Systems. A listening system that can be used from any seat in a seating area is the most flexible way to meet this specification. Earphone jacks with variable volume controls can benefit only people who have slight hearing losses and do not help people with hearing aids. At the present time, audio loops are the most feasible type of listening system for people who use hearing aids, but people without hearing aids or those with hearing aids not equipped with inductive pickups cannot use them. Loops can be portable and moved to various locations within a room. Moreover, for little cost they can serve a large area within a seating area. Radio frequency systems can be extremely effective and inexpensive. People without hearing aids can use them, but people with hearing aids need custom-designed equipment to use them as they are presently designed. If hearing aids had a jack to allow a by-pass of microphones, then radio frequency systems would be suitable for people with and without hearing aids. Some listening systems may be subject to interference from other equipment and feedback from hearing aids of people who are using the systems. Such interference can be controlled by careful engineering design that anticipates feedback and sources of interference in the surrounding area.

Table A1
Convenient Heights of Work Surfaces for Seated People[a]

Conditions of Use	Short Women in	Short Women mm	Tall Men in	Tall Men mm
Seated in a wheelchair:				
Manual work-				
Desk or removable armrests	26	660	30	760
Fixed, full-size armrests[b]	32[c]	815	32[c]	815
Light detailed work:				
Desk or removable armrests	29	735	34	865
Fixed, full-size armrests[b]	32[c]	815	34	865
Seated in a 16-in (405-mm) High chair:				
Manual work	26	660	27	685
Light detailed work	28	710	31	785

[a]All dimensions are based on a work-surface thickness of 1-1/2 in (38 mm) and a clearance of 1-1/2 in (38 mm) between legs and the underside of a work surface

[b]This type of wheelchair arm does not interfere with the positioning of a wheelchair under a work surface.

[c]This dimension is limited by the height of the armrests: a lower height would be preferable. Some people in this group prefer lower work surfaces, which require positioning the wheelchair back from the edge of the counter.

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Appendix C to Part 37—Where to Send Paratransit Plans

Region I, Urban Mass Transportation Administration, 206 Federal Plaza, suite 2940, New York, NY 10278.
Region II, Urban Mass Transportation Administration, Transportation Systems Center, Kendall Square, 55 Broadway, suite 921, Cambridge, MA 02142.
Region III, Urban Mass Transportation Administration, 841 Chestnut Street, suite 714, Philadelphia, PA 19107.
Region IV, Urban Mass Transportation Administration, suite 400, Atlanta, GA 30309.
Region V, Urban Mass Transportation Administration, 55 East Monroe Street, Room 1415, Chicago, IL 60603.
Region VI, Urban Mass Transportation Administration, 819 Taylor Street, suite 9A32, Ft. Worth, TX 76102.
Region VII, Urban Mass Transportation Administration, 6301 Rockville Road, suite 303, Kansas City, MO 64131.
Region VIII, Urban Mass Transportation Administration, Federal Office Building, 1961 Stout Street, 5th floor, Denver, CO 80294.
Region IX, Urban Mass Transportation Administration, 211 Main Street, room 1160, San Francisco, CA 94105.
Region X, Urban Mass Transportation Administration, 3142 Federal Building, 915 Second Avenue, Seattle, WA 98174.

Appendix D to Part 37—Certification of Equivalent Service

The (name of agency) certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Such service, when viewed in its entirety, is provided in the most integrated setting feasible and is equivalent with respect to:

(1) Response time;
(2) Fares;
(3) Geographic service area;
(4) Hours and days of service;
(5) Restrictions on trip purpose;
(6) Availability of information and reservation capability; and
(7) Constraints on capacity or service availability.

In accordance with 49 CFR 37.27, public entities operating demand responsive systems for the general public which receive financial assistance under sections 16(b)(2) or 18 of the Urban Mass Transportation Act) must file this certification with the appropriate state program office before procuring any inaccessible vehicle. Such public entities not receiving UMTA funds shall also file the certification with the appropriate state program office. Such public entities receiving UMTA funds under any other section of the UMT Act must file the certification with the appropriate UMTA regional office. This certification is valid for no longer than one year from its date of filing.

(signature)

(name of authorized official)

(title)

Appendix E to Part 37—Explanations and Interpretations of Regulatory Provisions [Reserved]

[FR Doc. 91–7775 Filed 3–29–91; 12:06 pm]
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federal register

Thursday
April 4, 1991

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 14, 25, and 202
Mortgagee Review Board; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 14, 25, and 202

[Docket No. R-91-1499; FR-2801-P-01]

RIN 2501-AB01

Mortgagee Review Board

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend existing part 25 of title 24, chapter II of the Code of Federal Regulations. The proposed rule would implement section 135 and portions of section 142 of the Department of Housing and Urban Development Reform Act of 1989, (Pub. L. 101-235, approved December 15, 1989), which added a new subsections (c) and (d) to section 202 of the National Housing Act of 1934 (hereinafter "National Housing Act"), and a new subsection (s) to section 203 of the National Housing Act. The proposed rule also would implement section 107 of the Department of Housing and Urban Development Reform Act of 1989 (which added a new section 536 to the National Housing Act of 1934) authorizing the Mortgagee Review Board to impose civil money penalties against mortgagees and lenders. Section 135 requires the Secretary to notify eight government or Federally chartered entities if the Secretary takes discretionary action to suspend or revoke the approval of any mortgagee to participate in any HUD/FHA mortgage insurance program. The new section 202(c) of the National Housing Act provides statutory authority for the establishment and operation of the Mortgagee Review Board within the Federal Housing Administration (FHA). The new section 202(d) of the National Housing Act requires the Government National Mortgage Association (GNMA) and FHA to coordinate withdrawal actions in their respective programs. Since these statutes apply to title I lenders as well as to mortgagees, technical conforming amendments must also be made to part 202 of title 24, Code of Federal Regulations. Another technical amendment would be made to part 14 of title 24, Code of Federal Regulations.

DATE: Comment due date: June 3, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

As convenience to commenters, the Rules Docket Clerk will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number). Only public comments of six or fewer *total* pages will be accepted via the FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk Voice, ((202) 708-2084) or TDD ((202) 708-3259). These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: For discussion of legal issues or matters of regulatory interpretation: Bruce S. Albright, Senior Trial Attorney, Inspector General and Administrative Proceedings Division, Department of Housing and Urban Development, room 10266, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-3200. For programmatic issues: William Heyman, Director, Office of Lender Activities and Land Sales Registration, Department of Housing and Urban Development, room 9146, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-1824. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502-0450. 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. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of 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, Attention: Desk Officer for HUD.

Background

Section 202(c) of the National Housing Act establishes within the Federal Housing Administration (FHA) a Mortgagee Review Board (Board) composed of five HUD officials at the Assistant Secretary level, and the Department's Chief Financial Officer. The Board is authorized to initiate administrative sanctions on HUD/FHA approved mortgagees found to be engaging in activities in violation of Federal Housing Administration requirements or the nondiscrimination requirements of the Equal Credit Opportunity Act, the Fair Housing Act, or Executive Order 11063.

The Board is empowered to issue a letter of reprimand, place a mortgagee on probation, or suspend or propose to withdraw the HUD/FHA approval of a mortgagee. The Board is required to follow statutory notice and hearing procedures when imposing administrative sanctions, except in the case of the issuance of a letter of reprimand. The Board also is authorized to enter into a settlement agreement with a mortgagee to resolve any outstanding grounds for an administrative action.

Section 202(c) further provides that the Board may request the Secretary of HUD to issue a temporary cease and desist order against a mortgagee where a violation of HUD/FHA requirements could result in a significant cost to the Government or the public. In addition, section 202(c) requires that the Board, in consultation with the FHA Advisory Board, must annually make appropriate recommendations for regulatory or statutory changes to ensure the long term financial strength of the FHA mortgage insurance funds, and adequate support for home mortgage credit. This section also requires the Department to publish in the **Federal Register** administrative actions taken by the Board against mortgagees.

The Department has an existing Mortgagee Review Board which was established pursuant to the Department's regulations at 24 CFR part 25. This rule would amend the existing regulations to incorporate the provisions of section 202(c) establishing by statute HUD's Mortgagee Review Board. This rule also would effect certain other revisions to part 25, to more clearly

delineate the type of offense which would result in administrative action; conform the Board's regulations to the Department's debarment and suspension regulations concerning the treatment of affiliates; provide for a majority vote of the Board in determining sanctions; provide that determinations of the Board may not be stayed pending the completion of any administrative hearing and issuance of a final determination; and that placing a mortgagee on probation or suspending a mortgagee's approval will become effective upon the determination of the Board to take such action, unless otherwise specified. Actions to withdraw a mortgagee's approval are proposed actions that become effective if no hearing is timely requested, or when an Administrative Law Judge issues a written determination upholding a withdrawal action. In addition, the non-discretionary acts which the Board may redelegate have been clarified.

The existing Board regulations authorized the Board to impose sanctions against title I lenders as well as mortgagees. The existing regulations were implemented under the Secretary's authority to issue such rules and regulations as may be necessary to carry out the programs of the Department. See 12 U.S.C. 1715b. and 42 U.S.C. 3535(d).

The Department has retained the Board's authority to impose sanctions on title I lenders in the proposed rule. The basis for retention is predicated on the long standing authority of the Secretary to make rules and regulations in order to carry out the Department's programs as provided in 12 U.S.C. 1715b. and 42 U.S.C. 3535(d). The Department needs to be able to continue the Board's oversight of title I lenders which has already been in existence for some time. Specific reference to title I lenders is contained in this proposed rule at §§ 25.2, 25.3(g), 25.9(dd), and 202.6.

This rule also would implement section 202(d) of the National Housing Act. Section 202(d) requires that whenever the Federal Housing Administration or the Government National Mortgage Association (GNMA) initiates proceedings that could lead to withdrawing a mortgagee from participation in their respective programs, such agency must provide the other with prompt notice. The agency receiving such notice is then required to conduct separately an investigation of the mortgagee and advise the other agency of its decision.

Additionally, this rule would implement section 135 of the Department of Housing and Urban Development Reform Act of 1989 (1989 Act). Under this section of the 1989 Act, the Department is required to notify various Federal agencies and other entities whenever it takes discretionary action to suspend or revoke the HUD/FHA approval of any mortgagee to participate in any mortgage insurance program under Title II of the National Housing Act. The specific provisions of 24 CFR part 25 which are proposed to be amended are as follows:

1. Section 25.2 would be revised to include the failure of a mortgagee to maintain the net worth in assets required by 24 CFR part 203 as a non-discretionary cause for action that may be redelegated by the Board. This section also would be amended to authorize the Board to take administrative action against mortgagees and their affiliates. This amendment would conform the Board's regulations to those governing suspensions and debarment actions against all other program participants under 24 CFR part 24.

2. Section 25.3 would be amended to include definitions of the terms mortgagee, affiliate, cease and desist order, lender, notice of charges, person, and reasonable cause for the issuance of a cease and desist order. The definitions of letter of reprimand, probation, suspension, and withdrawal have been amended to conform to the statutory language contained in the new subsections 202(c)(3) (A), (B), (C) and (D) of the National Housing Act.

3. Section 25.4 would be amended to add as statutory voting members of the Board, the Assistant Secretary for Fair Housing and Equal Opportunity (in cases involving violations of non-discrimination requirements), and the Chief Financial Officer of HUD. (The 1989 Act erroneously referred to the Assistant Secretary for Fair Housing and Equal Opportunity as the "Assistant Secretary for Fair Housing Enforcement.") This section would further be amended, as a regulatory change to the existing 24 CFR part 25, to include the Director of the Office of Lender Activities and Land Sales Registration, or its successor organization, as a non-voting advisor to the Board. In addition, this section would be amended to provide that four members of the Board constitute a quorum for purposes of voting on all Board business, and that any administrative action shall be determined by a majority vote of the quorum.

4. Section 25.5(a) would be amended to implement the statutory requirement that a Letter of Reprimand may be issued by the Board only once to a mortgagee without taking a probation, suspension, or withdrawal action. Section 25.5(b) would be amended to implement the provision of the statute which limits the duration of a probation action to a period of not more than six months. Section 25.5(c) would be amended to implement the statutory provisions that a suspension action shall last for not less than six months and that the mortgagee must be provided with notice and opportunity to respond prior to the Board's initiation of a suspension. This section also would be revised to provide that the Department shall not insure any mortgage originated by the suspended mortgagee. Section 25.5(d) would be amended to provide that a withdrawal of approval shall be for not less than one year. In addition, § 25.5(d) would be amended to provide that the date of any withdrawal action shall be effective 30 days after receipt of the notice by the mortgagee where there is no appeal; in cases where there is an appeal, the withdrawal is effective upon the written issuance of a determination by an Administration Law Judge affirming the Board's action.

Section 25.5(e), pertaining to settlements, would be amended to include the statutory provision that failure to comply with a settlement agreement shall be sufficient cause for suspension or withdrawal. A new paragraph (f) is proposed to be added to § 25.5, providing that where a mortgagee has a HUD/FHA approved affiliate, the Board also may impose a sanction against the affiliate.

5. Section 25.6 is proposed to be amended by having a new paragraph (a) which will implement the statutory requirements pertaining to the notice of violations the Board must give to the mortgagee. A new paragraph (b) would be added to govern the manner in which the mortgagee must respond to the Board's notice.

6. Sections 25.7 and 25.8 are proposed to be amended in order to implement the applicable statutory requirements. A new paragraph (d) is proposed to be added to § 25.8 to provide that where a hearing is to be held within 30 days, the hearing will be convened in Washington, DC. A new paragraph (e) is proposed to be added to § 25.8 in order to limit discovery at hearings regarding imposition of sanctions by the Board. The Department has recently been subject to discovery requests which have been overly broad. The proposed paragraph (e) is intended to eliminate the harassment and vexatious litigation which the Department has confronted.

7. Section 25.9 would be amended to delineate more clearly the types of

offenses that would result in administrative sanctions being imposed by the Board and to implement the statutory requirements that some sort of sanction must be imposed upon a finding that a basis for sanctions exists. The following violations of HUD/FHA requirements have been added to § 25.9 as enumerated grounds for an administrative action by the Board against a mortgagee because they represent recent specific problem areas in mortgagee activity: Failure to remit, or failure to remit timely, mortgage insurance premiums, late charges, or interest penalties to HUD; failure to perform properly underwriting functions in accordance with instructions and standards issued by HUD; failure to fund loans or misuse of loan proceeds; employing or retaining an officer, director, principal or employee who is subject to a Limited Denial of Participation (LDP) issued pursuant to 24 CFR part 24; the use of strawbuyers in conjunction with a HUD/FHA insured mortgage transaction; breach of a fiduciary duty owed by a mortgagee to any party in an insured mortgage transaction; and failure to pay any civil money penalty.

The addition of these enumerated grounds is in no way an indication that violation of Departmental requirements that are not specifically enumerated will not result in a sanction. Such violations have long been covered under other provisions (e.g., §§ 25.9 (g) and (j)), and will continue to result in sanctions. The Board has had the power to impose sanctions against Title I lenders under the existing regulations at part 202. However, to clarify this fact, a specific provision has been inserted in a new paragraph (dd). The introductory language of § 25.9 would be amended further to clarify the fact that the Board does not consider certain factors in determining which sanctions to apply where the Board has delegated its authority for nondiscretionary matters.

Section 25.9(o) has been amended to note the amendments to the Fair Housing Act. The Board has the authority to take an administrative action against a mortgagee for violations of the Fair Housing Act. However, the regulations do not propose to vest the Board with the authority to adjudicate the rights of aggrieved persons under the Fair Housing Act in the event a mortgagee is not in compliance with the Fair Housing Act.

8. Part 25 would be revised also by adding a new § 25.10 that would implement the statutory requirement that the Department publish in the **Federal Register** a description of, and the cause for, an administrative action by the Board against a mortgagee. The proposed rule provides that such publication will occur quarterly or more frequently.

9. Part 25 would be revised too by adding a new § 25.11 to implement section 135 of the 1989 Act. Section 135 requires that when the Department has taken any discretionary action to suspend or revoke the HUD/FHA approval of any mortgagee to participate in any mortgage insurance program under Title II of the National Housing Act, HUD shall provide prompt notice to the Secretary of Veterans Affairs; the Chief Executive Officer of the Federal National Mortgage Association; the Chief Executive Officer of the Federal Home Loan Mortgage Corporation; the Administrator of the Farmers Home Administration; the Comptroller of the Currency if the mortgagee is a national bank or district bank or a subsidiary or affiliate of such bank; the Board of Governors of the Federal Reserve System if the mortgagee is a State Bank that is a member of the Federal Reserve System, or a subsidiary or affiliate of such a bank, or a bank or bank holding company or a subsidiary or affiliate of such a company; the Board of Directors of the Federal Deposit Insurance Corporation if the mortgagee is a State Bank which is not a member of the Federal Reserve System or is a subsidiary or affiliate of such a bank; and the Director of the Office of Thrift Supervision, if the mortgagee is a Federal or State savings association or a subsidiary or affiliate of a savings association.

10. A further revision to part 25 is the addition of a new § 25.12 implementing the statutory authority of the Board to request that the Secretary of HUD issue a temporary cease and desist order against a mortgagee where it is determined that there is a reasonable cause to believe that a mortgagee is violating, has violated, or is about to violate, a law, rule, regulation, or any condition imposed in writing by the Secretary or the Board, and that such violation could result in significant cost to the Federal Government or the public. See section 202(c)(6)(A) of the National Housing Act. Authority to issue such cease and desist orders would be redelegated from the Secretary to the Chairperson of the Mortgagee Review Board.

The proposed regulation includes title I lenders as entities to which the Board may issue cease and desist orders. The existing Board regulations authorized the Board to take actions against title I lenders, and this policy is being continued in this proposed rule.

11. Part 25 would be revised further by adding a new § 25.13, which provides authority to the Board to impose civil money penalties against mortgagees and lenders pursuant to section 107 of the 1989 Act.

12. A new § 25.14 would be added to part 25 to implement section 202(d) of the National Housing Act, which requires that whenever the Federal Housing Administration or GNMA take action that could lead to withdrawing a mortgagee from participation in their respective programs, each agency must promptly notify the other, which must then conduct and complete its own investigation and provide notification to the other agency of its decision. If a mortgagee's approval is withdrawn from either agency's programs, the withdrawal decision is to be published in the **Federal Register.**

13. In a further revision to part 25 a new § 25.15 would be added to implement the statutory requirement that the Board, in consultation with the Federal Housing Administration Advisory Board, shall annually recommend to the Secretary of HUD such amendments to the Statutes or Regulations as the Board determines to be appropriate to ensure the long term financial strength of the Federal Housing Administration fund and the adequate support for home mortgage credit.

14. Part 25 would be revised also by adding a new § 25.16 which would provide that determinations of the Board may not be stayed by an Administrative Law Judge pending a final determination in connection with an administrative hearing requested by a mortgagee. This provision, while not specifically mandated by statute, is designed to protect the interests of the Department and the public where a mortgagee has been withdrawn, suspended, or placed on probation by the Board, after notice and opportunity to present its case to the Board, but prior to a final determination by a Hearing Officer. The Department believes that this provides a necessary safeguard against any future potential activities by a mortgagee that may place the Department or the public at further risk. This section would also provide that where an Administrative Law Judge issues a final determination in a matter involving a probation or suspension, and rules that there was no legal basis for the Board's decision to impose the sanction (i.e., the Board acted in an arbitrary and capricious manner), the Board's action is to be stayed pending an appeal, if any, by the Department to the Secretary.

15. Part 25 would be revised by adding a new § 25.17. Under 5 U.S.C. 554(d), agency judicial functions must be kept separate from prosecutorial and investigative functions. Because the General Counsel is a member of the Board, it is necessary to emphasize the separation of functions. This new section is to ensure that the separation of functions doctrine is followed in appeals of hearing determinations. The regulation makes it clear that while the functions are to be kept separate, the Office of General Counsel would not be precluded from appealing an Administrative Law Judge's decision and filing briefs and pleadings in conjunction with an appeal. In order to expedite the hearing process where appeals to the Secretary or Secretarial designee are made, the Department proposes a fifteen day deadline for the Secretary or designee to determine whether or not to accept a matter for review, and a forty-five day deadline for rendering a decision after the opposing parties file briefs for review.

16. Part 25 would be amended by adding a new § 25.18. This section has been included to describe the retroactive effect of this rule. This provision is based upon a similar provision in the nonprocurement debarment regulations, and has been included in the proposed Board regulation in order to effect consistency.

17. Section 202.6 would be amended to conform the administrative actions that may be brought against title I lenders to the revised procedures of the Board.

18. A technical amendment is proposed to be made to paragraph (a) of § 14.115. Because hearings appealing Board actions are now required by statute, the proceedings now come under the authority of the Administrative Procedure Act. The Equal Access to Justice Act provides, under limited circumstances, that a prevailing party is entitled to an award of attorneys fees and expenses in certain administrative proceedings. Hearings to appeal Board actions are adversary adjudications under the Administrative Procedure Act and thus are subject to the Equal Access to Justice Act. A new subparagraph (11) would be added to include Board actions pursuant to section 202(c) of the National Housing Act as coming under the authority of the Equal Access to Justice Act.

Findings and Other Matters

This rule would not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or Local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4331. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would implement statutory authority that is intended to protect the Department's programs from abusive practices, but it would have no adverse economic impact on small businesses.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule establishes an administrative regime for the prosecution of abuses of HUD programs but it has no impact on the family.

Executive Order 12612, Federalism

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 will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The rule's major effects are on individuals and businesses.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). Section 25.5(b), 25.5(d)(3)(ii), 25.6 (a) & (b), 25.8 (a) & (b), 25.12 (a) & (b), 25.13, and 25.17(a) of this rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Information collection requirement	Section of CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours	Average cost per respondent	Estimated annual costs	Form used
Periodic reporting to HUD or submission of internal or other audit.	§ 25.5(b)	6	2	12	16	192	($100/hr avg. Cost of Staff Time).	$19,200	No prescribed form
New application for approval.	§ 25.5(d)(3)(ii)						.....		HUD–92001 approved under 2502–0005.
Reply to notice of proposed administrative action.	§ 25.6 (a) & (b)	35	1	35	80	2,800	($100/hr avg. Cost of Staff Time).	280,000	No prescribed form

Information collection requirement	Section of CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours	Average cost per respondent	Estimated annual costs	Form used
Hearing request.	§ 25.12 (a) & (b)	12	1	12	1	12	($100/hr avg. Cost of Staff Time).	1,200	No prescribed form
Cease-and-desist order.	§ 25.12 (a) & (b)	5	1	5	1	5	($100/hr avg. Cost of Staff Time).	500	No prescribed form
Hearing requests civil money penalties.	§ 25.13	35	1	35	1	35	($100/hr avg. Cost of Staff Time).	3,500	No prescribed form
Appeal of Administrative Law Judge Determination.	§ 25.17(a)	12	1	12	16	192	($100/hr avg. Cost of Staff Time).	19,200	No prescribed form
Total Annual Hours and Estimated Annual Costs.				111		3,236	.....	$323,600	

List of Subjects

24 CFR Part 14

Equal access to justice; Lawyers; Claims.

24 CFR Part 25

Administrative practice and procedure, Mortgages, Organization and functions (government agencies).

24 CFR Part 202

Approval of lending institutions, Credit insurance, Administrative practice and procedure, Government contracts.

Accordingly, 24 CFR parts 14, 25 and 202 would be amended as follows:

PART 14—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN ADMINISTRATIVE PROCEEDINGS

1. The authority citation for part 14 would continue to read as follows:

Authority: Sec. 504(c)(1) of the Equal Access to Justice Act (5 U.S.C. 505(c)(1)); Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 14.115 would be amended by adding paragraph (a)(11) to read as follows:

§ 14.115 Proceedings covered.

(a) * * *

(11) Section 202(c) of the National Housing Act (12 U.S.C. 1708(c)) and 24 CFR part 25.

3. Part 25 would be revised to read as follows:

PART 25—MORTGAGEE REVIEW BOARD

Sec.
25.1 Scope of rules in this part.
25.2 Establishment of board.
25.3 Definitions.
25.4 Operation of the Mortgagee Review Board.
25.5 Administrative actions.
25.6 Notice of violation.
25.7 Notice of administrative action.
25.8 Hearings and hearing request.
25.9 Grounds for administrative action.
25.10 Publication in **Federal Register** of actions.
25.11 Notification to other agencies.
25.12 Cease and desist order.
25.13 Civil money penalties.
25.14 Coordination with GNMA.
25.15 Annual report.
25.16 Prohibition against modification of board orders.
25.17 Appeal to the secretary—separation of functions.
25.18 Retroactive application of board regulations.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d), Sections 202 (c) and (d), 203(s), 211 and 536 of the National Housing Act (12 U.S.C. 1708 (c) and (d), 1709(s), 1715b and 1734f–14).

§ 25.1 Scope of rules in this part.

The rules in this part are applicable to the operation of the Board and to proceedings arising from administrative actions of the Board.

§ 25.2 Establishment of Board.

The Mortgagee Review Board was established in the Federal Housing Administration, which is in the Office of the Assistant Secretary for Housing—Federal Housing Commissioner, by section 202(c)(1) of the National Housing Act of 1934, as added by section 142 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235. Except as limited by this part, the Mortgagee Review Board shall exercise all of the functions of the Secretary with respect to administrative actions against mortgagees and such other functions as are provided in this part, except the authority to review decisions and orders of an Administrative Law Judge. The Board may, in its discretion, approve the initiation of a suspension or debarment action against a mortgagee by any Suspending or Debarring Official under part 24 of this title. The Board shall have all powers necessary and incident to the performance of these functions. The Board may redelegate its authority to impose administrative sanctions on the grounds specified in §§ 25.9(e), (h) and (u), and to take all other nondiscretionary acts. With respect to sanctions imposed upon title I lenders, the Board may redelegate its authority to impose administrative sanctions on the grounds specified in sections 202.4(a)(9), 202.4(c)(1), and 202.4(c)(3) (as incorporated in section 202.6(b)(1)).

§ 25.3 Definitions.

Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

Administrative action. A letter of reprimand, an order of probation, a suspension, or a withdrawal of approval issued by the Board.

Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following any action under 24 CFR part 24 or 25 where the entity has the same or similar management, ownership, or principal employees as the entity against which action under part 24 or 25 was initiated.

Board. The Mortgagee Review Board.

Cease and desist order. A temporary order issued by the Secretary or his or her designee requiring the mortgagee to stop violations as set forth in the order, and to take affirmative action to prevent such violations, or the continuation of such violations pending completion of proceedings of the Board with respect to such violations.

Letter of reprimand. A letter issued by the Board that explains a violation or violations to the mortgagee and describes the actions the mortgagee should take to correct the violations.

Lender. A financial institution which is approved for credit insurance, holds a valid title I contract of insurance that has not been terminated by the Secretary, and is approved by the Secretary under 24 CFR part 202 to originate and purchase, and to hold, service, and sell title I loans insured under part 201. In matters involving the imposition of civil money penalties, this term also includes a financial institution whose title I contract of insurance has been terminated, but, with the Secretary's approval, has been permitted to hold, sell or continue to service title I insured loans held in its portfolio prior to the contract's termination.

Mortgagee. The original lender under the mortgage (as that term is defined at sections 201(a) and 207(a)(1) of the National Housing Act) and its successors and assigns as are approved by the Commissioner. As used in this part, reference to the term "mortgagee" also includes "affiliate" and "lender" as defined in this section.

Notice of charges. A notice, issued in conjunction with a cease and desist order of the Secretary pursuant to § 25.12, setting forth all statements and information that are required in a notice of administrative action issued pursuant to § 25.7.

Party. The Department of Housing and Urban Development or the mortgagee.

Person. Any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

Reasonable cause. Such grounds as to justify the issuance of a cease and desist order, founded upon circumstances sufficiently strong to warrant a reasonable person to believe that a violation has or will occur.

Probation. A period of time of up to six months during which a mortgagee is allowed under conditions as specified by the Board, to continue to participate in HUD/FHA mortgage insurance programs, while an evaluation is made of the mortgagee's compliance with HUD/FHA, Equal Credit Opportunity Act (ECOA), Fair Housing Act (42 U.S.C. 3601–3619), or Executive Order 11063 requirements, or an order of the Board.

Secretary. The Secretary of the Department of Housing and Urban Development or a person designated by the Secretary.

Suspension. The exclusion of the mortgagee from HUD/FHA mortgage insurance programs for a temporary period of time of not less than six months, pending completion of an audit, review, investigation, or other administrative or legal proceedings.

Withdrawal. The exclusion of a mortgagee from participation in HUD/FHA mortgage insurance programs for a specified period of time. The withdrawal shall be not less than one year, and, where the Board has determined that the violation is egregious or willful, the withdrawal shall be permanent.

§ 25.4 Operation of the mortgagee review board.

(a) *Members.* The Board consists of the following voting members: The Assistant Secretary for Housing-Federal Housing Commissioner who serves as chairperson; the General Counsel; the President of the Government National Mortgage Association (GNMA); the Assistant Secretary for Administration; the Chief Financial Officer of the Department; and, in cases involving violations of nondiscrimination requirements, the Assistant Secretary for Fair Housing and Equal Opportunity; or their designees.

(b) *Advisors.* The Inspector General or his or her designee, and the Director of the Office of Mortgagee Activities and Land Sales Registration (or such other position as may be assigned such duties), and such other persons as the Board may appoint, shall serve as nonvoting advisors to the Board.

(c) *Quorum.* Four members of the Board or their designees shall constitute a quorum.

(d) *Determination by the Board.* Any administrative action taken by the Board shall be determined by a majority vote of the quorum.

§ 25.5 Administrative actions.

When any report, audit, investigation or other information before the Board discloses that grounds for an administrative action against a mortgagee exist under § 25.9, the Board, depending upon the nature and extent of the violations, shall take one of the following actions:

(a) *Letter of reprimand.* The Board may issue a letter of reprimand to a mortgagee explaining the existence or occurrence of a violation and describing actions the mortgagee should take to bring and maintain its activities in conformity with all HUD/FHA requirements. The issuance of a letter of reprimand shall be effective upon service to the mortgagee in accordance with § 25.7. A letter of reprimand may only be issued once to a mortgagee without the Board's taking action under paragraph (b), (c) or (d) of this section. Failure of the mortgagee to comply with a directive in the letter of reprimand may result in any other administrative action under this part that the Board finds appropriate.

(b) *Probation.* The Board may issue an order placing a mortgagee on probation for a specified period of time, not to exceed six months, for the purpose of evaluating the mortgagee's compliance with HUD/FHA requirements, compliance with the Equal Credit Opportunity Act (ECOA), Fair Housing Act, Executive Order 11063, or an order of the Board. During a period of probation, the Board may impose reasonable additional requirements on the mortgagee to aid the Board in evaluating the mortgagee. Such additional requirements may include supervision of the mortgagee's activities by HUD/FHA, periodic reporting to HUD/FHA, or submission to HUD/FHA of internal audits, audits by an Independent Public Accountant, or other audits or such other provisions as are deemed appropriate by the Board. If the Board determines that a mortgagee has failed to comply with the terms of an order of probation or otherwise commits a violation of HUD/FHA requirements, Equal Credit Opportunity Act, the Fair Housing Act, or Executive Order 11063 requirements, the Board may take any other administrative action the Board determines appropriate. The placing of a mortgagee on probation shall be effective immediately upon issuance of notice by the Board.

(Approved by the Office of Management and Budget under control number 2502–0450)

(c) *Suspension*—(1) *General.* The Board may issue an order suspending a mortgagee's HUD/FHA approval temporarily if there exists adequate evidence of violation(s) under § 25.9, and if continuation of the mortgagee's HUD/FHA approval pending, or at the completion of, any audit, investigation, or other review, or other administrative or legal proceedings as may ensue, would not be in the public interest or in the best interests of the Department. Suspension shall be based upon adequate evidence.

(2) *Duration.* A suspension shall be for a specified period of time but not less than 6 months.

(3) *Effect.* During the period of suspension, the mortgagee is without HUD/FHA approval, and HUD will neither commit to insure nor endorse for insurance any mortgage originated by the suspended mortgagee.

(4) *Effective date of suspension.* The suspension of a mortgagee's approval shall be effective immediately upon issuance of notice by the Board.

(d) *Withdrawal.* (1) Where the Board makes a determination of a serious violation or a repeated violation by the mortgagee, the Board may issue an order proposing the withdrawal of the HUD/FHA approval of the mortgagee.

(2) *Duration.* A withdrawal shall be for a reasonable, specified period of time, not less than one year, commensurate with the seriousness of the ground(s) for withdrawal. A withdrawal shall be permanent where the Board has determined that the violation is egregious or willful.

(3) *Effect.* (i) Except as stated in the immediately following sentence, during the period of withdrawal, the mortgagee is without HUD/FHA approval, and HUD will neither comit to insure nor endorse for insurance any mortgage originated by the withdrawn mortgagee. Although withdrawal of approval will generally have the effect as set forth in the preceding sentence, the Board may limit the geographical extent of the withdrawal, or limit its scope to either the single family or multifamily activities of the withdrawn mortgagee.

(ii) Upon expiration of a stated period of withdrawal, the mortgagee may file a new application for approval with the Secretary under 24 CFR part 203.

(Approved by the Office of Management and Budget under control number 2502–0450)

(4) *Effective date of withdrawal.* The withdrawal of a mortgagee's approval shall take effect 30 days after the mortgagee receives the notice of proposed withdrawal from the Board, unless the mortgagee files a timely appeal. If the mortgagee appeals the proposed withdrawal and a hearing is held, withdrawal shall be effective upon the issuance of a written determination by an Administrative Law Judge affirming the withdrawal action by the Board.

(e) *Settlements.* The Board may at any time enter into a settlement agreement with a mortgagee to resolve any outstanding grounds for administrative action. Agreements may include, but are not limited to, provisions for cessation of any violation; correction or mitigation of the effects of any violation; repayment of sums of money wrongfully or incorrectly paid to the mortgagee by a mortgagor, a seller, or HUD; actions to collect sums of money wrongfully or incorrectly paid by the mortgagee to a third party; indemnification of HUD/FHA for mortgage insurance claims on mortgages originated in violation of HUD/FHA requirements; modification of the length of any penalty; implementation of a quality control plan that meets HUD's requirements or other corrective measures acceptable to the Board; or such other provisions as are deemed appropriate by the Board. Failure of a mortgagee to comply with a settlement agreement shall be sufficient cause for suspension or withdrawal.

(f) *Affiliates.* If the Board takes an administrative action against a mortgagee which has an affiliate that is also a HUD/FHA approved mortgagee, the Board may also impose an administrative sanction against the affiliate.

§ 25.6 Notice of violation.

(a) *General.* The Chairperson of the Board, or the Chairperson's designee, shall issue a written notice to the mortgagee at least thirty days before taking any probation, suspension, or proposed withdrawal action against a mortgagee. The notice shall state the specific violations that have been alleged, and shall direct the mortgagee to reply in writing to the Board within thirty days after receipt of the notice by the mortgagee. The notice shall also provide the address to which the response shall be sent. If the mortgagee fails to reply during such time period, the Board may make a determination without considering any comments of the mortgagee.

(Approved by the Office of Management and Budget under control number 2502–0450)

(b) *Mortgagee's response.* The mortgagee's response to the Board shall be in a format prescribed by the Secretary and shall not exceed 15 double spaced typewritten pages. The response shall include an Executive Summary, a statement of the facts surrounding the matter, an argument and a conclusion. A more lengthy submission, including documents and other exhibits, may be simultaneously submitted to Board staff for review.

(Approved by the Office of Management and Budget under control number 2502–0450)

§ 25.7 Notice of administrative action.

Whenever the Board takes an action to issue a letter of reprimand, place a mortgagee on probation, or to suspend or propose to withdraw a mortgagee's approval, the Board shall promptly notify the mortgagee in writing of the determination. Except for a letter of reprimand, the notice shall describe the nature and duration of the administrative action, shall specifically state the violations and shall set forth any findings of the Board. The notice shall inform the mortgagee of its right to a hearing pursuant to part 26 of this title and the manner and time in which to request a hearing, as required by § 25.8. The notice shall be served in accordance wtih § 26.15. A supplemental notice may be issued in the discretion of the Board to add or modify the reasons for the action.

§ 25.8 Hearings and hearing request.

(a) *Hearing request.* In the case of a probation, suspension or proposed withdrawal action, a mortgagee is entitled to request a hearing before an Administrative Law Judge to challenge the action. If, within 30 days of receiving the notice of administrative action, the mortgagee requests a hearing, there shall be a hearing on the record regarding the violations within 30 days of receiving the request from the mortgagee. The mortgagee may voluntarily agree to have the hearing held more than 30 days after such request is received by HUD.

(Approved by the Office of Management and Budget under control number 2502–0450)

(b) *Procedure for request.* The request for hearing shall be made in writing within 30 days of receipt of the notice of probation, suspension or withdrawal. The request shall be filed in accordance with § 26.15, addressed to the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address set out in the notice. The request for a hearing may be made via facsimile machine, telephone number (202) 619–8139. Failure to request a hearing within 30 days shall be deemed a waiver of the mortgagee's opportunity for hearing and a waiver of its right to contest the probation, suspension or proposed

withdrawal, which shall then become final.

(Approved by the Office of Management and Budget under control number 2502–0450)

(c) *Procedural rules.* Hearings to challenge a probation, suspension, or proposed withdrawal action shall be conducted according to the applicable rules of part 26, except as modified by this part. Because of stringent time deadlines, facsimile machine filing is encouraged, pursuant to the provisions regarding the use of facsimile filing set forth in 24 CFR 30.325(b)(3).

(d) *Hearing location.* Hearings, if held within the 30 day period of time set forth in paragraph (a) of this section, shall generally be held in Washington, DC, unless undue hardship is otherwise shown. In cases where undue hardship is shown, the Administrative Law Judge may order the hearing, or a bifurcation of the hearing, in a location other than Washington, DC.

(e) *Limitation of discovery.* Discovery shall be conducted in accordance with subpart E of part 26, except as modified by this part. Discovery shall be limited to exclude requests for answers to interrogatories, requests for admissions, and production of documents that (1) do not pertain to the appealing mortgagee; and (2) pertain to reviews or audits conducted by the Department, and sanctions imposed by the Board, on mortgagees other than the mortgagee which is a party to the pending administrative action. Because the hearing provided a mortgagee is a trial *de novo,* the members of the Board shall not be subject to being deposed.

§ 25.9 Grounds for administrative action.

One or more of the following violations by a mortgagee may result in administrative action by the Board under § 25.5. Except in cases where the Board's authority has been delegated pursuant to § 25.2, the Board will consider, among other factors, the seriousness and extent of the violations, the degree of mortgagee responsibility for the occurrences and any mitigating factors, in determining which sanction, if any, is appropriate. Any administrative action imposed under § 25.5 shall be based upon one or more of the following grounds:

(a) The transfer of an insured mortgage to a non-approved mortgagee, except pursuant to 24 CFR 203.433 or 203.435;

(b) The failure of a nonsupervised mortgagee to segregate all escrow funds received from mortgagors on account of ground rents, taxes, assessments, and insurance premiums, or to deposit such funds in a special account with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation or by the National Credit Union Administration except as otherwise provided in writing by the Federal Housing Commissioner;

(c) The use of escrow funds for which any purpose other than that for which they were received;

(d) The termination of a mortgagee's supervision by a governmental agency;

(e) The failure of a nonsupervised mortgagee to submit the required annual audit report of its financial condition prepared in accordance with instructions issued by the Secretary within 90 days of the close of its fiscal year or such longer period as the Assistant Secretary for Housing—Federal Housing Commissioner may authorize in writing prior to the expiration of 90 days;

(f) The payment by a mortgagee of a referral fee to any person or organization; or payment of any thing of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person, including but not limited to an attorney, escrow agent, title company, consultant, mortgage broker, seller, builder or real estate agent, if that person has received any other compensation from the mortgagor, the seller, the builder or any other person for services related to such transactions or from or related to the purchase or sale of the mortgaged property, except compensation paid for the actual performance of such services as may be approved by the Assistant Secretary for Housing—Federal Housing Commissioner;

(g) Failure to comply with any agreement, certification, undertaking, or condition of approval listed on either a mortgagee's application for approval or on an approved mortgagee's Branch Office notification;

(h) Failure of an approved mortgagee to meet or maintain the net worth in assets required by 24 CFR part 203;

(i) Failure or refusal of an approved mortgagee to comply with an order of the Mortgagee Review Board, the Secretary or hearing officer under this part;

(j) Violation of the requirements of any contract with the Department, or violation of the requirements set forth in any statute, regulation, handbook, mortgagee letter, or other written rule or instruction;

(k) Submission of false information to HUD in connection with any HUD/FHA insured mortgage transaction;

(l) Failure of a mortgagee to respond to inquiries from the Mortgagee Review Board;

(m) Indictment or conviction of a mortgagee or any of its officers, directors, principals or employees for an offense which reflects upon the responsibility, integrity, or ability of the mortgagee to participate in HUD/FHA programs as an approved mortgagee;

(n) Employing or retaining an officer, partner, director, principal, or employee at a time when such person was suspended, debarred, ineligible, or subject to a limited denial of participation under 24 CFR part 24 or otherwise prohibited from participation in HUD programs, where the mortgagee knew or should have known of the prohibition;

(o) Violation by an approved mortgagee of the nondiscrimination requirements of the Equal Credit Opportunity Act (15 U.S.C. 1691–1691f), Title VIII of the Civil Rights Act of 1968, as amended (Fair Housing Act, 42 U.S.C. 3601–3619), Executive Order 11063 (27 FR 11527), and all regulations issued pursuant thereto;

(p) Business practices which do not conform to generally accepted practices of prudent lenders or which demonstrate irresponsibility;

(q) Failure to cooperate with an audit or investigation by the Department's Office of Inspector General or an inquiry by HUD/FHA into the conduct of the mortgagee's HUD/FHA insured business or any other failure to provide information to the Secretary or a representative related to the conduct of the mortgagee's HUD/FHA business;

(r) Violation by an approved mortgagee of the requirements or prohibitions of the Real Estate Settlement Procedures Act, 12 U.S.C. 2601–2617;

(s) Without regard to the date of the insurance of the mortgage, failure to service an insured mortgage in accordance with the regulations and any other requirements of the Secretary which are in effect at the time the act or omission occurs;

(t) Failure to administer properly an assistance payment contract under section 235 of the National Housing Act;

(u) Failure to pay the application and annual fees required by 24 CFR 203.2(a)(11);

(v) The failure of a coinsuring mortgagee:

(1) Properly to perform underwriting, servicing or property disposition functions in accordance with instructions and standards issued by the Commissioner;

(2) To make full payment to an investing mortgagee as required by 24 CFR part 204;

(3) To discharge responsibilities under a contract for coinsurance;

(4) To comply with restrictions concerning the transfer of a coinsured mortgage to an agency not approved under 24 CFR part 250;

(5) To maintain additional net worth requirements, as applicable;

(w) Any other reasons the Board, Secretary or Hearing Officer, as appropriate, determine to be so serious as to justify an administrative sanction;

(x) Failure to remit, or timely remit, mortgage insurance premiums, late charges, or interest penalties to the Department;

(y) Failure to properly perform underwriting functions in accordance with instructions and standards issued by the Department;

(z) Failure to fund mortgage loans or any other misuse of mortgage loan proceeds;

(aa) Permitting the use of strawbuyer mortgagors in an insured mortgage transaction where the mortgagee knew or should have known of such use of strawbuyers;

(bb) Breach by the mortgagee of a fiduciary duty owed by it to any party, including GNMA and the holder of any mortgage-backed security guaranteed by GNMA, with respect to an insured mortgage transaction;

(cc) Breach by the mortgagee of a fiduciary duty owed by it to any party, including GNMA and the holder of any mortgage-backed security guaranteed by GNMA, with respect to an insured mortgage transaction.

(dd) Failure by a title I lender, in addition to the enumerated provisions in this section, as applicable, to comply with any provision contained in 24 CFR 202.6(b).

(ee) Failure to pay any civil money penalty, but only after all administrative appeals requested by the mortgagee have been exhausted.

§ 25.10 Publication in Federal Register of actions.

The Secretary shall publish in the **Federal Register** a description of, and the cause for, each administrative action taken by the Board against a mortgagee. Such publication shall be made quarterly or more frequently in the discretion of the Secretary.

§ 25.11 Notification to other agencies.

Whenever the Board has taken any discretionary action to suspend and/or propose to withdraw the approval of a mortgagee, the Secretary shall provide prompt notice of the action and a statement of the reasons for the action to the Secretary of Veterans Affairs; the chief executive officer of the Federal National Mortgage Association; the chief executive officer of the Federal Home Loan Mortgage Corporation; the Administrator of the Farmers Home Administration; the Comptroller of the Currency, if the mortgagee is a National Bank or District Bank or subsidiary or affiliate of such a bank; the Board of Governors of the Federal Reserve System, if the mortgagee is a State bank that is a member of the Federal Reserve System or a subsidiary or affiliate of such a bank, or a bank holding company or a subsidiary or affiliate of such a company; the Board of Directors of the Federal Deposit Insurance Corporation, if the mortgagee is a State bank that is not a member of the Federal Reserve System, or is a subsidiary or affiliate of such a bank; and the Director of the Office of Thrift Supervision, if the mortgagee is a Federal or State savings association or a subsidiary or affiliate of a savings association.

§ 25.12 Cease and desist order.

(a) *Issuance of order.* Whenever the Secretary, upon the request of the Board, determines that there is reasonable cause to believe that a mortgagee is violating, has violated, or is about to violate a law, rule, regulation, or any written condition imposed by the Secretary or the Board, and that such violation could result in significant cost to the Federal Government or to the public, the Secretary may issue a temporary order requiring the mortgagee to cease and desist from any such violation, and to take affirmative action to prevent such violation or a continuation of such violation pending completion of proceedings of the Board with respect to such violation. Each cease and desist order shall include a notice of charges and shall be effective upon service on the mortgagee. A cease and desist order shall remain effective and enforceable for a period not to exceed 30 days pending the completion of proceedings of the Board regarding the violation, unless the mortgagee obtains an injunction as described in paragraph (b) of this section. If, after receiving the order, the mortgagee requests a hearing, there shall be a hearing on the record regarding the violation. The opportunity for the hearing before an administrative law judge shall be provided for the mortgagee as soon as practicable, but no later than 20 days after the order has been served. The mortgagee's request for a hearing shall be filed with the Department within 10 days after the order has been served, otherwise the request shall be void. The request shall be filed with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address set out in the order; FAX number (202) 619–8139. Because of stringent time deadlines, facsimile machine filing is encouraged, pursuant to the provisions regarding the use of facsimile machine filing contained in 24 CFR 30.325(b)(3).

(Approved by the Office of Management and Budget under control number 2502–0450)

(b) *Application to U.S. District Court by Mortgagee.* Within ten days after the mortgagee receives the order, the mortgagee may apply to the United States District Court in the judicial district in which the home office of the mortgagee is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the mortgagee, and such court shall have jurisdiction to issue the injunction.

(Approved by the Office of Management and Budget under control number 2502–0450)

(c) *Application to U.S. District Court by HUD.* If the mortgagee violates, threatens to violate, or otherwise fails to obey a cease and desist order, the Secretary may apply to the United States District Court, or the United States Court of any territory, within the jurisdiction of which the home office of the mortgagee is located, for an injuction to enforce the order.

(d) *Special Definitions.* For the purposes of this section, the term "mortgagee" includes a branch office or subsidiary of a mortgagee, or a director, officer, employee, agent or other person participating in the conduct of the affairs of the mortgagee; and the term "home office" means whatever the mortgagee has shown as its primary business address in its application for HUD/FHA approval.

(e) *Redelegation.* The Secretary may redelegate authority to issue a cease and desist order to the Chairperson of the Board.

§ 25.13 Civil money penalties.

The Board is authorized pursuant to section 536 of the National Housing Act to impose civil money penalties on mortgagees and title I lenders, as set fourth in 24 CFR part 30. The violations for which a civil money penalty may be imposed are listed at § 30.320. Hearings to challenge the imposition of civil money penalties shall be conducted according to the applicable rules of part 30.

(Approved by the Office of Management and Budget under control number 2502–0450)

§ 25.14 Coordination with GNMA.

(a) *Notification to GNMA.* When the Board issues a notice of violation that could lead to withdrawing a mortgagee's approval, the Board shall:

(1) Notify GNMA in writing within 24 hours of the action taken;

(2) Provide GNMA with the factural basis for the action taken; and

(3) Publish the Board's decision in the Federal Register if the mortgagee's approval is withdrawn.

(b) *Notification by GNMA.* When GNMA notifies the Federal Housing Administration of an action that could lead to withdrawal of GNMA approval, the Board shall, within 60 days of receipt of such notice:

(1) Conduct and complete its own investigation;

(2) Provide GNMA written notification of the Board's decision and the factual basis for the decision; and

(3) If the Board withdraws the mortgagee's approval, publish its decision in the Federal Register.

§ 25.15 Annual report.

The Mortgagee Review Board, in consultation with the Federal Housing Administration Advisory Board, shall recommend annually to the Secretary amendments to statutes and regulations which the Board deems appropriate to ensure the long term financial strength of the Federal Housing Administration fund and adequate support for home mortgage credit.

§ 25.16 Prohibition against modification of board orders.

(a) *Policy.* The Board, before issuing orders, will carefully examine evidence and undertake deliberation before reaching a decision.

(b) *Modification of orders.* Notwithstanding any provision contained in 24 CFR part 26, pending a final determination of a matter brought before a Departmental Administrative Law Judge, the Administrative Law Judge shall not modify or otherwise disturb in any way an order of the Mortgagee Review Board.

(c) In cases involving probation or suspension actions where an Administrative Law Judge rules in a final determination that there was no legal basis for the Board's decision to impose the sanction, the Board's action shall be stayed pending an appeal, if any, to the Secretary.

§ 25.17 Appeal to secretary—separation of functions.

(a) *Separation of functions.* As provided under 24 CFR 26.25, a party may petition for review of a determination or order of an Administrative Law Judge. In order to ensure compliance with the Administrative Procedure Act, the following shall apply to appeals of determinations or orders regarding Board actions. The Office of General Counsel shall not provide legal advice to the Office of Administrative Law Judges, the Secretary or the Secretary's designee on any determination or order concerning a Board action which is pending review under 24 CFR 26.25. This does not prohibit the Office of General Counsel from initiating an appeal, and filing briefs and other pleadings or otherwise representing the Board in conjunction with an appeal.

(Approved by the Office of Management and Budget under control number 2502–0450)

(b) *Time period for secretarial review.* The Secretary or designee, within 15 days upon receipt of a request for review of the hearing officer's determination or order under § 26.25, shall issue a determination, in writing, granting or denying the request. The written determination of the Secretary or designee shall be issued within 45 days of receipt of the briefs filed by the opposing parties.

§ 25.18 Retroactive application of board regulations.

Limitations on participation in HUD mortgage insurance programs proposed or imposed prior to the effective date of these regulations under an ancillary procedure shall not be affected by this part. This part shall apply to sanctions initiated after the effective date of the Department of Housing and Urban Development Reform Act of 1989 (December 15, 1989) regardless of the date of the cause giving rise to the sanction.

PART 202—APPROVAL OF LENDING INSTITUTIONS UNDER TITLE I

4. The authority citation for part 202 would continue to read as follows:

Authority: Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)); title I, sec. 2, National Housing Act (12 U.S.C. 1702).

5. Section 202.6 would be amended by revising paragraphs (a) introductory text (c) and (d) to read as follows:

§ 202.6 Administrative action.

(a) *General.* The provisions of part 25 shall be applicable to a lender participating in the title I program. Administrative actions which may be applied are set forth in 24 CFR § 25.5. Civil money penalties may also be taken against title I lenders pursuant to 24 CFR 25.13 and part 30.

* * * * *

(c) *Notice, hearing and hearing requests.* In the case of a probation, suspension, or withdrawal action, a lender is entitled to notice and to request a hearing before an Administrative Law Judge to challenge the action, in accordance with the procedures in 24 CFR part 25. Hearings to challenge a probation, suspension, or withdrawal action shall be conducted in accordance with the applicable rules of 24 CFR part 26.

(d) *Settlement agreements.* The Board may at any time enter into a settlement agreement with a mortgagee to resolve any outstanding grounds for administrative actions. Agreements may include, but are not limited to, provisions for cessation of any violation; correction or mitigation of the effects of any violation; repayment of sums of money wrongfully or incorrectly paid to the lender by a borrower or by HUD; actions to collect sums of money wrongfully or incorrectly paid by the lender to a third party; indemnification of HUD for insurance claims on Title I loans originated in violation of HUD requirements; modification of any penalty; implementation of a quality control plan that meets HUD's requirements or other corrective measures acceptable to the Board; or such other provisions as deemed appropriate by the Board. Failure of a lender to comply with a settlement agreement shall be sufficient cause for suspension or withdrawal.

Dated: March 11, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91–7552 Filed 4–3–91; 8:45 am]

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Thursday
April 4, 1991

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 291

Single Family Property Disposition Program

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 291

[Docket No. R-91-1503; FR-2683-P-01]

RIN 2502-AE75

Single Family Property Disposition Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: Title II of the National Housing Act (the Act) authorizes HUD to insure mortgages for single family residences through the Federal Housing Administration (FHA) single family mortgage insurance program. The mortgages are insured through a revolving fund, which provides the money to pay insurance claims to lenders upon default of insured mortgages. The fund is replenished by insurance premiums, income from the investment of moneys held by the fund, and proceeds from the sales of homes that HUD acquires, either by foreclosures or voluntary transfers. The main purpose of the single family property disposition program is to reduce the inventory of HUD-acquired properties in a manner that ensures the maximum return to the mortgage insurance fund as quickly as possible through the sale of the properties at fair market value while simultaneously striving to preserve neighborhoods and communities, and to achieve the overall National Housing Goal of a "decent home and a suitable living environment for every American family."

This proposed rule describes HUD's existing policies and procedures for the disposition of HUD-acquired single family properties.

DATES: Comment due date: June 3, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this 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. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address. As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708–4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk on voice, (202) 708–2084 or TDD (202) 708–3259. (These are not toll-free numbers).

FOR FURTHER INFORMATION CONTACT: Jacqueline B. Campbell, Single Family Property Disposition Division, room 9172, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708–0740 or, for hearing and speech-impaired, (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements in this rule have been reviewed by the Office of Management and Budget under the Paperwork Reduction Act and assigned OMB approval numbers, which appear in the text of the proposed regulations.

I. Background

Title II of the National Housing Act (the Act) authorizes HUD to insure mortgages for single family residences through the Federal Housing Administration (FHA) single family mortgage insurance program. The mortgages are insured through a revolving fund, which provides the money to pay insurance claims to lenders upon default of insured mortgages. The fund is replenished by insurance premiums (*i.e.*, a fee mortgagors pay to obtain FHA insurance), income from the investment of moneys held by the fund, and proceeds from the sales of homes that HUD acquires, either by foreclosures or voluntary transfers.

The disposition program for single family properties, acquired by HUD in exchange for payment of an insurance claim, is authorized by section 204(g) of the Act. This proposed rule describes the standards and procedures under which HUD now operates the single family property disposition program. The rule would apply to the disposition of properties acquired by HUD through the FHA-insured mortgage program, as well as single family properties conveyed to the Secretary or in the possession of the Secretary as agent for the United States under other Federal laws or programs, except Real Estate Owned (REO) properties acquired under the Government National Mortgage Association (GNMA) Mortgage-Backed Securities program. The rule proposed today outlines the policies and procedures for both the sale and rental of HUD-acquired properties.

On January 11, 1990, HUD published an interim rule (24 CFR part 291, Subpart E) governing the disposition of HUD-acquired single family properties for use by the homeless (55 FR 1156). Public comments were requested and are now being considered for a final rule to be published in the near future. (Today's document also proposes to change the section numbering of the interim rule to conform with the section numbering of this proposed rule. Other sections of the interim rule, (*e.g.*, definitions) also may be revised or eliminated in the final rule for the homeless, to the extent today's proposed rule would make them redundant.)

Amendments to HUD's existing rule governing the conveyance of occupied properties (24 CFR 203.670—203.681) are also proposed in today's rule.

II. Proposed Single Family Property Disposition Rule

The main purpose of the single family property disposition program is to reduce the inventory of HUD-acquired properties in a manner that ensures the maximum return to the mortgage insurance fund as quickly as possible through the sale of the properties at fair market value. In fulfilling that purpose, the program also strives to preserve neighborhoods and communities and to achieve the overall National Housing Goal of a "decent home and a suitable living environment for every American family." Where either of the latter two goals would conflict with the Secretary's duty to protect the mortgage insurance fund for future homebuyers, the Secretary would give priority to protecting the fund.

In a statement on June 6, 1990, before the Senate Subcommittee on Housing and Urban Affairs, Secretary Jack Kemp addressed the financial status of FHA's principal insurance fund for mortgages on single family homes. The Secretary told the committee that, after an assessment of the actuarial soundness of the fund, a nationally known accounting firm concluded that the net worth of the fund has been steadily eroding in the last decade, from a net worth of $8 billion in 1979 to $2.6 billion at the end of fiscal year 1989. Moreover, each year's new business will lose money for FHA at the rate of $200

million. According to the Secretary's statement, the need to reform FHA and manage it properly is urgent if it is to continue to serve the American public in the 1990s. The main purpose of this rule—to maximize the return to the insurance fund—is critical to strengthening FHA and preserving it for future homebuyers.

The policies contained in the proposed rule are, in certain subject areas, necessarily flexible because of the differences in real estate markets where HUD-acquired properties are located throughout the United States. The property disposition program is carried out almost entirely by HUD field offices, which are familiar with the markets in their areas and operate the program according to the needs of their respective communities, while taking into consideration area market conditions. The proposed rule contains policies and procedures that are authorized for all field offices, although all of them may not be commonly practiced. Policies and procedures that are not discretionary or where field office discretion is limited are clearly stated in the proposed rule.

Disposition by Sale

In compliance with the Fair Housing Act and other Federal authorities, HUD does not discriminate in the sale of properties on the basis of race, color, religion, sex, national origin, familial status, age, or handicap. A former non-occupant mortgagor of an insured mortgage (whether the original mortgagor, an assumptor, or a person who purchased subject to the mortgage) who has defaulted on the mortgage is ineligible to repurchase the same property. The defaulting non-occupant mortgagor may not receive a benefit, after causing HUD to pay the insurance claim on the mortgage to the mortgagee.

Former mortgagors who occupy the property are eligible to repurchase the property, but are not offered the right of first refusal. Mortgagors who have defaulted on a mortgage are usually not in a position to obtain the necessary financing, and the sale of the property would be delayed while they search for financing if they are offered the right of first refusal. Tenants who are in occupancy would be offered the right of first refusal only where the tenant has a recognized ability to obtain financing and a good rent-paying history, and has made a request to HUD to be offered the right of first refusal. Additionally, tenants in occupancy would be offered the right of first refusal where required by State or local law.

HUD currently sells acquired properties in "as-is" condition, without repairs or warranties. HUD discontinued the practice of doing extensive refurbishing and repairs to properties before sale in the mid-1970s. First, while properties are on the market, they are vacant and subject to vandalism. In some cases, expensive repairs, paid for out of the insurance fund, were undone in a single act of vandalism. Secondly, HUD frequently found itself the victim of fraud by those who contracted to perform repairs. Repairs that supposedly had been done had to be repeated at extra expense and inconvenience to the buyers. The staff-intensive monitoring necessary to reduce the risk of fraud is prohibitive, considering the size of the staff in many HUD field offices. Finally, some purchasers of HUD-acquired properties plan to do extensive renovations. Repairs performed by HUD interfere with the renovation plans of purchasers, who prefer to pay a lower price for a property and make repairs at the same time they are renovating.

The list, or asking, price of a property is based on an estimate of its current fair market value. Properties entering HUD's inventory before October 1, 1990 were normally appraised by Area Management Brokers (AMBs), who are property managers who contracted with HUD to be responsible for the management of all HUD-acquired properties assigned to them in a field office jurisdiction. As part of their contractural duties, AMBs provided estimates of the value of properties, based on at least three comparable properties sold within the past six months in the same marketing area. All properties entering HUD's inventory after October 1, 1990, are appraised by real estate appraisers using nationally recognized industry standards for the appraisal of residential property. This change is anticipated to result in more accurate appraisals and is consistent with FHA's "up-front" mortgage business.

In estimating the current fair market value of a property, appraisers are required to consider the condition of the property, area market conditions, comparable sales, and HUD's need to dispose of the property within a reasonable time. Field offices may use their discretion whether to obtain new appraisals of any properties in HUD's inventory before October 1, 1990.

Properties are normally sold through local real estate brokers on a competitive bid basis. However, a field office may choose to invite real estate brokers experienced in property management to bid for an exclusive right to manage and list specified properties in a certain area. In determining whether to enter such an arrangement, a field office will consider its staff resources, the local market conditions, and the location of the properties. For example, if the local real estate market is slow or properties are scattered over a large area, such as in rural areas, a more concentrated effort by a firm with an exclusive listing may be more cost effective.

When purchasing property through the competitive bid process, a purchaser must submit a bid through a real estate broker. A purchaser may use a broker of his or her choice. (A field office's use of an exclusive listing contract with a broker does not affect a purchaser's right to use another broker of his or her choice to submit a bid.) A purchaser is entirely responsible for obtaining financing. If requested by the purchaser in the sales contract, HUD will pay all or a portion of the purchaser's financing and loan closing costs, as well as the broker's sales commission. The maximum amount that HUD will pay for closing costs may not exceed 6 percent of the purchase price, and the maximum amount for a sales commission may not exceed 6 percent. The percentage amount is determined by each field office as appropriate for the area.

HUD advertises properties for sale in area newspapers. The list price for a property is contained in the advertisement. Printed lists of properties may also be distributed to local real estate brokers, depending on the size of the area, number of brokers, and the practice of the field office. Lists are not made available to the general public on a regular or ongoing basis.

The bidding period is for 10 days following the newspaper advertisement, and all bids are opened simultaneously at the end of the bidding period. If a property fails to generate an acceptable bid during the 10-day period, it may remain on the market for an extended listing period. Bids are opened on a daily basis during the extended period until an acceptable bid is received.

Some field offices in areas with a soft real estate market have implemented "full price offer" programs to enable them to give a quicker response to offers. Those offices with full price offer programs open offers daily at a specific stated time during the 10-day bidding period. A full price offer may be accepted at any time during the 10-day period, and the bidding cancelled for that particular property.

An acceptable bid is the offer producing the greatest net return to HUD and otherwise complying with the offering's terms for that property. The net return is the amount remaining after subtracting from the bid price the dollar

amount a prospective purchaser requests HUD to pay for closing and financing costs, broker's commission, and, in the case of a property offered with a repair escrow, the amount of that escrow.

In determining whether to accept a bid, HUD does not give a preference to owner-occupant purchasers over investor purchasers. Rather, HUD accepts the highest bid offered. This comports with the main purpose of the program to reduce the inventory of HUD-acquired properties in a manner that ensures the maximum return to the mortgage insurance fund as quickly as possible. In the case of a tie bid, however, an owner-occupant purchaser is given priority over an investor purchaser. Between purchasers equally situated, an award is determined by drawing lots.

A bid must be accompanied by the required earnest money deposit in the form of a cashier's or certified check or money order. An earnest money deposit represents a pledge made by the purchaser to complete the transaction and will be credited to the purchaser at closing.

The amount of the required earnest money deposit is set by the field office, but may not be less than $500 or more than $2,000. A field office may use a percentage of the sales price, a step or sliding scale procedure, or a straight dollar amount. The deposit required by a field office depends on a variety of factors, such as comparable practice in the locality, the condition of the real estate market, the type of offers generally received, and the ability of the area's typical buyers to close the sale. If circumstances in an area change, the field office may modify the amount required for a deposit. However, real estate brokers in the area are notified of any modification.

Except for good cause, the earnest money deposit is subject to either total or partial forfeiture if the bid is accepted and the purchaser fails to close the sale. An owner-occupant purchaser is entitled to a full refund where there has been a recent death or serious illness in the immediate family, a loss of employment by the primary breadwinner, or, in the case of an insured sale, where HUD, or HUD's direct endorsement lender, determines that the purchaser is not an acceptable borrower for an FHA-insured mortgage. An owner-occupant purchaser is entitled to a 50 percent refund of the earnest money deposit where, despite good faith efforts, the purchaser is unable to obtain a mortgage loan from a recognized mortgage lender on a property offered without FHA mortgage insurance. An investor purchaser buying a property offered with FHA mortgage insurance is entitled to 50 percent refund where HUD, or the direct endorsement lender, determines that he or she is not an acceptable borrower. Investor purchasers of uninsured offerings are not entitled to any refund for failure to close.

In addition to the competitive bid sale procedure described above, properties are offered for sale by other methods. For example, if properties are sold through a contractor with an exclusive right in an area to sell HUD properties, they may not be subject to a ten-day bid period before HUD considers any offers from prospective purchasers. Properties are also sold by direct sales (*i.e.*, without advertising for bids) to governmental entities and private nonprofit organizations for use in other programs, such as for use by the homeless under subpart E of this part or for use by local governments under the Urban Homesteading program (24 CFR part 590).

Where there are large numbers of properties held in inventory for a long period of time, and other efforts to sell the properties have failed, HUD Headquarters may specifically authorize a field office to hold public auctions of properties. In addition, HUD field offices may occasionally sell properties in bulk packages to stimulate sales in slow markets, to reduce inventory quickly because of lack of HUD staff, or to sell low-priced properties that have been difficult to sell. The terms and conditions of bulk sales are announced in the public notices advertising the sales.

Sales closings are normally held 30 to 60 days from the date an offer is accepted by HUD, depending on the amount of time necessary in the community to obtain financing. When a scheduled closing cannot be met for reasons beyond the control of the purchaser (*e.g.*, the lender is still processing the loan, or the buyer is having difficulty obtaining the down payment but HUD is reasonably sure it will be successful), extensions are granted on a case-by-case basis for a non-refundable fee. Fees are set by the local field office, but may not be less than $10 a day or more than $25 a day. The amount charged by a field office depends on its individual circumstances, such as the average holding costs to HUD, the average sales price of property in the area, or whether the area has a high number of sales that fail to close. Extensions are granted for 15-day periods, with the purchaser credited with any unused portion of the fee if the closing occurs in fewer than 15 days.

Occupancy of the property by a purchaser before closing is normally not permitted, but may be authorized on a case-by-case basis when the purchaser would suffer an extreme hardship, where permission to occupy the property is necessary to meet competition, or where occupancy would protect the property against vandalism and theft. If occupancy is permitted solely to meet the needs of the purchaser, full market rent will be required and any risk of loss must be assumed by the purchaser. However, if occupancy is in the best interest of HUD, *i.e.*, protection from vandalism or theft, the property will be rented at a nominal rate.

Purchasers are entirely responsible for obtaining financing for the purchase of acquired property. HUD considers a sale, regardless of the financing program under which the property is eligible, to be an "all-cash" sale. HUD does not provide purchase money mortgages because of the burden of administering the mortgages, and the cost incurred when such mortgages default. HUD currently has three principal programs with respect to the financing of property, which are based upon the eligibility of the property: insured sale, insured sale with repair escrow, and uninsured sale.

Under the competitive sales program, owner-occupant purchasers who meet the income and credit requirements are eligible to buy property under the insured sales or insured sales with repair escrow programs, if the property meets the eligibility requirements for insured mortgages. Investor purchasers are eligible for the insured sales program, but are not eligible for the insured sales with repair escrow program. Section 143(b) of the 1989 Reform Act amended section 203(g) of the Act to eliminate private investor-owners from the Single Family Mortgage Insurance program. (HUD's final rule implementing section 143(b) was published August 24, 1990 (55 FR 34800).) However, section 223(c) of the Act authorizes the Secretary to insure mortgages executed in connection with the sale by HUD of any property acquired under the Act without regard to any other limitations or requirements contained in the Act. The Secretary has determined that eliminating investor purchasers from the insured sales program would frustrate the purpose of the property disposition program and would be a risk to the insurance fund. Therefore, investor purchasers continue to be eligible for the insured sales program when the mortgage is executed in connection with the sale of property under this program.

Properties sold under the insured sales program, in their present condition, meet the intent of the FHA Minimum Property Standards (MPS) for existing dwellings (*i.e.*, they are structurally sound, free of roof leaks, and have operable mechanical systems) and are eligible for mortgage insurance. By indicating that a property meets the "intent" of the MPS, HUD has every expectation that the property is still basically sound, but no warranty is intended. The property has been at least visually inspected and usually physically inspected, although it is not always possible to check each system.

Properties sold under the insured with repair escrow program are those that require repairs in an amount up to $5,000, as determined by HUD, to meet the intent of the MPS. Insured financing is available if a cash escrow is established with the lender to ensure the completion of repairs. Repairs are to be completed within 90 days after closing, unless HUD approves a longer time because completion has been delayed for reasons beyond the control of the purchaser. If the repairs are not completed within the specified time, or are not completed satisfactorily, the lender will apply the escrow amount to the outstanding principal balance of the mortgage, thus reducing its risk.

The uninsured sales program is for properties that, in their present condition, fail to qualify for either an insured sale or an insured with repair escrow sale. No mortgage insurance is available on these properties.

Lease Program

Although the overall policy of the property disposition program is to dispose of properties by sale, HUD leases properties under certain circumstances and programs. In addition to leasing to organizations for use by the homeless (interim rule published 55 FR 1156 (Jan. 11, 1990)), HUD leases acquired property when a closing is delayed at length; for protection of the property or to improve its marketability; or where the sales market has been exhausted. HUD also leases properties to disaster victims as temporary housing and to other government agencies, such as the Department of Defense and the Coast Guard for military families in areas where there are shortages or available housing.

The lease term and the amount of the rent vary, depending on the circumstances under which the property is leased. However, in all cases, occupancy is considered temporary, since the primary goal is to reduce the inventory and replenish the insurance fund.

III. Conveyance of Occupied Properties

When occupied property is conveyed to HUD by a mortgagee, the main purpose of the property disposition program—to reduce the inventory of acquired properties in a manner that ensures maximum return to the mortgage insurance fund—is frustrated. There may be a delay in marketing the property, resulting in extra holding costs to HUD. If the property is sold while occupied, its value is lowered, again with a loss to HUD. Therefore, HUD regulations permit mortgagees to convey occupied properties only under certain criteria (24 CFR 203.670–203.681). One criterion (§ 203.670(b)(1)) under which HUD will accept conveyance of occupied property is where an individual residing in the property is suffering from a temporary illness or injury that would be aggravated by the process of moving from the property. Under § 203.674(a), the period of occupancy due to temporary illness or injury is limited to three months. Under that current policy, properties occupied by persons with a long-term or permanent illness or injury are excluded from eligibility for conveyance. This exclusion creates personal hardships for occupants in those unfortunate circumstances. Therefore, HUD is proposing to amend §203.670(b)(1) to include long-term or permanent illness as a qualifying circumstance under which HUD would accept occupied conveyance. Rather than allowing automatic permanent occupancy or open-ended occupancy by ill or injured persons, §203.674(a) would also be amended to limit occupancy because of any illness or injury—temporary and long-term or permanent—to a reasonable time, to be determined by HUD on a case-by-case basis.

Under §203.670(b)(2), a second criterion under which HUD currently accepts conveyance of occupied property is when it is "in the Secretary's interest" to do so. Section 203.671 provides specific examples of what constitutes the Secretary's interest, one of which is when the number of Secretary-owned *vacant* properties in the residential area exceeds the number of properties acquired by the Secretary in that area within the past six months (§ 203.671(b)). The purpose of this criterion was to restrict occupied conveyances to those residential areas where there was a high number of unsold and unoccupied HUD-acquired properties. However, the policy is so restrictive that it limits occupied conveyances in soft market areas where sales are slow and significant inventory remains unsold for extended periods of time. HUD is, therefore, proposing to change this criterion to allow for occupied conveyance when the average time in inventory for HUD's unsold inventory in a residential area exceeds six months.

Finally, in some areas, State or local laws prohibit mortgagees from evicting a tenant from property on which a landlord-mortgagor has defaulted and an occupying tenant is making regular monthly rental payments to the mortgagor. At the same time, the regulations do not permit an occupied conveyance unless one of the criteria for continued occupancy in § 203.670 is met. As a consequence, the mortgagee cannot file a claim for the insurance benefits and convey the property to HUD. Therefore, this rule proposes an additional criterion that would allow the mortgagee to convey occupied property in situations where State or local laws prohibit the mortgagee from evicting an occupying tenant who is making regular monthly payments to a landlord-mortgagor, or prohibit eviction for other similar reasons beyond the control of the mortgagee.

V. Other Matters

This rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that this rule would not have

a potential significant impact on the formation, maintenance, and general well-being of the family and, thus, is not subject to review under that Order. The rule describes the standards and procedures under which HUD sells property acquired as a result of foreclosures on insured mortgages or under other Federal programs.

The General Counsel has also determined, as the designated official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under that Order. The rule would govern the manner in which HUD disposes of acquired properties.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities, because the program has been designed to dispose of properties with as little regulation as possible under existing law.

This rule was listed in the Department's Semiannual Agenda of Regulations published at 55 FR 44530, 44545, on October 29, 1990, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 203

Hawaiian natives, Home improvements, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 291

Community facilities, Homeless, Low and moderate income housing, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 24, chapter II, of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: Secs. 203, 204 and 211, National Housing Act (12 U.S.C. 1709, 1710, 1715b); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715(u)).

2. Section 203.670(b) would be amended by revising paragraph (b)(1); by redesignating existing paragraph (b)(2) as paragraph (b)(3); and by adding a new paragraph (b)(2) to read as follows:

§ 203.670 Conveyance of occupied property.

* * * * *

(b) * * *

(1) An individual residing in the property suffers from a temporary, permanent, or long-term illness or injury that would be aggravated by the process of moving from the property, and that the individual meets the eligibility criteria in § 203.674(a);

(2) State or local law prohibits the mortgagee from evicting a tenant residing in the property who is making regular monthly payments to the mortgagor, or prohibits eviction for other similar reasons beyond the control of the mortgagee; or

* * * * *

3. Section 203.671(b) would be revised to read as follows:

§ 203.671 Criteria for determining the Secretary's interest.

* * * * *

(b) The average time in inventory for HUD's unsold inventory in the residential area in which the property is located exceeds six months.

* * * * *

4. Section 203.674 (a) introductory text and (b) introductory text would be revised to read as follows:

§ 203.674 Eligibility for continued occupancy.

(a) Occupancy because of temporary, permanent, or long-term illness or injury of an individual residing in the property will be limited to a reasonable time, to be determined by the Secretary on a case-by-case basis, and will be permitted only if all the conditions in this paragraph (a) are met:

* * * * *

(b) An occupant who does not meet the illness or injury criteria in paragraph (a) of this section is eligible for continued occupancy only if all the conditions in this paragraph (b) are met:

* * * * *

5. Section 203.685 would be added, to read as follows:

§ 203.685 Waivers.

The Secretary may waive any requirement of this subpart that is not required by law, whenever it is determined that undue hardship would result from applying the requirement, or where application of the requirement would adversely affect the purposes of the program. Each waiver will be in writing and will be supported by documentation of the pertinent facts and grounds. The Secretary periodically will publish notice of granted waivers in the Federal Register.

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

6. The authority citation for part 291 would be revised to read as follows:

Authority: Secs. 203, 204, and 211, National Housing Act (12 U.S.C. 1709 and 1715b); sec. 2, Housing Act of 1949 (42 U.S.C. 1441); sec. 7, Housing and Urban Development Act of 1968 (42 U.S.C. 1551a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§§ 291.1, 291.5, 291.50, 291.100, 291.110, 291.120, 291.130, 291.140 [Redesignated as §§ 291.400, 291.405, 291.410, 291.415, 291.420, 291.425, 291.430, 291.435]

7. Subpart E of part 291 would be amended by redesignating §§ 291.1, 291.5, 291.50, 291.100, 291.110, 291.120, 291.130, and 291.140 as §§ 291.400, 291.405, 291.410, 291.415, 291.420, 291.425, 291.430, and 291.435, respectively.

8. Part 291 would be amended by adding subparts A, B, and C, to read as follows:

Subpart A—General Provisions

Sec.

291.1 Purpose and scope.
291.5 Definitions.
291.10 Waivers.

Subpart B—Disposition by Sale

Sec.

291.100 General policy.
291.105 Competitive sales procedure.
291.110 Other sales procedures.
291.115 Insured sales.
291.120 Insured sales with repair escrow.
291.125 Uninsured sales.
291.130 Closing.
291.135 Forfeiture of earnest money deposits.
291.140 Property damage after sale, before closing.
291.145 Occupancy before closing.
291.150 Sanctions against fraudulent purchase.

Subpart C—Rental of Acquired Property

291.200 General policy.
291.205 Conditions of occupancy.

Subpart A—General Provisions

§ 291.1 Purpose and scope.

(a) *Purpose.* (1) This part governs the disposition of one-to-four family properties that are acquired by HUD or are otherwise in HUD's custody. The purpose of the property disposition program is to reduce the inventory of acquired properties in a manner that maximizes the net return to the mortgage insurance funds while balancing the need to:

(i) Preserve and maintain residential areas and communities; and

(ii) Work toward the National Housing Goal of a decent home and a suitable living environment for every American family.

(2) Where achievement of the objectives in paragraph (a)(1)(i) and (ii) of this section has an adverse effect on the mortgage insurance fund, the Secretary will give first priority to the protection of the fund.

(b) *Nondiscrimination policy.* The following authorities apply to the administration of any activity under this part: the requirements of the Fair Housing Act, 42 U.S.C. 3601–19, and implementing regulations at 24 CFR parts 100, 109, and 110; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(c) *Applicability.* (1) Except as provided in paragraph (c)(2) of this section, this part applies to single family properties acquired by HUD or otherwise in HUD's possession as a result of:

(i) Foreclosure of an FHA-insured mortgage (title in the Secretary's name);

(ii) Foreclosure of a section 312 rehabilitation loan (title in the United States acting by and through the Secretary);

(iii) Foreclosure of a Secretary-held purchase money or assigned mortgage, or a deed in lieu of foreclosure (title in the Secretary's name);

(iv) Abandonment of a Secretary-held mortgage property pending foreclosure (possession under the terms of the mortgage held by HUD);

(v) Assignment from the Department of Defense of property it acquired under section 1013 (title remains vested in the United States);

(vi) Foreclosure of a title I Home Improvement Loan (title in the Secretary's name).

(2) This part does not apply to the disposition of any Real Estate Owned (REO) properties acquired under the Government National Mortgage Association (GNMA) Mortgage-Backed Securities program by VA "no-bid" foreclosed mortgages or foreclosed mortgages disclosed to be neither VA-guaranteed nor FHA-insured.

§ 291.5 Definitions.

As used in this part:

Competitive sale means a sale through a sealed bid process in competition with other bidders where properties have been publicly advertised for bids.

Closing agent means a qualified firm or person under contract to HUD to administer closings involving the sale of HUD-acquired single family properties.

Direct sale means a sale to a selected purchaser to the exclusion of all others without resorting to advertising for bids.

FHA means the Federal Housing Administration.

HUD means the Department of Housing and Urban Development.

Insured mortgage means a mortgage insured under the National Housing Act.

Investor purchaser means a purchaser who does not intend to use the property as his or her principal residence.

Owner-occupant purchaser means (1) a purchaser who intends to use the property as his or her principal residence; (2) a public entity, as provided in section 214 or 247 of the National Housing Act, or any other State or local government or an agency thereof; or, (3) a private nonprofit or public entity, as provided in section 221(h) or 235(j) of the National Housing Act, or other private nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 that intends to sell or lease the mortgaged property to low or moderate-income persons, or that purchases property for use as a facility for the homeless under subpart E of this part.

Secretary means the Secretary of the Department of Housing and Urban Development.

Single family property means a residence containing dwellings for one to four families.

§ 291.10 Waivers.

The Secretary may waive any requirement of this part that is not required by law, whenever it is determined that undue hardship would result from applying the requirement, or where application of the requirement would adversely affect the purposes of the property disposition program. Each waiver will be in writing and will be supported by documentation of the pertinent facts and grounds. The Secretary periodically will publish notice of granted waivers in the Federal Register.

Subpart B—Disposition by Sale

§ 291.100 General policy.

(a) *Qualified purchaser.* (1) Anyone, regardless of race, color, religion, sex, national origin, familial status, age, or handicap may offer to buy a HUD-owned property, except that:

(i) No member of or delegate to Congress is eligible to buy or benefit from a purchase of a HUD-owned property; and

(ii) No non-occupant mortgagor (whether an original mortgagor, assumptor, or a person who purchased subject to) of an insured mortgage who has defaulted, thereby causing HUD to pay an insurance claim on the mortgage, is eligible to repurchase the same property.

(2) Former mortgagors in occupancy who have defaulted on the mortgage will not be offered the right of first refusal to repurchase the same property. They may submit an offer, or bid, to purchase the property when it is publicly listed, which will be treated in the same manner as other offers received from other prospective purchasers during the listing period.

(3) Except as provided in paragraph (a)(4) of this section, tenants in occupancy will not be offered the right of first refusal to purchase the property. They may submit an offer, or bid, to purchase the property when it is publicly listed, which will be treated in the same manner as other offers received from other prospective purchasers during the listing period.

(4) Tenants in occupancy will be offered the right of first refusal to purchase the property where:

(i) The tenant has a recognized ability to acquire financing and a good rent-paying history, and has made a request to HUD to be offered the right of first refusal; or

(ii) State or local law requires that tenants be offered the right of first refusal.

(5) In accordance with § 291.410(c) of subpart E of this part, eligible properties in geographical areas designated by pre-approved applicants will be offered for a 10-day consideration and inspection period before being offered for sale to the general public.

(b) *List price.* (1) A list price, or "asking price," is assigned the property. The list price is based upon an appraisal conducted by an independent real estate appraiser using nationally recognized industry standards for the appraisal of residential property. Factors considered by the appraiser include:

(i) The condition of the property;

(ii) The real estate market in the area;

(iii) Comparable sales in the area; and

(iv) The need to dispose of the property within a reasonable time.

(2) Properties that fail to sell within 30 days after being offered for competitive bidding will be reanalyzed, and the Field Office may reduce the price.

(c) *Method of sale.* Properties are sold on an "as-is" basis, without repairs or warranties. The principal method of sale is the competitive sales procedure, as described in § 291.105. Where appropriate, the Secretary may utilize any of the other sales procedures described in § 291.110.

(d) *Financing.* (1) The purchaser is entirely responsible for obtaining financing for purchasing a property.

(2) Properties may be financed under the following programs:

(i) *Insured.* A property that meets the intent of the Minimum Property Standards (MPS) for existing dwellings, (*i.e.*, is structurally sound, free of roof leaks, with operable mechanical systems) will be offered for sale in "as-is" condition with mortgage insurance available, as described in § 291.115.

(ii) *Insured with repair escrow.* A property that requires no more than $5,000 for repairs to meet the intent of the MPS, as determined by the Secretary, will be offered for sale in "as-is" condition with mortgage insurance available, provided the mortgagor establishes a cash escrow to ensure the completion of the required repairs, as described in § 291.120.

(iii) *Uninsured.* A property that fails to qualify under either paragraph (d)(2) (i) or (ii) of this section will be offered for sale in "as-is" condition without mortgage insurance available, as described in § 291.125.

(e) *Environmental requirements and standards.* Sales under this part are subject to the environmental requirements and standards described in 24 CFR part 50, where applicable.

(f) *Flood insurance requirements.* (1) No property located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards will be eligible for an FHA-insured mortgage under the insured sales or insured sales with repair escrow method of sale unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(ii) Flood insurance is obtained and maintained in accordance with 24 CFR 203.16a.

(2) A current copy of the Policy Declarations form issued by the NFIP or by any property insurance company offering coverage under the NFIP must be provided to and retained by the lender.

(3) Flood insurance may be purchased from any licensed agent in the State in which the property is located.

(g) *Lead-based paint poisoning prevention.* Properties constructed before 1978 are subject to the lead-based paint poisoning prevention requirements contained in 24 CFR part 35 and 24 CFR part 200, subpart O.

(h) *Open listings.* Except as provided in paragraph (i) of this section, properties are sold on an open listing basis with participating real estate brokers. Any real estate broker who has agreed to comply with HUD requirements may participate in the sales program. Purchasers participating in the competitive sales program must submit bids through a participating broker.

(i) *Asset management and sales contracts.* (1) A field office may invite firms experienced in property management to bid competitively on one-year contracts that provide for an exclusive right to manage and sell specified properties in a given area. In determining whether to enter into an exclusive contract, the field office will consider its staff resources, local market conditions, and location of the properties. The contractor will provide a variety of management services to assist HUD in selling the properties, including advertising the properties in a manner approved by HUD, showing the properties to prospective purchasers, and submitting bids to HUD on behalf of prospective purchasers for acceptance or rejection.

(2) In areas where a broker has an exclusive right to list and sell properties, a purchaser may use a broker of his or her choice. The purchaser's broker must submit the bid to HUD through the exclusive broker.

§ 291.105 Competitive sales procedure.

(a) *General.* Properties are sold to the general public on a competitive bid basis through local real estate brokers. Properties are advertised in a newspaper of general circulation in the area in which they are located. If a property fails to generate an acceptable bid, or offer, during the 10-day bidding period, it will remain on the market for an extended listing period, as described in paragraph (f) of this section.

(b) *Net offer.* (1) If requested by the purchaser in the bid, HUD will pay all or a portion of the financing and loan closing costs and the broker's sales commission, not to exceed the percentage of the purchase price determined appropriate by the Secretary for the area. In no event will the amount for closing costs exceed 6 percent of the purchase price and the amount for broker's sales commission exceed 6 percent of the purchase price. The amount requested to be paid by HUD will be deducted from the amount bid for the property to determine the net offer. Where the actual financing and loan closing costs exceed the amount determined appropriate by the Secretary, the amount in excess must be paid by the purchaser and is not included in the deduction from the bid in determining the net offer.

(2) In the case of properties sold under the insured sales with repair escrow program, described in § 291.120, the repair escrow amount is also deducted from the bid to determine the net offer.

(c) *Acceptable bid.* HUD will accept the bid producing the greatest net return to HUD and otherwise meeting the terms of HUD's offering of the property, with priority given to owner-occupant purchasers in the case of a tie net offer. The greatest net return is calculated by subtracting from the bid price the dollar amounts for sales commission and any financing and closing costs that the purchaser expects HUD to pay, and the repair escrow amount, if applicable.

(d) *Bid period.* After properties are initially advertised, bids are accepted for a 10-day period, with all offers received during the 10 days considered to have been received simultaneously, except as described in paragraph (e) of this section. Offers received on a property before the 10-day bidding period begins will be returned. Offers received after the 10-day period will not be considered at the bid opening, but will be considered during the extended listing period if no acceptable bid was received during the 10-day period.

(e) *Full price offers.* HUD field offices that operate under a "full price offer" program open offers daily at a specified time during the 10-day period bidding period. If an offer for the full list price and otherwise meeting the terms of the offering is received, it will be accepted and the 10-day bid period cancelled.

(f) *Extended listing period.* Properties not sold at the bid opening will remain available for an extended listing period. All bids received on each day of the extended listing period will be considered as being received simultaneously, and will be opened together at the next scheduled daily bid opening. If no acceptable bids are received after a reasonable period of time, the property will be reanalyzed and relisted.

(g) *Bid requirements.* (1) All bids submitted, whether during the 10-day bid period or the extended listing period, must be in the form of a fully completed HUD–9548, Sales Contract, signed by both the submitting real estate broker and the prospective purchaser. The bid may be submitted with deductions from

the offering price, resulting in a net offer to HUD, as described in paragraph (b) of this section. If the purchase is to be an insured sale, a field office may also require that supporting exhibits for mortgage credit analysis accompany the initial submission of the bid.

(2) Bids must be placed in sealed envelopes marked with the property number, address, and return address of the broker. All bids not indicating that the purchaser will occupy the property will be considered as investor offers.

(3) Noncomplying bids will be returned to the broker with an explanation for the noncompliance decision and information about whether the property is still available.

(h) *Earnest money deposits.* (1) The amount of earnest money deposit required in the area in which the property is located is set by the field office, in an amount not less than $500 or more than $2,000. In determining the amount of earnest money deposits, a field office considers comparable practice in the locality, area real estate market conditions, the type of offers generally received, and the ability of the area's typical buyers to secure financing. The required earnest money deposit is available from the field office or participating real estate brokers.

(2) All bids must be accompanied by earnest money deposits in the form of a cashier's or certified check or money order, or a certification from the real estate broker that the earnest money has been deposited in the broker's escrow account. If a bid is accepted by HUD, the earnest money deposit will be credited to the purchaser at closing; if the bid is rejected, the earnest money deposit will be returned. Earnest money deposits are subject to total or partial forefeiture for failure to close a sale, as described in § 291.135.

(i) *Multiple bids.* Real estate brokers may submit unlimited numbers of bids on an individual property provided each bid is from a different prospective purchaser. If a purchaser submits multiple bids on the same property, only the bid producing the highest net return to HUD will be considered. If a prospective owner-occupant purchaser submits a bid on more than one property, the first of those bids that produces the greatest net return to HUD will be accepted and all other bids from that purchaser eliminated from consideration, unless the prospective purchaser has submitted the only acceptable bid on another property. When a prospective purchaser submits the only acceptable bid on a property, then that bid must be accepted and all other bids from that purchaser on any other properties eliminated from consideration.

(j) *Opening the bids.* (1) All sealed bids will remain sealed and safeguarded until the specified public opening date, which normally is the first business day after the 10-day listing period. The bids will be opened publicly at a time and place designated by the HUD field office.

(2) Each bid will be announced when opened, and acknowledgment made of the apparent highest net to HUD offer. Successful bidders will be notified through their real estate brokers by mail, telephone, or other means. Acceptance of a bid is final and effective only upon HUD's execution of the sales contract and mailing of a copy of the executed contract to the successful bidder or the bidder's agent.

(3) All bids not accepted will be promptly returned to the broker by mail. The earnest money deposit will also be returned, either by the field office or the broker, as applicable.

(k) *Counteroffers.* In cases where all bids received on a property are unacceptable, a field office may, after rejecting and returning all bids and earnest money deposits, notify all bidders or their brokers, including any bidders who have submitted unaccpetable bids during the extended listing period, that HUD would be willing to accept an offer equalling a predetermined net acceptable price. Bidders must submit an acceptable offer before the established bid cut-off period, to be determined by the field office. The highest acceptable offer received within the specified period of time, including any offer received from a bidder who did not submit a bid during the bid period, will be accepted, thus terminating the counteroffer negotiations. In case of identical bids, award will be determined by drawing lots.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0306, 2502–0059, and 2535–0093)

§ 291.110 Other sales procedures.

(a) *Direct sales to governmental entities and private nonprofit organizations.* (1) State and local governments, public agencies, and private nonprofit organizations may purchase properties on a direct sale basis, at a discount of 10 percent off the list price, for use in Urban Homesteading programs, by the homeless, or other local housing programs.

(b) *Direct sales to displaced persons.* (1) Properties eligible for insured financing are offered for direct sale, at a discount of 10 percent off the list price, to displaced persons who will occupy the properties. Properties offered will be only those in the general area in which displacement is occurring.

(2) *Displaced person* means:

(i) A legal occupant of any property being taken by government action;

(ii) A tenant forced to vacate because a recognized government body declares the building unfit for occupancy for reasons of health or safety; or

(iii) A person displaced by major disaster.

(c) *Razing for lot sale.* HUD will raze property and sell the vacant lot if required by local ordinance or agreement, or if it is determined to be in the best interest of the Secretary. As an alternative, HUD may sell the property with a requirement that the purchaser raze the property after the sale.

(d) *Bulk sales.* HUD may occasionally make groups of properties available for bulk sales in "as-is condition," without insured financing. Bulk sales of properties may be limited to governmental entities and private nonprofit organizations for a specific purpose. The terms and conditions for a particular bulk sale will be described fully in any public notice of the sale.

(e) *Section 203(k) financing.* HUD-acquired properties eligible for rehabilitation financing under section 203(k) of the National Housing Act, as described in 24 CFR 203.50 and 203.440 through 203.499, will be made available for sale at as-is value. For a property to be eligible for section 203(k) financing, the estimated cost of repairs must be at least $5,000.

(f) *Auctions.* HUD Headquarters may occasionally authorize a field office to sell properties at public auction. Terms and conditions of the auction sales will be announced in the public notices of the sales.

(Approved by the Office of Management and Budget under OMB control number 2502–0306)

§ 291.115 Insured sales.

The following apply to all sales with insured financing, including insured sales with repair escrow:

(a) *Underwriting standards.* In general, insured mortgages for property sold under this part are subject to all FHA underwriting standards contained in 24 CFR parts 200 and 203.

(b) *Mortgages.* (1) Insured sales may be financed without an appraisal requirement through any HUD-approved lender the purchaser chooses.

(2) For an owner-occupant purchaser, the mortgage amount is based on the bid price plus any allowable prepaids (*e.g.*, taxes) and financing or closing costs, up

to local maximum mortgage amounts. For investor purchasers, the mortgage amount is limited to 75 percent of the bid price for one-unit properties, and 85 percent for two- to four-unit properties, plus any allowable prepaids, up to local maximum mortgage amounts.

§ 291.120 Insured sales with repair escrow.

(a) *Eligible purchasers.* Purchasers of properties sold under the insured sales with repair escrow procedure must be owner-occupant purchasers. Investor owners may submit offers for eligible properties, as described in § 291.100(d)(2)(ii), but mortgage insurance will not be available.

(b) *Advertising property eligible for insured sales with repair escrow.* An advertisement for an eligible property will state the after-repair value of the property as the list price, the amount to be escrowed, and the unrepaired value of the property. The advertisement will also state where interested purchasers may obtain a list of the repairs required for mortgage insurance.

(c) *Repair escrow.* (1) The amount for repairs on eligible properties will be determined by HUD, but must be under $5,000. The purchaser will be required to establish an escrow account for 110 percent of the estimated repair cost.

(2) The repair escrow account will be established at closing with the lender, who is responsible for the inspection of the completed repairs.

(d) *Completion of repairs.* Unless completion has been delayed for reasons beyond the control of the purchaser and a longer time is approved by HUD, all repairs must be completed within 90 days of closing. Upon the satisfactory completion of repairs, the lender must disburse the escrow to compensate the purchaser or the contractor, as appropriate. If the actual cost of the repairs is less than the escrow amount, the balance in the escrow account will be applied to reduce the outstanding principal balance of the mortgage. If the escrow amount is inadequate, or if additional items of repair are discovered at a subsequent date, the purchaser must bear the additional cost. If the repairs are not completed, or not completed satisfactorily, the lender will apply the escrow amount to reduce the outstanding principal balance of the mortgage.

§ 291.125 Uninsured sales.

Properties sold under the uninsured sales program are sold in an unrepaired condition and do not, in their present condition, meet HUD's minimum standards for mortgage insurance.

§ 291.130 Closing.

(a) *Time allowed for closing the sale.* The number of days allowed to close the sale of a property is generally 30 to 60 days from the date of acceptance of the offer to purchase, and will be set by the field office depending on the amount of time necessary in the area to obtain financing.

(b) *Extensions.* (1) In the event a scheduled closing cannot be met for reasons beyond the control of the purchaser, an extension period of 15 days will be granted where HUD has reason to believe that the sale will close within a reasonable time.

(2) A request for an extension must be in writing, accompanied by the non-refundable free in an amount not less than $10 a day or more than $25 a day. The amount charged by a field office depends on circumstances in the area, such as the average holding costs to HUD, the average sales price of properties, and the number of sales that fail to close. Extensions will be granted in 15-day increments only. If a closing occurs in fewer than 15 days, the purchaser will be credited for any unused portion of the extension period.

(c) *Closing agent.* (1) HUD will provide a closing agent to administer the sale closing. The closing agent has an obligation to inform the purchaser fairly and accurately on matters pertaining to the sales closing, including providing information on the location and dates for closing, the amount of funds needed to close the sale, and any documents related to closing.

(2) The closing agent will perform the closing at no cost to the purchaser. The closing agent will be paid by HUD to conduct the closing in a manner specified by HUD. Although it may be legally acceptable in some jurisdictions for the closing agent to represent both purchaser and seller, purchasers may, at their own costs, obtain representation at closings if desired.

(3) The closing agents' functions include reviewing and ordering title information; preparing and recording deeds and related documents; explaining all closing papers and documents to the purchaser; administering requests for closing extensions; collecting and disbursing funds related to the sale, including wiring the net proceeds to HUD's account; reviewing for accuracy and forwarding appropriate closing documents to HUD; and representing HUD at closings conducted by third-party closers.

(d) *Taxes and other assessments on the property.* Taxes, utilities, and other assessments on the property will be prorated between HUD and the purchaser as of the date of the closing.

§ 291.135 Forfeiture of earnest money deposits.

(a) *Failure to close transaction.* The failure by a purchaser to close on the sale of property within the allowable time period, including any extensions granted by HUD, will result in the forfeiture of the earnest money deposit, except where the purchaser presents documentation to HUD that one of the special circumstances described in paragraphs (b) and (c) of this section has occurred.

(b) *Investor purchasers.* (1) The failure by a investor purchaser to close on an uninsured sale will result in forfeiture of the entire earnest money deposit.

(2) Fifty percent of the earnest money deposit on an insured sale will be returned to an investor purchaser where HUD determines that the purchaser is not an acceptable borrower.

(c) *Owner-occupant purchasers.* (1) The entire earnest money deposit will be returned to an owner-occupant purchaser who fails to close where, since the contract of sale was signed:

(i) There has been a death in the immediate family (contract holder, spouse, or children living in the same household);

(ii) There has been a recent serious illness in the immediate family that has resulted in significant medical expenses or substantial loss of income, thus adversely affecting the purchaser's financial ability to close the sale;

(iii) There has been a loss of job by one of the primary breadwinners; or

(iv) In the case of an insured sale, HUD determines that the purchaser is not an acceptable borrower.

(2) In those instances where, despite good faith efforts by the purchaser, there is an inability to obtain a mortgage loan from a recognized mortgage lender, 50 percent of the earnest money deposit will be returned.

§ 291.140 Property damage after sale, before closing.

(a) *Assumption of loss by HUD.* HUD assumes the risk of any damage or loss to the property occurring after acceptance of the sales contract and before the closing, provided the damage or loss is not the fault of the purchaser.

(b) *Insured sales.* For property sold under the insured sales program, any damage after the acceptance of the sales contract but before closing that causes the property to fail to meet the intent of the MPS may be authorized for immediate repair, at HUD's option, if HUD determines that repair is in its best

interest. If HUD chooses not to repair the property, the sale will be cancelled and the full amount of the earnest money deposit will be returned. If, after the damage, the property still meets the intent of the MPS, the purchaser has the option to accept the property as-is, with a purchase price adjustment at HUD's sole discretion, or to cancel the sale with a refund of the full amount of the earnest money deposit.

(c) *Uninsured sales.* For property sold under the uninsured sales program, any damage after the effective date of the sales contract but before closing will not be repaired. HUD may, at its sole discretion, reduce the sales price as a result of the damage. The purchaser has the option to cancel the sales contract, with all earnest money deposits refunded.

§ 291.145 Occupancy before closing.

(a) *General policy.* Occupancy of the property by the purchaser before closing is prohibited, except where authorized on a case-by-case basis under the following circumstances:

(1) When failure to permit occupancy would create an extreme hardship on the purchaser;

(2) Where permission to occupy is necessary to meet competition; or

(3) Where occupancy would protect against vandalism and theft.

(b) *Occupy under lease agreement.* (1) If occupancy before closing is permitted because the occupancy would protect the property against vandalism and theft, occupancy will be rent-free or at a nominal rate in exchange for caretaker services that the purchaser agrees to perform.

(2) If occupancy before closing is permitted solely to meet the needs of the purchaser, full market rent will be required, and the purchaser will be required to assume the risk of loss in the event there is damage to the property before closing.

§ 291.150 Sanctions against fraudulent purchase.

False certification by a purchaser concerning occupancy of single family properties financed by an insured mortgage is a violation of 18 U.S.C. 1001, which may result in the required prepayment of the mortgage in the amount of the difference between the downpayment made and the downpayment required if the loan had been processed as an investor purchaser loan, or in criminal prosecution.

Subpart C—Rental of Acquired Property

§ 291.200 General policy.

(a) *Policy.* HUD will lease acquired property only to comply with other designated HUD programs, or when the Secretary determines that it is in the interest of HUD, as follows:

(1) A sales closing is delayed at length;

(2) Occupancy is essential to prevent vandalism or rapid deterioration of the property;

(3) The inventory in an area exceeds sales market absorption capability for an extended period of time;

(4) The property is a two-to-four family dwelling and occupancy would improve marketability;

(5) The property is leased as a facility for the homeless under subpart E of this part;

(6) The property is leased as temporary housing for disaster victims; or

(7) The property is leased by other government agencies for defense, law enforcement, or other purposes.

(b) *Tenant selection.* In selecting tenants for any lease program, discrimination by race, color, religion, sex, national origin, age, familial status, or handicap is prohibited.

§ 291.205 Conditions of occupancy.

(a) *Lease term and rent.* All leases are month-to-month, except where leased under subpart E of this part or where leased to disaster victims. The amount of the rent is dependent on the circumstances under which the property is leased.

(b) *Continued occupancy.* (1) Occupancy of acquired property is temporary in all cases andd is subject to termination when necessary to facilitate preparing the property for sale and completing the sale.

(2) HUD will notify the occupant to vacate the property and, if necessary, will take appropriate eviction action, under the laws of the state in which the property is located, in any of the following situations:

(i) Failure of the tenant to execute a lease, or to comply with the lease;

(ii) Failure of the tenant to allow reasonable access to the property upon proper notice;

(iii) Necessity to prepare the property for sale; or

(iv) Assignment of the property by HUD to a different use or program.

Dated: March 6, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 91-7618 Filed 4-3-91 8:45 am]

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federal register

Thursday
April 4, 1991

Part V

Department of the Interior

Bureau of Indian Affairs

Plan for the Use of the Walker River Paiute Tribe Indian Judgment Funds in Docket 87-A (Railroad Claim) Before the United States Claims Court; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use of the Walker River Paiute Tribe Indian Judgment Funds in Docket 87–A (Railroad Claim) Before the United States Claims Court

March 11, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice. This Notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

EFFECTIVE DATE: This plan was effective on January 31, 1991.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Branch of Acknowledgment and Research, MS 2614–MIB; 1849 C Street, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on October 19, 1989, in satisfaction of the award granted to the Walker River Paiute Tribe before the United States Claims Court in Docket 87–A (Railroad Claim). The plan for the use and distribution of the funds was submitted to Congress with a letter dated September 20, 1990, and was received (as recorded in the Congressional Record) by the Senate on September 26, 1990, and by the House of Representatives on September 25, 1990. The plan became effective on January 31, 1991, as provided by the 1973 Act, as amended by Public Law 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

For the Use and Distribution of the Walker River Paiute Tribe Judgment Funds in Docket 87–A (Railroad Claim), before the United States Claims Court

The funds appropriated on October 19, 1989, in satisfaction of the award granted in Docket 87–A (Railroad Claim) to the Walker River Paiute Tribe before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows:

Per Capita Aspect

Eighty (80) percent of the funds shall be distributed in the form of per capita payments by the Secretary of the Interior (hereinafter the "Secretary") in sums as equal as possible to all tribal members born on or prior to and living on the effective date of this plan, except that individuals who have received per capita payments from any other federally recognized tribe or tribes, by virtue of tribal membership, shall not be eligible to participate in the per capita payment aspect of this plan.

The tribal governing body shall establish, with approval of the Secretary, procedures and a deadline for the filing or applications for tribal enrollment. Such deadline shall not be established on a Saturday, Sunday or legal holiday.

Programing Aspect

Twenty (20) percent of the funds, and any amounts remaining from the per capita payments provided above, shall be invested by the Secretary, and the principal, interest, and investment income accrued shall be available on a budgetary basis to the tribal governing body, subject to the approval of the Secretary, to be utilized for tribal administration, social and economic programs.

General Provisions

The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, part 4, subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512.

The Secretary, in arranging for the per capita payments to be made, shall withhold sufficient shares for individuals, whose eligibility may be in question. Those shares shall be held at interest in separate Individual Indian Money (IIM) accounts, pending determination of an individual's enrollment appeal. The amount of any shares not used to pay successful appellants shall be available for use in the programing aspect of this plan.

None of the funds distributed per capita or made available under this plan for programing shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted programs.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–7906 Filed 4–3–91; 8:45 am]

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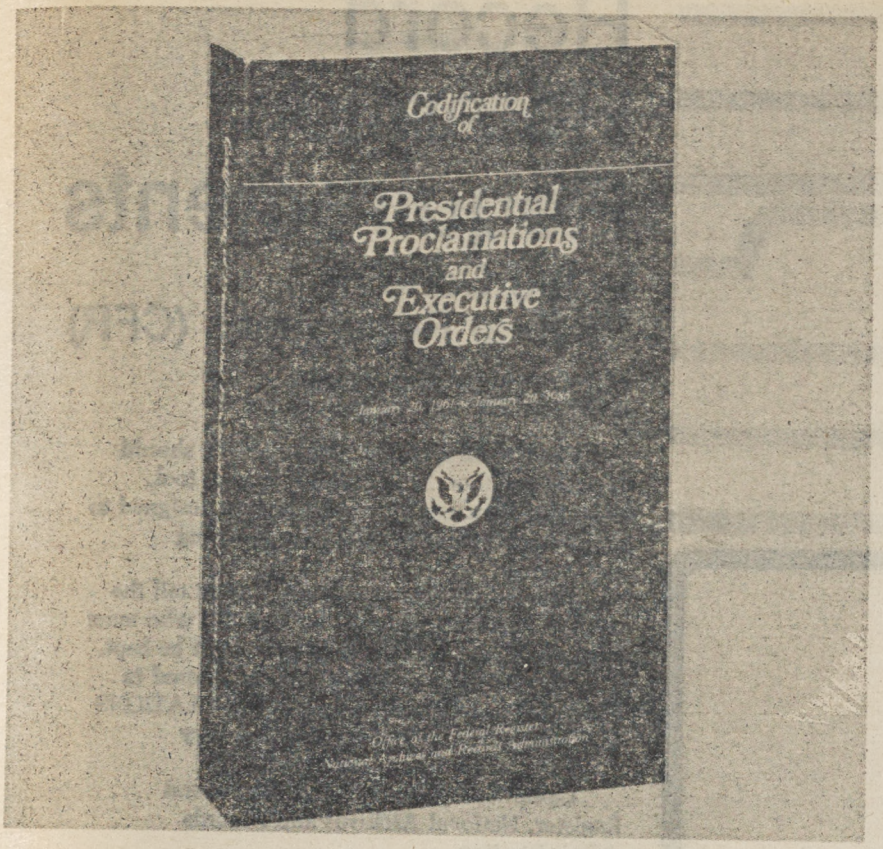
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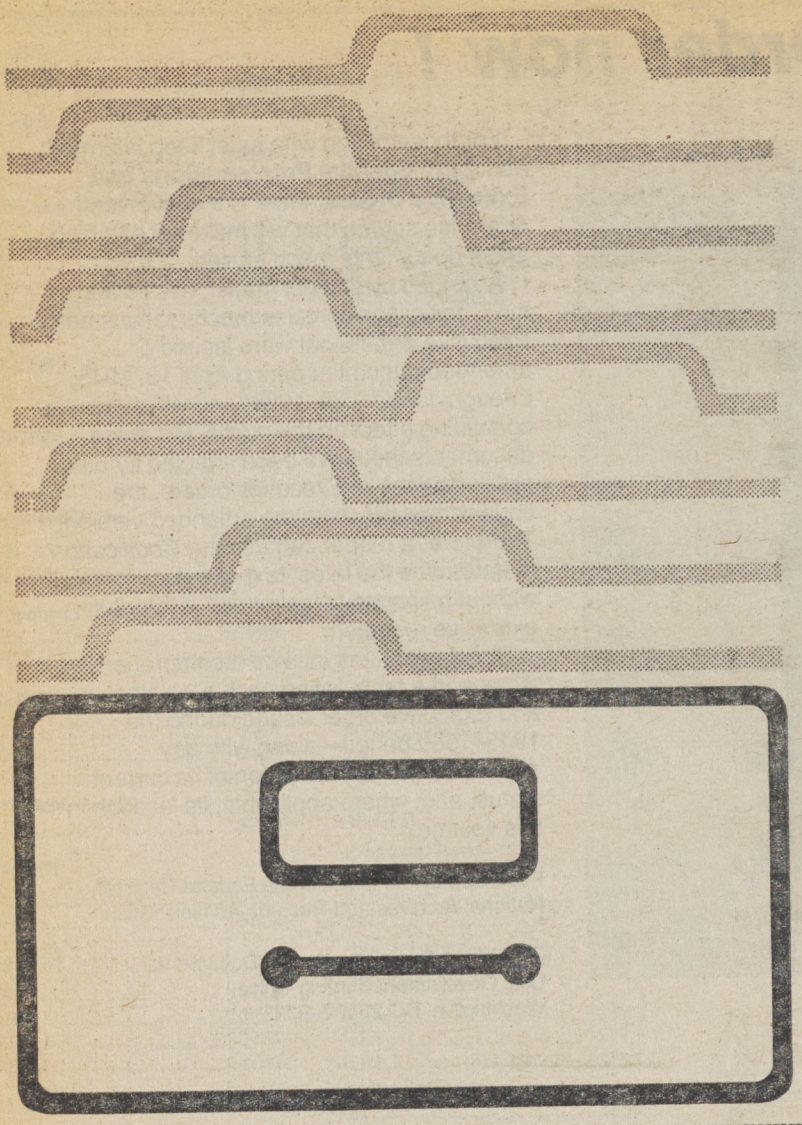
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in the Code of Federal Regulations (CFR)

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SUPPLEMENT: Revised January 1, 1991

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The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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