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Briefings on How To Use the Federal Register
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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC
(two briefings)

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

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

RESERVATIONS: 202–523–4538

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Presidential Documents

Title 3—

The President

Memorandum of August 19, 1993

Delegation of Authority To Review Emergency Release Authorities and Prepare and Transmit to the Congress a Message Concerning Such Authorities

Memorandum for the Administrator of the Environmental Protection Agency

WHEREAS, the Environmental Protection Agency, the agencies and departments that are members of the National Response Team (authorized under Executive Order No. 12580, 52 Fed. Reg. 2923 (1987)), and other Federal agencies and departments undertake emergency release prevention, mitigation, and response activities pursuant to various authorities;

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112(r)(10) of the Clean Air Act (the "Act") (section 7412(r)(10) of title 42 of the United States Code) and section 301 of title 3 of the United States Code, and in order to provide for the delegation of certain functions under the Act, I hereby:

(1) Authorize you, in coordination with agencies and departments that are members of the National Response Team and other appropriate agencies and departments, to conduct a review of release prevention, mitigation, and response authorities of Federal agencies in order to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources that may exist, to the extent such review is required by section 112(r)(10) of the Act; and

(2) Authorize you, in coordination with agencies and departments that are members of the National Response Team and other appropriate agencies and departments, to prepare and transmit a message to the Congress concerning the release prevention, mitigation, and response activities of the Federal Government with such recommendations for change in law as you deem appropriate, to the extent such message is required by section 112(r)(10) of the Act.

The authority delegated by this memorandum may be further redelegated within the Environmental Protection Agency.

You are hereby authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

[FR Doc. 93-24958
Filed 10-6-93; 12:46 pm]
Billing code 6560-50-M

Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 300

[Docket No. 93-028-1]

Incorporation by Reference; Plant Protection and Quarantine Treatment Manual

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document gives notice that the "Plant Protection and Quarantine Treatment Manual" (PPQ Treatment Manual) has been revised and reprinted and that the new version is now on file at the office of the Federal Register. We have revised the PPQ Treatment Manual by reformatting the treatment schedules so that the information can be more readily found and by removing certain treatment schedules that required the use of chemicals no longer authorized for use by the Environmental Protection Agency. This document also amends our regulations listing documents incorporated by reference to ensure that the current revision of the PPQ Treatment Manual is incorporated by reference and used.

EFFECTIVE DATE: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6799.

SUPPLEMENTARY INFORMATION:

Background

The "Plant Protection and Quarantine Treatment Manual" (PPQ Treatment Manual) of the Animal and Plant Health Inspection Service is incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1. The PPQ Treatment Manual contains treatment schedules and information on procedures for applying treatments to allow the movement of articles under domestic and foreign plant quarantines and regulations. This document amends the regulations at § 300.1 to show that the PPQ Treatment Manual has been revised and reprinted.

Since the PPQ Treatment Manual is referenced in various quarantines and regulations in chapter III, title 7 of the Code of Federal Regulations, it is necessary to amend part 300 to ensure that the current revision is incorporated by reference and used.

We have revised the PPQ Treatment Manual and reformatted the treatment schedules in the PPQ Treatment Manual so that the information can be more readily found. In addition, we have removed certain treatment schedules that required the use of chemicals that are no longer authorized for use by the Environmental Protection Agency under the Federal Insecticide, Fungicide, Rodenticide Act.

Miscellaneous

To further clarify the procedures in the PPQ Treatment Manual, we have used the U.S. measuring system throughout and provided a conversion table for the metric measurement system. The PPQ Treatment Manual also includes enhanced safety guidelines for applying treatments and treatment schedules for the movement of articles under domestic and foreign plant quarantines and regulations.

Effective Date

The PPQ Treatment Manual, which contains treatment schedules and information on procedures for applying treatments to allow the movement of articles under domestic and foreign quarantines and regulations, has been revised and reprinted. This document amends the regulations listing documents incorporated by reference to ensure that the current revision is incorporated by reference and used. Since there are no substantive changes as a result of these actions, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.**

Accordingly, this rule is effective upon publication in the **Federal Register.**

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.

The PPQ Treatment Manual, which contains treatment schedules and information on procedures for applying treatments to allow the movement of articles under domestic and foreign quarantines and regulations, has been revised and reprinted. This document amends the regulations listing documents incorporated by reference to ensure that the current revision is incorporated by reference and used.

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.

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.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

List of Subjects in 7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

Accordingly, 7 CFR part 300 is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 150ee, 161.

2. In § 300.1, paragraph (a) is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was revised and reprinted November 30, 1992, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

Done in Washington, DC, this 4th day of October 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-24832 Filed 10-7-93; 8:45 am]

BILLING CODE 3410-34-P

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV93-906-31FR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Revision of the Handling Requirements for Oranges and Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises the handling requirements for Texas oranges and grapefruit to require handlers to ensure that an inspection certificate accompanies each shipment of fruit when it is transported by motor vehicle, and that such inspection certificates are surrendered upon leaving the production area when requested by Texas Department of Agriculture (TDA) road guard station personnel designated as agents of the Texas Valley Citrus Committee (committee). This revision is expected to help the Texas citrus industry ensure that all fresh oranges and grapefruit are inspected prior to shipment from the production area.

DATES: This interim final rule becomes effective October 8, 1993. Comments received by November 8, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. Fax # (202) 720-5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone: (210) 682-2833; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone: (202) 720-2431.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 906 [7 CFR part 906] regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the order. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This interim final rule is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 15 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 750 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The committee met on August 3, 1993, and unanimously recommended revising paragraph (a)(5) of § 906.365 to require handlers to ensure that an inspection certificate accompanies each shipment of fruit when it is transported by motor vehicle, and that such inspection certificates are surrendered upon leaving the production area when requested by Texas Department of Agriculture (TDA) road guard station personnel designated as agents of the committee.

Section 906.365 is amended by adding the following sentence at the end of the current language in paragraph (a)(5). "No handler may transport by motor vehicle or cause the transportation of any shipment of fruit for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto,

and a copy of such inspection certificate is surrendered upon request to Texas Department of Agriculture Road Guard personnel as designated by the committee."

The committee recommended this action after discussions with TDA road guard station personnel on the subject of operating road guard stations located on the major roads leading out of the production area for Texas oranges and grapefruit. TDA informed the committee that, heretofore, TDA road guard station personnel had not been authorized to require handlers to surrender a copy of their inspection certificates to them, when checking fruit being transported from the production area to determine if it had been inspected and certified as meeting order requirements. Requiring handlers to surrender a copy of their inspection certificates to the TDA will enable TDA personnel to determine whether the fruit meets order requirements, thereby helping ensure compliance with order provisions.

Based on the above the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The committee needs to have this amendment in effect by this October when Texas orange and grapefruit shipments for the 1993–94 season are expected to begin, so that all handlers leaving the production area will be required to surrender their inspection certificates to TDA personnel; (2) handlers are aware of this action which was unanimously recommended by the committee at a public meeting; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 906.365 is amended by revising paragraph (a)(5) to read as follows:

Note: This action will appear in the annual Code of Federal Regulations.

§ 906.365 Texas Orange and Grapefruit Regulation 34.

* * * * *

(a)(5) An appropriate inspection certificate has been issued for such fruit within 48 hours prior to the time of shipment. No handler may transport by motor vehicle or cause the transportation of any shipment of fruit for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto, and a copy of such inspection certificate is surrendered upon request to Texas Department of Agriculture personnel designated by the committee.

* * * * *

Dated: October 4, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–24758 Filed 10–7–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 910

[FV93–910–3IFR]

Lemons Grown in California and Arizona; Increase in the Organic Exemption Provision

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the rules and regulations established under the marketing order covering California-Arizona lemons to increase from 350 to 500 cartons per week, the amount of organic lemons handlers may ship without regard to volume and size regulations. The marketing order regulates the handling of lemons grown in California and Arizona and is administered locally by the Lemon Administrative Committee (Committee). This action recognizes additional opportunity to market organic lemons to organic or health food wholesalers and retailers.

DATES: This interim final rule is effective on October 8, 1993; comments received by November 8, 1993 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, Fax # (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kellee J. Hopper, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901; or Kenneth G. Johnson, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 910 [7 CFR part 910], as amended, regulating the handling of lemons grown in California and Arizona, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601–674], hereinafter referred to as the "Act."

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with

law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 2,000 producers of lemons in the production area and approximately 70 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

This interim final rule invites comments on a change to the rules and regulations of the lemon marketing order. This rule modifies language in the order's rules and regulations to increase from 350 to 500 cartons per week, the amount of organic lemons handlers may ship free of order regulations.

Section 910.80 of the order authorizes the Committee, with the approval of the Secretary, to establish minimum quantities and types of shipments which shall be free from regulation under this order. Section 910.180(d)(3) of the administrative rules and regulations prescribes procedures governing exemption from volume and size regulations for organic lemons handled in minimum quantities.

On July 23, 1993, Mr. Rich Hart, President of Rainbow Valley Orchards, sent a letter to the Committee requesting an increase in the amount of organic lemons a handler may ship free of order regulations to 500 cartons per week. Currently, handlers can ship up to 350 cartons of such lemons weekly. At its August 3, 1993, meeting, the Committee recommended increasing the organic exemption provision from 350 to 500 cartons per week that handlers may ship to organic or health food wholesalers and retailers without regard to volume and size regulations. The vote on the recommendation was 12 in favor and 1 abstention. The person who abstained expressed a concern with the definition of organic.

Shippers of organic lemons have indicated that organic fruit markets can absorb more fruit than in the past, and that they need to take advantage of the additional marketing opportunity. The Committee expects the increase in shipments allowed will provide shipping flexibility for organic shippers and will facilitate the marketing of organic lemons. The Committee also believes that sales of organic lemons will not adversely impact sales of regulated lemons.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0120.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Handlers are currently shipping lemons for the 1993–94 season and this action will provide additional opportunity in the organic market; (2) the Committee recommended this action at a public meeting and all interested persons had an opportunity to provide input; (3) this action relaxes current organic requirements; (4) California-Arizona lemon handlers are aware of this action and need no additional time to comply with the relaxed requirements; and (5) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 910.180, paragraph (d)(3) is amended by revising the first sentence to read as follows:

[**Note:** This section will appear in the annual Code of Federal Regulations.]

§ 910.180 Lemons not subject to regulation.

* * * * *

(d) * * *

(3) Any person may be granted an exemption of up to 500 cartons per week, or an equivalent amount thereof, to market or distribute organic lemons to organic or health food wholesalers and retailers. * * *

* * * * *

Dated: October 4, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–24833 Filed 10–7–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 967

[Docket No. FV–93–967–2FR]

Handling Regulation for Celery Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that established the quantity of Florida celery which handlers may ship to fresh markets during the 1993–94 marketing season at 6,712,910 crates or 100 percent of producers' base quantities. This action is intended to lend stability to the industry and help provide consumers with an adequate supply of the product. As in past marketing

seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, because production and shipments are anticipated to be less than the marketable quantity. This action was unanimously recommended by the Florida Celery Committee (Committee), the agency responsible for local administration of the order.

EFFECTIVE DATE: November 8, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 205-2830, or John R. Toth, Officer-In-Charge, Southeast Marketing Field Office, P.O. Box 2276, Winter Haven, FL 33883-2276, telephone 813-299-4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 967 [7 CFR part 967] both as amended, regulating the handling of celery grown in Florida. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action establishes the quantity of Florida celery (at 6,712,910 crates or 100 percent of producers' base quantities) which handlers may ship to fresh markets during the 1993-94 marketing season which covers the period August 1, 1993, through July 31, 1994. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven producers of celery in the production area and an estimated seven handlers of celery grown in Florida subject to regulation under the celery marketing order. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual gross receipts from all commodities of less than $500,000, and small agricultural service firms are defined as those whose annual gross receipts from all quantities are less than $3,500,000. The majority of celery handlers and producers may be classified as small entities.

This action is based upon a recommendation and information submitted by the Committee and upon other available information. The Committee met on June 9, 1993, and unanimously recommended a marketable quantity of 6,712,910 crates of fresh celery for the 1993-94 marketing season. The season began August 1, 1993. Additionally, a uniform percentage of 100 percent was recommended which will allow each producer, registered pursuant to section 967.37(f) of the order, to market 100 percent of such producer's base quantity. These recommendations were based on an appraisal of expected 1993-94 supply and demand.

As required by section 967.37(d)(1) of the order, a reserve of 6 percent (396,775 crates) of the 1992-93 total base quantities was made available to new producers and for increases for existing producers. The deadline for requesting changes in base quantities was May 1, 1993. An application for additional base quantity of 100,000 crates was received from one producer. During the 1992-93 season, transfers of allotment to this producer of 100,000 crates from two other producers was approved by the committee. Therefore, the committee approved this application for additional base quantity.

This final rule will continue to limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1993-94 marketing season to 6,712,910 crates. This marketable quantity is slightly more than the 1992-93 marketable quantity, and is more than the average number of crates marketed fresh during the 1987-88 through 1991-92 seasons. It is expected that such quantity will be more than actual shipments for the 1993-94 season. Thus, the 6,712,910 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship. For these reasons, this final rule should lend stability to the industry and help provide consumers with an adequate supply of the product.

The interim final rule was issued on July 8, 1993, and published in the **Federal Register** [58 FR 38276, July 16, 1993], with an effective date of July 16, 1993. That rule added section 967.328 to the rules and regulations in effect under the marketing order. That rule provided a 30-day comment period which ended August 16, 1993. No comments were received.

On the basis on the foregoing, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** [58 FR 38276, July 16, 1993] will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 967 is revised as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR part 967 is revised to read as follows:

Authority: 7 U.S.C. 601-674.

Subpart—Administrative Rules and Regulations

2. Accordingly, the interim final rule adding section 967.328, which was published at 58 FR 38276 on July 16, 1993, is adopted as a final rule without change.

Note: This section will not appear in the Code of Federal Regulations.

Date: October 4, 1993.

Robert C. Keeney

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–24759 Filed 10–7–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1004

[DA–93–19]

Milk in the Middle Atlantic Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action relaxes for the months of September 1993 through February 1994 the limit on the amount of milk that may be diverted to nonpool plants by handlers other than cooperative associations from 40 percent to 50 percent of the milk for which a proprietary plant operator is the handler.

The suspension was requested by a large proprietary handler who receives milk from a substantial number of producers who are not cooperative members. Proponent contends that the action is necessary to assure that producer milk which has been historically associated with the market will continue to be pooled under the order without incurring unnecessary and uneconomic movements of milk for the purpose of maintaining pool status.

EFFECTIVE DATES: September 1, 1993 through February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 3, 1993; published August 12, 1993 (58 FR 42881).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria in Executive Order 12291, and has been determined to be a "non-major" rule.

This suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not established in accordance with law and requesting a modification of an order or an exemption from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Middle Atlantic marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 12, 1993 (58 FR 42881) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. One comment supporting the proposed suspension was received, and is summarized in the statement of consideration.

After consideration of all relevant material, including the proposal in the notice, the comment received, and other available information, it is hereby found and determined that for the months of September 1993 through February 1994 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1004.12(d)(2), the words "or (ii)".

2. In § 1004.12(d)(2)(i), the words "of members of a cooperative association or a federation of cooperative associations to nonpool plants are for the account of such cooperative association or federation, and the amount of member milk", and the words "of all members of such cooperative association or federation".

3. § 1004.12(d)(2)(ii).

Statement of Consideration

For the months of September 1993 through February 1994, this action suspends provisions of the Middle Atlantic milk order for the purpose of relaxing the percentage of a proprietary handler's supply of milk from producers who are not members of a cooperative association that may be diverted to nonpool plants from 40 percent to 50 percent.

The suspension was requested by Johanna Dairies, Inc. (Johanna), and its affiliates. Johanna and its affiliates receive milk from a substantial number of independent producers who are not cooperative members. Johanna stated that its reasons for requesting a suspension of the order's producer milk diversion limits are the same as those given by Pennmarva, a federation of cooperative associations representing about 90 percent of the market's producer milk, in requesting a suspension of the requirement that pool distributing plants dispose of at least 40 percent of their receipts as Class I use.

A decrease in the percentage of the Middle Atlantic market's producer milk used in Class I has made it difficult to maintain the pool status of the milk of producers who historically have been associated with the market. Since 1990, the percentage of the Middle Atlantic market's producer milk used in Class I has decreased. For example, in February 1990, 52 percent of Middle Atlantic producer milk was used in Class I compared with only 45 percent for the same month in 1993.

In addition, two large Order 4 distributing plants with which large volumes of Order 4 diverted milk had been associated recently became regulated under the New York-New Jersey order. Under Order 4, diverted milk is included in the receipts of the plant from which the milk is diverted in determining whether such plant meets

the minimum Class I use percentage to qualify as a pool plant. As a consequence of the above recent changes in marketing conditions in the Middle Atlantic area, Johanna and its affiliates apparently are experiencing the same difficulty as the cooperative handlers in associating all of their diverted producer milk with the remaining distributing plants now regulated under the Middle Atlantic order without affecting the pool status of the milk.

A comment supporting the proposed suspension was filed by Dairylea Cooperative, Inc., on the basis that the suspension would assure that uneconomic and inefficient movements of milk would not be required to maintain the pool status of the milk of producers historically associated with the market.

The suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the Middle Atlantic marketing area will continue to benefit from pooling and pricing under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment supporting the suspension was received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7 part 1004 are suspended as follows:

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. The authority citation for 7 CFR Part 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1004.12 [Temporarily suspended in part]

2. In § 1004.12(d)(2), the words "or (ii)" are suspended.

3. In § 1004.12(d)(2)(i), the words "of members of a cooperative association or a federation of cooperative associations to nonpool plants are for the account of such cooperative association or federation, and the amount of member milk" are suspended, and the words "of all members of such cooperative association or federation" are suspended.

4. Section 1004.12(d)(2)(ii) is suspended.

Dated: October 4, 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–24756 Filed 10–7–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1004

[DA–93–23]

Milk in the Middle Atlantic Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action relaxes for the months of September 1993 through February 1994 the limit on the period of automatic pool plant status for supply plants and reserve processing plants.

The suspension was requested by a federation of cooperative associations representing approximately 90 percent of the market's producer milk. The action is necessary to assure that producer milk which has been historically associated with the market will continue to be pooled under the order without incurring unnecessary and uneconomic movements of milk for the purpose of maintaining pool status.

EFFECTIVE DATES: September 1, 1993 through February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 9, 1993; published August 17, 1993 (58 FR 43572).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria in Executive Order 12291, and has been determined to be a "non-major" rule.

This suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not established in accordance with law and requesting a modification of an order or an exemption from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Middle Atlantic marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 17, 1993 (58 FR 43572) concerning a proposed suspension of certain provisions of the order.

Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments regarding the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of September 1993 through February 1994 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1004.7(e), the word "immediately" and the words "for each of the following months of March through August".

Statement of Consideration

For the months of September 1993 through February 1994, this action suspends provisions of the Middle Atlantic milk order for the purpose of relaxing the limit on the period of automatic pool plant status for supply plants and reserve processing plants.

The suspension was requested by Pennmarva Dairymen's Federation, a federation of cooperative associations representing approximately 90 percent of the market's producer milk. According to Pennmarva, a decline in the percentage of the Middle Atlantic market's producer milk used in Class I and a reduction in products processed at pool distributing plants have made maintaining pool status difficult for producers whose milk historically has been associated with the market.

Two large Order 4 distributing plants with which large volumes of Order 4 diverted milk had been associated recently became regulated under the New York-New Jersey order (Order 2). Under Order 4, diverted milk is included in the receipts of the plant from which the milk is diverted in determining whether such plant meets the minimum Class I use percentage to qualify as a pool plant. This action is necessary to ensure that producers whose milk has been displaced from the plants that have shifted their regulatory status to Order 2 maintain association with the Middle Atlantic marketing order, thus eliminating unnecessary and uneconomical movements of milk to maintain pool status for the purpose of benefiting from pooling and pricing under the order.

No comments supporting or opposing the proposed suspension were filed by interested persons.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7 part 1004 are suspended as follows:

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. The authority citation for 7 CFR part 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1004.7 [Temporarily suspended in part]

2. In § 1004.7(e), the word "immediately" and the words "for each of the following months of March through August" are suspended.

Dated: October 4, 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–24757 Filed 10–7–93; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 30, 40, 50, 60, 61, 70, 72, and 150

RIN 3150–AE50

Whistleblower Protection for Employees of NRC-Licensed Activities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations regarding the protection of employees who provide information to the NRC or their employers concerning safety issues. The amendments are intended to conform current NRC regulations to the new nuclear whistleblower protection provisions of the Energy Policy Act of 1992, which was enacted on October 24, 1992.

EFFECTIVE DATE: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–504–2741.

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of Proposed Rule
III. Public Comments and the Commission's Response
IV. Environmental Impact: Categorical Exclusion
V. Paperwork Reduction Act Statement
VI. Regulatory Analysis
VII. Regulatory Flexibility Certification
VIII. Backfit Analysis

I. Background

On October 24, 1992, the President signed into law the Energy Policy Act of 1992. Section 2902, "Employee Protection for Nuclear Whistleblowers," includes provisions amending Section 210 of the Energy Reorganization Act (ERA) of 1974, as amended. The changes pertinent to this rulemaking include the following:

(1) Because the ERA contained two sections 210, the legislation renumbered the whistleblower protection provisions as section 211.

(2) The new legislation extends the period in which a whistleblower complaint may be filed with the Department of Labor (DOL) from 30 days to 180 days.

(3) The new legislation extends and/or clarifies protection to new classes of employees and employers to include: (a) Employees who bring or are about to bring concerns directly to their employers; (b) employees who have "refused to engage in" an unlawful practice, provided that the employee has identified the illegality to the employer; (c) employees who have testified, or are about to testify, before Congress or in any Federal or State proceeding regarding any provision (or proposed provision) of the ERA or the Atomic Energy Act (AEA).

As a result of these legislative changes, the NRC concluded that its regulations in 10 CFR parts 19, 30, 40, 50, 60, 61, 70, 72, and 150 should be updated to conform to the new legislation. Accordingly, on June 15, 1993 (58 FR 33042), the Commission published in the **Federal Register** proposed changes to these Parts to reflect the changes in the whistleblower

protection provisions brought about by the Energy Policy Act of 1992.

II. Summary of Proposed Rules

Currently, 10 CFR 19.11(c) requires that the June 1982 version or later revision of the NRC Form 3, "Notice to Employees," be posted. This section is being changed to ensure that the most recent version of NRC Form 3 is posted. The language is modified so that the date of publication for NRC Form 3 is inserted in the revision to 10 CFR part 19. In the future, if NRC Form 3 is changed, 10 CFR part 19 will also be changed. With this rulemaking, 10 CFR part 19 is revised to specify NRC Form 3 (6/93). The revised NRC Form 3, in addition to addressing the 180-day time period that employees have to file a complaint with the Department of Labor, describes protection for employees who: (1) Bring safety complaints to their employers; (2) refuse to engage in an unlawful practice, provided that the employee has identified the illegality to the employer; and (3) have testified or are about to testify before Congress or in any Federal or State proceeding regarding any provision (or proposed provision) of the ERA or the AEA. The June 1993 version of Form 3 was distributed in July 1993. Additional copies are available as specified in 10 CFR 19.11. In addition, 10 CFR parts 30, 40 and 70 are modified to require posting of NRC Form 3 by general licensees subject to 10 CFR part 19.

Section 211 requires that the provisions of that section be posted. The Department of Labor (DOL) is implementing procedures to require all employers to post the provisions of section 211. Accordingly, given that the DOL action will require posting by a class of employers that includes all NRC licensees, the NRC is not separately requiring the posting of the provisions. However, NRC licensees will be subject to the DOL rule implementing the posting provision of section 211 and will also be required by this rule to post NRC Form 3 which summarizes protected activities, defines discrimination, and explains how to file a complaint with the DOL.

In 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, 72.10, and 150.20, the following changes were proposed to reflect the new legislation:

(1) The applicable section 210 is renumbered as section 211.

(2) The definition of protected activities is modified to reflect the provisions of the Energy Policy Act of 1992.

(3) The period in which a complaint can be filed with DOL is changed from 30 days to 180 days.

(4) References in certain sections of the regulations to "compensation, terms, conditions, and privileges of employment" are being changed to "compensation, terms, conditions, or privileges of employment." This change is necessary to correct earlier language to conform to the language in the ERA of 1974, as amended.

(5) The exemption in §§ 30.7, 40.7, and 70.7, formally exempting general licensees from the requirement to post NRC Form 3, is being deleted because some general licensees are subject to part 19.

(6) The part 150 NRC general license, recognizing Agreement State licenses, would be amended to conform to the changes to §§ 30.7, 40.7, and 70.7.

(6) Each applicable regulation would be amended to provide that licensees and applicants are expected to notify their contractors of the prohibition against discrimination for engaging in protected activities.

As provided in 10 CFR 30.7(c), 40.7(c), 50.7(c), 60.9(c), 61.9(c), 70.7(c), and 72.10(c) of these regulations, licensees and applicants may be subject to enforcement action for discrimination caused by their contractors or subcontractors.

III. Public Comments and the Commission's Response

The June 15, 1993 proposed rule resulted in the receipt of comments from the Nuclear Management and Resources Council (NUMARC), the International Union, United Plant Guard Workers of America (UPGWA), and the law firm of Winston & Strawn who commented on behalf of four nuclear utilities. (Copies of the three comment letters are available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level) Washington, DC).

Two of the comments were similar in nature. NUMARC commented that the NRC's rule changes appear to meet the Commission's intent to conform the regulations to the new statutory requirements. The UPGWA indicated that it enthusiastically supports the rule changes and hopes that the rules will be vigorously and strictly enforced. Both commenters were generally supportive of the proposed rule and provided no comments on specific provisions.

On the other hand, Winston & Strawn, while recognizing that most of the proposed changes are required by the Energy Policy Act of 1992, focused on the proposal in 10 CFR 50.7(e) and the related enforcement provision in § 50.7(c). In particular, the proposed rulemaking would add a subsection in each applicable section, e.g. 50.7(e)(2), that stated NRC's expectation that all licensees will notify their contractors of the prohibition against discrimination for engaging in protected activities. Winston & Strawn commented that there is no need for this provision since, in its view, the existing regulatory framework provides ample incentives for licensees to notify their contractors of the prohibitions on discrimination. Winston & Strawn's basic concern, however, is that these proposed subsections do not specify in any detail the licensee's contractor notification requirements and yet the NRC may seek to take enforcement action against a licensee for violations of the notification provision.

It should be noted that the NRC continues to find instances of contractor discrimination which indicate that there is a continuing need for licensees to work with their contractors to eliminate discrimination. A basic need in this area is for contractors to be fully apprised of their responsibilities and the prohibition on discrimination. The intent of these subsections was to prompt licensees to take whatever actions they believe to be necessary to ensure that their contractors are informed of the prohibitions against discrimination, not to impose rigid or prescriptive requirements as to how, when or how often licensees are to notify their contractors of the prohibitions.

The proposed notification requirement was not expressed in mandatory language, rather the language used provided NRC's expectation. This may make enforcement difficult. Therefore, rather than embark on a new rulemaking at this time to provide more specificity, the language will be deleted. However, the NRC continues to believe that it is in the interest of the public health and safety that each licensee take sufficient steps to assure that its contractors are aware of the prohibitions against discrimination. The need for rulemaking on this notification matter may be revisited following the completion of the staff's report to the Commission on its reassessment of the NRC program for protecting allegers against retaliation. 58 FR 41108 (August 2, 1993). The NRC emphasizes, however, regardless of whether a notification provision is specified in the regulations, licensees will be subject to enforcement actions for discrimination caused by their contractors.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the final rule.

V. Paperwork Reduction Act Statement

The final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0044, –0017, –0020, –0011, –0127, –0135, –0009, –0132, and 0032.

VI. Regulatory Analysis

The Commission finds that there is no alternative to amending the regulations because most of the amendments are statutorily mandated as required by the Energy Policy Act of 1992. The final rule is intended to conform the Commission's regulations to the nuclear whistleblower provisions of the Energy Policy Act of 1992. The final rule extends and clarifies protection to new classes of employees and employers and extends the period in which an employee may file a whistleblower complaint. The foregoing constitutes the regulatory analysis for the final rule.

VII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule conforms the Commission's regulations to the nuclear whistleblower provisions of the Energy Policy Act of 1992.

VIII. Backfit Analysis

The Nuclear Regulatory Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to the final rule and that a backfit analysis is not required for the final rule because these amendments are required by law and/or do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 19—Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 30—Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40—Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50—Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 60—Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61—Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70—Criminal penalties, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packing and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72—Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 150—Criminal penalties, Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 19, 30, 40, 50, 60, 61, 70, 72, and 150.

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for part 19 is revised to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

2. In § 19.11, paragraph (c) is revised to read as follows:

§ 19.11 Posting of notices to workers.

* * * * *

(c) Each licensee and each applicant for a specific license shall prominently post NRC Form 3, (Revision dated June 1993), "Notice to Employees."

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

* * * * *

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

3. The authority citation for part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83, Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

4. Section 30.7 is revised to read as follows:

§ 30.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged

violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each specific licensee, each applicant for a specific license, and each general licensee subject to part 19 shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c).

(2) The posting of NRC Form 3 must be at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

5. The authority citation for part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. Section 40.7 is revised to read as follows:

§ 40.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination

prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each specific licensee, each applicant for a specific license, and each general licensee subject to part 19 shall prominently post the revision of NRC Form 3, "Notice to Employees", referenced in 10 CFR 19.11(c).

(2) The posting of NRC Form 3 must be at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

7. The authority citation for part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 is also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 82 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50–81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

8. Section 50.7 is revised to read as follows:

§ 50.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee

may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

9. The authority citation for part 60 is revised to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213(g), 2228, as amended (42 U.S.C. 10134, 10141) and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

10. Section 60.9 is revised to read as follows:

§ 60.9 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not

later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to Part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

11. The authority citation for part 61 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246, (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851) and Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851).

12. Section 61.9 is revised to read as follows:

§ 61.9 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of the section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

13. The authority citation for part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954 as amended, secs. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); Secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246, (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 5–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

14. Section 70.7 is revised to read as follows:

§ 70.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each specific licensee, each applicant for a specific license, and each general licensee subject to part 19 shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c).

(2) The posting of NRC Form 3 must be at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

15. The authority citation for part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282), sec. 274 Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853) 42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h). Subparts K and L are also issued under sec. 133, 96 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

16. Section 72.10 is revised to read as follows:

§ 72.10 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission licensee, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

18. The authority citation for part 150 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

19. In § 150.20, the introductory text of paragraph (b) is revised to read as follows:

§ 150.20 Recognition of Agreement State licenses.

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to the provisions of §§ 30.7(a) through (f), 30.9, 30.10, 30.14(d), 30.34, 30.41, 30.51 to 30.63, inclusive, of part 30 of this chapter; §§ 40.7(a) through (f), 40.9, 40.10, 40.41, 40.51, 40.61, 40.63 inclusive, 40.71 and 40.81 of part 40 of this chapter; §§ 70.7(a) through (f), 70.9, 70.10, 70.32, 70.42, 70.51 to 70.56, inclusive, 70.60 to 70.62, inclusive, and to the provisions of 10 CFR parts 19, 20 and 71 and subpart B of part 34, §§ 39.15 and 39.31 through 39.77, inclusive, of part 39 of this chapter. In addition, any person engaging in activities in non-Agreement States or in offshore waters under the general licenses provided in this section:

* * * * *

Dated at Rockville, Maryland this 24th day of September, 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 93–24787 Filed 10–7–93; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Environmental Services

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On January 13, 1993, the Small Business Administration (SBA) published an interim final rule which established a small business size standard of $18 million for environmental services, an activity designated by the SBA under Standard Industrial Classification code 8744, Facilities Support Management Services (58 FR 4074). This final rule withdraws that size standard. This action is being taken in order to comply with a court decision, dated June 23, 1993, which judicially vacated the environmental services size standard.

DATES: Effective October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Director, Size Standards Staff, at (202) 205–6618.

SUPPLEMENTARY INFORMATION: On January 13, 1993, the SBA published an interim final rule in the **Federal Register**, 58 FR 4074, that established a size standard of $18 million in average annual receipts for environmental services. As discussed in the interim rule, SBA believed environmental services to be an emerging industry which the current SIC System and its corresponding size standards did not adequately address. In response to this situation, the SBA promulgated the environmental services size standard rule on an interim final basis, without opportunity for prior public comment, pursuant to the Administrative Procedure Act, 5 U.S.C. 553 (b)(B). SBA sought public comment on the rule as it recognized the desirability of input from the public prior to the Agency's final decision on establishing this size standard.

SBA is hereby withdrawing that interim final rule. This action is being taken as a result of a court decision that judicially vacated the environmental services size standard. As explained in a notice published in the **Federal Register** on August 9, 1993 (58 FR 42355), the United States District Court for the District of Columbia on June 23, 1993 held that the SBA's publication of that size standard as an interim final rule violated applicable provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553, requiring notice and comment as part of agency rulemaking procedures. *Analysas Corp.* v. *Bowles*, No. 93–0711, slip. op. (D.D.C. June 23, 1993). Because applicable provisions of the APA were not followed, the Court vacated the $18 million size standard for environmental services under SIC code 8744. *Id.* at 10.

This final rule formally withdraws the environmental services size standard. This allows the SBA to begin a new rulemaking action to reconsider a size standard for environmental services. Published elsewhere in this issue of the **Federal Register** a size standard for environmental services of $18 million is being proposed for public comment.

Compliance With Regulatory Flexibility Act, Executive Orders 12291, 12612, 12778, and the Paperwork Reduction Act

General

SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) as it is merely withdrawing the interim final rule in compliance with a court order. In addition, this rule will not constitute a major rule for the purpose of Executive Order 12291 for the same reasons.

Further, SBA certifies that this rule will not impose any paperwork or recordkeeping requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), and 634(b)(6), 637(a) and 644(c).

2. In § 121.601 Major Group 87, is amended in the table by revising SIC code 8744 to read as follows:

§ 121.601 Standard Industrial classification codes and size standards.

* * * * *

SIZE STANDARDS BY SIC INDUSTRY

SIC (*=new SIC code in 1987, not used in 1972)	Description (N.E.C.=not elsewhere classified)	Size standards in number of employees or millions of dollars
*	*	*
8744*	Facilities Support Management Services [19].	$3.5
	Base Maintenance [20].	13.5

[19] *Facilities Management, a component of SIC code 8744,* has the following definition: Establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities arrangement means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, use of information systems (not programming), etc.

[20] SIC code 8744: If one of the activities of *base maintenance,* as defined below, can be identified with a separate industry, and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard shall be that for the particular industry, and not the base maintenance size standard.

"Base Maintenance" constitutes three or more separate activities. The activities may be either service or special trade construction related activities. As services, these activities must each be in a separate industry. These activities may include, but are not limited to, such separate maintenance activities as Janitorial and Custodial Service, Protective Guard Service, Commissary Service, Fire Prevention Service, Safety Engineering Service, Messenger Service, and Grounds Maintenance and Landscaping Service. If the contract involves the use of special trade contractors (plumbing, painting, plastering, carpentering, etc.), all such specialized special trade construction activities will be considered a single activity, which is Base Housing Maintenance. This is only one activity of base maintenance and two additional activities must be present for the contract to be considered base maintenance. The size standard for Base Housing Maintenance is $7 million, the same size standard as for Special Trade Contractors.

* * * * *

Dated: September 30, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–24811 Filed 10–7–93; 8:45 am]

BILLING CODE 8025–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 200, 203, and 240

[Release No. 34–33007; International Series Release No. 587 File No. S7–38–92]

RIN 3235–AF72

Access to Nonpublic Information in the Commission's Possession

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting Rule 24c–1 under the Securities Exchange Act of 1934, pursuant to authority granted to it in 1990 by Congress. The Rule lists the entities to which the Commission may, in its discretion, and with appropriate assurances of confidentiality, provide nonpublic information. The Commission is also adopting related revisions to its Rules of Organization and Rules Relating to Investigations. Rule 24c–1 and attendant changes are intended to continue current procedures for cooperation between securities regulatory authorities.

EFFECTIVE DATE: November 8, 1993.

FOR FURTHER INFORMATION CONTACT: Anne H. Sullivan, (202) 272–7525, Office of General Counsel.

SUPPLEMENTARY INFORMATION:

I. Rule 24c–1

A. Section 24(c) and Proposed Rule 24c–1

The International Securities Cooperation Act of 1990 [1] added section 24(c) [2] to the Securities Exchange Act of 1934 (the "Exchange Act"). Section 24(c) provides that the Commission may, "in its discretion and upon a showing that such information is needed," provide nonpublic records "to such persons, both domestic and foreign, as the Commission by rule deems appropriate if the person receiving such records provides such assurances of confidentiality as the Commission deems appropriate." [3] The purpose of the provision was to make explicit the Commission's authority to provide documents and other information to appropriate foreign and domestic authorities. [4]

In November 1992, the Commission proposed Rule 24c–1 under section 24(c).[5] The proposed rule defined nonpublic information and listed the entities to which the Commission could, in its discretion, provide such information upon receiving appropriate assurances of confidentiality. The proposing release noted that, if it adopted Rule 24c–1, the Commission intended to amend other rules so that Rule 24c–1 could be administered by the staff pursuant to delegated authority.

B. Comments on the Proposal

The Commission received five comment letters on the proposed rule. The New York Stock Exchange expressed concern that the rule may permit the inappropriate use of competitive information obtained by request and, along with the Intermarket Surveillance Group, suggested that the Commission formally limit the use of the rule to situations identified in the Commission's existing request form. The Intermarket Surveillance Group argued that the rule should require express standards to judge a legitimate regulatory need and should limit the types of nonpublic information subject to disclosure.

The Pacific Stock Exchange expressed similar concern that the proposed rule would allow the Commission to share proprietary information from one domestic exchange with another domestic exchange. The comment letter also argued that the rule's requirement for "a showing that the information is needed" is too vague a standard for the Commission's release of information and requested that the Commission provide the Exchange with prior notice before releasing the Exchange's confidential nonpublic information to a third party.

The London Stock Exchange contended that section 24(c) does not give the Commission authority to define all the information in the Commission's possession which can be considered nonpublic, that the rule's proposed standards are too vague, and that it permits access to an excessively large group of requestors. In particular, the Exchange objects that the rule permits the Commission to share information with "persons or entities who are appointed in connection with a litigation."

The Depository Trust Company ("DTC") argued that the rule's standard is too vague, expressed a concern that the Commission might release proprietary information obtained from the DTC to a competitor, and requested that the Commission provide notice before releasing nonpublic information. In addition, the DTC requested that the Commission delegate authority under Rule 24c–1 to the Director of the Division of Market Regulation, especially with respect to information which it submits to the Commission.

C. Analysis of the Comments

The Commission shares the concern about confidentiality expressed by the commenters. The Commission understands that its ability to obtain confidential information promptly and cooperatively depends not only on its statutory powers but also on the expectation that the Commission will provide appropriate protection for the confidential information it obtains. The Commission does not intend, in adopting Rule 24c–1, to reduce its emphasis on maintaining the confidentiality of nonpublic information or change its procedures for ensuring confidentiality.

The Commission does not believe, however, that Rule 24c–1 is the appropriate place to develop detailed confidentiality or access procedures. section 24(c) gives the Commission broad discretion to determine whether information is needed, to whom it should be provided, and what assurances of confidentiality to require. What it does require is that the Commission list, in a rule, the types of persons to whom nonpublic information may be provided. Rule 24c–1 repeats the statutory standard and then, as required, enumerates the persons to whom the Commission may provide information under section 24(c).

The rule does not elaborate upon the standards enacted by Congress, and the Commission believes that further elaboration at this point would not preserve sufficient flexibility. The Commission receives a broad variety of specific requests for access, and the information it has been able to provide in response to requests is equally varied.

The Commission attempts to preserve the confidentiality of nonpublic information provided to third parties in a number of ways. In deciding whether to provide nonpublic information, the Commission evaluates the requestor's statement of its need for the information, the sensitivity of the information the Commission would be providing, and the assurances of confidentiality which the requestor

[1] Pub. L. No. 101–550, 104 Stat. 2714.

[2] 15 U.S.C. 78x(c).

[3] Id.

[4] See H.R. Rep. No. 240, 101st Cong., 1st Sess. 21 (1989).

[5] Exchange Act Release No. 31553 (Nov. 30, 1992) (57 FR 57710 (Dec. 7, 1992)).

offers. The Commission routinely requires that these assurances be in writing, and include promises to maintain the confidentiality of the information and consult with the Commission before any release of the information, other than as set out in the agreement for release. The Commission also routinely includes, in its memoranda of understanding with foreign securities authorities, provisions regarding the uses and confidentiality of information shared.

With respect to information obtained from self-regulatory organizations or broker-dealers, the Commission generally does not give other regulators access to such information except for a purpose which is proper under this Rule. Whenever the regulatory offices of the Commission provide information to any regulator, the Commission routinely cautions that the information is provided for regulatory, but not for competitive, purposes.

The Commission intends, under Rule 24c–1, to continue to use these existing confidentiality procedures, including the required statements of need and assurances of confidentiality. If it appears that these provisions are inadequate to maintain the confidentiality and limit the use of nonpublic information, the Commission will consider revisions.

The rule also makes no provision for notice to the sources of nonpublic information prior to release, as requested by some commentators. Although a certain amount of consultation may be necessary and appropriate in many circumstances, the Commission must also preserve flexibility to act without prior notice or consultation, which it would not have under a notice provision. The Commission's current procedures often involve consultation. For example, when the Commission has originally received notification of possible wrongdoing from a registrant or self-regulatory organization, it may also contact the original source before sharing that information with other regulators. Similarly, when the Commission has originally received information from a foreign authority under a memorandum of understanding, the memorandum will generally address the question of prior notice before the information is shared with a third party. However, there may also be circumstances in which it would be inappropriate for the Commission to advise the original source of information that an enforcement organization other than the Commission has inquired about the information.

The conforming amendments which are adopted along with Rule 24c–1 include delegations of authority to the Directors of the Divisions of Enforcement, Corporation Finance, Market Regulation and Investment Management and the General Counsel and the Director of the Office of International Affairs. This will ensure that decisions regarding grants of access are made by the senior staff members who are most knowledgeable about the information in question and most sensitive to the confidentiality concerns of those who provided it. This is consistent with the request of the Depository Trust Company that the Director of the Division of Market Regulation receive authority to decide whether to release information obtained by the Division from the Depository Trust Company.

Finally, the Commission does not believe that, in carrying out the Congressional directive to list persons which might request access to nonpublic Commission files, it has been overly inclusive. Many of the persons listed in Rule 24c–1 are already listed in the current access rules: Rule 30–4(a)(7) of the Rules of Organization and Rule 2 of the Rules of Investigation. Many of these persons are also parties to agreements, or subject to rules, which require them to maintain the confidential nature of information provided.

II. Amendments to the Rules of Organization and Relating to Investigations

The adoption of Rule 24c–1 will require the Commission to make certain amendments to its existing Rules of Organization and Rules Relating to Investigations. The Commission is amending its Rules of Organization to include a new Rule 15 describing the responsibilities of its Office of International Affairs, and it is amending its rules relating to delegation of authority to include a delegation of authority to that Office. The Commission has also identified sections of existing rules which need modification in light of the adoption of Rule 24c–1.

A. Office of International Affairs

The Commission is amending its Rules of Organization to include a new rule describing the responsibilities of its Office of International Affairs, and to delegate certain authority to that office.

B. Rules of Organization and Delegations of Authority

Rule 24c–1 is intended to complement the Commission's existing access program, which is currently administered primarily by the Director of the Division of Enforcement pursuant to delegated authority.[6] The Commission is amending its Rules of Organization relating to delegation of authority to clarify that the authority of the Director of the Division of Enforcement extends to administration of Rule 24c–1, and also to extend similar authority to share information, including investigatory or enforcement-related information, to the Directors of the Divisions of Corporation Finance, Market Regulation, and Investment Management, the General Counsel and the Director of the Office of International Affairs. Delegated authority to administer Rule 24c–1 is being extended to the directors of these other divisions and offices because information that the Commission may provide under its access program is not limited to investigatory or enforcement-related information. It may include, for example, compliance, regulatory and market surveillance information.

The International Securities Enforcement Cooperation Act of 1990 also added section 24(d) to the Exchange Act,[7] which permits the Commission, when advised in good faith that disclosure would violate foreign law and when the Commission obtains information pursuant to enforcement proceedings or a memorandum of understanding, to withhold from disclosure records obtained from a foreign securities authority. The Commission has therefore amended its delegation of authority rules to give the General Counsel and the Directors of each of the above mentioned Divisions and Offices delegated authority to administer the provisions of section 24(d).

The foregoing amendments to the Commission's delegation of authority rules are reflected in: Rule 30–1(f)(14) and (15) (17 CFR 200.30–1(14) and (15)); Rule 30–3(a)(53) and (54) (17 CFR 200.30–3(a)(53) and (54); Rule 30–4(a)(7) and (9) (17 CFR 200.30–4(a)(7) and (9)); Rule 30–5(c–1)(3) and (4) (17 CFR 200.30–5(c–1)(3) and (4)); Rule 30–14(j)(1) and (2) (17 CFR 200.30(j)(1) and (2)); and new rule 30–17 (17 CFR 200.30–17).

C. Rules Relating to Investigations

Rule 2 of the Commission's Rules Relating to Investigations (17 CFR 203.2) currently provides that information or documents obtained in the course of an investigation or examination, unless

[6] See Rule 30–4(a)(7) of the Commission's Rules of Organization, 17 CFR 200.30–4(a)(7).

[7] 15 U.S.C. 78x(d).

made a matter of public record, shall be deemed nonpublic, but indicates that the Commission approves the practice whereby senior officials of the Division of Enforcement and of the Commission's Regional Offices may engage in, and may authorize members of the Commission's staff to engage in, discussions concerning such information or documents with persons specified in the Rule. In view of the adoption of Rule 24c–1, which identifies persons who may be provided access to nonpublic information in the Commission's possession, and the related amendments to the Commission's delegation of authority rules regarding administration of Rule 24c–1, the Commission has amended Rule 2 to amplify the persons currently identified therein for purposes of discussions with those persons identified in Rule 24c–1, and to provide that senior staff members of the Divisions of Corporation Finance, Market Regulation and Investment Management and the Office of International Affairs may also participate in discussions regarding information or documents obtained in the course of any investigation or examination.

The Commission has determined that its amendments and additions to its Delegations of Authority and Rules Relating to Investigations, and new Rule 15 of its Rules of Organization, describing the Office of International Affairs, relate solely to the agency organization, procedure or practice. Therefore, the provisions of the Administrative Procedure Act ("APA") regarding notice of proposed rulemaking and opportunities for public participation,[8] are not applicable. Similarly, the provisions of the Regulatory Flexibility Act,[9] which apply only when notice and comment rulemaking are required by the APA or other law, are not applicable. The Commission finds that the rule amendments and new rule 15 will not impose any burden on competition.

III. Regulatory Flexibility Act Analysis

Section 3(a) of the Regulatory Flexibility Act[10] requires the Commission to undertake a regulatory flexibility analysis of the impact of a rule on small entities, unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities. To the extent that Rule 24c–1 would impose any costs on entities subject to the Rule, or have a competitive effect on entities subject to the Rule, these costs are not significant and would not impact a substantial number of small entities. Accordingly, the Chairman has certified that the rule would not have a significant economic impact on a substantial number of small entities. A copy of the Chairman's certification is available from Anne Sullivan at 450 Fifth Street NW., Washington, DC 20549.

IV. Effects on Competition

Section 23(a)(2) of the Exchange Act[11] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered Rule 24c–1 in light of the standards cited in section 23(a)(2) and believes that adoption would not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

V. Statutory Basis of Rule

Rule 24c–1 is being adopted pursuant to sections 23(a) and 24(c) of the Exchange Act.[12] The amendments to the Commission's Rules of Organization are adopted pursuant to the authorities set forth therein.

List of Subjects

17 CFR Part 200

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

17 CFR Part 203

Administrative practice and procedures, Investigations, Securities.

17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, 17 CFR, chapter II, is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for part 200, subpart A, continues to read as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

Section 200.30–1 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 78c(b), 78*l*, 78m, 78n, 78*o*(d).

Section 200.30–3 is also issued under 15 U.S.C. 78b, 78d, 78f, 78k-1, 78s, 78q, 78eee, 79d.

2. Section 200.15 is added to read as follows:

§ 200.15 Office of International Affairs.

(a) The Office of International Affairs ("OIA") is responsible for the negotiation and implementation of the Commission's bilateral and multilateral agreements and understandings with foreign financial regulatory authorities. OIA coordinates and participates in activities relating to the Commission's international cooperation programs and develops initiatives to enhance the Commission's ability to enforce the federal securities laws in matters with international elements.

(b) OIA assists in and facilitates the efforts of the Commission's other divisions and offices in responding to international issues and in developing legislative, rulemaking and other initiatives relating to international securities markets. OIA facilitates the development of and, where appropriate, provides advice and presents Commission positions relating to international initiatives of other U.S. Government departments and agencies affecting regulation of securities markets. OIA plans, coordinates and participates in Commission meetings with foreign financial regulatory authorities.

3. Section 200.30–1 is amended by republishing paragraph (f) introductory text and by adding paragraphs (f)(14) and (15) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(f) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*):

* * * * *

(14) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(15) To administer the provisions of Section 24(d) of the Act (15 U.S.C. 78x(d)).

* * * * *

4. Section 200.30–3 is amended by republishing paragraph (a) introductory

[8] 5 U.S.C. 553.

[9] 5 U.S.C. 601 *et seq.*

[10] 5 U.S.C. 603(a).

[11] 15 U.S.C. 78w(a)(2).

[12] 15 U.S.C. 78w(a) and 78x(c).

text and by adding paragraphs (a) (53) and (54) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*):

* * * * *

(53) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(54) To administer the provisions of Section 24(d) of the Act (15 U.S.C. 78x(d)).

* * * * *

5. Section 200.30–4 is amended by revising paragraph (a)(7) and adding paragraph (a)(9) to read as follows:

§ 200.30–4 Delegation of authority to Director of Division of Enforcement.

* * * * *

(a) * * *

(7) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

* * * * *

(9) To administer the provisions of Section 24(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78x(d)).

* * * * *

6. Section 200.30–5 is amended by republishing paragraph (c-1) introductory text, by removing "; and" at the end of paragraph (c-1)(1) and adding a period in its place, and by adding paragraphs (c-1)(3) and (4) to read as follows:

§ 200.30–5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(c-1) With respect to the Securities Exchange Act of 1934:

* * * * *

(3) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(4) To administer the provisions of section 24(d) of the Act (15 U.S.C. 78x(d)).

* * * * *

7. Section 200.30–14 is amended by adding paragraph (j) to read as follows:

§ 200.30–14 Delegation of authority to the General Counsel.

* * * * *

(j) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

(1) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(2) To administer the provisions of section 24(d) of the Act (15 U.S.C. 78x(d)).

8. Section 200.30–17 is added to read as follows:

§ 200.30–17 Delegation of authority to Director of Office of International Affairs.

Pursuant to the provisions of Pub. L. 100–181, 101 Stat. 1254, 1255 (15 U.S.C. 78d-1, 78d-2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the Office of International Affairs to be performed by the Director or under the Director's direction by such other person or persons as may be designated from time to time by the Chairman of the Commission:

(a) To administer the provisions of § 240.24c-1 of this chapter; provided that access to nonpublic information as defined in such section shall be provided only with the concurrence of the head of the Commission division or office responsible for such information or the files containing such information.

(b) To administer the provisions of section 24(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78x(d)).

PART 203—RULES RELATING TO INVESTIGATIONS

9. The authority citation for Part 203 is revised to read as follows:

Authority: 15 U.S.C 77s, 78w, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

Subpart A—In General

10. Section 203.2 is revised to read as follows:

§ 203.2 Information obtained in investigations and examinations.

Information or documents obtained by the Commission in the course of any investigation or examination, unless made a matter of public record, shall be deemed non-public, but the Commission approves the practice whereby officials of the Divisions of Enforcement, Corporation Finance, Market Regulation and Investment Management and the Office of International Affairs at the level of Assistant Director or higher, and officials in Regional Offices at the level of Assistant Regional Administrator or higher, may engage in and may authorize members of the Commission's staff to engage in discussions with persons identified in § 240.24c-1(b) of this chapter concerning information obtained in individual investigations or examinations, including formal investigations conducted pursuant to Commission order.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

11. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11 unless otherwise noted.

* * * * *

12. Section 240.24c-1 is added to read as follows:

§ 240.24c-1 Access to nonpublic information.

(a) For purposes of this section, the term "nonpublic information" means records, as defined in Section 24(a) of the Act, and other information in the Commission's possession, which are not available for public inspection and copying.

(b) The Commission may, in its discretion and upon a showing that such information is needed, provide nonpublic information in its possession to any of the following persons if the person receiving such nonpublic information provides such assurances of confidentiality as the Commission deems appropriate:

(1) A federal, state, local or foreign government or any political subdivision, authority, agency or instrumentality of such government;

(2) A self-regulatory organization as defined in Section 3(a)(26) of the Act, or any similar organization empowered with self-regulatory responsibilities under the federal securities laws (as defined in Section 3(a)(47) of the Act), the Commodity Exchange Act (7 U.S.C. 1, *et seq.*), or any substantially equivalent foreign statute or regulation;

(3) A foreign financial regulatory authority as defined in Section 3(a)(51) of the Act;

(4) The Securities Investor Protection Corporation or any trustee or counsel for a trustee appointed pursuant to Section 5(b) of the Securities Investor Protection Act of 1970;

(5) A trustee in bankruptcy;

(6) A trustee, receiver, master, special counsel or other person that is appointed by a court of competent jurisdiction or as a result of an agreement between the parties in connection with litigation or an administrative proceeding involving allegations of violations of the securities laws (as defined in Section 3(a)(47) of the Act) or the Commission's Rules of Practice, 17 CFR Part 201, or otherwise, where such trustee, receiver, master, special counsel or other person is specifically designated to perform particular functions with respect to, or as a result of, the litigation or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice;

(7) A bar association, state accountancy board or other federal, state, local or foreign licensing or oversight authority, or a professional association or self-regulatory authority to the extent that it performs similar functions; or

(8) A duly authorized agent, employee or representative of any of the above persons.

(c) Nothing contained in this section shall affect:

(1) The Commission's authority or discretion to provide or refuse to provide access to, or copies of, nonpublic information in its possession in accordance with such other authority or discretion as the Commission possesses by statute, rule or regulation; or

(2) The Commission's responsibilities under the Privacy Act of 1974 (5 U.S.C. 552a), or the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401–22) as limited by section 21(h) of the Act.

By the Commission.

Dated: October 4, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24745 Filed 10–7–93; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 141

[Docket No. RM93–10–000]

New Reporting Requirement Implementing Section 213(b) of the Federal Power Act and Supporting Expanded Regulatory Responsibilities Under the Energy Policy Act of 1992, and Conforming and Other Changes to Form No. FERC–714

Issued September 30, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is creating a new reporting requirement, FERC Form No. 715, Annual Transmission Planning and Evaluation Report, to inform potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints as required under section 213(b) of the Federal Power Act, as added by the Energy Policy Act of 1992.

In addition to implementing the information requirements of section 213(b), the rule is intended to support the Commission's expanded responsibilities under sections 211 and 212 of the Federal Power Act, as amended by the Energy Policy Act of 1992, and to provide information with which to analyze filings involving, or requests for, transmission services under the Federal Power Act.

The Commission is also amending Form No. FERC–714, Annual Electric Control and Planning Area Report. The conforming and other changes in Form 714 involve: Changing the designation of the form to read: "FERC Form No. 714"; changing the annual filing date of the form to no later than June 1 of the following year; eliminating information requirements duplicating the information that the Commission will now collect in Form 715; eliminating the reporting of certain information no longer needed for the Commission's regulatory purposes; and modifying certain existing information requirements to improve their usefulness.

DATES: The final rule is effective November 8, 1993. The information collection provisions, however, will not become effective until approved by the Office of Management and Budget. Notice of this date will be published in the **Federal Register.**

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Daniel L. Larcamp (Legal Information), Assistant General Counsel, Electric Rates and Corporate Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–2088.

William Booth (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0849.

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

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

Order No. 558

Final Rule

Issued September 30, 1993.

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

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending part 141 of its regulations by adding a new § 141.300 requiring that "transmitting utilities"[1] inform

[1] A transmitting utility is any electric utility (*i.e.*, any person or State agency (including any municipality) which sells electric energy), qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency that owns or operates electric power transmission facilities that are used for the

potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints as required under section 213(b) of the Federal Power Act (FPA), as added by the Energy Policy Act of 1992 (Energy Policy Act).[2] The new regulation creates a new reporting form, FERC Form No. 715, Annual Transmission Planning and Evaluation Report (Form 715). In addition to implementing the requirements of section 213(b), this rule is intended to support the Commission's expanded responsibilities under sections 211 and 212 of the FPA, as amended by Energy Policy Act, and to provide information with which to analyze filings involving, or requests for, transmission services. The Commission also is amending 18 CFR 141.51 and the associated Form No. FERC–714, Annual Electric Control and Planning Area Report (Form 714), to make conforming and other changes.[3]

A. Notice of Proposed Rulemaking

The Commission issued a Notice of Proposed Rulemaking (NOPR) on March 30, 1993.[4] The Commission received 118 sets of comments in response to the NOPR. Commenters represent all interest groups in the electric utility industry. Commenters include: 48 investor-owned utilities; 18 municipal utilities; 12 rural electric cooperatives; 13 regional reliability councils, subregional organizations or proposed regional transmission groups (RTGs); 7 state regulatory commissions; 7 non-traditional generating entities (such as Independent Power Producers (IPPs) and Qualifying Facilities (QFs)); and 13 other parties, including industrial customer groups, the U.S. Department of Energy (DOE) and members of the Energy and Commerce Committee of the United States House of Representatives.

B. Summary of Form 715 Requirements[5]

Starting on April 1, 1994, each transmitting utility that operates integrated transmission system facilities that are rated at or above 100 kilovolts (kV) (Respondent), will annually submit to the Commission a new reporting form, Form 715.

Form 715 requires each Respondent to:

(1) Identify a contact person for inquiries regarding information in the form [Form 715, part 1];

(2) Submit in electronic form its base case power flow data[6] if it does not participate in the development and use of regional power flow data. A Respondent that participates in the development and use of regional power flow studies must either submit in electronic form the regional or subregional base case power flow data or designate any regional or subregional organization, or any other single entity to submit in electronic form the regional or subregional base case power flow data [Form 715, part 2];

(3) Submit transmission system maps and diagrams used by the Respondent for transmission planning [Form 715, part 3];

(4) Submit a detailed description of the transmission planning reliability criteria used to evaluate system performance for time frames and planning horizons used in regional and corporate planning [Form 715, part 4];

(5) Submit a detailed description of the Respondent's transmission planning assessment practices (including, but not limited to, how reliability criteria are applied and the steps taken in performing transmission planning studies) [Form 715, part 5]; and

(6) Submit a detailed evaluation of the Respondent's anticipated system performance as measured against its stated reliability criteria using its stated assessment practices [Form 715, part 6].

Respondents must submit to the Commission an original and two copies in hard copy of the above items 1 through 6. Respondents must also submit to the Commission in electronic form items 1, 2, 4, 5, and 6.

Respondents must also make available expeditiously to the public, upon request, in hard copy, the above items 1 through 6. Respondents must also make available expeditiously to the public, upon request, in electronic form, items 1, 2, 4, 5, and 6.

When Respondents have designated any single entity to submit regional or subregional base case power flow data to the Commission, that entity must submit these data to the Commission in both hard copy and electronic form, as indicated immediately above. That entity must also make these data available expeditiously to the public, upon request, in both hard copy and electronic form, as indicated immediately above.

The primary authority for the collection of Form 715 data is section 213(b) of the FPA. The collection of these data also supports the Commission's expanded responsibilities under sections 211, 212 and 213(a) of the FPA (as amended by the Energy Policy Act), and assists in rate or other regulatory proceedings. Thus, the Commission's authority for this rule is also based on the Commission's general authorities under sections 307(a), 309 and 311 of the FPA.

C. Summary of Form 714 Revisions[7]

Changes to Form 714 involve:

(1) Changing the designation of the form to read: "FERC Form No. 714," to be consistent with the designation of other Commission forms;

(2) Changing the annual reporting date from May 1 to no later than June 1 of the following year (to better accommodate regional reporting of hourly demand and demand forecast data); and

(3) Eliminating and modifying several existing information requirements.

The Commission is eliminating certain schedules from Form 714 because it will now collect this information in Form 715. These schedules include: Schedules VIII (Control Area Transmission Power Flow Data), XIII (Planning Area Transmission Line Data), and XV (Planning Area Transmission Maps and Diagrams). The Commission is also eliminating Schedule XIV (Hydroelectric Data) because the Commission no longer needs the information in this schedule to fulfill its responsibilities under parts I or II of the FPA.

The Commission is also eliminating the reporting of Base Power Transfers and Incremental Transfer Capability from Schedule VI because the Commission can derive this information from data now filed in Form 715. The Commission is changing Schedule VII (Control Area System Lambda) to collect hourly system lambda data (in electronic form) for the entire year and to require a description of how transmitting utilities calculate system lambda or, for those control areas that do not use an economic dispatch algorithm, how the control area dispatches its resources.

In addition, the Commission is consolidating Schedules X (Planning Area Monthly Net Energy for Load), XI

sale of electric energy at wholesale. See section 3(23) of the FPA, as added by the Energy Policy Act.

[2] Public Law No. 102–486, 106 Stat. 2776 (1992).

[3] Although some information required by new Form 715 is already included in Form 714, the Commission is not combining the reporting requirements into one form because the two forms differ substantially both in purpose and as to who must file them. To prevent duplication of reporting effort, the Commission is eliminating a number of schedules from Form 714.

[4] New Reporting Requirements Under the Federal Power Act and Changes to Form No. FERC–714, 58 FR 17544 (April 5, 1993); IV FERC Stats. & Regs. ¶32,493.

[5] The instructions for completing Form 715 appear in appendix A.

[6] Base case power flows are best estimate simulations of the operations of regional transmission grids.

[7] The changes to Form 714 appear in appendix B.

(Planning Area Summer and Winter Actual and Forecast Peak Demand and Annual Net Energy for Load), and XII (Planning Area Hourly Demand Data By Specified Week) into a requirement that form 714 Respondents submit hourly demand data in electronic form to the Commission. Respondents that are members of regional or sub-regional organizations may instead, however, authorize their national, regional, or subregional organizations to file hourly demand data on behalf of their member systems. If a national, regional, or subregional organization does consolidate and report Form 714 (or Form 715) information for its members, it must separately identify data for each Respondent covered by the report. The authority to collect the Form 714 information is the Commission's general information collection authorities in sections 307(a), 309 and 311 of the FPA.

D. Major Changes in Final Rule From NOPR

The following is a list of the major changes in the final rule from the reporting requirements proposed in the NOPR:

—Only transmitting utilities that are operators of integrated transmission system facilities that are rated at or above 100 kV must file a Form 715. The NOPR proposed submittal by operators and owners and included entities owning only radial facilities.

—A request for waiver of the requirement to file Form 715 must either: (1) Indicate the entity that performs transmission planning for the entity requesting waiver, or (2) State that the entity requesting waiver does not use power flow analyses in performing transmission planning.[8]

—The annual filing date for Form 715 is no later than April 1 of each year. The NOPR proposed a filing date of January 1.

—When a Respondent identifies stability as a limiting factor in its regional transmission analysis, the Respondent must, on request, make regional stability studies available to the public.

—The Commission is allowing regional organizations to charge a fee for copying the material provided to the public, and requiring that a fee schedule be included in part 2 of Form 715.

—The Commission has eliminated Base Power Transfers and First Contingency Incremental Transfer Capability data from Schedule 5 (previously cited as Schedule VI) of Form 714. Similar information can be derived from base case power flows data that transmitting utilities now submit in part 2 of Form 715.

—The Commission has added to Schedule 6 of Form 714 a requirement that a control area describe how it calculates its system lambda (*i.e.* its incremental cost of energy).[9] Any entity that does not use an economic dispatch algorithm must describe how it dispatches its resources. The annual filing date for Form 714 is no later than June 1 of the following year. The current filing date is no later than May 1.

II. Preliminary Matter

A number of commenters filed their comments after the deadline for the filing of comments in this proceeding.[10] All of these commenters have demonstrated a substantial interest in this proceeding, and no one objects to the admission of these untimely-filed comments into the record in this proceeding. Our consideration of these comments will not unduly prolong this proceeding or prejudice any of the parties who timely filed their comments. The late-filed comments have contributed to our analysis of the issues in this proceeding. We will, therefore, accept these untimely filed comments and make them a part of the record.

Some commenters have requested the opportunity to respond to other parties' comments. Other commenters have requested that the Commission convene a technical conference.

We think that the 118 comments that we have received thoroughly explore the issues in this proceeding. We see no need for either reply comments or for a technical conference. We will, therefore, deny the requests for reply comments and for a technical conference.

III. Jurisdiction

There are two challenges to the Commission's jurisdiction to apply the rule to certain entities. Alabama Electric Cooperative (Alabama Electric) challenges the Commission's authority to apply the rule to cooperatives. The Alaska Intertie Operating Committee (Alaska Committee) argues that the Commission has no power to apply the rule to the operators of Alaskan transmission facilities. We have reviewed these arguments and have concluded that, in each instance, the Commission has the authority to apply the rule to the entities.

A. Cooperatives

Section 213(b) of the FPA, as amended by the Energy Policy Act, requires the Commission to require "transmitting utilities" to provide potential transmission customers, State regulatory authorities, and the public with information concerning potentially available transmission capacity and known constraints. In the NOPR,[11] the Commission stated that:

> A transmitting utility is any electric utility (i.e., investor-owned, cooperative, municipal or state agency), qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale. See section 3(23) of the Federal Power Act, as added by the Energy Policy Act of 1992.[12]

The Commission also stated that:

> [T]he Energy Policy Act gives the Commission authority to order wheeling by "transmitting utilities" as defined in the new section 3(23) of the FPA. Such entities include electric utilities (irrespective of public, cooperative or private ownership status), qualifying facilities and Federal power marketing agencies which own or operate electric power transmission facilities used for the sale of electric energy at wholesale.[13]

Alabama Electric challenges the accuracy of the Commission's jurisdictional assertions. It notes that the Energy Policy Act does not include the word "cooperative" in its definition of "transmitting utility." Alabama Electric argues that the Commission offers no statutory support for including the term "cooperative" within the definition of "transmitting utility" or within the term "electric utility."[14] Alabama Electric cites *Salt River Project Agr. Dist.* v. *Federal Power Commission*[15] and *Dairyland Power Cooperative*[16] for the proposition that the Commission lacks jurisdiction over cooperatives.[17] We reject Alabama

[8] The Commission expects that requiring only operators of integrated transmission facilities to file Form 715 will reduce the number of requests for waiver.

[9] A description of the development of system lambda is included in the instructions to Schedule 6, Control Area Hourly System Lambda, of Form 714.

[10] The Commission originally designated May 20, 1993 as the final date for filing comments in this proceeding, but later extended the comment period to June 21, 1993.

[11] New Reporting Requirement Under the Federal Power Act and Changes to Form No. FERC–714, 58 FR 17544 (April 5, 1993); IV FERC Stats. & Regs. ¶ 32,493.

[12] 58 FR 17544 (April 5, 1993), n.1; IV FERC Stats & Regs. ¶ 32,493 at 32,686, n.1.

[13] 58 FR 17544, 17548 (April 5, 1993); IV FERC Stats. & Regs. ¶ 32,493 at 32,691.

[14] Alabama Electric Comments at 3.

[15] 391 F.2d 470 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 857 (1968) (*Salt River*).

[16] Opinion No. 511, 37 FPC 12 (1967) (*Dairyland*).

[17] In contrast to Alabama Electric's position, North Carolina Electric Membership Corporation

Electric's arguments. The *Salt River* and *Dairyland* cases are inapposite. These cases address whether a cooperative is a public utility as defined in the FPA.[18] They do not address whether a cooperative is an electric utility as defined in the FPA.[19]

The terms "public utility" and "electric utility" have different meanings under the FPA.[20] As the Commission has noted, "[a]ll public utilities, as defined in the FPA, are electric utilities * * * . However, electric utilities include entities that are not public utilities, such as cooperative and municipal utilities."[21] Section 3(22) of the FPA defines "electric utility" as any person, State agency, or Federal agency that sells electricity.[22] Section 3(4) of the FPA defines "person" as an individual or corporation.[23] Section 3(3) of the FPA defines "corporation" as, among other things, any corporation, joint-stock company, partnership, association, business trust, or any organized group of persons, whether incorporated or not.[24] Because cooperatives fall within the definition of "corporation," they are persons that sell electricity. As such, they are "electric utilities."

When Congress passed the Public Utility Regulatory Policies Act of 1978 (PURPA),[25] it added section 211 as well as the section 3(22) definition of electric utility to the FPA, thereby giving the Commission authority to order electric utilities not otherwise subject to its jurisdiction (i.e., not otherwise "public utilities") to provide transmission service.[26] The term "transmitting utility," which the Energy Policy Act added to the FPA, and which appears in both the newly amended section 211 and the new section 213, includes the term "electric utility." The Commission, therefore, has jurisdiction under section 213(b) of the FPA, as added by the Energy Policy Act, to require cooperatives to provide information on their potentially available transmission capacity and known constraints.

B. Alaska

Alaska Committee argues that, because Alaska is not interconnected with any interstate transmission grid, Alaskan transmission facilities do not meet the Commerce Clause requirements for interstate activity. We construe its argument to mean that we should not apply the proposed reporting requirements to Alaskan utilities because to do so would be unconstitutional.[27]

This rule requires that all transmitting utilities submit information to us. Section 3(23) of the FPA defines "transmitting utilities" as those that own or operate transmission facilities used for the sale of electric energy at wholesale. Indeed, the term "transmitting utility" (FPA section 3(23)) encompasses the term "electric utility" (FPA section 3(22)). Neither term includes any reference to a distinction between inter- and intrastate facilities. When Congress intended to make such a distinction, it did so clearly, as is evidenced by the term "wholesale transmission services" (FPA section 3(23)) which specifically refers to energy sold at wholesale in interstate commerce.[28] Therefore, Congress intended that the information requirements of section 213(b) apply to both interstate and intrastate utilities.

Moreover, there is little doubt that Congress may regulate intrastate utilities. Congress may regulate an intrastate activity when that activity is part of a national activity that Congress has chosen to regulate under its interstate commerce power. When it enacted the Energy Policy Act, Congress' purpose was national in scope.[29] It intended to encourage a competitive bulk power market, to promote increased efficiency and reduce the cost of electric energy.[30] Information regarding transmission availability and known constraints is essential to market-oriented pricing. And Congress has a legitimate interest in using market forces to aid in producing an abundant supply of electric energy at reasonable prices. The transmission information requirements are, therefore, reasonably adapted to a constitutional end, as the case law requires.[31] Since the effects of electricity are all-pervasive in our society, Congress was well within its interstate commerce authority in applying its transmission information requirements to transmitting utilities that are not connected to an interstate transmission grid.[32] The Commission has found jurisdiction in analogous circumstances.[33]

IV. Objectives of Form 715

A. Implementation Alternatives

In addressing how best to implement the requirements of Section 213(b), the Commission stated in the NOPR that, based on its experience, "it is not practical to provide a simple measure of

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recognizes that "under the recently enacted Energy Act, electric cooperatives that own or operate * * * facilities used for wholesale sales could be subject to FERC jurisdiction as 'transmitting utilities' * * * regardless of their exempt status from other aspects of FERC jurisdiction." North Carolina Electric Membership Corporation Comments at 4–5.

[18] See *Salt River* at 472. In *Dairyland*, the Commission determined that non-profit cooperatives financed by the Rural Electrification Administration (REA) are not "public utilities" under the FPA, and thus do not have to comply with the Commission's reporting, accounting and rate schedule filing requirements. Salt River relied on Dairyland in finding that a specific REA-financed cooperative was "not a 'public utility' within the meaning of Parts II and III of the Federal Power Act."

[19] *Salt River* at 474. See also Arkansas Electric Cooperative Corp. v. Arkansas Public Service Commission, 461 U.S. 375, 381–385 (1982) (discussing Dairyland and Salt River).

[20] See Enron Power Enterprise Corp., 52 FERC ¶ 61,193 at 61,704, n.5, citing Long Lake Energy Corp., 51 FERC ¶ 61,262 (1990).

[21] Policy Statement Regarding Regional Transmission Groups, 58 FR 41,626 (Aug. 5, 1993), III FERC Stats. & Regs. ¶ 30,975.

[22] Public Law No. 95–617 section 3(4), 92 Stat. 3117, (1978) (codified at 16 U.S.C. 796(22) (1986)).

[23] U.S.C. 796(4).

[24] U.S.C. 796(3).

[25] Public Law No. 95–617, 92 Stat. 3117 (1978).

[26] H.R. Rep. No. 95–1750, 95th Cong., 2d Sess. at 94–95 (1978). Prior to PURPA, the Commission had limited authority to order transmission in non-emergency situations, but only to public utilities. See FPA sections 202(b) and 207. When Congress added sections 210–212 to the FPA, it provided in section 201(b)(2) that compliance with a Commission order under sections 210 or 211 will not make an electric utility subject to the jurisdiction of the Commission for purposes other than the provisions of sections 210, 211 or 212.

[27] Alaska Committee Comments at 3–4. Alaska Committee argues that Alaskan transmission facilities do not meet the Commerce Clause requirements for interstate activity; this implies that if the Energy Policy Act does apply to these utilities, the statute is unconstitutional. In the alternative, Alaska Committee asks the Commission for an exemption, implicitly recognizing the Commission's authority to impose the reporting requirements on Alaska's transmitting utilities.

[28] FPA section 3(24) defines wholesale transmission services as the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce.

[29] Congress' aim was nothing less than a "comprehensive national energy policy * * *." H.R. Rep. No. 102–474, 102nd Cong. 2nd Sess., pt. 1 at 132 (1992).

[30] H.R. Rep. No. 102–474, 102nd Cong. 2nd Sess., pt. 1 at 132–138 (1992). Congress sought "to use the market rather than government regulation wherever possible both to advance energy security goals and to protect consumers." *Id.* at 133. It hoped that "additional competition in [the] wholesale electricity power market * * * [would] improve the efficiency of the electric utility industry and secure the lowest possible costs for consumers." *Id.* at 138.

[31] See *Presault* v. *Interstate Commerce Commission*, 494 U.S. 1, 17 (1989); *Hodel* v. *Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264 (1981); *Hodel* v. *Indiana*, 452 U.S. 314, 323–324 (1981); *FERC* v. *Mississippi*, 456 U.S. 472 (1981).

[32] See e.g., *Heart of Atlanta Motel* v. *United States*, 379 U.S. 241 (1964); *Katzenbach* v. *McClung*, 379 U.S. 294 (1964); *Wickard* v. Filburn, 317 U.S. 111 at 125 (1942) (Congress may reach local activity if the activity "exerts a substantial economic effect on interstate commerce"); *cf. Arizona Public Service Co.* v. *Snead*, 441 U.S. 141 (1979) (New Mexico's energy tax found to be an impermissible burden on interstate commerce).

[33] See Central Power and Light Company, 8 FERC ¶ 61,065, modified and reh'g denied, 9 FERC ¶ 61,011 (1979), reh'g denied, 10 FERC ¶ 61,131 (1980); Kalaeloa Partners, L.P., 48 FERC ¶ 61,173 (1989).

transmission availability that would cover all potential transmission service requests."[34] The Commission stated that the better approach to providing meaningful information to potential transmission customers is to require access to "the fundamental information used and assumptions made by the transmitting utility to perform its planning and operating studies"[35] so that these potential customers "can perform their own studies and reach their own conclusions."[36]

One commenter states that the Commission's interpretation is the only practical approach.[37] Other commenters state that the commission's approach is consistent with Congressional intent in establishing Section 213(b).[38] On the other hand, some commenters do not support the Commission's approach, stating that it is unnecessary, burdensome, wasteful, unreasonable, will not provide useful or meaningful information, or exceeds the intent of Congress.[39]

Seven commenters believe that potential transmission customers would not be able to use the requested information to do their own analyses.[40] One of the commenters states that "if potential users want to know if a transmission system can accommodate additional transfers, they will have to ask the owners and operators of that generation and transmission system."[41] A few commenters also question the value of collecting this information in light of alleged national security concerns.[42] Additionally, several commenters state that the information to be collected is not sufficient to analyze transmission capability because stability is the limiting factor in their areas. These commenters argue that more detailed and specific data and analyses are needed to evaluate transmission capability.[43]

These commenters propose a number of alternatives, such as:

(1) Allowing transmitting utilities to provide the information when requested;

(2) Relying on the transmitting utility to perform any studies, perhaps jointly with the requester;

(3) Requiring that transmitting utilities provide only summary information, such as regional assessments, DOE OE–411 reports or transfer capability data; and

(4) Encouraging working through regional reliability councils or regional transmission groups (RTGs).

The Commission concludes that none of the proposed alternatives satisfies the requirements of section 213(b). Requiring transmitting utilities to make information available only on request or relying on a transmitting utility to perform the studies is inconsistent with the annual collection and public availability requirements of section 213(b). Furthermore, a large number of commenters, representing the entire spectrum of interests, state that the information as defined in this rule will be useful to potential customers for screening analyses of transmission capability.[44]

The Commission has concluded that there is, at present, no simpler way to satisfy the requirements of section 213(b).[45] Regional reliability council assessments (such as NERC summer and winter assessments that contain interregional transfer capabilities for those periods or DOE OE–411 reports) are too general to provide useful information to potential transmission customers for meaningful analysis regarding specific inquiries. Similarly, regional operating studies—which estimate the ability to transfer energy between control areas or regions (such as the East Central Area Reliability Coordination Agreement's (ECAR) summer and winter assessment of transmission system performance)—provide little, if any, information regarding the availability of transmission capacity within or across a control area or region. In addition, reported transfer capability data do not provide sufficient information to evaluate or to screen for either alternative generation sites or for the effects of alternative bulk power purchases and sales on the transmission system.[46]

A number of commenters disagree with the Commission's objective of providing data to potential transmission customers so that customers can perform their own studies and reach their own conclusions. These commenters state that meaningful planning studies can result from joint studies done from a regional perspective. The commenters urge that the Commission discourage potential customers from performing their own studies and instead encourage them to work through regional organizations such as RTGs to develop transmission capacity studies.[47]

The Commission agrees with the commenters that RTGs could be good vehicles for satisfying the intent of section 213(b) and encourages parties to work through regional transmission organizations to develop the data required by this rule.[48] However, RTGs simply do not exist at the present time and thus are not available to help us meet the requirements of section 213(b). In addition, once RTGs do exist, not all entities may see a need to work through a regional organization. Some entities, such as Exempt Wholesale Generators (EWGs) or Qualifying Facilities (QFs), with multiple facilities across the

[34] 58 FR 17548 (April 5, 1993); IV FERC Stats. & Regs., Proposed Regulations ¶ 32,493 at 32,692.

[35] *Id.*

[36] 58 FR 17548 (April 5, 1993); IV FERC Stats. & Regs. at 32,693.

[37] See Pennsylvania-New Jersey-Maryland Interconnection Comments at 3.

[38] See, e.g., American Iron and Steel Institute, *et al.* Comments at 3; Indiana Utility Regulatory Commission Comments at 2; U.S. Department of Energy (DOE) Comments at 1; Electric Generating Association Comments at 1; Texas Utilities Comments at 1; National Association of Regulatory Utility Commissioners (NARUC) Comments at 3; Pacific Gas & Electric Comments at 3.

[39] See, e.g., Centerior Comments at 1; Northern States Power Comments at 2; Central Louisiana Electric Comments at 3; Large Public Power Council Comments at 5.

[40] See Central Louisiana Electric Comments at 3; Wisconsin Power and Light Comments at 2; North American Electric Reliability Council (NERC) Comments at 2; Northern States Power Comments at 6; South Carolina Electric & Gas Comments at 1; Virginia-Carolinas Reliability Group Comments at 3–4; and Central & Southwest Comments at 2.

[41] NERC Comments at 2.

[42] See, e.g., Commonwealth Edison, *et al.* Comments at 2–3; Central Illinois Public Service Comments at 6. This issue is addressed separately in Section V.B, below.

[43] See, e.g., Public Generating Pool Comments at 3; Montana-Dakota Utilities Comments at 2; San Diego Gas & Electric Comments at 2; Large Public Power Council Comments at 5.

[44] See, e.g., NARUC Comments at 5–7; DOE Comments at 3; California Energy Commission Comments at 1; National Rural Electric Cooperative Association, *et al.* Comments at 1–2; National Independent Energy Producers Comments at 3; Indiana Utility Regulatory Commission Comments at 4; American Public Power Association (APPA) Comments at 1–3; Western Systems Coordinating Council Comments at 1–4; Duke Power Comments at 3; Edison Electric Institute (EEI) Comments at 7; Institute of Electrical and Electronic Engineers (IEEE) Comments at 2.

[45] The Tennessee Valley Authority (TVA) states that it "would be willing to work with the Commission on ways to develop a system of reporting transmission capacity that would both minimize the reporting burden and provide a realistic measure of available capacity and known constraints." TVA Comments at 2. The Commission supports and encourages efforts to identify more efficient and less costly means to develop data required by section 213(b).

[46] See, e.g., Southwest Power Pool Comments at 4; Utah Associated Municipal Power Systems Comments at 4–7. A transmitting utility may, however, use the results of regional assessments and transfer capability studies, in part, to develop the narrative description of the transmitting utility's evaluation of its transmission performance, which Part 6 of Form 715 requires.

[47] See, e.g., Southwest Power Pool Comments at 3; NERC Comments at 2; South Carolina Electric & Gas Comments at 1; Virginia-Carolinas Reliability Group Comments at 3–4.

[48] The Commission recently issued a Policy Statement encouraging the development of RTGs. Policy Statement Regarding Regional Transmission Groups, 58 FR 41626 (Aug. 5, 1993); 64 FERC ¶ 61,138 (1993). As yet, however, no RTG has been approved.

Nation, may not wish to join each regional group throughout the country, but nevertheless are interested in the ability to perform screening studies. The information requirements of this rule allow potential transmission users to judge for themselves the value of either working through regional organizations or doing screening studies on their own.

B. Objectives in Gathering Form 715 Information

Several commenters ask the Commission to state that it intends transmitting utilities and potential transmission customers to use Form 715 information only for screening studies. They also ask the Commission to recognize that a transmitting utility can only assess the actual availability of transmission capacity when presented with a specific request for transmission service under section 213(a).[49] Some commenters allege that the Commission is confusing the requirements of section 213(b) with those of section 213(a).[50]

The Form 715 reporting requirement serves two purposes. First, Form 715 will provide a potential transmission customer with sufficient information to perform a screening analysis (*i.e.*, a preliminary study of the availability of transmission capacity for the region of interest) to determine the likely response by a transmitting utility should the customer make a request for transmission service. With this information in hand, the potential transmission user can make broad estimates of the likely transmission costs of a potential transaction. The availability of such information should reduce the instances when a transmitting utility denies a request for transmission service because transmission capacity is not available or because its cost is too high.

Second, Form 715 will provide potential transmission customers, State regulatory authorities, and the public with the specific procedures that a transmitting utility will follow when determining available transmission capacity in response to a request for service. The information in parts 3 through 6 of Form 715 will enhance the understanding of how an individual transmitting utility performs transmission planning studies that it will need to respond to a transmission service request.

Some commenters allege that there is an inconsistency between the general nature of the regional power flow base cases required in part 2 of Form 715 and the individual detail required in parts 3 through 6 of Form 715.[51] The different requirements of these parts are intentional; data from the various parts complement each other.[52] Regional power flow base cases typically do not include certain lower voltage transmission lines within the region, while transmission planning data, criteria and procedures that transmitting utilities use typically consider all lower voltage transmission lines.

Furthermore, Form 715 will inform a potential customer of the current utility practices that may be relevant to a specific request for transmission service. The annual reporting of Form 715 also will ensure identification of significant changes in data, criteria or procedures used to analyze individual requests. The availability of Form 715 information should also help to ensure the accuracy and consistency of transmission planning information and assist potential customers in corroborating the validity of transmitting utility responses to requests for service. Similarly, the availability of a utility's transmission planning information will help potential transmission customers make better "good faith" requests and better understand the transmitting utility's response.

Although the level of detail in parts 3 through 6 of Form 715 may, in some cases, exceed that necessary to understand and to use the regional data furnished under part 2 of Form 715, the Commission finds that the need to understand the entire process of determining available transmission capacity and constraints on individual systems warrants the filing of this information. The Commission intends to make publicly available information that reflects, to the fullest extent possible, utilities' current planning processes. These criteria and procedures may change in light of the open transmission access environment that is now evolving. Changes in the planning process may also occur as a result of organizational developments, such as the formation of RTGs. Ensuring that current information is available regarding available transmission capacity is consistent with our statutory responsibilities and Congressional intent in enacting the relevant sections of the Energy Policy Act, i.e., those modifying sections 211 and 212 and adding section 213 to the FPA.

C. Use of Existing Information

The NOPR stated that the proposed Form 715 reporting requirement would rely in large part on existing information. Most commenters generally agree.[53] Part 2 (regional power flow base cases) and part 3 (utility maps and diagrams) of Form 715 do not require the development of new information. Transmitting utilities currently develop and use these data in the course of their utility business.

Parts 4 and 5 (criteria and planning procedures) of Form 715 require a description of a transmitting utility's planning reliability criteria and planning assessment procedures. Commenters indicate, however, that the degree of documentation of procedures varies among companies. For example, many utilities state that they make numerous engineering judgments in the course of performing transmission studies. Because these judgments are based on the planner's experience, they are not generally documented in any systematic fashion.

Commenters also raise concerns regarding the meaning of certain portions of the instructions of parts 4 and 5 of Form 715. They interpret certain phrases contained in these parts, such as "in totality" and "reasonably replicate," as requiring an unreasonable or impractical amount of detail.[54]

The Commission is not requiring the documentation of the institutional knowledge of transmitting utilities' planning engineers. The Commission's intention is that transmitting utilities file the substantive criteria and planning procedures that they follow in the normal course of business. The information that transmitting utilities will file in Form 715 should help requesters to perform preliminary

[49] See, e.g., Wisconsin Public Service Comments at 1–2; Southern Company Services Comments at 13–14; Pennsylvania Power & Light Comments at 2–3.

[50] See, e.g., American Electric Power Comments at 2; Duke Power Comments at 4–21.

[51] See, e.g., Midwest Power Systems Comments at 2; Municipal Energy Agency of Nebraska Comments at 6; NERC Comments at 9; Pacific Gas & Electric Comments at 4.

[52] The Commission notes that advances in computing capability are allowing regional power flow analyses to reflect more individual utility detail. Future regional models are likely to include much more individual utility data as utilities attempt to reduce the number of sets of base cases they must maintain on their own and the amount of additional individual data they must input when using regional base cases as the basis for performing their own analyses. See, e.g., Southwest Power Pool Comments at 2; APPA Comments at 18; Transmission Access Policy Study Group Comments at 11.

[53] See, e.g., American Electric Power Comments at 3; NERC Comments at 2; Western Systems Coordination Council Comments at 2; Associated Electric Cooperative Comments at 3; Municipal Electric Authority of Georgia Comments at 3; NARUC Comments at 6.

[54] See, e.g., American Electric Power Comments at 6–7; NERC Comments at 10; Entergy Services Comments at 4–5; Union Electric Comments at 8; Associated Electric Cooperative Comments at 4–5; Duke Power Comments at 3–4; Allegheny Power Service Comments at 2–4; Pacific Gas & Electric Comments at 9.

screening analyses and to better understand the process of determining available transmission capacity. With such knowledge, requesters can better anticipate the response of an inquiry regarding potential transmission service. In the final rule, the Commission has modified the instructions of parts 4 and 5 to clarify this point. It has also removed the terms "in totality" and "reasonably replicate" to ensure that Form 715 will not require an unreasonable amount of detail.

Because most criteria and procedures required by parts 4 and 5 should already be identified and documented by utilities, the Commission does not expect that new information will have to be developed. If utilities have not identified or documented some of their criteria and procedures, they will have to add this to their existing materials in order to satisfy the initial reporting requirements for parts 4 and 5. In subsequent years, however, only changed criteria and procedures are required to be filed.

The evaluation of transmission system performance requirement of part 6 of Form 715 does require data that transmitting utilities do not currently develop in the normal course of business. This evaluation requires new data because: (1) The analysis is to include information that encompasses future periods that generally are longer than the periods covered by operating studies utilities currently perform; and (2) similar evaluations are not collected or cannot be derived from existing information requirements. Without these data, neither the Commission nor potential transmission users can estimate potentially available transmission capacity and known constraints. Consequently, the rule will not satisfy the statutory mandate that transmission capacity and known constraints be made available without the development of this information.

V. Discussion of Specific Issues

A. Reporting Burden

The estimate of the annual reporting burden for Form 715 is 200 hours per response. In the NOPR, the Commission estimated the reporting burden to be 100 hours per response. Many commenters indicate that if the Commission requires the reporting of only existing information and a narrative description for Part 6, the 100 hours per response estimate is reasonable after the first year.[55] Other commenters suggest that the burden is greater than 100 hours, with estimates generally ranging from 250 to 600 hours.[56] After consideration of the comments, the Commission concludes that 200 hours is a more accurate reflection of the average reporting burden per response for Form 715. The estimated number of Form 715 respondents is 200; thus, the resulting total annual reporting burden is 40,000 hours.

The Commission estimates that the annual reporting burden for the revised Form 714 will decline from 86 to 50 hours per response. Two commenters claim that the Commission has underestimated the reporting burden associated with changes to Form 714.[57] After further consideration, the Commission retains the burden estimate of 50 hours per response for Form 714. The estimated number of Form 714 Respondents is 250; thus, the resulting total annual reporting burden is 12,500 hours.

These estimates include time for reviewing instructions, gathering and maintaining the data, and reviewing the collection of information. Comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing the reporting burden, should be filed at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Services Division) and sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

B. National Security Concerns

A large number of commenters indicate that the filing of Form 715 data raises national security concerns.[58] Several commenters note that although much of the information either is currently available from various sources or could be developed, Form 715 combines the information into one source and thus makes it more readily available to those who might misuse it.[59] To mitigate concerns regarding national security, commenters suggest that the Commission: (1) Consult with NERC and other organizations that monitor terrorist activity before issuing a final rule;[60] (2) place restrictions on access to Form 715 information, such as screening requesters, or requiring that the information be made confidential;[61] or (3) require that requesters state the intended use of he information.[62] Other commenters claim that some commenters may be raising national security issues in an attempt to thwart the establishment of the reporting requirement.[63]

A number of commenters object to reporting "a list of critical facilities."[64] These commenters indicate that the industry has specifically avoided creating such a list due to national security concerns. NERC suggests that rather than requiring the reporting of a list of critical facilities, the Commission should ask Respondents to indicate the various contingencies against which the utility typically tests in applying its reliability criteria.[65]

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[55] See, e.g., EEI Comments at 20–21; Oglethorpe Power Corporation Comments at 9; Allegheny Power Service Comments at 4–5; Pacific Gas & Electric Comments at 10–11; Mid-Continent Area Power Pool Comments at 3; Minnesota Power & Light Comments at 4; Pennsylvania Power & Light Comments at 3; TVA Comments at 1.

[56] See e.g., Midwest Power Systems Comments at 7–8; Southwestern Public Service Comments at 3; Associated Electric Cooperative Comments at 6; Houston Lighting & Power Comments at 4; Northeast Utilities Comments at 5; Boston Edison Comments at 3; Central & Southwest Comments at 1. At the extreme, one commenter estimates that thousands of hours would be required to meet the new data requirements. Northern States Power Comments at 9–10.

[57] See Pacific Gas & Electric Comments at 10; and Southwest Regional Transmission Association Comments at 16.

[58] See e.g., NERC Comments at 1–3; New England Power Pool Comments at 3; Commonwealth Edison, *et al.* Comments at 3; Mid-America Interconnected Network Comments at 2; Pennsylvania-New Jersey-Maryland Interconnection Comments at 4–5; San Diego Gas & Electric Comments at 5–6; Central Maine Power Comments at 3; South Carolina Electric & Gas Comments at 2; New England Power Service Comments at 3–5; Central Illinois Public Service Comments at 2; Virginia-Carolinas Reliability Group Comments at 3.

[59] See, e.g., Wisconsin Public Service Comments at 2; Southern Company Comments at 20; Commonwealth Edison, *et al.* Comments at 12; Central Illinois Public Service Comments at 6; New England Power Service Comments at 4.

[60] See, e.g., Mid-American Interconnected Network Comments at 2; Pennsylvania-New Jersey-Maryland Interconnection Comments at 5; Southern Company Comments at 20.

[61] See, e.g., Midwest Powers Comments at 7; South Carolina Electric & Gas Comments at 2; Commonwealth Edison, *et al.* Comments at 13; Central Illinois Public Service Comments at 7; Duke Power Comments at 29; Allegheny Power Service Comments at 3; Dayton Power & Light Comments at 1.

[62] See, e.g., Midwest Powers Comments at 7; Cajun Electric Power Cooperative Comments at 5; Transmission Access Policy Study Group Comments at 17.

[63] See, e.g., Sacramento Municipal Utility District Comments at 6–7; National Independent Energy Producers Comments at 3; Transmission Access Policy Study Group Comments at 16–17; Members of the House of Representatives Energy and Commerce Committee Comments at 1–3.

[64] 58 FR 17552 (April 5, 1993); IV FERC Stats. & Regs. ¶ 32,493 at 32,699. See, e.g., Wisconsin Public Service Comments at 2; San Diego Gas & Electric Comments at 5–6; South Carolina Electric & Gas Comments at 2; Virginia-Carolinas Reliability Group Comments at 3; Duke Power Comments at 29; Cajun Electric Power Cooperative Comments at 5; Houston Lighting & Power Comments at 4; TVA Comments at 1.

[65] See NERC Comments at 5.

The Commission agrees with this suggestion. In the final rule, the Commission has revised part 5 of Form 715 to require the identification of contingencies that a Respondent typically uses to perform transmission assessments. The Commission does not intend that utilities compile lists of sensitive facilities.

Entities that are concerned that someone may use Form 715 information improperly may, when receiving requests for the information, require the identity of requesters (e.g., organization name, contact person, verifiable address) as a prerequisite for disclosure of information. The Southwest Power Pool points out that keeping a record of the name and address of a requester will have an added benefit of allowing transmitting utilities to inform requesters of errors in the information provided.[66] The final rule, however, does not require requesters to state the intended use of the information. Such a requirement would exceed that necessary to reasonably administer the statutory requirements of section 213(b) while doing little to address national security concerns. Given the clear Congressional intent to make this information available to the public, the Commission will not treat Form 715 information as confidential or limit public access to it.[67]

C. Form 714 Changes

1. *Elimination of Redundant or Unnecessary Data.* As part of the implementation of section 213(b), the Commission proposed certain changes to Form 714. The changes involve eliminating and modifying several existing information requirements. The Commission is eliminating four Schedules of Form 714: Schedule VIII, Control Area Transmission Power Flow Data; Schedule XIII, Planning Area Transmission Line Data; Schedule XIV, Hydroelectric Data; and Schedule XV, Planning Area Transmission Maps and Diagrams. The Commission is eliminating Schedules VIII, XIII, and XV because the Commission will now collect this information through Form 715. The Commission is eliminating Schedule XIV because the Commission no longer needs this information to fulfill the Commission's regulatory responsibilities under parts I and II of the FPA. Most commenters support these changes.[68]

Some commenters ask the Commission to eliminate the requirement to report the Base Power Transfers and the First Contingency Incremental Transfer Capability (FCITC) data in part I, Schedule VI of Form 714. They contend that these data are redundant because similar information can be derived from the base case power flow data submitted in part 2 of Form 715.[69] The Commission agrees. In the final rule, the Commission has eliminated from Form 714 the requirement to report Base Power Transfers and FCITC data.

2. *System Lambda Data.* The proposed rule would revise the reporting format for Schedule VII, Control Area System Lambda, to require reporting in electronic form of hourly system lambda data.[70] Sixty-nine commenters address the issue of collecting system lambda data.

In the NOPR, the Commission stated that the purpose of collecting system lambda data together with other Form 714 data is "to permit the replication of production cost simulations * * *."[71] Numerous commenters indicate that system lambda cannot serve this purpose because system lambda is typically an "output" of production cost studies, not an input data requirement.[72] They are correct; a more accurate statement is that system lambda data can assist in validating results of production cost simulations.

The Commission stated in the NOPR that system lambda information may "be useful to prospective generators in deciding where to locate."[73] Several commenters disagree.[74] However, they do not rebut the observation that system lambda data will help identify areas where introduction of more efficient generation could lower energy costs.

Many commenters claim system lambda data are proprietary and competitively sensitive information.[75] Their concern is that making current system lambda data available to others may weaken a utility's competitive position. The system lambda data collected, however, are historical, *i.e.*, for the prior year. Historical hourly system lambda data do not necessarily provide a good projection of the future. As NERC states in its comments:

> The timeliness of the data is the key. Having lambda available to the public in real-time may be anticompetitive.[76]

Even commenters arguing for non-disclosure of system lambda data agree that one cannot project future generation costs on the basis of historical hourly system lambda data.[77] Furthermore, a number of commenters, most of which are utilities with their own control areas, indicate a willingness to provide hourly system lambda data and do not consider such data proprietary.[78] Moreover, fifteen control areas have submitted hourly system lambda data since 1990. Although not required to, these entities have done so, presumably because it is less burdensome than providing the monthly statistics.

Because the system lambda data reported: (1) Are historical, (2) cannot be used to derive unit specific cost data, and (3) are currently provided by a number of entities, the information is neither confidential nor proprietary.

Many commenters state that it is unfair to provide system lambda information to their competitors unless the Commission also requires competitors, especially non-traditional

[66] See Southwest Power Pool Comments at 4.

[67] NERC supports this position; it states: "Our investigation and discussions showed a misconception among security experts regarding how publicly and routinely disclosing transmission line loadings could increase the vulnerability of transmission facilities to sabotage and terrorism. These experts now have a better understanding of how electric transmission systems work, the nature of the data requested, and their concerns have been ameliorated. These agencies have agreed to defer to NERC to speak to the national security concerns. NERC only asks that the word 'critical' in 'critical facilities' be dropped or changed." NERC Comments at 6.

[68] See, e.g., EEI Comments at 21–22; Dayton Power and Light Comments at 4; Northeast Utilities Comments at 5–6; PSI Energy Comments at 7; Union Electric Comments at 12–13.

[69] See, e.g., EEI Comments at 22; Central & Southwest Comments at 20; Commonwealth Edison, *et al.* Comments at 27; Midwest Power Systems Comments at 11.

[70] Respondents currently are required to report only certain statistics, i.e., monthly highs, lows, and averages for system lambda. Hourly system lambda are necessary in order to calculate these statistics.

[71] 58 FR 17545 (April 5, 1993); IV FERC Stats. & Regs. ¶ 32,493 at 32,687.

[72] See, e.g., NERC Comments at 11; Electric Power Consultants Comments at 1; APPA Comments at 16; PSI Energy Comments at 7; Montana-Dakota Utilities Comments at 3; National Rural Electric Cooperative Association, *et al.* Comments at 9–10; Cajun Electric Power Cooperative Comments at 6–7; Power Computer Applications Comments at 2.

[73] 58 FR 17545; IV FERC Stats. & Regs. ¶ 32,493 at 32,687.

[74] See, e.g., Southern Company Services Comments at 22; Atlantic City Electric Comments at 7; Northern States Power Comments at 16.

[75] See, e.g., Otter Tail Power Comments at 3; American Electric Power Comments at 8; Wisconsin Power & Light Comments at 1–3; Oklahoma Gas & Electric Comments at 4; Public Service Electric & Gas Comments at 5–6; Southwestern Public Service Comments at 7; Florida Power & Light Comments at 2; Central & Southwest Comments at 3; National Rural Electric Cooperative Association, *et al.* Comments at 9–10; Associated Electric Cooperative Comments at 2–3; Central Illinois Public Service Comments at 13–15; Dayton Power & Light Comments at 1–2.

[76] NERC Comments at 12.

[77] See, e.g., Wisconsin Power and Light Comments at 1; Southern Company Services Comments at 23; EEI Comments at 26.

[78] See, e.g., LG&E Energy Comments at 2; Consumers Power Comments at 2–3; Duke Power Comments at 33; Duquesne Light Comments at 7–8; Pacific Gas & Electric Comments at 6–7.

utility generators, to report this information.[79] Some commenters confuse system lambda data with unit-specific cost information. System lambda data do not provide incremental production cost information for individual units. The data collection is intended to show hourly system information, not unit data. System lambda data are a product of economically dispatching thermal generating resources to follow load within a control area.[80] Individual unit data are not system lambda data and are of limited value for purposes of this rule. Although a number of commenters ask the Commission to require collection of unit-specific information (either to allow for replication of production cost simulations[81] or to allow redispatch of units in power flow studies[82]), the Commission finds that it does not need such information for purposes of section 213(b) (*i.e.*, performing screening analyses) or for other Commission regulatory responsibilities.[83] Therefore, the Commission will not require individual-unit data. Consequently, the Commission will not require entities such as QFs and other non-traditional generators, that own only a single unit, to submit system lambda information data.

Many commenters question whether the Commission is justifying changes to system lambda reporting under section 213(b)[84] or whether it intends to use the data to identify transmission availability or constraints.[85] These commenters misconstrue both the purpose of the proposed rule and the authority under which the Commission is requiring production of hourly system lambda data. Changes to the Form 714 schedules are necessary to avoid duplication of the information requirements established in new Form 715, which implements section 213(b). The Commission is not collecting Form 714 data, including the reporting of hourly system lambda, for section 213(b) purposes.

The proposed rules are designed in part to enable the Commission to better monitor the wholesale electric power market in an era of increasing market competition.[86] The Commission must monitor wholesale power markets to carry out its regulatory responsibilities in an era of increasing competition in the electric utility industry, especially in the generation sector. As many commenters point out,[87] hourly system lambda data will contribute to the body of knowledge necessary to understand the changing wholesale electric market. One commenter states that hourly system lambda are a minimum basis for testing whether market forces discipline the price for generation resources.[88]

The Commission can better monitor markets by comparing, on an hour-by-hour basis, the system lambda of control areas within a region or adjacent regions. Although system lambda comparisons may be only a rough measure of market performance, they nevertheless serve as a preliminary indicator of market problems. Significant differences in hourly system lambda indicate that trade possibilities have not been exhausted. This market failure could be due to transmission capacity constraints or other reasons, such as inadequate information availability or market power. As the Commission relies more on market forces to discipline prices, the performance of wholesale markets takes on added importance. These comparisons also will assist the Commission in carrying out other regulatory responsibilities, such as power pooling studies pursuant to section 205(b) of PURPA and analyses of electric bulk power transfers and system interconnected operations.

Some commenters state that the current collection of monthly statistics on system lambda is adequate for monitoring the market.[89] Adequate comparisons cannot be made from monthly statistics. Other commenters contend that system lambda data are of little use for monitoring the market. They argue that because various utilities calculate system lambda differently, comparison of system lambda is of questionable value.[90] Commenters also claim that system lambda may be distorted by operational requirements or the mix of thermal and hydroelectric generation.[91]

The Commission acknowledges that different utilities use different methods to calculate system lambda. These commenters, however, do not show that this limitation seriously undermines the usefulness of the data as a preliminary indicator of market performance. In addition, most control areas calculate system lambda, so there is a common criterion for comparison.

The final rule requires that control areas using an economic dispatch algorithm must document how they calculate system lambda. Control areas

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[79] See, e.g., Midwest Power Systems Comments at 4; Virginia Electric and Power Comments at 3; Union Electric Comments at 13–14; San Diego Gas & Electric Comments at 7–9; Northern States Power Comments at 14–16; Florida Power & Light Comments at 2; South Carolina Electric & Gas Comments at 2; Consumers Power Comments at 2–3; Central & Southwest Comments at 3; Texas-New Mexico Power Comments at 16–17; Duke Power Comments at 33; Houston Lighting & Power Comments at 2–3; Allegheny Power Service Comments at 5; Northeast Utilities Comments at 5–6; Wisconsin Power & Light Comments at 1–3; Centerior Energy Comments at 5; Minnesota Power & Light Comments at 4; Pennsylvania-New Jersey-Maryland Interconnection Comments at 13–15; Oglethorpe Power Corporation Comments at 9–11; TVA Comments at 2.

[80] Units owned by others, including QFs and other nontraditional generators, can affect the dispatch of these resources and can affect the net of control area purchases and sales.

[81] See, e.g., APPA Comments at 16–17; Allegheny Electric Cooperative, *et al.* Comments at 52–58; National Independent Energy Producers Comments at 4–6; National Power Comments at 5–6.

[82] See, e.g., Electric Power Consultants Comments at 1; Duquesne Light Comments at 2; Oglethorpe Power Corporation Comments at 5.

[83] In fact, production cost simulations may be just as reliable a method for competitors to use for estimating (projecting) a utility's current (future) incremental costs. Competitors can perform these studies using publicly available information (such as the monthly delivered cost of fuel delivered to generating plants reported in FERC Form No. 423, plant operation and maintenance costs and purchases and sales data reported in FERC Form No. 1, and actual and typical heat rate data reported by the Energy Information Administration in EIA Form 860 and Electric Power Research Institute Technical Assessment Guides, respectively).

[84] See, e.g., Midwest Power Systems Comments at 4; American Electric Power Comments at 8; Minnesota Power & Light Comments at 4; Northern States Power Comments at 14–16; Oglethorpe Power Corporation Comments at 9–11; New England Power Pool Comments at 3; Northeast Utilities Comments at 5–6; Houston Power & Light Comments at 2–3.

[85] See, e.g., Public Generating Pool Comments at 3; Oklahoma Gas & Electric Comments at 4; Centerior Energy Comments at 5; Orlando Utilities Commission Comments at 2; Southwestern Public Service Comments at 7; Florida Power & Light Comments at 2; EEI Comments at 23–27; Associated Electric Cooperative Comments at 2–3; Commonwealth Edison, *et al.* Comments at 26–29; Northeast Utilities Comments at 5–6.

[86] See New Reporting Requirements Under the Federal Power Act and Changes to Form No. FERC–714, 58 FR 17544 (April 5, 1993); IV FERC Stats. & Regs. ¶ 32,493 at 32,687–88.

[87] See, e.g., Indiana Utility Regulatory Commission Comments at 4–6; DOE Comments at 11; Duquesne Light Comments at 7–8; American Iron & Steel Institute, *et al.* Comments at 13–15.

[88] See Transmission Access Policy Study Group Comments at 15.

[89] See, e.g., Pennsylvania-New Jersey-Maryland Interconnection Comments at 13–15; Union Electric Comments at 13–14; Central & Southwest Comments at 3; Commonwealth Edison, *et al.* Comments at 25–26; Central Illinois Public Service Comments at 13–15.

[90] See, e.g., Public Service Commission of Wisconsin Comments at 6; PSI Energy Comments at 7–8; Minnesota Power & Light Comments at 4; San Diego Gas & Electric Comments at 7–9; Southwestern Public Service Comments at 7; New England Power Pool Comments at 3; Houston Power & Light Comments at 2–3; Allegheny Power Service Comments at 5; Multinational Business Services Comments at 1.

[91] See, e.g., APPA Comments at 17; City of Colorado Springs Comments at 6; Entergy Services Comments at 6; Western Group Considering Formation of RTG(s) Comments at 8; Puget Sound Power & Light Comments at 4–6; Cajun Electric Power Cooperative Comments at 6–7; Power Computer Applications Comments at 2.

that do not use an economic dispatch algorithm must describe how they dispatch their resources. By requiring the documentation of system lambda development, the Commission can identify significant differences in methodologies that may affect the level of system lambda and that may make direct comparison with other data less meaningful.

The Commission's authority to collect hourly system lambda data derives from several provisions of the FPA. First, section 304 authorizes the Commission to require every public utility to make adequate provision for determining the current cost of generating electric energy and to report that cost to the Commission.[92] Second, section 309 of the FPA gives the Commission power to perform any and all acts and to prescribe such rules and regulations as it finds necessary to carry out the provisions of the Act.[93] Among other things, the Commission may prescribe the reports to be filed with the Commission, and the information that they shall contain.[94] Third, so that the Commission can secure information upon which to recommend legislation, section 311 of the FPA authorizes the Commission to conduct investigations regarding the generation, transmission, distribution, and sale of electric energy, however produced, throughout the United States and its possessions, whether or not otherwise subject to the jurisdiction of the Commission.[95] Section 311 of the FPA further provides that the Commission shall secure and keep current information regarding the cost of generation of electric energy.[96]

Thus, the Commission has ample authority to collect system lambda data, since these data reflect the incremental cost of energy, and the Commission has explicit (sections 304 and 311) and implied (section 309) authority to collect information regarding the cost of generating electric energy.

Finally, one commenter requests that: (1) Hourly system lambda data start at 1 a.m. (instead of 12 midnight) on January 1, consistent with current industry practices for collecting hourly demand data, and (2) "N.A." be entered for hours when the dispatch computer is not operating.[97] The final rule adopts both suggestions.

3. *Planning Area Hourly Demand Data.* The Commission is replacing the current reporting of demand data (*i.e.*, Schedule X—Planning Area Monthly Net Energy for Load, Schedule XI—Planning Area Summer and Winter Actual and Forecast Peak Demand and Annual Net Energy for Load, and Schedule XII—Planning Area Hourly Demand Data By Specified Week) with a requirement that Respondents report in electronic form:

(1) The historical hourly demands for planning areas for the reporting year; and

(2) The forecast summer and winter peak demands and net energy for load for each of the next ten years.

Most commenters support this change.[98] However, a few commenters state that the submission of hourly and seasonal demand and hourly load data does not achieve the purpose of the rulemaking; that is, it does not enable potential transmission customers to assess available transmission capacity.[99] The Commission is proposing to collect hourly system load data as part of Form 714, not as part of Form 715. As noted above, the regulatory purpose for collecting Form 714 data (e.g., bulk power transfer and interconnected operations analyses) is not changed. Furthermore, if the Commission performs a production simulation study involving the analysis of actual hourly data, the change in reporting requirements eliminates the need to impute a relationship between the summary statistics previously reported and actual hourly data. Also, by requiring hourly data, the Commission can more easily and accurately aggregate respondents' load information.

The final rule also requires Respondents to authorize their regional organization to make hourly demand and forecast demand information available in an easily accessible format. Consistent with this requirement, commenters indicate that NERC already collects and maintains an hourly load data system for most utilities in the country in EEI format.[100] In addition, consistent with the change in reporting for hourly system lambda data, the Commission is modifying Part III, Schedule 2 of Form 714 to require reporting of hourly demand data beginning at 1 a.m. on January 1.

D. Market Power

The Commission stated in the NOPR that the availability of transmission information should help mitigate a potential source of a transmitting utility's market power.[101] Some commenters support the statement;[102] others disagree.[103] For example, one commenter states that Congress did not enact section 213(b) because it was concerned about market power.[104]

The Commission disagrees. Section 213(b) requires the Commission to collect information regarding available transmission capacity and known constraints. It is important to view the section 213(b) information requirements in their appropriate context. Congress added section 213 to the FPA to support the concurrent changes that it made to sections 211 and 212, which give the Commission additional authority to order transmission service. The Members of the House Committee on Energy and Commerce note in their comments that:

> Congress' objective of increasing the efficiency of the electricity markets through a more open transmission system can only be achieved if basic information about the system is publicly available.[105]

Eliminating the ability to withhold basic transmission information reduces the potential for abuse of market power and will increase efficiency in the wholesale electric market.

Another commenter claims that the Energy Policy Act removes its market power in transmission.[106] We do not agree. The Commission's new authority to order transmission service under section 211 does not by itself eliminate market power in transmission. Market power may lie in the ability to delay or

[92] 16 U.S.C. 825(c).

[93] 16 U.S.C. 825h.

[94] 16 U.S.C. 825h. Section 309 authorizes the Commission "to use means of regulation not spelled out in detail, provided * * * [the Commission's] action conforms with the purposes and policies of Congress and does not contravene any terms of the Act." Niagara Mohawk Power Corp. v. Federal Power Commission, 379 F.2d 153, 158 (D.C. Cir. 1967). Although section 309 does not confer additional power on the Commission, it does augment those powers that Congress has conferred upon it. New England Power Co. v. Federal Power Commission, 467 F.2d 425 (D.C. Cir. 1972), aff'd 415 U.S. 345 (1973). Here, the Commission is collecting information that sections 304 and 311 of the FPA authorize it to collect.

[95] 16 U.S.C. 825j.

[96] 16 U.S.C. 825j.

[97] See LG&E Energy Comments at 2.

[98] See, e.g., EEI Comments at 27; Western Entities Considering Formation of Regional Transmission Group(s) Comments at 7–8; Allegheny Power Service Comments at 6; Atlantic Electric Comments at 7; Duquesne Light Comments at 7.

[99] See, e.g., Oglethorpe Power Corporation Comments at 11; Southern Company Services Comments at 20–21.

[100] See, e.g., EEI Comments at 27–28; Electric Reliability Council of Texas (ERCOT) Comments at 2.

[101] 58 FR 17548; IV FERC Stats. & Regs. ¶ 32,493 at 32,693.

[102] See, e.g., APPA Comments at 2; Duquesne Light Comments at 1–2; American Iron and Steel Institute, *et al.* Comments at 3–4; DOE Comments at 2; Transmission Access Policy Study Group Comments at 6.

[103] See, e.g., Central Louisiana Electric Comments at 4; EEI Comments at 6–7; Allegheny Power Service Comments at 2.

[104] See Duke Power Comments at 21.

[105] Members of the House Committee on Energy and Commerce Comments at 1. Cf. HR. R. Rep. No. 102–474, 102nd Cong. 2nd Sess. pt. 1 at 132–138 (1992).

[106] See, Allegheny Power Service Comments at 2.

to undermine the process of requesting service. While the Commission addressed the formal process of service requests in its recent policy statement on good faith requests for transmission services and responses,[107] there still remains a basic information asymmetry that impedes efficient resource choices and market results. Superior knowledge of and access to technical information on transmission system availability may result in competitive advantages. Consequently, the availability of information regarding transmission capacity and known constraints helps to mitigate a potential source of market power and promotes a "more level playing field" for buyers and sellers.

E. General Filing Requirements

1. *Form 715 Respondents.* A number of commenters, many representing small systems, raise concerns regarding exemptions from or waivers of Form 715. In the NOPR, the Commission proposed that the reporting requirements apply to transmitting utilities that own or operate transmission facilities at or above 100 kilovolts (kV).[108] Commenters state that many entities that technically may be transmitting utilities do not engage in transmission planning because they: (1) Do not operate the transmission line (because they lease or are a joint owner of transmission facilities); or (2) operate only radial lines.[109] Some commenters also note that operators of these facilities may be "small-business concerns" as defined in section 3 of the Small Business Act, (15 U.S.C. 632) and thus require special consideration.[110]

Upon further consideration, we will require only transmitting utilities operating integrated transmission system (i.e., non-radial) facilities that are rated at or above 100 kV to report Form 715. In cases of joint ownership of a facility, only the operator of the facility must report. This change avoids duplication of reported information. Similarly, we will not require operators of only radial transmission lines to file Form 715 data; we expect few requests for transmission service that would use such facilities exclusively.

We will retain the 100 kV threshold for transmission facilities. Because the capacity of lines below 100 kV is relatively small, those lines do not provide significant amounts of transmission service. This threshold also eliminates the reporting requirement for most small business entities.

Some commenters indicate that if an entity other than the party requesting waiver of Form 715 performs transmission planning for that party: (1) The waiver requirements generate confusion regarding the party responsible for reporting information, and (2) obtaining the planning information required by the rule from the other party is sometimes difficult.[111] The final rule requires that an entity requesting waiver must either: (1) Indicate the entity that performs transmission planning for it, or (2) state that it does not use power flow analyses in performing transmission planning.

Once granted, a waiver request in subsequent years is unnecessary, provided the party's status does not change; that is, as long as the party does not begin to perform transmission planning or to use power flow analyses in its planning. Exemption or granting of waiver from Form 715 reporting requirements does not affect an entity's status as a transmitting utility for other purposes under the FPA, such as the applicability of sections 211 and 213(a).

One commenter requests an exemption from Form 715 requirements for facilities used primarily to deliver energy to affiliates for use in manufacturing.[112] We will not grant this proposed exemption because an affiliate could operate facilities that are a part of the integrated transmission system, for which Form 715 reporting is appropriate. The radial line exemption and 100 kV threshold provide sufficient protection for small entities, including many manufacturing affiliates of transmitting utilities.

2. *Filing Date*—a. *Form 715.* The NOPR established a January 1 filing date for Form 715. Several commenters request that the filing date be moved to later in the year.[113] Many commenters also suggest that the filing date coincide with either that for the DOE OE–411 report, which is a voluntary filing by regional reliability councils (April 1), FERC Form No. 1 (April 30), or Form 714 (currently May 1).[114] Commenters state that filing several forms at the same time promotes administrative efficiency and data consistency.[115] The Commission's experience, however, is that a significant number of Respondents, especially those required to file Form 714, request extensions of time to file because of the difficulty in completing all the reporting forms at the same time.

Some commenters state that they cannot supply historical data immediately after the end of the year.[116] These commenters apparently confuse Form 715 with Form 714. Form 715 does not require historical information. The filing date for Form 714, which requires the reporting of some historical data, has been May 1.

Upon consideration of the comments and to provide for a reporting consistent with utility and regional planning schedules, we will change the filing date for Form 715 to April 1.

Finally, several commenters request that the Commission delay the collection of information until 1995.[117] Given the deadline imposed by Congress for Commission regulations implementing data collection (October 24, 1993), we will adopt a filing date of April 1, 1994. This is sufficient time for Respondents to develop and provide the information, especially because most of the requested information is produced in the normal course of business.

b. *Form 714.* Respondents currently file Form 714 no later than May 1 of the year following the calendar reporting year. One commenter requests a delay in the Form 714 filing date until June 1, the date on which it submits hourly demand information to NERC.[118] The final rule adopts the suggestion.

Two commenters request that the Commission delay the collection of

[107] Policy Statement Regarding Good Faith Requests for Transmission Services and Responses by Transmitting Utilities Under sections 211(a) and 213(a) of the Federal Power Act, as Amended and Added by the Energy Policy Act of 1992, 58 FR 38964 (July 21, 1993), III FERC Stats. and Regs. ¶30,975.

[108] 58 FR 17544, 17550; IV FERC Stats. & Regs. ¶32,493 at 32,686, 32,695.

[109] See, e.g., Oregon Trail Consumers Cooperative Comments at 2–5; PSI Energy Comments at 3–4; North Texas Electric Cooperative Comments at 2–5; Old dominion Electric Cooperative Comments at 11; Northwest Cogeneration and Industrial Power Comments at 1–2; Southwest Regional Transmission Association Comments at 12; Texas-New Mexico Power Comments at 10–11; City of Vernon Comments at 5–6; National Independent Energy Producers Comments at 4; Utah Associated Municipal Power Systems Comments at 14.

[110] See, e.g., American Forest & Paper Association Comments at 2; Oxbow Geothermal Corporation Comments at 3–4; Allegheny Electric Cooperative Comments at 13.

[111] See, e.g., Oxbow Geothermal Corporation Comments at 3; Transmission Agency of Northern California Comments at 2; Southwestern Public Service Comments at 2–3; New England Electric Service Comments 6–7; Allegheny Power Service Comments at 3.

[112] Alcoa Companies Comments at 1–2.

[113] See, e.g., ERCOT Comments at 2; Colorado Association of Municipal Utilities Comments at 1.

[114] See, e.g., Atlantic City Electric Comments at 3; Commonwealth Edison, *et. al.* Comments at 3; Western Group Considering Formation of RTG(s) Comments at 9–10.

[115] See, e.g., Atlantic City Electric Comments at 8; Western Systems Coordinating Council Comments at 4; Northeast Utilities Comments at 4.

[116] See, e.g., Large Public Power Council Comments at 21; Southwest Regional Transmission Association Comments at 8.

[117] See, e.g., Western Systems Coordinating Council Comments at 4; Large Public Power Council Comments at 21; Southwest Regional Transmission Association Comments at 8.

[118] See ECAR Comments at 4.

hourly system lambda until 1995 because some systems do not collect such data.[119] The Commission will deny this request. Entities have reported system lambda information since 1990. Respondents have had ample time to add necessary software or to adjust computer systems in order to record system lambda data. In addition, calculation of the previously required monthly system lambda statistics requires averaging of hourly data, which Respondents must now report. Therefore, entities which must file a Form 714 should be able to satisfy the modified reporting requirement without significant additional investment. Respondents must file hourly system lambda data by the June 1, 1994 filing date of the next Form 714 report.

F. Section-by-Section Analysis of Form 715

1. *Part 1—Identification and Certification.* Part 1 requires that Respondents file the following identifying information.

(1) The name and business address of the transmitting utility;

(2) The name, title, telephone number, and facsimile number of a person to contact regarding Form 715 data;

(3) A certification by an authorized official of the transmitting utility regarding the accuracy of the data submitted; and

(4) The name and title of the certifying official.

One commenter requests that part 1 data also include information identifying the individuals in charge of transmission system planning, transmission system operations, and transmission service contracting.[120] Such information would inform interested parties of whom to contact regarding technical and contracting information. Another commenter requests that Form 715 include a section identifying a contact person for section 213(a) transmission service requests.[121]

The Commission rejects these proposed additions. Part 1 is intended to gather only information necessary to implement the requirements of section 213(b). Information regarding specific transmission service requests, including requests under section 213(a), is not within the scope of Form 715. The purpose of the contact person requirement is to identify a point of contact at the transmitting utility for inquiries regarding Form 715 data. However, a transmitting utility may, at its option, include in its Part 1 response the person to contact regarding specific transmission service requests.[122]

2. *Part 2—Regional or Subregional Power Flow Base Cases.* There is nearly universal agreement that the ability to simulate power flows on a transmission grid is a necessary first step in determining available transmission capacity and constraints on that grid. To give potential transmission customers and the public this ability, the NOPR proposed that transmitting utilities authorize their regional or subregional organizations to make available base case power flow data.

Generally, the regional organizations support this proposal.[123] It is these organizations that develop base case power flows for their members' use and, under part 2, that will make them available to potential transmission customers and the public. Most individual transmitting utilities also support the intent of part 2.[124]

In the NOPR, the Commission requested comments on ways in which transmitting utilities or regional or subregional entities could best make the electronic data available to the public. Comments from regional entities support making the data available on diskette[125] in a format similar to those suggested in the NOPR.[126] The Commission is modifying the instructions for part 2 to make clear that the Commission is not recommending any particular format. However, to ensure that information is reported on a consistent and useful basis for a region, the format used must be associated with the power flow program used by that region.

One commenter claims that the IEEC Common Format is obsolete and that the Electric Power Consultants' (EPC) format contains a more meaningful set of input data.[127] Another commenter supports the use of the IEEE Common Format.[128] The Commission is adding EPC raw data file format to the list of commonly used formats for reporting power flow data in Part 2. Although the IEEE Common Format will be retained, it does not appear that it is currently being used to develop input data for the commonly used power flow programs. The Commission does not encourage translation of data into input formats other than those used in the region due to the risk that vital information necessary to solve the power flows will be lost.

Two commenters express concern that power flow software documentation (with the exception of the IEEE common format) may be copyrighted and proprietary and therefore not be readily available.[129] They note that users need software manuals and papers to interpret the power flow cases. According to these commenters, if the Commission or others publish this information, they risk violating such copyrights. The concerns of these commenters are unfounded. The Commission is not recommending the unauthorized distribution, nor will it provide, licensed software to the public. To use the information in Part 2, a potential transmission customer or member of the public must have software compatible with that used in the region. No other commenters have suggested that the power flow data required under this rule are proprietary because of vendor license conditions.

Several commenters within Texas are concerned that regional power flow data will reveal industrial load levels that industrial customers consider proprietary and confidential.[130] ERCOT now requires users of power flow data to specify what they will do with it and to agree not to provide it to a third party. The Commission will not allow restrictions on the use of these data. If the information is shared by all within ERCOT for purposes of transmission planning, then it must be available to potential transmission customers and the public. Conditioning the use of these data would be inconsistent with the

[119] See City of Colorado Springs Comments at 7; and Western Group Considering Formation of RTG(s) Comments at 9–10.

[120] See APPA Comments at 9.

[121] See EEI Comments at 18.

[122] One of the goals of making Form 715 data available is to foster successful negotiations that culminate in voluntary transmission agreements. Identifying individuals that will respond to specific requests would simplify the initiation of this process.

[123] See, e.g., NERC Comments at 2; ERCOT Comments at 1; Mid-America Interconnected Network Comments at 2; Mid-Continent Area Power Pool Comments at 6.

[124] See, e.g., EEI Comments at 9; APPA Comments at 6; Allegheny Power Service Comments at 3; Atlantic Electric Comments at 4–5; Idaho Power Comments at 1; Duke Power Comments at 23.

[125] Reaction to the use of Electronic Bulletin Boards is mixed. The Southwest Power Pool members now have access to power flow models through dial-up capability. See Southwest Power Pool Comments at 4. ECAR, however, contends that it is impractical. See ECAR Comments at 4. The Commission will not require Electronic Bulletin Board access at this time, but encourages its use when practical.

[126] See, e.g., ECAR Comments at 3; Mid-Continent Area Power Pool Comments at 5; Southwest Regional Transmission Association Comments at 8; Group of Western Entities Considering Formation of RTG(s) Comments at appendix.

[127] APPA Comments at 10.

[128] Pennsylvania-New Jersey-Maryland Interconnection Comments at 5.

[129] Electrocon International Comments at 1; New England Electric System Comments at 6.

[130] See, e.g., ERCOT Comments at 2; Houston Lighting and Power Comments at 4; Texas Utilities Comments at 4; Central & Southwest Comments at 8–9; Texas–New Mexico Comments at 10.

public availability requirement of section 213(b).

Regional groups and others suggest that the Commission should allow them to charge the administrative costs of providing this information to the public.[131] The Commission finds that recovering the cost to copy materials is reasonable. However, transmitting utilities may not assess copying charges to those entities (such as the Commission and other regulatory, planning and siting agencies) which have statutory authority to require the filing of the information with such entity. If Respondents desire to impose copying charges, Form 715 requires Respondents to include the fee schedule for making the information available to the public. Transmitting utilities must also provide for on-site inspection of data.

Some commenters suggest that transmitting utilities should update the data in Form 715 during the year when there are significant changes.[132] Because section 213(b) requires an annual submission, the Commission will not require the filing of updated information between reporting dates. However, we agree with those commenters who say that transmitting utilities should have the opportunity to update criteria and practices (and presumably power flow data) as needed to help avoid misunderstandings.[133] Consequently, we would expect regional entities, upon request, to supply the most current criteria, practices and power flow data available, beyond those in the Form 715 on file with us. Transmitting utilities need not file this up-dated information and data with us until the next Form 715 submission.

Several commenters suggest that the 100 kV threshold should not apply to power flow data bases made available under part 2.[134] This is not the Commission's intent. The 100 kV threshold determines only who must file Form 715. The base case power flow data made available by a regional entity should include all voltage levels used in developing the regional base cases.

Some commenters suggest that part 2 should cover additional information beyond that proposed. One commenter provides a list of generating unit information that some power flow programs can use to dispatch generation on an economic basis.[135]

Some redispatch of the generation output in a power flow program is generally necessary to simulate a proposed power transfer on the transmission system. However, for purposes of preliminary studies, transmitting utilities can dispatch generation in various ways other than through the use of an economic dispatch algorithm; that is, without the need for detailed, unit-specific data. Therefore, the Commission does not find that this information is necessary to perform preliminary studies based on the power flow imput data that transmitting utilities will make available under part 2. However, if the regional power flow data base cases provided to members already contain economic dispatch data, then transmitting utilities must release that data to the public.

Other commenters suggest that system stability may limit transmission availability in certain regions and that, therefore, these regions should provide stability studies,[136] or the data needed to perform stability studies, to a requester.[137] Also, a number of electric utilities state that the power flow data without stability data will not be sufficient to conduct useful preliminary studies.[138]

While a more detailed and comprehensive analysis of a proposed use of the transmission system in certain regions may require a stability study, the Commission does not find it necessary to require the regional entities to provide the more voluminous input data necessary to perform stability studies, if stability is not identified as a limiting factor in their regional power flow analyses. The Commission notes that a number of other studies, such as voltage stability and other specialized analyses of suspected system dynamic problems, may also affect the outcome of power flow analyses. In light of the fact that Form 715 data will generally be used for preliminary analyses, the Commission is not requiring transmitting utilities to provide the data for such studies. However, the instructions in part 6 of Form 715 provide that, if stability is identified in studies as a regional transmission limiting factor, transmitting utilities must, on request, provide a requester with the results of existing regional stability studies.

Two State commissions express concern whether planning data reflected in the power flow base cases will also reflect planning done under State authority.[139] The Commission expects that utilities will provide information consistent with that provided to their state commissions.

3. Part 3—Transmitting Utility Maps and Diagrams. Part 3 requires transmitting utilities to file two copies of their general transmission maps and single-line schematic diagrams of their transmission systems. Specific guidelines indicate the type of information (such as geographic location of generating plants, switching stations, substations, service areas, and interconnections with other utilities) and the level of detail (for example, nominal operating and design voltages of transmission lines) that transmitting utilities must include in the maps and diagrams. The Commission is not requiring Respondents to create new maps and diagrams for purposes of this reporting requirement. Transmitting utilities must file only those maps and diagrams prepared in the normal course of business.

Some commenters contend that the part 3 requirement is more involved than the current Form 714 requirement.[140] They suggest relaxing the requirement to no more than the level of detail included in regional maps submitted as part of DOE OE–411 reports.

The data that transmitting utilities must file under this part are no different from those required in part II, Schedule XV of the current Form 714. The detail required by part 3 has not changed from existing requirements that have been effective for many years. The current Form 714 and its predecessor forms (EIA Form 714 and Federal Power Commission Form 12) require

[131] See, e.g., ECAR Comments at 4; ERCOT Comments at 2; Mid-America Interconnected Network Comments at 3; Southwest Regional Transmission Association Comments at 7; Group of Western Entities Considering Formation of RTG(s) Comments at 9.

[132] See, e.g., APPA Comments at 4; American Iron and Steel Institute, *et al.* Comments at 5; LG&E Energy Comments at 4.

[133] See, e.g., EEI Comments at 12; LG&E Energy Comments at 3–4; PSI Energy Comments at 4–5.

[134] See, e.g., APPA Comments at 5–6; Transmission Access Policy Study Group Comments at 15; National Rural Electric Cooperative Association, *et al.* Comments at 4–5; Municipal Energy Agency of Nebraska Comments at 2–3; American Iron and Steel Institute, *et al.* Comments at 6.

[135] APPA Comments at Attachment C.

[136] Stability studies are studies of the measures that transmitting utilities must take to maintain the synchronization of their generating units after a disturbance.

[137] See, e.g., APPA Comments at 15; DOE Comments at 9; Electric Power Consultants Comments at 1; Professor Choudhry of West Virginia University Comments at 1.

[138] See, e.g., San Diego Gas & Electric Comments at 2–3; Minnesota Power & Light Comments at 3; Otter Tail Power Comments at 3; Public Generating Pool Comments at 3; Montana-Dakota Utilities Comments at 2; Large Public Power Council Comments at 5.

[139] See Public Service Commission of Wisconsin Comments at 2–3; Massachusetts Department of Public Utilities Comments at 4–5.

[140] See, e.g., American Electric Power Comments at 5–6; Pennsylvania-New Jersey-Maryland Interconnection Comments at 8–9; New England Power Pool Comments at 1.

Respondents to submit maps with the same level of detail as that required by part 3. Although the applicability of the requirement to file maps and diagrams is slightly different under Form 715 than Form 714,[141] most transmitting utilities currently file Form 714. Consequently, there is no change in the filing requirement for these entities. Furthermore, the Commission is not requiring entities that do not currently produce maps and diagrams to create such documents solely for the purpose of part 3 reporting.

Additionally, a Respondent that has not produced more recent maps and diagrams than those currently on file at the Commission need not re-submit the same maps and diagrams each year. In such a case, a Respondent will file a statement indicating that a more recent set of maps and diagrams is not available.

Because of the expected interest in Form 715 information, the Commission will require transmitting utilities to file two copies of maps and diagrams. This requirement will enable the Commission to keep a copy available in the Commission's public reference room and to use the other copy. If a Respondent has up-to-date maps and diagrams on file, it need only file one additional copy of its maps and diagrams with its Form 715 report.

4. *Part 4—Transmission Planning Reliability Criteria.* In the NOPR, the Commission requested comments on the proposed requirement that Respondents submit transmission planning reliability criteria that the transmitting utility uses to assess the limits of its transmission system to meet its load responsibility as well as to move bulk power among other electric systems. The Commission also proposed guidelines to indicate the type of information that Respondents might provide to satisfy this requirement. The guidelines included documents that contain transmission reliability criteria of NERC, regional reliability councils, or DOE OE–411 reports. In addition to these documents, the rule would have required the Respondent to submit all criteria that are enforced on its system. The criteria could be imposed by the Respondent itself or pursuant to interconnection or pooling agreements with others. In the proposed rule, the test for adequacy of submitted information was that, using the same reliability criteria, others should be able to "reasonably replicate" studies done by the Respondent.

Many commenters support allowing individual Respondents to reference appropriate NERC publications and DOE OE–411 reports in order to satisfy part 4 requirements. They state that these criteria may be sufficient for transmission service requesters who require information on established regional transmission planning reliability criteria.[142] A few commenters, however, state that existing DOE OE–411 report criteria, alone, are sufficient to satisfy the requirements of part 4.[143] A number of regional and pool commenters support submittal of transmission reliability criteria, but state that individual utilities would have to supply criteria specific to their systems.[144] Some commenters interpret the proposed rule as permitting utilities to submit additional system-specific planning criteria,[145] or allowing submittal upon request.[146] For example, Duke Power Company indicates that it has internal criteria that are not in written form, and it would be extremely burdensome to reduce these criteria to written form, because the criteria involve the application of subjective engineering judgments.[147] Two transmission-owning commenters support the requirement for submittal of specific criteria, with one commenter recommending that the Commission require individual utilities to document and explain the engineering basis for the reliability criteria.[148]

In addition to their regional criteria, Respondents must submit system-specific planning criteria. Unless Respondents make such criteria publicly available, a potential user of the system will have little idea of system specific criteria that might limit transmission availability. As stated above, the Commission's intention is that transmitting utilities file the substantive criteria and planning procedures that they follow in the normal course of business.

We have removed the terms "in totality" and "reasonably replicate" from the instructions to Form 715 and have revised the part 4 instructions to make clear that the transmission planning criteria must be in sufficient detail to allow others to perform similar planning or screening studies, and to better understand the process of determining available transmission capacity.

Two commenters are concerned that once Respondents supply their reliability criteria, they will be unable to modify them as needed.[149] The Commission will not require Respondents to update their submittals immediately upon a change in reliability criteria. However, Respondents must reflect revised criteria in their next Form 715 filing. In addition, in their next Form 715 filing, Respondents will also be required to identify any changes from their prior year's report.

One commenter recommends that the Commission require each transmitting utility to file a description of its transmission planning process and list specific items that transmitting utilities should provide to potential transmission users.[150] Another commenter suggests that the Commission provide guidance on the format and level of detail to be used by Respondents that do not document individual system reliability criteria.[151] A commenter requests that reliability criteria rules also specify the relationship between planning criteria and actual system operation, and define reliability policies.[152] Another commenter recommends that the Commission require transmitting utilities to document the method used to assess the effect of a wheeling transaction on the transmitting utility's system.[153]

Because only existing reliability criteria are to be reported, the Commission is not establishing standards or requiring a particular format. We, therefore, will not adopt these suggestions.

5. *Part 5—Transmission planning Assessment Practices.* In the NOPR, the Commission requested comments on the proposal to require submittal of transmission planning assessment practices that the transmitting utility uses to apply its particular reliability criteria. The Commission also provided guidelines on what might constitute transmission planning assessment practices. Included in the guidelines

[141] Form 714 requires electric utilities with an annual peak demand greater than 200 megawatts to file maps and diagrams. Form 715 filing requirements are applicable to transmitting utilities.

[142] See, e.g., EEI Comments at 11; Boston Edison Comments at 2; Union Electric Comments at 6–7; Oglethorpe Power Corporation Comments at 6.

[143] See, e.g., Dayton Power and Light Comments at 3; Northern States Power Comments at 9.

[144] See, e.g., New England Power Tool Comments at 2; Northeast Power Coordinating Council Comments at 2; Pennsylvania-New Jersey-Maryland Interconnection Comments at 9–10.

[145] See EEI Comments at 11; Allegheny Power System Comments at 3–4; Union Electric Comments at 7.

[146] See Boston Edison Comments at 2.

[147] See Duke Power Comments at 25.

[148] See Public Service Electric and Gas Comments at 3; Duquesne Light Comments at 5.

[149] See EEI Comments at 12; Florida Power & Light Comments at 5–6.

[150] APPA Comments at 12–13 and 31–32.

[151] Oglethorpe Power Comments at 7.

[152] National Independent Energy Producers Comments at 3–4.

[153] Electric Power Consultants Comments at 2.

was a proposal to require the transmitting utility to submit a list of critical facilities that are generally used in performing its contingency studies. As in part 4, the Commission proposed that the information provided in part 5 should be in sufficient detail to allow others to reasonably replicate planning studies done by the Respondent.

We have removed the term "critical facilities" from the instructions.[154] We have also re-written the second paragraph of the part 5 instructions to make clear that a transmitting utility need only submit a list of contingencies that are generally considered as part of its assessment of system performance.[155]

Some commenters agree that transmission planning assessment practices are important in determining transmission capacity and constraints, but state that utilities cannot describe, in sufficient detail for all possible cases, certain assessment practices which have been developed through experience, study and an interactive review process.[156]

Northern States Power states that requiring Respondents to file transmission planning practices is duplicative because transmitting utilities already include this information in DOE OE–411 reports.[157] Otter Tail Power is concerned that a listing of "proposed" system additions could create a financial liability for the Respondent.[158] Pacific Gas & Electric states that it has no comprehensive document describing transmission planning and assessment practices, but is prepared to submit any existing documents that relate to the requested information.[159] Large Public Power Council states that the data gathered would not be sufficient to perform screening studies.[160] However, DOE states that submission of transmission planning assessment practices, together with the other information provided, will enable potential transmission users to do their own first-cut analysis of transmission availability.[161] Florida Power & Light Company cautions that the reporting requirements must not constrain the utility's ability to modify its transmission planning assessment practices.[162]

As in part 4, the Commission's objective is to require submittal of the substantive planning assessment practices that a Respondent follows in the normal course of business. The information filed should help requesters to perform screening analyses and to better understand the process of determining available transmission capacity and known constraints. As in the case of part 4 material, the Commission will require transmitting utilities to file changes in their transmission planning assessment practices on an annual basis, as part of Form 715.

Oglethorpe Power Corporation states that Form 715 information should specifically address any economic and financial factors governing system planning decisions, including state or Federal regulatory constraints (such as siting and licensing approval requirements, or the ability to recover incremental facility expansion costs).[163] The Commission will not adopt these suggestions because they are overly broad and have nothing to do with the reporting of planning assessment practices necessary in the context of section 213(b).

6. *Part 6—Evaluation of Transmission System Performance.* In the NOPR, the Commission requested comments on the proposed requirement that Respondents submit evaluations of their transmission system performance for future time periods based on the application of their reliability criteria. As proposed, the evaluation would provide potential transmission customers and regulators with a clear understanding of existing and, where known, likely future transmission constraints, the location of such constraints, and how they were identified, as well as a description of any plans to mitigate the constraints. The Commission also proposed that transmitting utilities submit the results of any dynamic stability studies that set transmission limits. The proposed rule characterized the evaluation as being separate from traditional utility studies that are not usually undertaken unless there is a specific need.

Some commenters claim that part 6 requirements would cause a significant burden, if the filing of existing planning studies is considered insufficient.[164] Many transmitting utilities state that, if they are to develop and file Form 715 within the projected 100 hours timeframe for completing the form, only a narrative description for part 6 should be required, and new evaluations should not be required where none currently exist.[165] As discussed above, the part 6 instructions require only a narrative description.

A few commenters state that the Commission should limit the part 6 portion of the filing to information that a utility prepares in the normal course of planning and operating its transmission system, and should not impose a requirement for additional studies.[166] Florida Power and Light Company states that transmitting utilities cannot fulfill the proposed requirement that owners of transmission facilities provide detailed descriptions of all expected constraints and mitigation plans unless they have a specific list of expected uses for their transmission system.[167]

Northern States Power is concerned that the rule provides no clear time frame for assessment. It states that, if the analyses are for a short term, they will not provide any useful information on long-term transmission capacity availability; and if they are for a long term, they must by their very nature include assumptions regarding the future that may not turn out to be true.[168] Midwest Power Systems Incorporated asks the Commission to clarify the definition of "transmission constraint" and to include in the definition thresholds for factors such as costs, overloads, and low voltage.[169] Texas-New Mexico Power Company proposes that the Commission address the issue of the maximum amount of capacity a utility may set aside in a given corridor for uses such as load growth, load swings and inadvertent flows.[170]

The Commission anticipates that for the most part only existing information will need to be filed to comply with part

[154] See NERC Comments at 6.

[155] For example, before testing for the limits of transmission capability that could be used for firm power transfers on its system, a transmitting utility will assume, based on experience or realistic expectation, that certain facilities will be unavailable for certain periods.

[156] See, e.g., New England Power Pool Comments at 2; Pennsylvania-New Jersey-Maryland Interconnection Comments at 10–11; EEI Comments at 13–14; Boston Edison Comments at 3; Central Maine Power Comments at 2; Florida Power and Light Comments at 5–6; Northeast Utilities Comments at 3.

[157] Northern States Power Comments at 9.

[158] Otter Tail Power Comments at 5.

[159] Pacific Gas & Electric Comments at 9.

[160] Large Public Power Council Comments at 7–8.

[161] DOE Comments at 3–4.

[162] Florida Power & Light Comments at 5–6.

[163] Oglethorpe Power Corporation Comments at 8–9.

[164] See, e.g., New England Power Pool Comments at 2; Northeast Power Coordinating Council Comments at 2; Southwest Regional Transmission Association Comments at 12–13; Allegheny Power Comments at 4; TVA Comments at 2.

[165] See, e.g., Pennsylvania-New Jersey-Maryland Interconnection Comments at 13; EEI Comments at 16; Allegheny Power Comments at 4; American Electric Power Comments at 7–8; Northeast Utilities Comments at 4; PSI Energy Comments at 6; Southwestern Public Service Comments at 6–7.

[166] See, e.g., Duke Power Comments at 32–33; Union Electric Comments at 9–10.

[167] Florida Power and Light Comments at 5.

[168] Northern States Power Comments at 10.

[169] Midwest Power Systems Comments at 3–4.

[170] Texas-New Mexico Power Comments at 15.

6 requirements. However, evaluation of the transmitting utility's system to take into account potential transactions beyond those already planned for is necessary in order to satisfy the statutory objective of identifying available transmission capacity and known constraints. To minimize the Respondent's burden, the Commission will accept narrative descriptions of existing and future transmission system performance that identify known and future constraints and proposed mitigating actions. The Commission recognizes that transmitting utilities cannot be held strictly accountable if their predictions turn out to be inaccurate; that is, when they do not correctly anticipate the results of a particular proposed transaction. The Commission has revised the language of the rule to reflect this discussion.

Some commenters point out that it may take a long time to perform system evaluations and that it would be very burdensome to require a transmitting utility to provide evaluations using power flow base cases submitted in part 2 for the current year.[171] The Commission recognizes that requiring use of power flows submitted in part 2 would be impractical due to the time constraints and has rewritten part 6 accordingly.

A few commenters state that it is important to submit stability studies as part of the evaluation.[172] The Commission finds that stability studies will be useful in screening studies to assess transmission availability only when stability is the constraining factor in transmission. The instructions have been modified to require that transmitting utilities make available the results of stability studies when stability is a limiting factor in the existing or planned transmission system.

A number of commenters state that a transmitting utility should provide only existing transmission capability studies performed as part of DOE OE–411 reports (for 230 kV and above) or as part of pool or regional reliability council requirements.[173] While the Commission will accept transmission capability studies as part of the transmission system evaluation narrative, they alone may not be adequate to meet future assessments of the transmission system.

A number of commenters propose that Respondents provide certain specific information so that others can evaluate transmission availability and identify the constraints.[174] The Commission will not adopt these suggestions. The ability to be more specific at this stage may well impose a burden beyond that required to meet our responsibilities.

A number of commenters suggest that any operating guides or criteria that transmitting utilities may implement must be available or described in detail, to help transmission dependent entities understand the permissible uses of the network and its capabilities, and because a utility's transmission system operating criteria may vary from the planning criteria submitted.[175] Respondents may draw upon operating studies to establish transmission transfer limits, but the explicit reporting of operating criteria is not necessary to meet our responsibilities.

IV. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[176] require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information requirements contained in this proposed rule are contained in FERC–715 "Annual Transmission Planning and Evaluation Report" (1902–0167) and FERC–714 (1902–0140). The Commission uses the data collected in these information requirements to carry out its regulatory responsibilities under the FPA, PURPA and the Energy Policy Act. Moreover, the collection of Form 715 data is mandated by the Energy Policy Act. The Commission's Office of Electric Power Regulation uses the Form 714 data to obtain a better overall picture of annual power generation and transmission and to ensure consistency in the reporting of operational data by the electric utility industry. In particular, the data collected provides greater comprehension of interconnected control area operations. The Commission also has deleted certain reporting requirements from the Form 714 because the Commission can obtain the data from Form 715.

The Commission is notifying the Office of Management and Budget that it is modifying its proposed information requirements. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Services Division (202) 208–1415). Comments on the requirements of the final rule can be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act requires rulemaking either to contain a description and analysis of the effect that a rule will have on small entities or to certify that the rule will not have a significant economic effect on a substantial number of small entities.[177] Allegheny Electric Cooperative, Inc. (Allegheny) and several other electrical cooperatives (Allegheny, *et al.*)[178] challenge the Commission's certification that the proposed rule would not have a significant economic impact on a substantial number of small entities.[179] Allegheny, *et al.* maintain that the proposed rule will impose new data collection and maintenance requirements on rural electrical cooperatives and small generation and transmission cooperatives that operate radial, rather than network transmission facilities.

These commenters state that electric cooperatives do not generally conduct load flow simulations or develop the type of reliability, assessment, or evaluation information that the rule would require. According to Allegheny, *et al.*, electric cooperatives are generally not full members of NERC regional councils or sub-regional groups, and their facilities are not typically included in those groups' load flow simulations.

Allegheny, *et al.* point out that many electrical cooperatives already serve municipalities or other customers at wholesale and may well become transmitting utilities, covered by the requirements of the proposed rule, as EWGs and IPPS locate within their service areas. Allegheny, *et al.* fear that electrical cooperatives and small power systems may have to manufacture the

[171] See, e.g., Pennsylvania-New Jersey-Maryland Interconnection Comments at 13; EEI Comments at 15.

[172] See, e.g., Utah Associated Municipal Power Systems Comments at 13; American Iron and Steel Institute, *et al.* Comments at 10–11.

[173] See, e.g., Atlantic Electric Comments at 6; Boston Edison Comments at 4; Central & Southwest Comments at 10–13, 16–17.

[174] See, e.g., Duquesne Light Comments at 6–7; National Power PLC Comments at 4–5; ERCOT Comments at 3.

[175] See, e.g., APPA Comments at 14–15; American Iron and Steel Institute, *et al.* Comments at 10; Oglethorpe Power Comments at 8.

[176] 5 CFR 1320.12.

[177] 5 U.S.C. 601–612.

[178] The other electrical cooperatives are: Four County Electric Membership Cooperative, Inc., Rayburn County Electric Cooperative, Inc. (Rayburn), Saluda River Electric Cooperative, Inc. (Saluda River) and Southern Maryland Electric Cooperative, Inc.

[179] New Reporting Requirement Under the Federal Power Act and Changes to Form No. FERC–714; Proposed Rulemaking, 58 FR 17544, 17549 (April 5, 1993); IV FERC Stats. & Regs. ¶ 32,493 at 32,694–5.

required data for the sole purpose of complying with the proposed rule.[180] Allegheny, *et al.* request that the Commission exempt from the Form 715 reporting requirements entities that own or operate only discrete line sections or radial facilities, and that the Commission exempt small power systems from the requirement to conduct regional power flow studies or to provide equivalent power flow cases.[181]

Although we will not grant Allegheny, *et al.* the exemptions they seek, we have modified the proposed rule to accommodate their concerns. To ensure that the final rule will not have a significant economic impact on a substantial number of small entities, we have made the following changes from the proposed rule:

A. In the NOPR, we proposed that both owners and operators of fully integrated and radial transmission facilities must file Form 715. In the final rule, we are requiring only operators of these facilities to file Form 715.[182]

B. The proposed rule would have included entities owning and operating only radial facilities. We have restricted the filing requirements in the final rule to operators of integrated facilities.[183]

C. In the final rule, we have allowed for waiver for those entities that do not develop or use power flows in the normal course of business.[184]

We think that our changes in the final rule have responded to the needs of small entities. Most small entities will either be exempt from our final rule or will be eligible for a waiver from its requirements. The final rule only covers the operators of integrated transmission facilities of 100 kV and above. Because most transmission utilities that operate integrated transmission facilities of 100 kV and above do not fall within the definition of "small entity,"[185] and because the final rule accommodates the economic concerns of small entities, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[186] The Commission categorically excludes certain actions from this requirement as not having a significant effect on the human environment.[187] No environmental consideration is necessary for the promulgation of a rule that involves the gathering, analysis, and dissemination of information.[188] Because this final rule involves only the gathering, analysis and dissemination of information, no environmental consideration is necessary.

VII. Effective Date

This final rule is effective November 8, 1993. The information collection provisions, however, will not become effective until approved by the Office of Management and Budget. Notice of this date will be published in the **Federal Register.**

List of Subjects in 18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

It is ordered:

1. Late filed comments are hereby accepted and made part of the record in this proceeding.

2. Requests for an opportunity to file reply comments are hereby denied;

3. Requests for a technical conference are hereby denied;

4. In consideration of the foregoing, the Commission amends part 141 in chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 141—STATEMENT AND REPORTS (SCHEDULES)

1. The authority citation for part 141 is revised to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 141.51 is revised to read as follows:

§ 141.51 FERC Form No. 714, Annual Electric Control and Planning Area Report.

(a) *Who must file.* (1) Any electric utility, as defined by section 3(4) of the Public Utility Regulatory Policies Act, 16 U.S.C. 2602, operating a control area, and any group of electric utilities, which by way of contractual arrangements operates as a single control area, must complete and file the applicable schedules in FERC Form No. 714 with the Federal Energy Regulatory Commission.

(2) Any electric utility, or group of electric utilities that constitutes a planning area and that has a peak load greater than 200 megawatts (MW) based on net energy for load for the reporting year, must complete applicable schedules in FERC Form No. 714.

(b) *When to file.* FERC Form No. 714 must be filed on or before each June 1 for the preceding calendar year.

(c) *What to file.* An original and three conformed copies of FERC Form No. 714 "Annual Electric Control and Planning Area Report," must be filed with the Federal Energy Regulatory Commission, in accordance with the instructions in that form and in this section.

3. Part 141 is amended by adding § 141.300 to read as follows:

§ 141.300 FERC Form No. 715, Annual Transmission Planning and Evaluation Report.

(a) *Who must file.* Any transmitting utility, as defined in § 3(23) of the Federal Power Act, that operates integrated (that is, non-radial) transmission facilities at or above 100 kilovolts must complete FERC Form No. 715.

(b) *When to file.* FERC Form No. 715 must be filed on or before each April 1.

(c) *What to file.* FERC Form No. 715 must be filed with the Federal Energy Regulatory Commission in accordance with the instructions on that form.

[Note: The instructions for filling out FERC Form No. 15 appear in appendix A. The changes to FERC Form No. 714 appear in appendix B. Neither appendix will appear in the Code of Federal Regulations.]

Appendix A—Annual Transmission Planning and Evaluation Report—FERC Form No. 715

Form Approved
OMB No. 1902–0167
Expires: 12/31/96

This report is mandatory under sections 213(b), 307(a) and 311 of the Federal Power Act and Volume 18 CFR 141.300.

The Commission does not consider the information collected by this report to be confidential and will not treat it as such.

The public reporting burden for this collection of information is estimated to average 200 hours per response, including

[180] Allegheny, *et al.* Comments at 22–27.

[181] Allegheny, *et al.* Comments at 31–36.

[182] Because Allegheny owns but does not operate a section of 500 kV transmission line (Allegheny, *et al.* Comments at 15), under the final rule it will not have to file Form 715.

[183] Because Saluda River operates only radial lines (Allegheny, *et al.* Comments at 25), it will not have to file Form 715.

[184] Allegheny, *et al.* state that electrical cooperatives do not generally conduct load flow simulations. Allegheny, *et al.* Comments at 24. Those cooperatives would, then, be eligible for waiver from the requirement to file Form 715.

Rayburn requests a waiver from Form 715 filing requirements. Allegheny, *et al.* Comments at 26. We will deny this request as premature, without prejudice to Rayburn's renewing its request for waiver once the final rule becomes effective.

[185] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632, which defines a "small-business concern" as a business that is independently owned and operated and that is not dominant in its field of operation.

[186] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. and Regs., Regulations Preambles 1986–1990, ¶ 30,783 (1987).

[187] 18 CFR 380.4.

[188] 18 CFR 380.4(a)(5).

the time for reviewing the 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:

Federal Energy Regulatory Commission, Information Services Division, ED12.3, 941 N. Capitol St. NE., Washington, DC 20426

and to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FERC Form No. 715 Contents

General Information
General Instructions
Terms and Definitions
Specific Instructions
Part 1: Identification and Certification
Part 2: Power Flow Base Cases
Part 3: Transmitting Utility Maps and Diagrams
Part 4: Transmission Planning Reliability Criteria
Part 5: Transmission Planning Assessment Practices
Part 6: Evaluation of Transmission System Performance

Instructions for Completing the FERC Form No. 715 Annual Transmission Planning and Evaluation Report

General Information

I. Purpose of Report

The FERC Form No. 715, Annual Transmission Planning and Evaluation Report, is required pursuant to sections 213(b), 307(a) and 311 of the Federal Power Act to provide information adequate to inform potential transmission customers, State regulatory authorities and the public of potential transmission capacity and known constraints, to support the Commission's expanded responsibilities under sections 211, 212 and 213(a) of the Federal Power Act (as amended by the Energy Policy Act), and to assist in rate or other regulatory proceedings.

II. Who Must Submit

Each transmitting utility, as defined in section 3(23) of the Federal Power Act, that operates network (that is, non-radial) transmission facilities at or above 100 kilovolts must report and make readily available to the public the information requested under the listed items in the prescribed manner. A designated agent, such as a regional transmission group, North American Electric Reliability Council (NERC), regional reliability council, formal power pool, or other group, may submit and make readily available to the public part or all of the required information on behalf of the transmitting utility. The transmitting utility is responsible for submitting all data not submitted on its behalf by a designated agent. Designated agents must specify the transmitting utility (or transmitting utilities) for which they are submitting information.

III. Where to Submit

Submit one original and two copies in hard copy of FERC Form No. 715, Annual Transmission Planning and Evaluation Report, and one copy in electronic form of FERC Form No. 715, Annual Transmission Planning and Evaluation Report (except part 3: Transmitting Utility Maps and Diagrams), to:

Office of Electric Power Regulation, Federal Energy Regulatory Commission, room 2410, ER-10.1, 825 North Capitol Street NE., Washington, DC 20426

IV. When to Submit

File the report annually on April 1.

V. Further Information

Direct questions concerning the FERC Form No. 715, Annual Transmission Planning and Evaluation Report, to James S. Ballard at (202) 208-6989, Fax (202) 208-0180.

VI. Sanctions and Confidentiality Statements

The FERC Form No. 715, Annual Transmission Planning and Evaluation Report, is mandatory under the Federal Power Act. The information reported in FERC Form No. 715 is not confidential. Late filing or failure to file, keep records, or comply with these instructions may result in criminal fines, civil penalties, and other sanctions as provided by law.

General Instructions

The Federal Energy Regulatory Commission (Commission) has determined that to satisfy section 213(b) of the Federal Power Act (FPA) it is necessary for potential customers to be able to reasonably anticipate the outcome of technical studies that a transmitting utility would perform in assessing the availability of transmission capacity to satisfy a request for transmission service. Therefore, the Commission requires each transmitting utility, or its designated agent, to: (1) Submit and make available expeditiously to the public, upon request (in hard copy and in electronic form, except for item (b), below) an annual report that includes (a) power flow base cases for its transmission system, or if the transmitting utility belongs to a regional or subregional transmission planning or reliability organization, power flow base cases for that region or subregion; (b) system maps and one-line diagrams; (c) a description of their reliability criteria and transmission planning assessment practices; and (d) an evaluation under the reliability criteria of the current and future performance of their transmission system; and (2) designate any regional or subregional transmission planning or reliability organizations to which it belongs or any other single entity to submit to the Commission and to release to the public any regional or subregional power flow base cases developed for the purposes of members' transmission planning. If Respondents desire to impose copying charges, they shall provide a fee schedule for making this information available to the public.

The Commission assumes that most transmitting utilities participate in the development, by a regional or subregional organization to which they belong, of regional or subregional power flow base cases. The purpose of this process is to ensure consistency of assumptions and accuracy of data.

Individual members of regional or subregional organizations use these power flow cases as the starting place for their own transmission planning studies. A detailed description of a transmitting utility's reliability criteria and planning practices and an evaluation of system performance are essential to perform planning studies, to assess the availability of transmission, to identify potential constraints, and to anticipate the outcome of transmitting utility technical studies made in response to an actual request for service.

Terms and Definitions

Transmission Planning Reliability Criteria—The measuring systems and performance standards used for assessing the actual or projected ability of the bulk electric transmission system to deliver power to load reliably. Failure to attain a specified performance standard indicates the need to consider adding or rearranging facilities, changing operating modes, or other responses.

Examples of criteria that might apply to simulated testing of the bulk electric transmission system are:

(a) No cascading outage following any specified set of contingencies.

(b) No overloaded facilities following a specified contingency.

(c) All voltages within prescribed limits.

Transmitting Utility—Any electric utility, qualifying cogeneration facility (section 3(18)(B), FPA), qualifying small power production facility (section 3(17)(C), FPA), or Federal power marketing agency (section 3(19), FPA) that owns or operates electric power transmission facilities that are used for the sale of electric energy at wholesale. (section 3(23), FPA)

Specific Instructions

Part 1: Identification and Certification

Provide the following information:

1. Transmitting Utility Name.
2. Transmitting Utility Mailing Address.
3. Contact Person Name.
4. Contact Person Title.
5. Contact Person Telephone Number.
6. Contact Person Facsimile Number.
7. Certification by an authorized official of the Transmitting Utility regarding the accuracy of the information submitted.
8. Certifying Official Signature.
9. Certifying Official Name.
10. Certifying Official Title.

Part 2: Power Flow Base Cases

A Respondent participating in a regional or subregional process (for consolidating and ensuring the consistency and accuracy of the power flow information used by the Respondent for transmission planning) must either authorize the regional or subregional organization to release, without conditions, to the public in an easily accessible electronic format, the most current regional or subregional input data to solved power flow base cases that the transmitting utility would ordinarily use as the starting point for

its transmission planning studies or, where these data are unavailable from a regional organization, submit such data itself.

If the Respondent participates in such a regional or subregional process, it must submit the following items:

1. Regional or subregional organization name;
2. Regional or subregional organization mailing address;
3. Regional or subregional organization contact person;
4. Regional or subregional organization contact person title;
5. Regional or subregional organization contact person telephone number;
6. Regional or subregional organization contact person facsimile number;
7. Description of process for public access to regional or subregional power flow information; and
8. Description of power flow cases currently available from regional or subregional organization, including time frame, conditions, format, media and the fees, if any, for copying data for the public.

If a Respondent does not participate in the development of regional or subregional transmission planning power flow base cases, the Respondent must submit its own equivalent power flow base cases directly to the Commission.

Each Respondent must submit for each solved power flow base case: the input data file (in formats described below) and the corresponding output data file (in ASCII format) showing the solved real and reactive power flows, voltages, real and reactive generation and loads, solution parameters, and other relevant output information; or, in the alternative, at a minimum, a one-line diagram showing real and reactive power flows, bus voltages and angles, generator outputs, transformer tap settings and loads.

Regional and subregional organizations authorized by their members to provide access to solved power flow cases should make them available electronically on MS/PC DOS format (version 3.x or higher), high density (1.44 MB), 3.5 inch diskette or via a computer bulletin board, when practical, in the input data format associated with the power flow program that the regional or subregion organizations use in their transmission studies. The Commission expects that, in nearly all cases, the format will be one of the following:

—The Raw Data File format of the PTI (Power Technologies, Inc.) PSS/E Power flow program.
—The Card Deck Image format of the Philadelphia Electric Power flow program.
—The Card Deck format of the WSCC Power flow program.
—The Raw Data File format of the EPC (Electric Power Consultants, Inc.), or the PSLP power flow program.
—The IEEE Common Format for Exchange of Solved Power Flows.

Respondents submitting their own cases must supply the input data to the solved base cases and associated ASCII output data on MS/PC DOS format (version 3.x or higher), high density (1.44 MB), 3.5 inch diskette in the format associated with the power flow program used by the Respondents in the course of their transmission studies, as described above.

The input data to the solved power flow base cases must be forward-looking. For example, the power flow base cases submitted and made available might include:

—One, two, five and ten-year forecasts under summer and winter peak conditions.
—A one-year forecast under light load/heavy transfers condition.

This example is similar to a schedule of base cases proposed by NERC's Multiregional Modeling Working Group for development at the time this form was created. A regional and subregional organization may develop, depending on its needs, a different number of power flow base cases than those described above.

The power flow base cases must be in sufficient detail that network equivalents, if used, extend sufficiently beyond the electrical borders of the transmitting utility that potential transmission users could simulate power transfers within a reasonable market area without significant loss of accuracy.

The power flow base cases should include all branch circuit ratings (that is, normal, long-term and short-term emergency, or other relevant ratings) that a Respondent uses. Each Respondent must also submit or make available a data-dictionary that cross-references the bus or line terminal names.

Part 3 Transmitting Utility Maps and Diagrams

1. Each Respondent must submit an original and one copy of general transmission maps and single-line schematic diagrams. The maps and diagrams should be those prepared in the general course of business for planning and operating purposes. The guidelines provided below indicate the type of information and the level of detail desired; however, the Commission is not requiring the Respondent to specifically prepare new maps and diagrams to satisfy this requirement. If the Respondent has readily available more than one set of maps and/or diagrams, the Commission requests that the set submitted best provide the level of detail described below.

2. The transmitting utility's general maps should show the geographic locations and names of:

A. Generating plants;
B. Switching stations;
C. Substations;
D. Service areas; and
E. Interconnections with other utilities.

3. The transmitting utility's single-line schematic diagrams should show and identify:

A. AC and DC transmission lines and facilities, including their nominal operating and design voltages;
B. Electrical connections;
C. Generating plants;
D. Transformation facilities;
E. Phase angle transformers;
F. VAR control equipment; (i.e., shunt and series capacitors and inductors, etc.).

4. On the maps or in separate documentation, each Respondent should provide a legend that shows the symbols used on the map or diagram to represent generators, transmission lines, transformers, capacitors, reactors, buses, etc.

5. If maps and diagrams have not changed from those currently on file at the Commission, Respondents should make a statement to that effect. Respondents must submit new maps or diagrams only if they have revised those currently on file at the Commission.

Part 4 Transmission Planning Reliability Criteria

Each Respondent is to provide the transmission planning reliability criteria used to assess and test the strength and limits of its transmission system to meet its load responsibility as well as to move bulk power between and among other electric systems.

If a Respondent subscribes to the NERC and regional reliability council transmission reliability criteria, the Respondent must submit the documents containing such criteria, unless these documents are readily available in NERC publications or are available in the regional reliability council OE–411 reports submitted to the DOE. In such cases, Respondent must submit only the title, source and effective date of each publication or document.

If a transmitting utility subscribes to more detailed criteria compatible with the NERC or regional reliability council through its interconnection or pooling agreements with others, then it must also submit these additional criteria.

The Commission expects that each transmitting utility will have additional detailed criteria. For example, each utility generally sets its own voltage limit criteria on its bulk system as well as its lower voltage system, since NERC and the regional reliability councils generally do not. Particular criteria may differ from those of the council and may be justified by the geography of the area, type of loads being served, system configuration, weather considerations, or other reasons. Each transmitting utility must submit all such additional criteria.

The above criteria will be those which the transmitting utility uses to determine available transmission capacity needed to meet potential transmission requests as well as its own native load. A transmitting utility must describe the criteria that it uses in sufficient detail to allow others to use the criteria when performing their own planning or screening studies and to better understand the process of determining available transmission capacity.

In subsequent years, Respondents need only identify and file changed criteria.

Part 5 Transmission Planning Assessment Practices

The criteria submitted under part 4 of this form set the limits of transmission use. However, assessment practices that a transmitting utility uses in applying these criteria are as important as the criteria themselves. These practices, developed through experience and study, include consideration of detailed factors that a transmitting may not list in the criteria that it submits under part 4. For example, a utility might have certain operating restrictions and

limitations that must be met by appropriate modelling within a simulation study.

Also, through experience and study, each transmitting utility may have developed a list of various contingencies it typically tests against in the application of its transmission planning reliability criteria. For example, before testing for the limits of transmission capability that could be used for firm power transfers on its system, a transmitting utility will assume, based on experience or realistic expectation, that certain facilities will be unavailable for some period of time. Each transmitting utility must identify these contingencies and submit them under this part.

A description of the Respondent's practices when applying the transmission planning reliability criteria submitted in part 4 must be submitted under this part. The description must include the substantive planning assessment practices that a Respondent follows in the normal course of business. The information filed should help requesters to perform planning or screening studies and to better understand the process of determining available transmission capacity and known constraints.

In subsequent years, Respondents need only identify and file changed assessment practices.

Part 6 Evaluation of Transmission System Performance

The transmitting utility must provide a narrative evaluation or assessment of the performance of its transmission system in future time periods based on the application of its reliability criteria. It must provide a clear understanding of existing and likely future transmission constraints, their sources, how it identified these constraints, and a description of any plans to mitigate the constraints. The evaluation must provide a clear understanding of the existing and expected system performance of the Respondent's transmission system. The evaluation should include a description of all existing transmission stability limits that the transmitting utility has uncovered through dynamic system simulation studies. If, in their studies, Respondents identify stability as a regional transmission limiting factor, Respondents must, on request, provide the results of their studies.

The required evaluation is to be drawn from existing utility transmission planning studies and the experience and judgment of the Respondents' transmission system planners. Respondents may base the required evaluation, in part, on recently performed operating studies that determine transfer capabilities for the upcoming peak load season.

Appendix B—Changes to FERC Form No. 714

The existing form FERC–714 is modified by eliminating schedules VIII, XIII, XIV and XV, modifying schedules VI and VII and consolidating schedules X, XI, and XII. The table of contents (reorganized and renumbered) is as follows:

Part I: Identification and Certification

Part II: Control Area Information

Schedule 1: Generating Plants Included in Reporting Control Area
Schedule 2: Control Area Monthly Capabilities at Time of Monthly Peak Demand
Schedule 3: Control Area Net Energy for Load and Peak Demand Sources by Month
Schedule 4: Adjacent Control Area Interconnections
Schedule 5: Control Area Scheduled and Actual Interchange
Schedule 6: Control Area Hourly System Lambda

Part III: Planning Area Information

Schedule 1: Electric Utilities that Compose the Planning Area
Schedule 2: Planning Area Hourly Demand and Forecast Summer and Winter Peak Demand and Annual Net Energy for Load

Part IV: Notes

The existing schedule VII, Control Area System Lambda is replaced by the following:

Part II Schedule 6: Control Area Hourly System Lambda

Submit on a 3.5 inch diskette formatted for the DOS operating system the following data file in ASCII format: the control area's system lambda for each hour of the year starting with 1 a.m., January 1, 1993. Identify clearly the time zone in which this time series is made. The file should have 8760 records (8784 for leap years). Each record is to contain the system lambda value at the clock hour in dollars per megawatthour (mills per kilowatthour) or an "NA" for those hours when system lambda was not calculated.

Control Area Hourly System Lambda. For control areas where demand following is primarily performed by thermal generating units, the system lambda is derived from the economic dispatch function associated with automatic generation control performed at the controlling utility or pool control center. Excluding transmission losses, the fuel cost ($/hr) for a set of on-line and loaded thermal generating units (steam and gas turbines) is minimum [1] when each unit is loaded and operating at the same incremental fuel cost ($/MWh) [2] with the sum of the unit loadings (MW) equal to the system demand plus the net of interchange with other control areas. This single incremental cost of energy is the system lambda. System lambdas are likely recalculated many times in one clock hour. However, the indicated system lambda occurring on each clock hour would be sufficient for reporting purposes.

Provide, as a note in part IV, an explanation describing the reason for the unavailability of system lambda information and a definite plan for reporting the information with a target date. The Commission expects that all Energy Management Systems, with proper instructions, can record the system lambda being used for economic dispatch of the control area's thermal units.

Respondents should be able to report system lambda, along with the other information reported on a control area basis, that describe the operation of such areas from information that should be readily available. The Commission is not requesting Respondents to develop incremental or marginal cost (either short or long term) according to any formula. Nor is the Commission requesting "avoided cost rates" that, pursuant to PURPA 210, electric utilities file with state commissions or otherwise make available for prospective qualified facilities.

Description of Economic Dispatch. Also, provide in writing a detailed description of how Respondent calculates system lambda. For those systems that do not use an economic dispatch algorithm and do not have a system lambda, provide in writing a detail description of how control area resources are efficiently dispatched.

The existing Schedule X, Planning Area Monthly Net Energy for Load, Schedule XI Planning Area Summer and Winter Actual and Peak Demand and Annual Net Energy for Load, and Schedule XII, Planning Area Hourly Demand Data By Specified Week are replaced by the following:

Part III Schedule 2: Planning Area Hourly Demand and Forecast Summer and Winter Peak Demand and Annual Net Energy For Load

(1) Respondents must submit hourly demand data in electronic form to the Commission. Additionally, Respondents that participate in a national, regional or subregional process for consolidating and ensuring the consistency and accuracy of actual hourly and forecast demand information, may instead authorize the national, regional or subregional organization to release that information to the Commission, and to the public at the cost of reproduction, in an easily accessible electronic format, such as EEI format.

(2) If the Respondent does not participate in the development of national, regional or subregional actual and forecast demand information, it must submit its own, equivalent, demand information directly to the Commission along with this report, as follows.

Respondents must submit on a 3.5 inch diskette formatted for the DOS operating system the following data file in ASCII format: the planning area's actual hourly demand, in megawatts, for each hour of the year starting with 1 am, January 1, 1993, central standard time. The file should have 8760 records (8784 for leap years). For hours when this information is not available, enter "NA."

Also provide on the diskette a file containing the planning area's forecast summer and winter peak demand, in megawatts, and annual net energy for load, in megawatthours, for the next ten years.

[1] Some utilities may also include variable operation and maintenance costs that they consider "dispatchable." Therefore the costs to be minimized could include a variable O&M component as well as the fuel costs.

[2] Because unit heat rates and fuel costs vary, some units may not be able to operate at the same incremental fuel cost as the other units and, thus, those units may be loaded differently.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–24521 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 821

[Docket No. 91N–0296]

Medical Devices; Device Tracking; Opportunity for Comments; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; opportunity for comments; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of August 16, 1993 (58 FR 43442). The document announced an opportunity for public comments on the final rule on device tracking which was also published in the **Federal Register** of August 16, 1993 (58 FR 43442). The document was published with some inadvertent editorial errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Robin T. Johnson, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In FR Doc. 93–19473, appearing on page 43442, in the **Federal Register** of Monday, August 16, 1993, the following corrections are made:

On page 43442, in the first column, under the caption **FOR FURTHER INFORMATION CONTACT:**, in line 3, the mail code "(HFA–84)" is corrected to read "(HFZ–84)"; and in the second column, the heading **"III. Opportunity for Comments"** is removed.

Dated: October 1, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–24783 Filed 10–7–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD02–93–031]

Special Local Regulations; the First Chattanooga Head Race (Tennessee River Between Mile 467.0 and 464.0)

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the First Chattanooga Head Race which will be held on the Tennessee River near Chattanooga, Tennessee on October 9, 1993. These regulations are needed to control vessel traffic in the immediate vicinity of the event. The regulations will restrict general navigation in the regulated area for the safety of spectators, participants and through traffic.

EFFECTIVE DATE: These regulations become effective from 8 a.m. to 6 p.m. local time on October 9, 1993.

FOR FURTHER INFORMATION CONTACT: LTJG D.R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, fax (314) 539–2685.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are LTJG D.R. Dean, Project Officer, Second Coast Guard District, Boating Safety Division and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the Coast Guard could not approve this regatta until it was too late to publish a notice of proposed rule making in advance of the event. This delay was caused by the Coast Guard's operational commitments to providing flood relief in the Upper Mississippi River basin. Until recently, personnel were not available to provide the necessary patrols for the regatta. Rather than deny approval of the event, the decision to approve was delayed.

Background and Purpose

The First Chattanooga Head Race is an event that consists of a three-mile rowing race along the south shore of the river starting at 8 a.m. on Saturday, October 9, 1993. It will be completed by 6 p.m. local time. In order to provide for the safety of spectators and participants, and for the safe passage of through traffic, the Coast Guard will restrict vessel movement in the regatta area. The river will be closed during part or all of the effective periods to all vessel traffic except participants, official regatta vessels, and patrol craft. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

Regulatory Evaluation

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

Federalism Assessment

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

Environmental Assessment

Under section 2.B.2.c of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

Temporary 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 section 100.35–T0231 is added, to read as follows:

§ 100.35–T0231 Tennessee River, Chattanooga, Tennessee.

(a) *Regulated Area.* Tennessee River from mile 467.0 to mile 464.0.

(b) *Special Local Regulations.* (1) Except for participants in the First Chattanooga Head Race, no person or

vessel may enter or remain in the regulated area without permission of the Patrol Commander.

(2) The Coast Guard Patrol Commander will be a commissioned or petty officer designated by the Commanding Officer, Marine Safety Office Paducah, Kentucky and may be contacted, during the event, on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander." The Patrol Commander may:

(i) Direct the anchoring, mooring, or movement of any vessel within the regulated area,

(ii) Restrict vessel operation within the regulated area to vessels having particular operating characteristics,

(iii) Terminate the marine event or the operation of any vessel when necessary for the protection of life and property, and

(iv) Allow vessels to transit the regulated area whenever an event is not being conducted and the transit can be completed before another event begins.

(3) Coast Guard commissioned or petty officers will patrol the event on board patrol vessels which display the Coast Guard Ensign. If radio or other voice communications are not available to communicate with a vessel, they will use a series of sharp, short blasts by whistle or horn to signal the operator of any vessel in the vicinity of the regulated area to stop. When signaled, the operator of any vessel in the immediate vicinity of the regulated area shall stop the vessel immediately and shall proceed as directed.

(4) Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(5) The Patrol Commander will terminate enforcement of the regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective Dates.* These regulations become effective from 8 a.m. to 6 p.m. local time on October 9, 1993.

Dated: September 29, 1993.

F.M. Chliszczyk,

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

[FR Doc. 93-24808 Filed 10-7-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD 09-93-006]

Drawbridge Operation Regulations, Manistee River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Michigan Department of Transportation and the City of Manistee, Michigan, the Coast Guard is changing the operating regulations governing the US-31 highway bridge, mile 1.14, the Maple Street highway bridge, mile 1.1, and the Chessie System Railroad bridge, mile 1.5 across the Manistee River in Manistee, Michigan. The new regulations extend the periods of time when bridgetenders are not required to be in constant attendance at the bridges. This action will relieve the bridge owners of the burden of having bridgetenders constantly in attendance at the bridges and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This rule is effective on November 8, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Bloom, Jr., Chief, Bridge Branch, telephone (216) 522-3993.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Fred H. Mieser, Project Manager, and Lieutenant Karen E. Lloyd, Project Counsel, Ninth Coast Guard District.

Regulatory History

On Thursday, July 15, 1993, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (58 FR 38102). In addition, the Commander, Ninth Coast Guard District, published the proposal in a Public Notice dated July 6, 1993. The Coast Guard received one letter commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

Presently, the Maple Street, US-31 highway, and Chessie System Railroad bridges are not required to have bridgetenders in constant attendance at the bridges from January 1 through March 31, and the draws need not open unless notice is given to the bridge owners at least 24 hours in advance of a vessel's time of intended passage through the draws.

The owners of the highway bridges requested that the present period of time when bridgetenders are not required to be in constant attendance at the bridges be extended, allowing for the removal of bridgetenders, from November 1 through April 30. In addition, the owners requested the removal of bridgetenders between the hours of 10 p.m. and 6 a.m., seven days a week, from May 1 through October 31. Both requests will reduce the burden to the bridge owners of the requirement to have bridgetenders in constant attendance at the bridges during periods of time when there are few, if any, requests for bridge openings. The few vessels that do require the bridges to open during the unattended periods from May 1 through October 31, between the hours of 10 p.m. and 6 a.m., will be accommodated by giving a two (2) hours advance notice, and, for the unattended period from November 1 through April 30, by giving a 24 hours advance notice.

Discussion of Comments

One letter was received in response to the Public Notice. The response was from a representative of Great Lakes commercial shipping interests who stated that their member companies will interpose no objection to the proposed change to the operating regulations as long as the regulations could be rescinded should the bridge owners not comply with the new regulations by not having bridgetenders on duty at the bridges after being notified of vessel's time of intended passage through the draw, thereby causing delays to vessel traffic. The Commander, Ninth Coast Guard District, has the authority to rescind drawbridge operations regulations, and could do so after a thorough review of any documentation that would be received which would support a need to rescind such regulations.

No changes were made to the final rule as a result of comments from the Notice of Proposed Rulemaking or Public Notice.

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the additional periods of time when the bridges would be unattended are times when there are few requests to have the bridges opened for the passage of a vessel.

Small Entities

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

as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since vessels could navigate the Manistee River by giving an advance notice during the periods of time the bridges are unattended, and the impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.5 of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.637 is revised to read as follows:

§ 117.637 Manistee River.

(a) The draws of the Maple Street bridge, mile 1.1, and US–31 highway bridge, mile 1.4, both at Manistee, shall operate as follows:

(1) From May 1 through October 31 from 6 a.m. to 10 p.m., the bridges shall open on signal. From 10 p.m. to 6 a.m., the bridges need not open unless notice is given at least two hours in advance of a vessel's time of intended passage through the draws.

(2) From November 1 through April 30, the bridges need not open unless notice is given at least 24 hours in advance of a vessel's time of intended passage through the draws.

(b) The Chessie System railroad bridge, mile 1.5, at Manistee, shall open on signal from May 1 to October 31. From November 1 to April 30, the bridge need not open unless notice is given at least 24 hours in advance of a vessel's time of intended passage through the draw.

Dated: September 28, 1993.

W.R. Wilkins,

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

[FR Doc. 93–24810 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–93–001]

Safety Zone; Boston Inner Harbor, Boston, MA; Correction

AGENCY: Coast Guard, DOT.

ACTION: Corrections to final rule.

SUMMARY: This document contains corrections to the final regulation [CGD01–93–001] which was published Tuesday, September 14, 1993, (58 FR 47990). The regulation related to a permanent safety zone around the USS CASSIN YOUNG (DD–793), 33 CFR 165.112.

EFFECTIVE DATE: This regulation becomes effective September 28, 1993.

FOR FURTHER INFORMATION CONTACT: MST1 Daniel J. Dugery, USCG Marine Safety Office Boston, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction, is a permanent safety zone around the USS CASSIN YOUNG (DD–793), a 376 foot World War II Fletcher Class destroyer, operated by the National Park Service in Boston, MA, to protect the vessel whenever it is underway in Boston Harbor.

Need for Correction

As published, the final regulation contains an error in the **EFFECTIVE DATE** section which needs to be corrected.

Correction of Publication

Accordingly, the publication on September 14, 1993 of the final regulation [CGD01–93–001] is corrected as follows:

§ 165.112 [Corrected]

Paragraph 1 on page 47990, in the second column, under the heading **EFFECTIVE DATE**, the line "This regulation becomes effective October 14, 1993." is corrected to read "This regulation becomes effective October 8, 1993."

Dated: September 28, 1993.

G.W. Abrams,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 93–24809 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–14–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 503, 507, 508, 509, 511, 514, 515, 519, 522, 525, 528, 529, 532, 536, 542, 543, 552 and 570

[APD 2800.12A, CHGE 47]

General Services Administration Acquisition Regulation; Regulation Review Project

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is conducting a review of its internal acquisition regulation/directive system. Consistent with the requirements of Executive Order 12681, "The Elimination of One-Half of Executive Branch Internal Regulations," GSA will, among other things, streamline its directive system, and eliminate unnecessary, unproductive, duplicative and burdensome requirements. This change implements our first phase of the regulatory review effort by deleting more than sixty provisions of the GSAR which were initially found to be appropriate for elimination. The next phase of GSA's regulatory review effort will further reduce internal regulations in order to improve productivity, streamline operations and improve customer service. Future changes will also provide greater flexibility for contracting officials to exercise discretion, encourage innovation, place decisionmaking authority at the lowest level possible, and minimize paperwork burdens on contractors and contracting officials.

EFFECTIVE DATE: October 15, 1993.

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

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the **Federal Register** for public comment because it is not a significant revision as defined in FAR 1.501–1.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply because this rule is not a significant revision as defined in FAR 1.501–1 and, therefore, was not required to be published for public comment.

D. Paperwork Reduction Act

This rule does not contain any recordkeeping or information collection requirements that require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 501, 503, 507, 508, 509, 511, 514, 515, 519, 522, 525, 528, 529, 532, 536, 542, 543, 552 and 570

Government procurement.

Accordingly, 48 CFR parts 501, 503, 507, 508, 509, 511, 514, 515, 519, 522, 525, 528, 529, 532, 536, 542, 543, 552 and 570 are amended to read as follows:

1. The authority citation for 48 CFR parts 501, 503, 507, 508, 509, 511, 514, 515, 519, 522, 525, 528, 529, 532, 536, 542, 543, 552 and 570 continues to read as follows:

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

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

2. Section 501.105 is amended by removing reference to 507.305 and 552.207–70 and related OMB Control Numbers.

501.105 OMB Approval under the Paperwork Reduction Act.

3. Sections 501.670, 501.670–2, 501.670–3, 501.670–4, 501.670–5 and 501.670–6 are removed.

501.670 [Removed]

501.670–1 [Removed]

501.670–2 [Removed]

501.670–3 [Removed]

501.670–4 [Removed]

501.670–5 [Removed]

501.670–6 [Removed]

501.704–70 [Amended]

4. Section 501.704–70 is amended by removing and reserving paragraph (b)(2).

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

5. Section 503.104–8 is revised to read as follows:

503.104–8 Knowing violations, duty to inquire, and ethics advisory opinions.

If a contracting officer has not been appointed, the contracting director shall serve as the Administrator's designee and respond to inquiries under FAR 3.104–8(d) and (e) regarding proprietary and source selection information.

PART 507—ACQUISITION PLANNING

507.305 [Removed]

6. Section 507.305 is removed.

PART 508—REQUIRED SOURCES OF SUPPLIES AND SERVICES

7. Section 508.307–1 is revised to read as follows:

508.307–1 General.

GSA contracting officers are not required to submit proposed utility contracts that meet the criteria at FAR 8.307–1 to the Public Utilities Division (PPU) for review.

508.705–72 [Removed]

8. Section 508.705–72 is removed.

PART 509—CONTRACTOR QUALIFICATIONS

509.106–1 [Removed]

9. Section 509.106–1 is removed.

509.405 [Removed]

10. Section 509.405 is removed.

PART 511—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

511.001 [Removed]

11. Section 511.001 is removed.

PART 514—SEALED BIDDING

514.201–72 [Removed]

12. Section 514.201–72 is removed.

514.208 [Removed]

13. Section 514.208 is removed.

14. Section 514.402–1 is amended by revising paragraph (i) to read as follows:

514.402–1 Unclassified Bids.

* * * * *

(i) Negotiable instruments submitted as bid guarantees to meet solicitation requirements must be forwarded by the bid opening official to the Finance Division in accordance with procedures established by the Chief Financial Officer. When award is made, the solicitation is cancelled, or all bids are rejected, the contracting officer shall direct the Finance Division to refund the amount of the bid guarantee to the unsuccessful bidder(s). Bid guarantees may be returned before award when a bidder requests the guarantee be returned and the bidder is not in contention for the award. Other forms of bid guarantees (e.g., bid bonds, letters of credit, corporate and individual sureties, etc.), must be retained by the contracting officer and included in the contract file.

* * * * *

15. Section 514.404–1 is amended by revising paragraph (b) to read as follows:

514.404–1 Cancellation of invitations after opening.

* * * * *

(b) *Extension of time for bid acceptance.* Requests for time extensions may be made using GSA Form 2981 and must specify a period reasonable under the circumstances.

514.407–2 [Removed]

16. Section 514.407–2 is removed.

PART 515—CONTRACTING BY NEGOTIATION

515.170 [Removed]

17. Section 515.170 is removed.

18. Section 515.402 is revised to read as follows:

515.402 General.

Contracting officers may authorize facsimile proposals (see FAR 15.407(j)) after considering the factors outlined in FAR 15.402(i), provided that facsimile equipment is available in the office designated to receive proposals, procedures and controls have been established for receiving and safeguarding incoming proposals.

515.403 [Removed]

19. Section 515.403 is removed.

20. Section 515.405–1 is revised to read as follows:

515.405–1 General.

Solicitations for information or planning purposes must be approved by the Chief of the Contracting Office (See 502.101).

515.506–1 [Removed]

21. Section 515.506–1 is removed.

22. Section 515.414–70 is amended by revising paragraph (a) to read as follows:

515.414–70 GSA Forms.

(a) The GSA Form 1602, Notice Concerning Solicitation, may be used to (1) describe the type of contract, the duration of the contract, and the type of

supplies or services being procured; (2) direct the attention of prospective offerors to special requirements that, if overlooked, may result in rejection of the offer; (3) highlight significant changes from previous solicitations covering the same supplies or service; and (4) include other special notices as appropriate. The GSA Form 1602 is not part of the solicitation or resulting contract.

* * * * *

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

23. Section 519.705–5 is amended by revising paragraph (d) to read as follows:

519.705–5 Awards involving subcontracting plans.

* * * * *

(d) When the contractor submits a commercial products plan, the contracting officer shall transmit copies of the Standard Form 295, Summary Subcontract Report, to the contractor at the time of contract award. (See 519.770–1(b)(2) for exception.) A letter substantially as follows must be used for this purpose:

Name _____
Address _____
City, State, Zip Code _____

Re: Subcontracting Plan Reports
Contract No. _____

Dear _____:

Your commercial products plan, submitted under the Small Business and Small Disadvantaged Business Subcontracting Plan clause of your contract, has been approved by *(name, address, and telephone number of approving official)*. The clause also requires you to submit subcontracting reports on Standard Form (SF) 295, Summary Subcontract Report.

The SF 295 is an annual report and is due on or before October 30th of each year. The reporting period is October 1–September 30, i.e., the Government fiscal year. The report should summarize subcontracting activity under plans for commercial products in effect during the reporting period.

Please note the requirement on the SF 295 to report your subcontracting with women-owned small business concerns.

Forward this report to: (*address of contracting office administering the contract*); and send a copy to the GSA Office of Small and Disadvantaged Business Utilization (AU), 18th and F Streets, NW, Washington, DC 20405.

Note: Contractors are required to submit SF 295 reports to the Contracting Officer who approved the commercial products plan, only. If the contract for which the commercial products plan was submitted and approved is assigned to an Administrative Contracting Officer (ACO), then the reports are submitted to the ACO.

SF 295 report forms are enclosed.

Sincerely,
Contracting Officer _____
Enclosure (SF 295)

24. Section 519.705–6 is amended by revising paragraph (a) and removing paragraph (c) to read as follows:

519.705–6 Postaward responsibilities of the contracting officer.

(a) In addition to the requirements of FAR 19.705–6, contracting officers shall notify the SBTA of each contract award or contract modification exceeding $500,000 ($1 million for construction) that contains a subcontracting plan within 5 work days after award. The notice of award must contain the following information:

(1) Contractor's name, address, phone number.

(2) Subcontracting plan administrator's name, address, phone number.

(3) Contract number.

(4) Place of performance.

(5) Dollar amount of contract award.

(6) Period of contract performance.

(7) Description of contract items.

(8) Contracting officer's name, address, phone number.

(9) Administrative contracting office address, phone number.

(10) Type of plan (individual or commercial products).

* * * * *

25. Section 519.770–1 is amended by revising paragraph (b)(2)(i) to read as follows:

519.770–1 Report forms.

* * * * *

(b) * * *

(2) * * *

(i) Contractors shall submit the SF 295 reports to the contracting office administering the contract and a copy to AU. *NOTE:* Contractors are required to submit SF 295 reports to the Contracting Officer who approved the commercial products plan, only. If the contract for which the commercial products plan was submitted and approved is assigned to an Administrative Contracting Officer (ACO), then the reports are submitted to the ACO.

* * * * *

26. Section 519.770–3 is amended by revising paragraph (a) to read as follows:

519.770–3 Reporting on contractual actions under Section 211 of Public Law 95–507.

(a) *Contracting office reporting requirements.* A quarterly report of the number and dollar value of contracts and modifications awarded in excess of $500,000 ($1 million for construction) that require subcontracting plans, or a written determination that no subcontracting opportunities exist, must be prepared by contracting offices and submitted to the SBTA by the 10th calendar day after the end of the quarter. Report Control Symbol ADM 64 is assigned to this report. Negative reports are required. The SBTA will forward the reports to AU by the 20th calendar day following the end of the quarter.

* * * * *

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

522.407 [Removed]

27. Section 522.407 is removed.

PART 525—FOREIGN ACQUISITION

Subpart 525.10 [Removed]

28. Subpart 525.10 is removed.

PART 528—BONDS AND INSURANCE

528.102–3 [Removed]

29. Section 528.102–3 is removed.

528.106–70 [Removed]

30. Section 528.106–70 is removed.

31. Section 528.202 is revised to read as follows:

528.202 Acceptability of corporate sureties.

(a) Corporate surety bonds must be manually signed by the Attorney-in-Fact or officer of the surety company and the corporate seal affixed. Failure of the surety to affix the corporate seal may be waived as a minor informality. (See B–184120, July 2, 1975, 75–2 CPD 9.)

(b) A contractor submitting a performance or payment bond executed by an unacceptable corporate surety in satisfaction of a performance or payment bond requirement may be permitted to substitute an acceptable surety for a surety previously determined to be unacceptable.

PART 529—TAXES

32. Section 529.401–70 is revised to read as follows:

529.401–70 Small purchases.

The contracting officer shall insert the clause at 552.229–70, Federal, State, and Local Taxes, in small purchases, except small purchase of utility services.

529.401–71 [Removed]

33. Section 529.401–71 is removed.

PART 532—CONTRACT FINANCING

532.803 [Removed]

34. Section 532.803 is removed.

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

35. Section 536.201 is revised to read as follows:

536.201 Evaluation of contractor performance.

(a) The construction activity shall prepare a performance report for each construction contract of $25,000 or more, and each construction contract where any element of performance was unsatisfactory or outstanding.

(b) Each regional construction activity shall establish an evaluation report file with procedures for maintaining alphabetically the evaluation reports, for cross referencing all names under which a contractor does business with GSA, and for ensuring that fully qualified personnel possessing the knowledge of the contractor's performance prepare and review the evaluation reports.

36. Section 536.203 is revised to read as follows:

536.203 Government estimate of construction cost.

(a) A copy of the independent Government estimate must be sealed in an envelope and submitted to the contracting officer before the date and time for bid opening or the date for receipt of proposals. (See paragraphs (b) and (c) of this section.)

(b) If the procurement is by sealed bidding, the sealed copy of the Government estimate must be stored with the bids received until bid opening. Before releasing an amendment to a solicitation that may affect the price, a revised sealed Government estimate must be stored with the bids until bid opening. After the bids are read and recorded, the sealed Government estimate will be opened and retained with abstract of offers (See Optional Forms 1419 and 1419A). However, the Government's estimate must not be disclosed until after award. Immediately after award the Government estimate must be recorded on the abstract of offers as the Independent Government Estimate.

(c) If the procurement is by negotiation, the sealed copy of the Government estimate must be stored with the proposals until the closing time for receipt of proposals. Cost figures in the Government estimate may be disclosed during negotiation, but only to the extent considered necessary for arriving at a fair and reasonable price, provided that the overall amount of the Government estimate is not disclosed before award. Before the release of a modification to the solicitation which may affect price, a revised Government estimate must be prepared, sealed, and stored, with the proposals until closing time for proposals. After award, the independent Government estimated price may be revealed, upon request, to those firms or individuals who submitted proposals.

(d) The Government estimate must be used to evaluate offers, as a guide in conducting contract negotiations or negotiations of contract modifications, and as a tool for determining the reasonableness of prices.

536.206 [Removed]

37. Section 536.206 is removed.

536.303 [Removed]

38. Section 536.303 is removed.

39. Section 536.303–70 is revised to read as follows:

536.303–70 Bids that include alternates.

(a) The base bid must include all features that are essential to a sound and adequate building design. However, if it appears that funds available for a project may be insufficient to include all desired features in the base bid, the contracting officer may issue a solicitation for a base bid and include one or more alternates in the order of priority. Alternates may be used only when they are clearly justified and should involve substantial amounts of work in relation to the base bid. Their use must be limited and should involve only "add" alternates.

(b) The language used in soliciting alternates must be approved in writing by counsel.

(c) Before opening bids that include alternates, the contracting officer shall determine and record in the contract file the amount of funds available for the project. The amount recorded must be announced at the beginning of the bid opening and must be the controlling factor in determining the low bidder. This amount may be increased later when determining the alternate items to be awarded to the low bidder, provided that the award amount of the base bid plus the combination of alternate items do not exceed the amount offered by any other responsible bidder whose bid conforms to the solicitation for the base bid and the same combination of alternate items.

536.303–71 [Amended]

40. Section 536.303–71 is amended by removing paragraph (g).

536.303–72 [Amended]

41. Section 536.303–72 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

PART 542—CONTRACT ADMINISTRATION

42. Section 542.302 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

542.302 [Amended]

43. Section 543.202 is revised to read as follows:

543.202 Authority to issue change orders.

(a) A contracting officer's representative (COR) for a construction contract that has been issued a warrant under 501.603–70, may be authorized to issue change orders. (See 542.302.) Such change order authority may be exercised on a contract-by-contract basis by the contracting officer's written authorization. The contracting officer may further limit the authorization, e.g., to lower dollar amounts, to emergency situations, etc. In addition, the contracting officer's written authorization must instruct the COR to avoid personally performing all of the following tasks for a single change order: (1) Determining the need for change, (2) Preparing the Government's cost estimate, (3) Conducting negotiations, (4) Issuing the change order and (5) Inspecting the work. The contracting officer shall further instruct the COR to submit change orders to a designated official for review before issuance (for price-to-be-determined-later change orders before definitization) whenever all of these activities are personally performed. The contracting officer may personally review change orders or may designate the COR's immediate supervisor or a higher-level official within the organization to review change orders. To the maximum extent possible, the same individual should review change orders issued under a particular contract.

(b) Change orders should be issued after coordination as appropriate, with counsel, quality control, finance, audit or other technical personnel.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.207–70 [Removed]

44. Section 552.207–70 is removed.

552.222–82 [Removed]

45. Section 552.222–82 is removed.

46. Section 552.228–70 is amended by revising the introductory paragraph to read as follows:

552.228–70 Bid Guarantee and Bonds.

As prescribed in 528.101–3(a) insert a clause substantially the same as follows:

* * * * *

47. Section 570–208–1 is amended by removing paragraph (c).

Dated: September 24, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 93–24363 Filed 10–7–93; 8:45 am]

BILLING CODE 6820–61–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1816 and 1852

NASA FAR Supplement Coverage on Cost-Plus-Award-Fee Contracts

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA has amended the NASA FAR Supplement (NFS) with more extensive coverage on cost-plus-award-fee (CPAF) contracts policy. Consideration of a variety of types of contracts before selecting CPAF is emphasized. Cost control must be emphasized in all award fee evaluations. Use of base fees in CPAF contracts is restricted. On other than service contracts, all award fee is earned based on the final, comprehensive rating. "Roll-over" of fee on service contracts is eliminated. Six months is established as a standard evaluation period. A NASA-wide, simplified scoring system is created. Both positive and negative performance incentives are to be required on all hardware contracts over $25 million. NFS CPAF contract clauses have also been amended to reflect the new CPAF coverage.

EFFECTIVE DATE: This rule is effective October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Guenther (Code HC), Telephone (202) 358–0003.

SUPPLEMENTARY INFORMATION:

Background

Section 401 of the fiscal year 1993 NASA Authorization Act (Pub. L. 102–588) directs NASA to assess the allocation of risk between the Agency and its contractors in order to identify options for more effectively allocating risk on future contracts. This policy on the use of CPAF contracts, which was developed as a result of a initiative begun in August 1991, will implement that direction.

Proposed CPAF coverage was published in the **Federal Register** for public comment on April 14, 1993. Eighteen responses were received. Numerous comments were received which opposed (i) elimination of base fee and roll-over on service contracts, (ii) interim evaluations on contracts other than for services, (iii) the 80 percent cap on provisional interim fee payments, (iv) the requirement to underrun cost and achieve a score of at least 80 on all factors except cost to be rewarded for the underrun, (v) mandating less than the maximum rating for achieving on-target cost, (vi) negative performance incentives that are not limited to earned award fee, and (vii) no incentive amount earned at the standard performance level. As a result of all of the comments received, changes were made to the draft coverage to correct ambiguities or add clarifying language. However, no substantive changes were made.

In addition to the revised CPAF coverage, this notice includes four NASA FAR Supplement contract clauses for use in CPAF contracts. These clauses reflect the new CPAF coverage.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, whether in whole or in part, directly from NASA.

Regulatory Flexibility Act

NASA certifies that this final rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because it applies to a very limited number of contracts, which are generally not used with small entities; in fact, the policy will reduce even further the possibility that CPAF contracts will be used with small entities.

Paperwork Reduction Act

This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR 1816 and 1852

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1816 and 1852 are amended as follows:

1. The authority citation for 48 CFR parts 1816 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1816—TYPES OF CONTRACTS

2. Section 1816.404 is revised to read as follows:

1816.404 Cost-reimbursement incentive contracts.

1816.404–2 Cost-plus-award-fee (CPAF) contracts.

1816.404–270 Approval of CPAF contracts.

(a) Use of a cost-plus-award-fee (CPAF) contract shall be approved in writing by the procurement officer. The procurement officer's approval shall include a discussion of the other types of contracts considered and shall indicate why a CPAF contract is the appropriate choice.

(b) Normally, CPAF contracts are only used on contracts with a total estimated cost and few greater than $1 million per year. The procurement officer may authorize use of a CPAF contract for lower-valued acquisitions, but should do so only in exceptional situations, such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

1816.404–271 Base fee.

(a) A base fee shall not be used on CPAF service contracts for which the periodic award fee evaluations are final (1816.404–273(a)). Base fee normally shall not be used in other contracts, such as study, design, or hardware. However, the procurement officer may authorize the use of a base fee for these contracts by making a written determination that such use is in the best interest of the Government. In such cases, a base fee of no more than 3 percent of the estimated contract cost may be included in the contract.

(b) When a base fee is authorized for use in a CPAF contract, it shall be paid only if the final award fee evaluation is "satisfactory" or better. (See 1816.404–273 and 1816.404–275 for information on final evaluations and evaluation rating categories, respectively.) Pending final evaluation, the base fee may be paid during the life of the contract at defined intervals on a provisional basis. If the final award fee evaluation is

"poor/unsatisfactory," all provisional base fee payments shall be refunded to the Government.

1816.404–272 Award fee evaluation periods.

(a) Award fee evaluation periods shall be at least 6 months in length. When appropriate, the procurement officer may authorize shorter evaluation periods after ensuring that the additional administrative costs associated with the shorter periods are balanced by benefits accruing to the Government. In some cases, such as developmental contracts with defined performance milestones (e.g., Preliminary Design Review, Critical Design Review, initial system test), the procurement officer may authorize evaluation periods at conclusion of the milestones rather than calendar dates, or in combination with calendar dates. In no case, however, shall an evaluation period be longer than 12 months.

(b) A portion of the total available award fee on a CPAF contract shall be allocated to each of the evaluation periods. This allocation may result in either an equal or unequal distribution of fee among the evaluation periods. The contracting officer should consider the nature of each contract and the incentive effects of fee distribution in determining the appropriate allocation structure. Allocation of fee on contracts for which periodic award fee evaluations are interim is for provisional fee payment purposes only. See 1816.404–273 (b) and (c).

1816.404–273 Award fee evaluations.

(a) Award fee evaluations are either interim or final. On service contracts where the contract deliverable is the performance of the service over any given time period, contractor performance is definitively measurable at each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or "rolled-over," into subsequent periods.

(b) On other contracts such as study, design, or hardware, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. Interim evaluations are also done to monitor performance prior to contract completion and provide feedback to the contractor on the Government's assessment of the quality of its performance. Interim evaluations are also used to establish the basis for making professional award fee payments.

(c) Provisional award fee payments may be included in the contract and should be negotiated on a case-by-case basis. For service contracts, provisional payments may be made in amounts up to 80 percent of the current period's available amount. For other contracts, the amount of the provisional award fee payment is determined by applying the lesser of the interim evaluation score (see 1816.404–275) or 80 percent of the fee allocated to that period. The provisional award fee payments are superseded by the fee determination made in the final evaluation at contract completion. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative provisional fee payment.

(d) The Fee Determination Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, provisional or final, due the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

1816.404–274 Award fee evaluation factors.

(a) Evaluation factors will be developed by the contracting officer based upon the characteristics of an individual procurement. Normally, technical and schedule considerations will be included in all CPAF contracts as evaluation factors.

(b) Cost control shall be included as an evaluation factor in all CPAF contracts. When explicit evaluation factor weightings are used, cost control shall be no less than 25 percent of the total fee, excluding any base fee. When explicit weightings are not used (which should only occur on service contracts), cost control shall be a substantial factor in the performance evaluation plan. The predominant consideration of the cost control evaluation should be an objective measurement of the contractor's performance against the negotiated estimated cost of the contract. This estimated cost may include the value of undefinitized change orders when appropriate.

(c) In rare circumstances, contract costs may increase for reasons outside the contractor's control and for which the contractor is not entitled to an equitable adjustment. One example is a weather-related launch delay on a launch support contract. The Government shall take such situations into consideration when evaluating contractor cost control.

(d) Emphasis on cost control should be balanced against other performance requirement objectives. The contractor should not be incentivized to pursue cost control to the point that overall performance is significantly degraded. For example, incentivizing an underrun that results in direct negative impacts on technical performance, safety, or other critical contract objectives is both undesirable and counterproductive. Evaluation of cost control shall conform to the following guidelines:

(1) Normally, the contractor should be given a score of 0 for cost control when there is a significant overrun within its control. However, the contractor may receive higher scores for cost control if the overrun is insignificant. Scores should decrease sharply as the size of the overrun increases. In any evaluation of contractor overrun performance, the Government shall consider the reasons for the overrun and assess the extent and effectiveness of the contractor's efforts to control or mitigate the overrun.

(2) The contractor should normally be rewarded for an underrun within its control, up to the maximum score allocated for cost control, provided the average numerical rating for all other award fee evaluation factors is 81 or greater. See 1816.404–275 for information on numerical scoring. An underrun shall be rewarded as if the contractor has met the estimated cost of the contract (see 1816.404–274(d)(3)) when the average numerical rating for all other factors is less than 81 but greater than 60.

(3) The contractor should be rewarded for meeting the estimated cost of the contract, but not to the maximum score allocated for cost control, to the degree that the contractor has prudently managed costs while meeting contract requirements. No award shall be given in this circumstance unless the average numerical rating for all other award fee evaluation factors is 61 or greater.

(e) Only the award fee performance evaluation factors set forth in the award fee plan shall be used to determine award fee scores. The Government may unilaterally modify the award fee performance evaluation factors and performance evaluation areas applicable to the evaluation period. The contracting officer shall notify the contractor in writing of any such changes prior to the start of the relevant evaluation period.

1816.404–275 Award fee evaluation scoring.

(a) A scoring system of 0–100 shall be used for all award fee ratings. Award fee earned is determined by applying the numerical score to the award fee pool. For example, a score of 85 yields an award fee of 85 percent of the award fee pool. No award fee shall be paid unless the total score is 61 or greater.

(b) The following standard adjectival ratings and the associated numerical scores shall be used on all award fee contracts.

(1) Excellent (100–91): Of exceptional merit; exemplary performance in a timely, efficient, and economical manner; very minor (if any) deficiencies with no adverse effect on overall performance.

(2) Very good (90–81): Very effective performance; fully responsive to contract requirements accomplished in a timely, efficient, and economical manner for the most part; only minor deficiencies.

(3) Good (80–71): Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance.

(4) Satisfactory (70–61): Meets or slightly exceeds minimum acceptable standards; adequate results; reportable deficiencies with identifiable, but not substantial, effects on overall performance.

(5) Poor/Unsatisfactory (60 and below): Does not meet minimum acceptable standards in one or more areas; remedial action required in one or more areas; deficiencies in one or more areas which adversely affect overall performance.

(c) As a benchmark for evaluation, in order to be rated "Excellent," the contractor must be under cost, on or ahead of schedule, and have provided excellent technical performance.

(d) A scoring system appropriate for the circumstances of the individual contract requirement should be developed. Weighted scoring is recommended. In this system, each evaluation factor (e.g., technical, schedule, cost control) is assigned a specific percentage weighting with the cumulative weightings of all factors totalling 100. During the award fee evaluation, each factor is scored from 0–100 according to ratings defined in 1816.404–275(b). The numerical score for each factor is then multiplied by the weighting for that factor to determine the weighted score. For example, if the technical factor has a weighting of 60 percent and the numerical score for that factor is 80, the weighted technical score is 48 (80×60%). The weighted scores for each evaluation factor are then added to determine the total award fee score.

1816.404–276 Performance incentives on CPAF hardware contracts.

(a) A performance incentive shall be included in all CPAF contracts where the primary deliverable(s) is (are) hardware and where total estimated cost and fee is greater than $25 million. Any exception to this requirement shall be approved in writing by the Center Director. Performance incentives may be included in CPAF hardware contracts valued under $25 million at the discretion of the procurement officer. Performance incentives, which are objective and measure hardware performance after delivery and acceptance, are separate from award fee, which is subjective and measures contractor performance. The final award fee rating is final and cannot be retroactively changed.

(b) When a performance incentive is used, it shall be structured to be both positive and negative based on hardware performance after delivery and acceptance. In doing so, the contract shall establish a standard level of performance based on the salient hardware performance requirement. This standard performance level is normally the contract's minimum performance requirement. No incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance both above and below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to minimal beneficial performance or total failure (maximum negative incentive) in accordance with 1816.404–276(g)(3). The relationship between any given incentive, both positive and negative, and its associated unit of measurement should reflect the value to the Government of that level of hardware performance. The contractor should not be rewarded for above-standard performance levels that are of no benefit to the Government.

(c) The final calculation of the positive or negative performance incentive shall be done when performance, as defined in the contract, ceases or when the maximum positive incentive is reached. When the performance is below the standard established in the contract, the Government shall calculate the amount due and the contractor shall pay the Government that amount. When performance exceeds the standard, the contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor. The exclusion at FAR 16.405(e)(3) does not apply to decisions made as to the amount(s) of positive or negative incentive.

(d) One example of how a performance incentive would work is on a contract requiring delivery of a spacecraft. In this case, the performance incentive unit of measurement could be useful months in orbit. If 12 months is the expected performance level, the 12th month could be identified as standard performance for which no incentive is earned. If 24 months is the maximum useful life for the spacecraft relative to the technical requirements, the 24th month could be identified as the maximum performance level at which the contractor would earn the maximum positive incentive. Interim measures of spacecraft life from 12 to 24 months would then be identified with fees from $0 to the maximum positive incentive. The amounts associated with these interim measures should correspond to the relative value to the Government of each additional month in orbit. A similar scale would be established for the negative incentive ranging from the 12th month for standard performance, $0, to total and immediate system failure at the start of performance, the maximum negative incentive.

(e) When the deliverable hardware lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. In addition, when the contract requires the sequential delivery of several hardware items (e.g., multiple satellites), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables. In either case, the amounts of the maximum performance incentives and the total potential award fee, including any base fee, shall be in accordance with the structure and limitations specified in 1816.404–276(g).

(f) The definitions of standard performance, maximum positive and negative performance, and the units of measurement may be negotiated and will vary from contract to contract. Care must be taken, however, to ensure that the performance incentive structure is

both reflective of the value to the Government of the various performance levels and a meaningful incentive to the contractor.

(g) In determining the value of the maximum performance incentive available under the contract, the contracting officer shall follow the following rules.

(1) The sum of the total potential award fee (including any base fees) plus the maximum positive performance incentive may not exceed the limitations in FAR 15.903(d).

(2) The individual values of the maximum positive performance incentive and the total potential award fee (including any base fee) shall each be at least one-third of the total potential contract fee. The remaining one-third of the total potential contract fee may be divided between award fee and the maximum performance incentive at the discretion of the contracting officer.

(3) The maximum negative performance incentive for research and development hardware (e.g., the first and second units) shall be equal in amount to the total *earned* award fee (including any base fee). The maximum negative performance incentives for production hardware (e.g., the third and all subsequent units of any hardware items) shall be equal in amount to the total *potential* award fee (including any base fee). Where one contract contains both cases described above, any base fee shall be allocated reasonably among the items.

3. Section 1816.405 is revised to read as follows:

§ 1816.405 Contract clauses.

§ 1816.405–70 NASA contract clauses.

(a) As authorized by FAR 16.405(e), the contracting officer shall insert the clause at 1852.216–76, Award Fee for Service Contracts, in solicitations and contracts when a cost-plus-award-fee contract is contemplated and the contract deliverable is the performance of a service. When provisional award fee payments are authorized, use Alternate I.

(b) As authorized by FAR 16.405(e), the contracting officer shall insert the clause at 1852.216–77, Award Fee for Non-Service Contracts, in solicitations and contracts when a cost-plus-award-fee contract is contemplated and the contract deliverables are a study, design, hardware or other end items for which total contractor performance cannot be measured until the end of the contract.

(c) The contracting officer may insert a clause substantially as stated at 1852.216–83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. For items to be subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(d) The contracting officer shall insert the clause at 1852.216–84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.

(e) The contracting officer may insert the clause at 1852.216–85, Estimated Cost and Award Fee, in cost-plus-award-fee solicitations and contracts. When the contract includes performance incentives, use Alternate I.

(f) Except as provided at 1816.404–276, the contracting officer shall insert a clause substantially as stated at 1852.216–88, Performance Incentive, when (1) a CPAF contract is contemplated, (2) the primary deliverable(s) is (are) hardware, and (3) total estimated cost and fee is greater than $25 million. A clause substantially as stated at 1852.216–88 may be included in lower dollar value CPAF hardware contracts with the approval of the Procurement Officer.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Part 1852 is amended as set forth below:

a. Section 1852.216–76 is revised, and section 1852.216–77 is added to read as follows:

§ 1852.216–76 Award Fee for Service Contracts.

As prescribed in 1816.405–70(a), insert the following clause:

Award Fee for Service Contracts

(September 1993)

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, "Estimated Cost and Award Fee" in this contract.

(b) Beginning 6* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6* months to determine the amount of award fee earned by the contractor during the period. The Contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government's Fee Determination Official (FDO) will determine the award fee amounts based on the Contractor's performance in accordance with *[identify performance evaluation plan]*. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the Contractor in writing of the evaluation results. The Contracting Officer will issue a unilateral modification to the contract that will recognize the award fee earned. The Contractor is not required to submit a separate voucher for earned award fee. The *[insert payment office]* will make payment based on the unilateral modification.

(d) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at *[identify location of award fee amounts]*. Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(e) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

* A period of time greater or lesser than 6 months may be substituted in accordance with 1816.404–272(a).

Alternate I

(September 1993)

As prescribed in 1816.405–70(a), insert the following paragraph (e) and reletter existing paragraph (e) to (f):

(e) (1) Pending a determination of the amount of award fee earned for an evaluation period, a portion of the available award fee for that period will be paid to the contractor on a _____[Insert the frequency of provisional payments (not more often than monthly] basis. The portion paid will be _____[Insert percentage (not to exceed 80 percent) for provisional payments] percent of the current period's available amount; provided, however, that when the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer shall notify the Contractor in writing if it is determined that such discontinuance or reduction is appropriate. This determination is not subject to the Disputes clause.

(2) In the event the amount of award fee earned, as determined by the FDO, is less than the sum of the provisional payments made for that period, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer.

(3) Provisional award fee payments will *[insert "not" if appropriate]* be made prior to the first award fee determination by the Government.

(End of clause)

1852.216–77 Award Fee for Non-Service Contracts.

As prescribed in 1816.405–70(b), insert the following clause:

Award Fee for Non-Service Contracts

(September 1993)

(a) The contractor can earn award fee, or base fee, if any, from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, "Estimated Cost and Award Fee" in this contract. All award fee evaluations, with the exception of the last evaluation, will be interim

evaluations. At the last evaluation, which is final, the Contractor's performance for the entire contract will be evaluated to determine total earned award fee. No award fee or base fee will be paid to the Contractor if the final award fee evaluation is "poor/unsatisfactory."

(b) Beginning 6* months after the effective date of this contract, the Government shall evaluate the Contractor's interim performance every 6* months to monitor Contractor performance prior to contract completion and to provide feedback to the Contractor. The evaluation will be performed in accordance with [*identify performance evaluation plan*] to this contract. The Contractor may submit a self-evaluation of performance for each period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government will advise the Contractor in writing of the evaluation results. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c)(1) Provisional payments will [*insert "not" if applicable*] be made under this contract. Pending the final evaluation, provisional award fee, including base fee if any, payments will be made to the Contractor on a [*insert the frequency of provisional payments (not more often than monthly)*] basis. The amount of award fee, including base fee, if any, which will be provisionally paid in each evaluation period is limited to the lesser of the interim evaluation score, applied as a percentage, or 80 percent of the award fee allocated to that period (see [*insert applicable cite*]). If the Government determines that (i) the total amount of provisional fee payments will apparently *substantially* exceed the anticipated final evaluation score, or (ii) the interim evaluation is "poor/unsatisfactory," no provisional fee payment shall be made for that period.

(2) The Contracting Officer will issue a unilateral modification to the contract that will recognize any provisional award fee, including base fee if any, paid, for the interim performance period evaluated. The Contractor is not required to submit a separate voucher for provisional fee payments. The [*insert payment office*] will make payment based on the unilateral modification.

(3) All provisional fee payments will be superseded by the fee determination made in the final award fee evaluation. The Government will then pay the Contractor, or the Contractor will refund to the Government, the difference between the final award fee determination and the cumulative provisional fee payments.

(d) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

(End of clause)

1852.216–83 and 1852.216–84 [Amended]

b. In 1852.216–83, the reference "1816.405–70(b)" is revised to read "1816.405–70(c)" and in 1852.216–84, the reference "1816.405–70(c)" is revised to read "1816.405–70(d)."

c. Section 1852.216–85 is revised, and section 1852.216–88 is added to read as follows:

1852.216–85 Estimated Cost and Award Fee

As prescribed in 1816.405–70(e), insert the following clause:

Estimated Cost and Award Fee

(September 1993)

The estimated cost of this contract is $_____. The maximum available award fee, excluding base fee, if any, is $_____. The base fee is $_____. Total estimated cost, base fee, and maximum award fee are $_____.

Alternate I

(September 1993)

As prescribed in 1816.405–70(e), change the title to read ESTIMATED COST, AWARD FEE AND PERFORMANCE INCENTIVE and insert the following sentence at the end of the clause:

The maximum positive performance incentive is $_____. The maximum negative performance incentive is *(1)*.

(1) For research and development hardware contracts, insert [equal to total earned award fee (including any base fee)]. For production hardware contracts, insert [$ *(total potential award fee amount, including any base fee)*]

(End of clause)

* * * * *

1852.216–88 Performance Incentive

As prescribed in 1816.405–70(f), insert the following clause:

Performance Incentive

(September 1993)

(a) A performance incentive applies to the following hardware item(s) delivered under this contract: *(1)* The performance incentive will measure the performance of those items against the salient hardware performance requirement, called "unit(s) of measurement," e.g., months in service or amount of data transmitted, identified below. The performance incentive becomes effective when the hardware is put into service. It includes a standard performance level, a positive incentive, and a negative incentive, which are described in this clause.

(b) *Standard performance level.* At the standard performance level, the Contractor has met the contract requirement for the unit of measurement. Neither positive nor negative incentives apply when this level is achieved but not exceeded. The standard performance level for *(1)* is established as follows: *(2)*

(2) *Positive incentive.* The Contractor earns a separate positive incentive amount for each hardware item listed in paragraph (a) of this clause when the standard performance level for that item is exceeded. The amount earned for each item varies with the units of measurement achieved, up to a maximum positive performance incentive amount of $ *(3)* per item. The units of measurement and the incentive amounts associated with achieving each unit are shown below: *(4)*

(d) *Negative incentive.* The Contractor will pay to the Government a negative incentive amount for each hardware item that fails to achieve the standard performance level. The amount to be paid for each item varies with the units of measurement achieved, up to the maximum negative incentive amount of $ *(5)*. The units of measurement and the incentive amounts associated with achieving each unit are shown below: *(6)*

(e) The final calculation of positive or negative performance incentive amounts shall be done when performance (as defined by the unit of measurement) ceases or when the maximum positive incentive is reached.

(1) When the Contracting Officer determines that the performance level achieved fell below the standard performance level, the Contractor will either pay the amount due the Government or credit the next payment voucher for the amount due, as directed by the Contracting Officer.

(2) When the performance level exceeds the standard level, the Contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases or the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(f) If performance cannot be demonstrated, through no fault of the Contractor, within *(insert number of months or years)* after the date of hardware acceptance by the Government, the Contractor will be paid *[insert percentage]* of the maximum performance incentive.

(g) The decisions made as to the amount(s) of positive or negative incentives are subject to the Disputes clause.

(1) Insert applicable item number(s) and/or nomenclature.

(2) Insert a specific unit of measurement for each hardware item listed in (1) and each salient characteristic, if more than one.

(3) Insert the maximum positive performance incentive amount (see 1816.404–276(g)(1) and (2)).

(4) Insert all units of measurement and associated dollar amounts up to the maximum performance incentive.

(5) For research and development hardware contracts, insert [equal to total earned award fee (including any base fee)]. For production hardware contracts, insert [$____(total potential award fee amount, including any base fee)] (see 1816.404–276(g)(3)).

(6) Insert all units of measurement and associated dollar amounts up to the maximum negative performance incentive.

(End of clause)

[FR Doc. 93–24728 Filed 10–7–93; 8:45 am]

BILLING CODE 7510–01–M

* A period of time greater or lesser than 6 months may be substituted in accordance with 1816.404–272(a).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185-3021; I.D. 100493B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rescission of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for pollock by the inshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the allowance of the total allowable catch (TAC) of pollock for the inshore component in the AI.

EFFECTIVE DATE: 12 noon, Alaska local time A.l.t., October 4, 1993, until 12 midnight, A.l.t., December 31, 1993.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The directed fishery for pollock in the AI by vessels catching pollock for processing by the inshore component was previously closed under § 675.20(a)(8) on April 9, 1993 (58 FR 19213, April 13, 1993).

The Regional Director, Alaska Region, NMFS, has determined that the allowance of the TAC of pollock allocated to the inshore component in the AI has not been reached. Therefore, NMFS is rescinding that closure and is reopening directed fishing for pollock in the AI for vessels catching pollock for processing by the inshore component effective at 12 noon, A.l.t., October 4, 1993, until 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under § 675.20 and complies with E.O. 12291.

List of Subjects in 50 CFR 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: October 4, 1993.

Richard H. Schaefer,

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

[FR Doc. 93-24754 Filed 10-5-93; 9:22 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 194
Friday, October 8, 1993

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Environmental Services

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing a size standard of $18.0 million in average annual receipts for environmental services, an activity which involves work identified with a number of different functions including: Preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, and security and site closeouts. SBA views environmental services activities as an emerging industry in which firms perform tasks that depart from traditional activities in any one industry as presently defined under the Standard Industrial Classification System. This is expected to result in a different and distinct industry structure in which firms tend to be of a different size than firms specializing in any one industry.

DATES: Comments must be submitted on or before December 7, 1993.

ADDRESSES: Send Comments to: Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 409 3rd Street, SW, 8th Fl., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Economist, Size Standards Staff, Tel: (202) 205-6618.

SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) is proposing a size standard of $18.0 million for the activity of environmental services. Environmental services involves the restoration of a contaminated environment to an acceptable condition (usually to accommodate regulatory requirements). In many situations, a wide range of activities is undertaken to achieve this result, for example, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, and security and site closeouts. SBA believes environmental services is an emerging industry not explicitly defined under the present Standard Industrial Classification System. This proposed size standard is the same as was in effect earlier this year on an interim final rule basis until vacated by a court order, except that the accompanying definition of environmental services has been revised.

An interim final size standard, similar to that proposed in this rule, was judicially vacated by an order of the United States District Court for the District of Columbia (Civil Action No. 93-0711). On January 13, 1993, SBA promulgated an interim final rule which established a size standard of $18.0 million for the activity of environmental services (58 FR 4074). On June 23, 1993, the District Court invalidated this size standard on the basis that SBA should have obtained public comments before implementing the size standard. On August 9, 1993, SBA published in the **Federal Register** a notice on this decision (58 FR 42355). Published elsewhere in this **Federal Register** is a final rule which withdraws the environmental services size standard that was established by the interim final rule.

SBA continues to believe that the reasons for establishing an environmental services size standard are valid and that the best available data support a size standard of $18.0 million. The purposes of this proposed rule are twofold: (1) To propose a size standard of $18.0 million for the activity of environmental services as a component of SIC code 8744, Facilities Support Management Services, and (2) to request public comments on this proposal, both as to the industry definition and as to the appropriate industry size standard.

Industry Designation for Environmental Services

Environmental services has become an expanding area of Federal government procurement. Over the past year, Federal agencies and small businesses have expressed concern about the appropriate SIC classification of environmental services. A distinct industry designation specifically describing environmental services does not exist under the Standard Industrial Classification (SIC) System. Federal procurements for environmental services, therefore, have had to be classified in one of several existing SIC codes which inadequately describe the procurement's true nature. These SIC codes have included: Heavy Construction (SIC code 1629); Plastering, Drywall, Acoustical and Insulation Work (SIC code 1742); Wrecking and Demolition Work (SIC code 1795); Special Trade Contractors, Not Elsewhere Classified (SIC code 1799); Local Trucking Without Storage (SIC code 4212); Refuse Systems (SIC code 4953); Sanitary Services, Not Elsewhere Classified (SIC code 4959); Architectural and Engineering Services (SIC codes 8711 and 8712); Commercial Physical and Biological Research (SIC code 8731); Testing Laboratories (SIC code 8734); and Management Consulting (SIC code 8742). However, these SIC codes, individually, do not fully represent the true nature and scope of the multiple activities involved in environmental services. This results in confusion and inconsistency among the Federal procuring agencies in selecting the proper SIC for environmental services procurements. Further confusion and inconsistency arises in determining which procurements can be set aside for small business. One of the principal reasons underlying the creation of a new environmental services size standard is to resolve the present uncertainty in determining the proper SIC of procurements involving environmental services activities so that contracting officers can make set-aside decisions with confidence.

The nature of environmental services typically involves multimillion dollar costs spread out over a number of years. For example, among the *smallest* procurements recently issued by Brooks Air Force Base in Texas for environmental services have been multi-year procurements estimated at approximately $25.0 million, or about $5.0 million to $6.0 million per year over five years. For many of the industries listed above, the current size standard for that industry would preclude the opportunity to set aside procurements for small business competition since businesses at or below the size standard would lack the capabilities needed to perform the

environmental services contract, or the successful offeror would exceed the size standard shortly after obtaining such a contract, thereby rendering it ineligible for any other set-aside contracting. Accordingly, a new size standard is needed which takes into consideration the size and scope of environmental services procurements and the varying size of businesses that operate in the environmental services field.

SBA is proposing to segment a category of the industry of Facilities Support Management Services (SIC code 8744) to define environmental services under SBA's regulations. SBA will consider establishing a separate industry or sub-industry designation when requested and when changes within industries suggest that a new industry is taking shape which would have a different structure than the traditional industries with which it is associated under the SIC System designations (13 CFR 121.301(c)). This situation exists with respect to environmental services activities, an activity in which Federal procurements have expanded significantly in recent years, and with the imposition of rigorous environmental standards combined with the Department of Defense's realignments and base closings.

In evaluating a new emerging industry, for size standard purposes, the SBA must consider whether the activity under consideration for a distinct size standard is a component of a larger four-digit SIC code industry or includes activities which are incorporated in several SIC industries. Based upon information available to it, SBA believes the latter is the case for environmental services activities. As indicated above, many different SIC codes have been used because they reflect a portion of the work performed under environmental services and the industries of firms doing part of the work. Significantly, these industries have widely varying size standards and this has led to difficulties in the past in implementing small business procurement preference programs for environmental services activities where the procurement involves a combination of activities from these industries.

SBA is proposing to further segment a component of SIC code 8744 to identify environmental services due to the similar characteristics it has with Base Maintenance, also a component of SIC code 8744 with its own size standard. Both involve activities that comprise several industries, but no single industry activity represents the majority of the activities. Also, like Base Maintenance, a great majority of environmental services activities will occur on Federal lands and installations. Thus, both the multi-industry composition and the dependence of both activities on Federal procurements suggest a close similarity between base maintenance and environmental services.

One important change has been made to the definition of environmental services contained in this proposed rule as compared with the interim final rule of January 13, 1993. The proposed definition requires that for a firm to be classified under environmental services there must be a range of activities identified with separate industries, none of which constitutes 50 percent or greater of a firm's revenues, employees or other factors. For purposes of Federal procurement, the definition tracks the existing language within footnotes 19 and 20 to SBA's size standard table (13 CFR 121.601) and requires that there be at least three activities associated with separate industries. In the interim final rule of January 13, SBA stated an intent to combine remedial activities which involve three or more activities in different industries into the single industry category of environmental services activities with a size standard of $18.0 million, but it was not stated as an explicit requirement in the definition of environmental services. As a result, some agencies were not aware of this intent and classified procurements involving activities in only one or two industries under environmental services rather than under the appropriate industry activity. The SBA, in this rule, is making this requirement explicit. This definition should clarify the SIC designation for environmental services, and avoid situations in which contracting officers would incorrectly classify procurements involving activities primarily associated with one industry under environmental services. Such procurements should have been, and should continue to be, classified by that primary industry.

SBA received thirty-one comments to its request in the January 13 interim final rule. Twenty-two commentators, for various reasons, argued against an environmental services size standard of any kind. Reasons included their disagreement with SBA's contention that the environmental services activities is an emerging industry, disagreement with a receipts-based size standard, and concerns with the interim rule being in conflict with the Brooks Act and the Small Business Competitiveness Demonstration Program. The discussion above explained the reasons SBA believes environmental services is an emerging industry, and believes there is a need to establish a separate size standard. SBA's assessment of comments concerning the possible conflict between the environmental services size standard, as proposed, and the Brooks Act and Small Business Competitiveness Demonstration Program follows below.

SBA's designation of environmental services under SIC code 8744 in its interim rule raised concerns by some architectural and engineering firms, various industry associations, and Federal procuring offices that, since environmental services often involves a high proportion of architectural and engineering work, utilizing SIC code 8744 would ignore the Federal government's qualification-based selection procedures for architectural and engineering services required under the Brooks Act. This Act stipulates that a different contractor selection process (based on qualifications) must be used for architectural and engineering services than that for other contracting activities in which the primary criteria usually focus on bid price.

The SBA believes that the designation of a procurement for size standard purposes should not by itself affect the applicability of statutory requirements related to the Brooks Act, or any other legal requirements (such as wage requirements related to the Davis Bacon Act or the Service Contracts Act). It is not uncommon, for example, for a single contract to have more than one product or service associated with it and for these products or services to often be individually associated with industries with more than one size standard. In such cases SBA provides explicit guidance as to the classification of the procurement under one size standard based on the principal purpose of the procurement and the relative value and importance of each of the components in the procurement. This guidance, however, refers to the classification of the procurement for size standard purposes only.

The classification of a procurement or a component of the procurement for purposes of Brooks Act application depends on the procurement's statement of work. Pursuant to § 36.601–3(b) of the Federal Acquisition Regulations (FAR), Title 48 of the Code of Federal Regulations, the Brooks Act procedures apply to a contract statement of work that includes both architect-engineer services and other services "if the statement of work, substantially or to a dominant extent, specifies performance or approval by a registered or licensed architect or engineer."

Similarly, the Davis-Bacon Act requirements apply to contracts that are

not primarily construction if the construction work to be performed under the contract is (1) to be performed on a public work or building, (2) substantial, and (3) separable (FAR § 22.402(b)). The establishment of this size standard for environmental services is not meant to affect these and other statutory requirements for specific types of procurements.

There is nothing inconsistent with utilizing the environmental services size standard and associated SIC code designation under SIC code 8744 if the procurement satisfies the definition of the rule and at the same time follows the dictates of the Brooks Act or the Davis-Bacon Act to the extent that they apply.

Another concern raised as a result of the interim final rule was whether the establishment of an environmental services industry designation conflicted with the Small Business Competitiveness Demonstration Program. Title VII of Public Law 100-656 established the Demonstration program to test the competitiveness of small business in the Federal procurement market by limiting the use of small business set-aside procurements under certain conditions. Four industry categories have been designated to participate in the program: Architectural and Engineering Services (including surveying and mapping), construction, refuse systems and related services, and nonnuclear ship repair. SBA does not believe the industry category of environmental services, as described in this rule, is within the scope of the Demonstration program. Under the Office of Federal Procurement Policy and Small Business Administration's Policy Directive (58 FR 19849) governing the Demonstration program's implementation, procurements classified under a construction SIC code or certain Federal Procurement Data System (FPDC) service codes for the architectural and engineering services, nonnuclear ship repair and refuse systems industries are covered by the program. The FPDC service codes for environmental services fall under FPDC service codes F101-F999. None of these codes is listed in the Demonstration program's policy directive. Furthermore, under the proposed definition for environmental services, if 50 percent or more of the procurement is identified with a specific industry activity, such as construction, the proper industry classification would be that industry (i.e., construction) rather than the environmental service industry category, and the Demonstration program could then be applicable, depending upon the major industry involved.

Size Standard for Environmental Services

SBA is proposing for public comment a size standard of $18.0 million in average annual receipts for the activity of environmental services. The following section outlines considerations which SBA commonly uses in the size standard decision process. These considerations are reviewed to assist the public to comment on this proposed rule. Following that discussion, another section discusses the reasons SBA believes the proposed $18.0 million size standard is appropriate.

Factors Influencing the Size Standard Decision Process

In considering the appropriateness of a size standard, SBA evaluates an industry using five primary factors. The primary factors include: Industry competition, average firm size, start-up costs, distribution of firms by size and the impact on SBA's programs. Preliminary information based on both established data sources and anecdotal information, using the above factors as guidelines, point to the need for a relatively high size standard for the activity of environmental services. Information relating to any of these factors would greatly assist SBA in its evaluation of the acceptability of the proposed size standard for environmental services activities of $18.0 million in average annual receipts. However, while these factors are generally considered the most important, SBA will consider and evaluate all relevant information that would assist it in assessing this industry's size standard; its assessment of relevant factors is not limited to these five factors.

As an indicator of industry competition, SBA first looks at competition within the industry as measured by the share of industry sales controlled by producers above a relatively large firm size. In this case, SBA would be most interested in obtaining information which would indicate industry activity for firms active in environmental services activities that individually exceed $25.0 million in annual sales or the market share of the largest firms in an industry. To the extent that economic activity is concentrated in an industry or a component of an industry by a few relatively large producers, SBA tends to set higher size standards to assist firms in a broader size range to compete with firms that are dominant in the industry. If this pattern occurs for environmental services activities to a greater degree than alternate industry activities (e.g., construction, sanitary services, refuse collection, testing, research and development and engineering), there would be a justification for a higher size standard for this activity.

Average firm size is the second factor considered by SBA. SBA tends to set higher size standards in industries with high average firm size and low size standards in industries with low average firm size. Any information which commentators have relating to differences in the average size of firms active in environmental services activities as contrasted with average firm size for the related industries would assist SBA in evaluating the need for a separate, distinct size standard for environmental services activities.

Indexes of start-up costs are the third factor used to evaluate size standards. High start-up costs affect a firm's initial size because potential entrants into an industry must have sufficient capital to start a viable business, and these capital requirements vary significantly by industry. To the extent that firms active in environmental services activities have greater capital expenses than firms active in related industries, the SBA would be justified in considering a higher size standard for the environmental services activities. High average start-up costs are viewed as a justification for a relatively high size standard, while low average start-up costs are usually associated with smaller size standards.

The fourth factor—firm size distribution—relates the proportion of industry sales, employment and other economic activity accounted for by firms of different sizes within an industry to its size standard. If the preponderance of an industry's output is by smaller firms, this would tend to support a low size standard. The opposite would be the case for an industry in which firm size distribution indicates that output is concentrated among intermediate sized and/or large firms.

The fifth factor to be considered is the impact of the proposed size standard on SBA's programs. These usually involve a calculation of small business shares of federal procurement, and often the size of federal contracts in an industry. In general, the lower the share of Federal procurement activity by small firms in an industry, and the greater the average size of Federal contracts, the greater would be the justification for a higher size standard. Any information which commentators may have relating to the impact of the present size standards or

the proposed size standard on any of SBA's major programs could affect the decision for environmental services.

Selection of $18.0 Million Size Standard

As already discussed, SBA is proposing a size standard of $18.0 million in average annual receipts for this activity. Because environmental services has not been established as a separate industry under the SIC system, governmental statistical agencies have not collected data on the structural characteristics of firms engaged in environmental services. This hinders SBA in its evaluation of the primary industry factors discussed above; and underscores the desirability of receiving additional information for the public. However, data available to SBA on firms active in environmental service work from private data sources and the data on known procurement activity undertaken by several Federal agencies together provide an indication of the need for a relatively high size standard as an appropriate size standard for environmental services. These reasons are discussed below.

In lieu of data on firms engaged in environmental services from standard statistical sources, such as the U.S. Bureau of the Census, SBA analyzed data from private data collection sources. The primary source of data influencing this proposed size standard is Wards Business Directory, a publication which describes in detail a firm's activities within its industry classification. It is possible from this data source to determine whether a firm is active in environmental services. One of the largest single grouping of firms which are capable of performing environmental services is listed in Refuse Systems (SIC code 4953); and data for this industry are listed in Table 1. This table first portrays the larger industry in which many firms specialize in garbage and trash collection activities. However, the second part of this table separates out firms, by size, that are involved in environmental services activities from the larger industry.

TABLE 1.—SIZE DISTRIBUTION OF FIRMS IN REFUSE SYSTEMS

[Total industry (SIC 4953)]

Size firm	Less than 100 employees	100–249 employees	250–999 employees	1,000–4,999 employees	5,000+ employees	Total
Number of firms	44	29	19	11	5	104
Number of employees	2,200	3,800	8,400	21,100	138,500	174,000

FIRMS SPECIALIZING IN ENVIRONMENTAL CLEANUP ACTIVITIES IN SIC CODE 4953

Size firm	Less than 100 employees	100–249 employees	250–999 employees	1,000–4,999 employees	5,000+ employees	Total
Number of firms	28	14	10	10	4	66
Number of employees	1,400	1,900	4,200	18,600	133,100	159,200

Source: Data derived from Wards Business Directory of U.S. Private and Public Companies—1992.

The data in this table clearly indicate that very large firms are more involved in environmental services activities than smaller firms. The larger the size class of firm, the more likely a firm will have the ability to perform environmental services activities. This table, therefore, suggests that the size standard for firms involved in environmental services activities should be significantly higher than the size standard of $6.0 million for the refuse systems industry generally.

A preliminary evaluation of the various factors associated with firms which specialize in this activity supports the indication for the need of a size standard which is relatively high among SBA's receipts-based size standards. The primary considerations influencing this view stem from SBA's belief that relatively large companies will have to be involved in the task given the size and sophistication of Federal government remediation efforts. This effort requires highly responsible and competent contractors since the liability of both the government and contractor is at stake given the extraordinary importance of the cleanup work. Most full service remediation projects, such as tank removal and site restoration contracts, are multi-year projects to fall in the $20 to $30 million range with some contracts exceeding $100 million. In rare cases, contracts may exceed $1.0 billion with contractors subcontracting much of the work to smaller firms.

Among industries typically classified under environmental services, the larger the size class of firm, the more likely that it includes firms that have the ability to do environmental services activities. SBA uncovered this pattern in its survey of SIC 4953 (Refuse Systems). SBA believes a similar pattern would logically occur in other industries as well. A broad-based pattern would suggest that the size standard for firms involved in environmental services activities should be significantly higher than the size standard for most industries into which this activity has been categorized, and would tend to support the decision to raise the size standard for this activity to a level which is one of the highest size standards among industries with receipts-based size standards.

The following table lists industries and their size standards into which environmental services activities have been classified in the past in order to provide a perspective on the complexity of contracting in the absence of an environmental service size standard.

SIC	Name	Size standard
1629	Heavy Construction, NEC	$17.0 million.
1795	Wrecking & Demolition Work	$7.0 million.
1799	Special Trade Contractors, NEC	$7.0 million.
4212	Local Trucking Without Storage	$12.5 million.
4953	Refuse Systems	$6.0 million.
4959	Sanitary Services, NEC	$3.5 million.
8711	Other Engineering Services	$2.5 million.

SIC	Name	Size standard
8731	Commercial, Physical & Biological Research	500 employees.
8734	Testing Laboratories	$3.5 million.

A size standard of $18.0 million (as measured by the annual average receipts of a firm over the last three completed fiscal years) would fall at the very highest level of the receipts-based size standards among industries listed above. It would better reflect the size of firms needed to address larger sized contracts in this area, which tend to fall in the $20 to $30 million range over the period of the contract, or $5.0 million to $6.0 million per year. Moreover, since SBA is requiring that procurements which fall in this category by composed of activities in three industries with distinct size standards, SBA is defining this category by a criteria which would naturally encompass larger procurements. The establishment of a size standard for an industry that is higher than most of the size standards for industries that typically make up its components has proven successful for small business in the base maintenance field. Base maintenance has a size standard of $13.5 million in order to accommodate the needs of procurements with widely disparate and numerous components. If a procurement for remediation activities is composed of only one or two industry activities, it would be classified under a size standard for that industry which best describes the procurement, usually one of the industries listed above. This distinction permits Federal agencies some degree of discretion in structuring contracts that would both address the remedial requirements of the Federal government and the need to develop a small business base of contractors for this industry/activity.

The selection of the $18.0 million size standard level for environmental services is influenced in part by a recent SBA proposal to simplify industry-based size standards by reducing the number of size standard levels. Currently, SBA has 30 different size standard levels covering almost 1000 industries. On December 31, 1992, SBA published a proposed rule in the **Federal Register** (57 FR 62515) to reduce the number of size standard levels from 30 to 9. The nine proposed size standard levels were: $5.0 million, $10.0 million, $18.0 million and $24.0 million for size standards based on average annual receipts; and 100, 500, 750, 1000 and 1500 employees for size standards based on number of employees. SBA withdrew that proposal on February 19, 1993 (58 FR 9131). However, SBA intends to re-propose the simplification of industry-based size standards in the near future which will contain these or similar size standards. As previously discussed, SBA believes that a relatively high size standard is appropriate for this industry. Under SBA's intended policy to establish size standards only at certain pre-established size levels, the $18.0 million level is believed to be the most appropriate size standard level for environmental services.

Fourteen comments received in response to the interim rule discussed above dealt specifically with the appropriateness of $18.0 million as the size standard. Eight of the 14 comments were in complete agreement with a size standard of $18.0 million for the activity of environmental services as a component of SIC code 8744. Six comments specifically disagreed with the establishment of a size standard of $18.0 million for various reasons. Those not in agreement with the $18.0 million suggested that either an employee-based size standard be used, which generally equates to a much higher receipts-based size standard than $18.0 million, or suggested a complicated "tiering" of size standards based on the number of firms in different size classes. As is evident from the above, comments received specifically on the $18.0 million size standard level were mixed. However, as discussed above, SBA's analysis points to a relatively high size standard compared to size standards in effect for other industries. The comments, while helpful, did not provide any substantial data or information which would indicate a size standard other than $18.0 million as a more appropriate size standard for environmental services. Noting that several commentators were proposing an employee-based size standard, SBA is interested in obtaining data or information indicating the need for an employee-based standard in the environmental services field. SBA generally uses a receipts-based size standard for nonmanufacturing industries. However, SBA will consider an employee-based size standard if information clearly demonstrates a receipts-based size standard would be inequitable in its application to environmental services firms.

SBA is seeking information or data which would either support an $18.0 million size standard for environmental services or suggest the need for a different size standard. This request for public comment stems from the unavailability of statistical data on the structural characteristics for this industry/activity collected by Federal statistical agencies commonly relied upon by SBA in establishing size standards. For commenters offering a different size standard, SBA is seeking data which would provide some perspective of the magnitude of differences in industry structure (e.g., average firm size in receipts and assets, size distribution of firms, the concentration of economic activity among a few firms, etc.) between firms specializing in environmental services activities and firms specializing in activities which are related, such as sanitary services and refuse collection and disposal, as well as any other information which supports an alternative size standard.

SBA also is interested in obtaining comments on two other aspects of this proposed size standard: (1) Whether this industry/activity should have a single size standard or should have more than one size standard based on such considerations as the toxicity and difficulty of the remediation activities (i.e., the cleanup of radioactive waste might justify a higher size standard than the cleanup of other, less toxic waste), and (2) whether the proposed definition of environmental services adequately describes the full range of activities associated with environmental services, and is otherwise appropriate.

Comments on the proposed size standard, or comments suggesting other standards, or measures of size, should also address the questions of:

(1) The interaction of this size standard with SBA's programs;

(2) The relative levels of participation in SBA programs anticipated at different size standards;

(3) The effect of this proposed size standard or the commenter's proposed alternative size standard on businesses within the industry; and

(4) The prospect of significant new entries into these businesses in response to the establishment of the proposed size standard or some alternative size standard;

Compliance With Regulatory Flexibility Act, Executive Orders 12291, 12612, 12778, and the Paperwork Reduction Act

General

Based on all available information, SBA believes that this proposed rule would, if finalized, have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) In addition,

this rule constitutes a major rule for the purpose of Executive Order 12291. Immediately below SBA has set forth an initial regulatory impact analysis.

(1) Description of Entities to Which This Rule Applies

Based on the interest in a recent environmental services conference in SBA's Region VI attended by representatives of over 600 firms and other industry information, SBA estimates that 300 to 1000 firms would gain eligibility to bid on procurements competed under various small business and small disadvantaged business procurement preference programs or to seek assistance under SBA's financial assistance programs if the proposed rule is adopted. These are primarily firms that are active in environmental services and cleanup activities, but are classified in industries such as construction, refuse systems, engineering, management consulting, and commercial physical and biological research and development. Since the size standards for all of these industries, except one, are significantly less than $18.0 million in average annual receipts, a number of firms exceed these industries' size standards while not exceeding the $18.0 million size standard that SBA is proposing for this industry. SBA estimates that 300 to 1000 firms would presently fall in this category. However, from a longer term perspective, more firms may eventually be impacted if the proposed standard is adopted, as firms develop their capabilities in response to one of the major growth areas of Federal procurement and the private sector.

(2) Description of Potential Benefits of the Rule

The establishment of a size standard of $18.0 million would open up procurement opportunities to hundreds of small firms and permit Federal agencies to better utilize SBA programs and other programs (such as the Small Disadvantaged Business (SDB) Program of the Department of Defense) which also utilizes SBA's size standards. The amount of Federal procurement in this area is projected to fall in the billions of dollars on a yearly basis. It is possible that over a ten year period, federal contracting may exceed $25 billion for this activity. At present, many procurements cannot be set-aside for small business or reserved for SDB or 8(a) firms because the alternative size standards for environmental services work are considered too low. The result is that SBA's preference programs for small businesses cannot be properly utilized and many contracts which could be performed by small firms would be competed on an unrestricted basis.

In SBA's Business Loan Program, it is estimated that approximately ten additional loans amounting to $5 million would be made to firms newly eligible to participate in the program if the proposed standard is adopted. This modest estimated impact occurs since only a small percentage of eligible firms avail themselves of this program in any one year, especially by firms at the proposed size standard level.

(3) Description of Potential Costs of the Rule

The potential cost of the establishment of this size standard are expected to be minimal. With respect to the General Business Loan Program, no extra costs to the government should result from the establishment of this size standard. The amount of lending authority SBA can make or guarantee is established by appropriation.

The costs to Federal procurement are also thought to be minimal for two reasons: First, competition between two or more small firms must exist before a contract may be set aside for small business. Second, set-asides are expected to be awarded at reasonable prices. If competition and reasonable pricing do not exist on proposed set-asides, the procuring agencies are expected to issue unrestricted procurements. Thus, losses in the form of increased costs to the government, if any, are not expected to be significant.

In addition, this new size standard is not expected to have significant adverse effects on competition, employment, investment, price, productivity, innovation or on the ability of U.S. based businesses to compete with foreign-based businesses in domestic or export markets. The competitive effects of size standard revisions differ from those normally associated with regulations affecting key economic factors such as the price of goods and services, costs, profits, growth, innovations, mergers and foreign trade. Size standards are not thought to have any appreciable effect on any of these factors.

(4) Description of the Potential Net Benefits of the Rule

From the above discussion, SBA believes that, because the potential costs of this rule are minimal, the potential net benefits would approximately equal the potential benefits. The impact of the size standard would, if adopted, be concentrated in Federal procurement.

(5) Description of Reasons Why This Action Is Being Taken and Objectives of the Rule

SBA has provided above in the supplementary information a description of why this action is being taken and a statement of the reasons for and objectives of this proposed rule.

(6) Legal Basis for this Proposed Rule

The legal basis for this rule is sections 3(a) and 5(b) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

(7) Federal Rules

There are no Federal rules which duplicate, overlap or conflict with this final rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards.

(8) Significant Alternatives to Proposed Rule

The change set forth in this rule attempts to establish the most appropriate definition of small business eligible for SBA's assistance programs. There are no significant alternatives to defining a small business other than developing an alternate size standard. This was discussed in the supplementary information above.

SBA certifies that this rule will not impose any requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C., chapter 35. SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), and 634(b)(6), 637(a) and 644(c).

2. In § 121.601 Major Group 87, is amended in the table by revising SIC code 8744 to read as follows:

§ 121.601 Standard Industrial Classification codes and size standards.

* * * * *

SIZE STANDARDS BY SIC INDUSTRY

SIC (*=New SIC code in 1987, not used in 1972)	Description (N.E.C.=not elsewhere classified	Size standards in number of employees or millions of dollars
*	* * *	*
8744*	Facilities Support Management Services.[19]	$3.5
	Base Maintenance[20]	13.5
	Environmental Services.[21]	18.0

[19] *Facilities Management, a component of SIC code 8744,* has the following definition: Establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities arrangement means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, use of information systems (not programming), etc.

[20] SIC code 8744: If one of the activities of *base maintenance,* as defined below, can be identified with a separate industry, and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard shall be that for the particular industry, and not the base maintenance size standard.

"Base Maintenance" constitutes three or more separate activities. The activities may be either service or special trade construction related activities. As services, these activities must each be in a separate industry. These activities may include, but are not limited to, such separate maintenance activities as Janitorial and Custodial Service, Protective Guard Service, Commissary Service, Fire Prevention Service, Safety Engineering Service, Messenger Service, and Grounds Maintenance and Landscaping Service. If the contract involves the use of special trade contractors (plumbing, painting, plastering, carpentering, etc.), all such specialized special trade construction activities will be considered a single activity, which is Base Housing Maintenance. This is only one activity of base maintenance and two additional activities must be present for the contract to be considered base maintenance. The size standard for Base Housing Maintenance is $7 million, the same size standard as for Special Trade Contractors.

[21] SIC code 8744: Environmental Services includes concerns primarily engaged in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition, such as, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, and security and site closeouts. If any particular service associated with remediation activities accounts for 50 percent or more of a concern's total revenues, employees or other factors, the concern's primary industry shall be that for the particular industry and not environmental services.

For purposes of classifying a Government procurement as environmental services under SIC code 8744, the following is required: (1) That the overall purpose of the procurement is to restore a contaminated environment and (2) that the procurement is composed of activities of three or more separate industries identified with separate Standard Industrial Classification four-digit industry codes or, in some instances (e.g., engineering) smaller subcomponents of four-digit industry codes with separate, distinct size standards. These activities may include, but are not limited to, such separate industry activities as Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Services; Refuse Systems; Sanitary Services, Not Elsewhere Classified; Local Trucking Without Storage; Pollution Testing; and the industry of Commercial, Physical and Biological Research. However, if any activity in the procurement can be identified with a separate four-digit industry code, or component of a code with a separate, distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard shall be the one for that particular industry, and not the environmental services size standard.

* * * * *

Erskine B. Bowles,

Administrator.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960-AC22

Supplemental Security Income for the Aged, Blind, and Disabled; Continuation of Benefits and Special Eligibility for Certain Severely Impaired Recipients Who Work

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed regulations reflect changes made by section 2 and portions of section 4 of the Employment Opportunities for Disabled Americans Act, and sections 5032 and 5033 of the Omnibus Budget Reconciliation Act of 1990. These statutes amend section 1612(b)(4)(B)(ii) and section 1619 of the Social Security Act (the Act). Section 1612(b)(4)(B)(ii) provides an impairment-related work expense exclusion from the regular supplemental security income (SSI) income counting rules. Section 1619 provides incentives for disabled and blind SSI recipients who attempt to work. The effects of the section 1619 amendments made by these statutes are to liberalize, simplify, and make permanent section 1619 of the Act. In addition, we propose related administrative policy changes necessary to carry out these provisions.

DATES: To be sure that your comments are considered, we must receive them by December 7, 1993.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact individual shown below.

FOR FURTHER INFORMATION CONTACT: Richard M. Bresnick, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1758.

SUPPLEMENTARY INFORMATION:

General

SSI payments are designed to provide a basic level of support for certain aged, blind or disabled individuals. A number of different work incentive provisions have been incorporated into the SSI program. They generally enable blind and disabled individuals to return to work or to increase their level of work activity without the loss of SSI disability or blindness status. Certain work incentives provide some protection to individuals from having their SSI benefits reduced based on the increased earnings. Some of these provisions also permit continued Medicaid coverage for qualified individuals, in most States, even if the earnings preclude any SSI cash payments.

Under the law in effect before July 1, 1987, regular SSI benefits (section 1611 benefits) were not payable to a disabled SSI recipient who worked at the substantial gainful activity (SGA) level after a 9-month trial work period. Work at the SGA level resulted in the cessation of disability status and, thus, resulted in an inability to requalify for regular SSI benefits without the filing of a new SSI application if the work continued after a 15-month extended period of eligibility. Section 1619, in effect from January 1, 1981, through June 30, 1987, permitted payment of special SSI cash benefits (section 1619(a) benefits) to disabled recipients when they lost eligibility for section 1611 benefits because of SGA. Section 1619(b) provided for special SSI eligibility status for Medicaid purposes to working disabled or blind individuals when their earnings made them ineligible for SSI cash payments. Transitions between the various statuses, particularly after the extended period of eligibility, were complicated. Many felt that the complexity deterred people from participating in the section 1619 program. Amendments to the section 1619 program enacted in 1986 addressed these concerns. Specifically, sections 2 and 4 of Public Law 99–643 made permanent and provided several improvements to sections 1619 (a) and (b). Four years later, section 5032 of Public Law 101–508 further amended section 1619(b) by eliminating the 65-year age limit for special SSI eligibility status for Medicaid purposes. In addition, section 5033 of Public Law 101–508 liberalized the impairment-related work expense exclusion of section 1612(b)(4)(B)(ii) of the Act.

Proposed Changes

11. Expiration Date of Section 1619

Section 2 of Public Law 99–643 amended section 201(d) of the Social Security Disability Amendments of 1980, as amended by section 14 of the Social Security Disability Benefits Reform Act of 1984, to remove the expiration date of June 30, 1987, for section 1619 of the Act. The effect of section 2 of Public Law 99–643 is to make section 1619 permanent for an individual who works despite a disabling impairment or blindness. Regulations at §§ 416.260 and 416.261 provide that the special SSI cash benefits and special SSI eligibility status would remain in effect through June 30, 1987. The proposed changes at §§ 416.260 and 416.261 reflect removal of the expiration date.

2. Section 1619(a)—Special SSI Cash Benefits

Section 4 of Public Law 99–643 amended section 1619(a) of the Act to provide for special SSI cash benefits to an individual whose earnings exceed the amount designated by the Secretary of Health and Human Services (the Secretary) to represent SGA despite a disabling impairment, provided that individual meets certain eligibility requirements.

The eligibility requirements for special SSI cash benefits contained in our regulations, which reflect section 1619(a) before Public Law 99–643, and the proposed changes, which reflect the changes to section 1619(a) made by section 4 of Public Law 99–643, and related policy changes are discussed below.

Sections 416.262(a)

• These regulations require an individual to have been eligible for regular SSI benefits, special SSI cash benefits, or State supplementary payments in the month immediately prior to the month of eligibility under 1619(a).

Proposed regulations reflect the change in the requirement for eligibility under section 1619(a), as amended by section 4 of Public Law 99–643, that the individual was eligible to receive a regular SSI benefit or federally administered State supplementary payment based on disability in a month before the month for which eligibility is being determined. The month the individual was eligible for a regular SSI benefit or federally administered State supplementary payment may not be in a prior period of eligibility which has been terminated pursuant to §§ 416.1331–416.1335.

Sections 416.262(c)

• These regulations require that an individual continue to have a disabling impairment.

Proposed regulations do not change this requirement.

Sections 416.260, 416.261, and 416.262(b)

• These regulations require that an individual be ineligible for regular SSI benefits under section 1611 of the Act because of a demonstrated ability to engage in SGA. Thus, an actual SGA determination must be made which includes deciding whether an individual's earnings, as described in § 416.1110, in a month subsequent to a month of initial SSI eligibility exceed the amount designated by the Secretary ordinarily to represent SGA in order to determine whether the individual qualifies for special SSI cash benefits in lieu of regular SSI benefits.

Under the proposed regulations, the individual is eligible for benefits under section 1619(a) when his or her gross earned income exceeds the amount designated as the SGA level (currently $500 per month). Because actual monthly determinations of SGA are not required to be made before an individual moves from section 1611 to 1619(a) status, gross earned income rather than earnings will be used. This is consistent with Congress' intent, as shown in the legislative history of section 1619, to simplify the transition between benefit statuses, to limit actual determinations of eligibility, and to ease the administration of the section 1619 program. For disabled individuals otherwise eligible for a cash benefit, the only distinction between regular benefit status under section 1611 and section 1619(a) status will be whether or not their gross earned income exceeds the SGA level. Section 1619(a) of the Act does not apply to the blind because earnings of blind individuals are not subject to an SGA test under the SSI program.

Section 416.262(d)

• These regulations require that the individual "continue to meet" all of the nondisability requirements for eligibility for SSI benefits.

Proposed regulations provide that in order to be eligible for special SSI cash benefits, an individual must "meet" all nondisability requirements for SSI eligibility. This change reflects the amendment to section 1619(a) made by section 4 of Public Law 99–643 which removes the former statutory requirement that an individual "continue to meet" all nondisability

requirements for eligibility for SSI benefits in the month for which the determination is being made, thus permitting eligibility for special SSI cash benefits following a month or months of suspension.

3. Section 1619(b)—Special SSI Eligibility Status

Section 4 of Public Law 99–643 and section 5032 of Public Law 101–508 amended section 1619(b) of the Act to provide changes in the eligibility requirements for special SSI eligibility status. The changes are discussed below.

Section 416.264

• These regulations provide that special SSI eligibility status applies only for purposes of establishing or maintaining eligibility for Medicaid.

The proposed regulations add that special SSI eligibility status also applies for purposes of reacquiring status as eligible for regular or special SSI cash benefits.

Section 416.265

• These regulations require that an individual be under age 65 to be eligible for special SSI eligibility status.

Proposed regulations reflect that section 5032 of Public Law 101–508 removes this limitation effective May 1, 1991.

Section 416.265

• These regulations require an individual to have been eligible to receive a regular SSI benefit, a special SSI cash benefit, or a State supplementary payment in the month immediately prior to the first month of eligibility for special SSI eligibility status.

Proposed regulations reflect the change in a requirement for eligibility under section 1619(b), as amended by section 4 of Public Law 99–643 by providing that an individual must have eligibility for a regular SSI benefit or a federally administered State supplementary payment in a month before the month for which eligibility for special SSI eligibility status is being determined. The month the individual was eligible for a regular SSI benefit or federally administered State supplementary payment may not be in a prior period of eligibility which has been terminated pursuant to §§ 416.1331–416.1335.

Sections 416.265(a) and 416.267

• These regulations provide that an individual must continue to be blind or continue to have a disabling impairment in order to be eligible for the special SSI eligibility status.

Proposed regulations do not change this requirement.

Section 416.265(b)

• These regulations require that an individual, except for earnings, "continue to meet" all the nondisability requirements for SSI eligibility to be eligible in the month for which the determination is being made.

Proposed regulations provide that an individual must "meet" all nondisability requirements, except for earnings, for eligibility for SSI benefits to be eligible for the special SSI eligibility status (§ 416.265(b)). This change reflects the amendment to section 1619(b) made by section 4 of Public Law 99–643 which removes the former statutory requirement that an individual, except for earnings, "continue to meet" all the nondisability requirements for SSI eligibility to be eligible in the month for which the determination is being made, thus permitting eligibility following a month or months of suspension.

Section 416.265(c)

• These regulations require that the termination of an individual's eligibility for Medicaid would seriously inhibit the individual's ability to continue working.

Proposed regulations do not change this requirement.

Section 416.265(d)

• These regulations require that an individual's earnings not be sufficient to allow the individual to provide a reasonable equivalent of the benefits (SSI benefits, federally administered State supplementary payments, and Medicaid) which would be available if the individual did not have those earnings.

Proposed regulations do not change this requirement; however, publicly funded attendant care services will be considered for purposes of sufficiency of earnings determinations.

Section 416.268

• These regulations provide that the individual must need Medicaid eligibility in order to continue to work (§ 416.265(c)). Need is evidenced by a signed statement from the individual regarding use of Medicaid benefits in the current month and past 12 months, or when there has been no past use, by the individual's identified expectations of use in the next 12 months. The regulations do not now provide for consideration of unexpected medical expenses. The individual's allegations regarding past use are verified with the service providers or agency administering the Medicaid program in the State.

The proposed regulations add the provision that an individual may also establish the need for Medicaid eligibility by showing that Medicaid benefits would be needed to pay for unexpected medical expenses in the next 12 months (§ 416.268). This policy change adds consideration of the individual's ability to pay for unexpected medical expenses to the factors that can meet the statutory requirement that termination of Medicaid would seriously inhibit the individual's ability to continue working. We believe the proposed change is consistent with the purpose of Public Law 99–643 because such individuals, if not accorded section 1619(b) status, might be forced to stop working in order to get Medicaid to pay for unexpected medical expenses. This proposed change will enable individuals without recurring medical expenses or expectation of expenses to meet the requirement if they cannot provide for their own medical care. We are also proposing to delete paragraphs (b) and (c) of § 416.268 which require an individual's signed statement about use or expected use of Medicaid and verification, as necessary, of past services with the service providers or the State agency administering the Medicaid program. This proposed change will permit determinations of the need for Medicaid in order to continue working to be made based on information provided by the individual. Our operational experience shows that the individual's knowledge about use or expected use of Medicaid is almost always valid and, therefore, verification results in unnecessary administrative burdens and costs.

Section 416.269

• These regulations require that the individual have insufficient earnings to provide a reasonable equivalent of the SSI benefits, State supplementary payments, and Medicaid benefits which would be available absent those earnings (§ 416.265(d)). Insufficiency of earnings is determined (§ 416.269) by a comparison of actual and/or anticipated gross earnings for the 12-month period, beginning with the month for which special SSI eligibility status is being determined, with a threshold amount for the individual's State of residence. The threshold amount is determined using the amount of gross earnings that it would take to reduce to zero the Federal SSI benefit and State supplementary payment for an individual with no other income living

in his or her own household and the average Medicaid expenditures for disabled SSI cash recipients for the State of residence. If an individual's gross earnings exceed the State threshold amount, a second comparison is done which compares the earnings with an individualized threshold.

Proposed regulations reflect the statutory expansion of the factors considered in determining the sufficiency of a person's earnings. In addition to the factors discussed in the preceding paragraph, the individualized threshold determination will also consider any amounts excluded as impairment-related work expenses or work expenses of the blind, amounts used or set aside for use under an approved plan for achieving self-support, and the value of any publicly funded attendant care services.

Proposed regulations add § 416.269(d) which explains that the value of attendant care services will be considered for purposes of sufficiency of earnings determinations discussed previously if the services are provided by a paid attendant, needed to assist with work-related and/or individual functions, and paid from Federal, State, or local funds.

Proposed regulations add § 416.269(e) to reflect the requirement of section 4 of Public Law 99–643, which amended section 1619(b), that determinations of sufficiency of earnings will be based on information and data updated no less frequently than annually.

• These regulations at § 416.269 predate retrospective monthly accounting and refer to "calendar quarter" rather than "month" for the beginning of the comparison period.

Proposed regulations revise the language of § 416.269, which predates retrospective monthly accounting, and provides for using the month, rather than the calendar quarter, for which eligibility for special SSI eligibility status is being determined as the beginning of the 12-month period for which it will be determined whether an individual's earnings are sufficient to replace benefits which would be available in the absence of such earnings.

4. Impairment-Related Work Expense Change

Section 416.1112(c)(5)

• The regulations at § 416.1112(c)(5) require that disabled individuals must first establish SSI (Federal) eligibility without use of the impairment-related work expense exclusion. Once an individual qualifies for the use of this exclusion, that exclusion is used in determining continuing eligibility for as long as he or she remains continuously eligible for a regular or special SSI cash benefit or for a federally administered optional State supplement. However, in order for an individual who left special SSI eligibility status under section 1619(b) to return to cash payment status, he or she had to meet the eligibility requirements without use of the impairment-related work expense exclusion.

In enacting Public Law 99–643, Congress recognized that disabled individuals who make work attempts may not be able to follow a steady progression from regular SSI status under section 1611 of the Act to special SSI cash benefit status under section 1619(a), to special SSI eligibility status under section 1619(b), and then to a status of complete independence. In reality, such individuals tend to have setbacks which may cause a drop in earnings and, therefore, a change in eligibility status. According to the legislative history of Public Law 99–643, it was the intent of Congress to provide for easy transition, in either direction, among the various categories of benefits.

Proposed regulations, in response to the intent of Congress as expressed in Public Law 99–643, would change § 416.1112(c)(5) to facilitate easier movement between different benefit statuses. The proposed regulations provide that for periods prior to December 1, 1990, an individual who remained continuously eligible for a benefit under section 1611, 1616 (if supplementation is federally administered), 1619(a), or 1619(b) of the Act, continued to qualify for the impairment-related work expense exclusion in determining financial eligibility for SSI.

In addition, effective for periods after November 30, 1990, section 5033 of Public Law 101–508 removed the requirement that an individual must establish eligibility without benefit of the impairment related work expense exclusion.

These changes, consistent with Congressional intent, will allow an individual to move more freely between the different benefit statuses.

5. Administrative Actions Under Section 1619(a)

In addition to the changes already discussed, these proposed regulations contain changes which we believe are consistent with the legislative intent of Public Law 99–643 to simplify the administration of section 1619 of the Act and facilitate transition among the various categories of benefits. We propose to revise current regulations at §§ 416.1402 and 416.1403 with regard to initial determinations in order to state our policy on determinations involving transitions between sections 1611, 1619(a), and 1619(b) of the Act.

We propose to revise § 416.1402(a) to clarify that initial determinations regarding SSI benefits include, but are not limited to, determinations about eligibility for or the amount of SSI benefits or special SSI cash benefits, except actions solely involving transitions to eligibility between these types of benefits. We propose to revise § 416.1402(b) to clarify that the administrative actions of "suspension" and "termination" pertain to special SSI eligibility status under section 1619(b) as well as SSI cash benefits under section 1611 or section 1619(a).

Current regulations at § 416.1402(h) provide that a determination about whether an individual is eligible for special SSI cash benefits under § 416.262 (section 1619(a) status) is an initial determination. We propose to delete § 416.1402(h) and redesignate the subsequent paragraphs. The proposed change recognizes that transition alone from eligibility for regular SSI benefits under section 1611 of the Act to eligibility for special SSI cash benefits under section 1619(a) and vice versa generally has little practical effect on an individual. The change will allow movement between the statuses to be made with fewer steps, saving time and administrative expense. We believe this change is consistent with Congress' intent to simplify the transition between benefit statuses.

In addition, we propose to revise § 416.1403(a) to include in the list of administrative actions that are not initial determinations, transitions from section 1611 to 1619(a) eligibility or section 1619(a) to 1611 eligibility. If a recipient's section 1611 or 1619(a) benefits are adversely affected (i.e., reduced, suspended, or terminated) for a reason unrelated to his or her medical condition at the time of the shift, such planned action(s) will continue to be subject to advance notice of benefit reduction, suspension, or termination and be covered as initial determinations under § 416.1402(b). If an individual's benefit amount increases, an initial determination is made under § 416.1402(a). Determinations about an individual's disability are also initial determinations under § 416.1402.

Current § 416.1402(i) provides that a determination about whether an individual is eligible for special SSI eligibility status under § 416.265 is an initial determination. The referenced section (§ 416.265) describes the

eligibility requirements for special SSI eligibility status under section 1619(b).

Because a threshold calculation and a finding that an individual needs Medicaid to continue working must be made in order to determine eligibility for section 1619(b) benefits, an initial determination will continue to be provided. Movement from special SSI eligibility status under section 1619(b) of the Act back to regular SSI benefit status under section 1611 of the Act or special SSI cash benefit status under section 1619(a) of the Act is covered as an initial determination at § 416.1402(a).

Public Law 99–643 Changes Not Reflected In This NPRM

Public Law 99–643 also provided for additional continuing disability review requirements for individuals with section 1619 status and provides for benefits based on the full Federal benefit rate to certain blind and disabled section 1619 individuals during the initial 2 months in certain institutions. These changes will be addressed in separate notices of proposed rulemaking.

Regulatory procedures

Executive Order 12291

All program changes related to Public Law 99–643 were implemented on July 1, 1987. All program changes related to Public Law 101–508 were implemented on May 1, 1991. As of June 1992, there were 16,474 section 1619(a) participants and 29,792 section 1619(b) participants.

The Secretary has determined that this is not a major rule under Executive Order 12291 because the program and administrative costs of these regulations will be insignificant and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations contain information collection requirements in § 416.268. As required by section 2(a) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), we will submit a copy to the Office of Management and Budget (OMB) for its review. Other organizations and individuals desiring to submit comments on these proposed rules should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, DC 20503, Attention: Desk Officer for HHS. Public reporting burden for this collection of information is estimated to average 5 minutes per response. This includes the time it will take to read the instructions, gather the necessary facts, and fill out the forms, if any. If you have any comments or suggestions on this estimate, or on any other aspect of this proposed rule, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, Maryland 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960–*NEW*), Washington, DC 20503.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Reporting and recordkeeping requirements, Public assistance programs, Supplemental Security Income.

Dated: May 25, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: August 10, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

Subparts B, K, and N of part 416 of chapter III of title 20 of the Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation for Subpart B of part 416 continues to read as follows:

Authority: Secs. 1102, 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634, of the Social Security Act; 42 U.S.C. 1302, 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c; secs. 211 and 212 of Pub. L. 93–66, 87 Stat. 154 and 155; sec. 502(a) of Pub. L. 94–241, 90 Stat. 268; and sec. 2 of Pub. L. 99–643, 100 Stat. 3574.

2. The undesignated center heading immediately above § 416.260 is revised to read as follows:

Special Provisions for People Who Work Despite a Disabling Impairment

3. Section 416.260 is revised to read as follows:

§ 416.260 General.

The regulations in §§ 416.260 through 416.269 describe the rules for determining eligibility for special SSI cash benefits and for special SSI eligibility status for an individual who works despite a disabling impairment. Under these rules an individual who works despite a disabling impairment may qualify for special SSI cash benefits and in most cases for Medicaid benefits when his or her gross earned income exceeds the applicable dollar amount which ordinarily represents SGA described in § 416.974(b)(2). Also, for purposes of determining eligibility or continuing eligibility for Medicaid benefits, a blind or disabled individual (no longer eligible for regular SSI benefits or for special SSI cash benefits) who, except for earnings, would otherwise be eligible for SSI cash benefits may be eligible for a special SSI eligibility status under which he or she is considered to be a blind or disabled individual receiving SSI benefits. We explain the rules for eligibility for special SSI cash benefits in §§ 416.261 and 416.262. We explain the rules for the special SSI eligibility status in §§ 416.264 through 416.269.

4. The undesignated center heading immediately above § 416.261 is removed.

5. Section 416.261 is amended by revising the first sentence to read as follows:

§ 416.261 What are special SSI cash benefits and when are they payable.

Special SSI cash benefits are benefits that we may pay you in lieu of regular SSI benefits because your gross earned income in a month subsequent to the month of initial eligibility for regular SSI benefits exceeds the amount ordinarily considered to represent SGA under § 416.974(b)(2). * * *

6. Section 416.262 is amended by revising the introductory text and paragraphs (a), (b) and (d) to read as follows:

§ 416.262 Eligibility requirements for special SSI cash benefits.

You are eligible for special SSI cash benefits if you meet the following requirements—

(a) You were eligible for a regular SSI benefit or a federally administered State supplementary payment (see § 416.2001) in a month before the month for which we are determining your eligibility for special SSI cash benefits as long as that month was not in a prior period of eligibility which has terminated according to §§ 416.1331 through 416.1335;

(b) In the month for which we are making the determination, your gross earned income exceeds the amount ordinarily considered to represent SGA under § 416.974(b)(2);

(c) * * *

(d) You meet all the nondisability requirements for eligibility for SSI benefits (see § 416.202).

7. Section 416.264 is revised to read as follows:

§ 416.264 When does the special SSI eligibility status apply.

The special SSI eligibility status applies for the purposes of establishing or maintaining your eligibility for Medicaid. For these purposes we continue to consider you to be a blind or disabled individual receiving benefits even though you are in fact no longer receiving regular SSI benefits or special SSI cash benefits. You must meet the eligibility requirements in § 416.265 in order to qualify for the special SSI eligibility status. Special SSI eligibility status also applies for purposes of reacquiring status as eligible for regular SSI benefits or special SSI cash benefits.

8. Section 416.265 is amended by revising the heading to the section, introductory paragraph and paragraphs (b) and (d) to read as follows:

§ 416.265 Requirements for the special SSI eligibility status.

In order to be eligible for the special SSI eligibility status, you must have been eligible to receive a regular SSI benefit or a federally administered State supplementary payment (see § 416.2001) in a month before the month for which we are making the special SSI eligibility status determination. The month you were eligible for a regular SSI benefit or a federally administered State supplementary payment may not be in a prior period of eligibility which has been terminated according to §§ 416.1331 through 416.1335. For periods prior to May 1, 1991, you must be under age 65. Also, we must establish that—

(a) * * *

(b) Except for your earnings, you meet all the nondisability requirements for eligibility for SSI benefits (see § 416.202);

(c) * * *

(d) Your earnings after the exclusions in § 416.1112(c) (5), (7) and (8) are not sufficient to allow you to provide yourself with a reasonable equivalent of the benefits (SSI benefits, federally administered State supplementary payments, Medicaid, and publicly-funded attendant care services, including personal care assistance under § 416.269(d)) which would be available to you if you did not have those earnings (see § 416.269).

9. The undesignated center heading immediately above § 416.267 is removed.

10. Section 416.268 is revised to read as follows:

§ 416.268 What is done to determine if you must have Medicaid in order to work.

For us to determine that you need Medicaid benefits in order to continue to work, you must establish:

(a) That you are currently using or have received services which were paid for by Medicaid during the period which began 12 months before our first contact with you to discuss this use; or

(b) That you expect to use these services within the next 12 months; or

(c) That you would need Medicaid to pay for unexpected medical expenses in the next 12 months.

11. Section 416.269 is revised to read as follows:

§ 416.269 What is done to determine whether your earnings are too low to provide comparable benefits and services you would receive in the absence of those earnings.

(a) *What we determine.* We must determine whether your earnings are too low to provide you with benefits and services comparable to the benefits and services you would receive if you did not have those earnings (see § 426.265(d)).

(b) *How the determination is made.* In determining whether your earnings are too low to provide you with benefits and services comparable to the benefits and services you would receive if you did not have those earnings, we compare your anticipated gross earnings (or a combination of anticipated and actual gross earnings, as appropriate) for the 12-month period beginning with the month for which your special SSI eligibility status is being determined to a threshold amount for your State of residence. This threshold amount consists of the sum for a 12-month period of two items, as follows:

(1) The amount of gross earnings including amounts excluded under § 416.1112(c) (5) and (6) that would reduce to zero the Federal SSI benefit and the optional State supplementary payment for an individual with no other income living in his or her own household in the State where you reside. This amount will vary from State to State depending on the amount of the State supplementary payment; and

(2) The average expenditures for Medicaid benefits for disabled and blind SSI cash recipients, including recipients of federally administered State supplementary payments only, in your State of residence.

(c) *How the eligibility requirements are met.* (1) You meet the requirements in § 416.265(d) if the comparison shows that your gross earnings are equal to or less than the applicable threshold amount for your State, as determined under paragraphs (b) (1) and (2) of this section. However, if the comparison shows that these earnings exceed the applicable threshold amount for your State, we will establish (and use in a second comparison) an individualized threshold taking into account the total amount of:

(i) The amount determined under paragraph (b)(1) of this section that would reduce to zero the Federal SSI benefit and State supplementary payment for your actual living arrangement;

(ii) The average Medicaid expenditures for your State of residence under paragraph (b)(2) of this section or, if higher, your actual medical expenditures in the appropriate 12-month period;

(iii) Any amounts excluded from your income as impairment-related work expenses (see § 416.1112(c)(5)), work expenses of the blind (see § 416.1112(c)(7)), and income used or set aside for use under an approved plan for achieving self support (see § 416.1112(c)(8)); and

(iv) The value of any publicly-funded attendant care services as described in paragraph (d) of this section (including personal care assistance).

(2) If you have already completed the 12-month period for which we are determining your eligibility, we will consider only the expenditures made in that period.

(d) *Attendant care services.* Expenditures for attendant care services (including personal care assistance) which would be available to you in the absence of earnings that make you ineligible for SSI cash benefits will be considered in the individualized threshold (as described in paragraph (c)(1) of this section) if we establish that they are:

(1) Provided by a paid attendant;

(2) Needed to assist with work-related and/or personal functions; and

(3) Paid from Federal, State, or local funds.

(e) *Annual update of information.* The threshold amounts used in determinations of sufficiency of earnings will be based on information and data updated no less frequently than annually.

12. The authority citation for Subpart K of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

13. Section 416.1112 is amended by revising paragraph (c)(5) to read as follows:

§ 416.1112 Earned income we do not count.

* * * * *

(c) * * *

(5) Earned income you use to pay impairment-related work expenses described in § 416.976, if you are disabled (but not blind) and under age 65 or you are disabled (but not blind) and received SSI as a disabled individual (or received disability payments under a former State plan) for the month before you reached age 65.

(i) For periods prior to December 1, 1990, you must be able, however, to establish your initial eligibility for Federal benefits without the use of the impairment-related work expense exclusion. Once you establish your initial eligibility without the use of the impairment-related work expense exclusion, the exclusion applies for determining your eligibility for all subsequent consecutive months for which you are eligible for regular SSI benefits, federally administered optional State supplementary payments, special SSI cash benefits or special SSI eligibility status. If, in a subsequent month, you are not eligible for any of these benefits, you cannot reestablish your eligibility for Federal SSI benefits or federally administered optional State supplementary payments before December 1, 1990, using the impairment-related work expense exclusion.

(ii) For periods after November 30, 1990, you may also use the impairment-related work expense exclusion to establish initial eligibility and reeligibility following a month in which you were not eligible for regular SSI benefits, a federally administered optional State supplementary payment, special SSI cash benefits or special SSI eligibility status.

* * * * *

14. The authority citation for Subpart N of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b.

15. Section 416.1402 is amended by revising paragraphs (a) and (b), removing paragraph (h), and by redesignating paragraphs (i) through (l) as paragraphs (h) through (k), respectively, to read as follows:

§ 416.1402 Administrative actions that are initial determinations.

* * * * *

(a) Your eligibility for, or the amount of, your supplemental security income benefits or your special SSI cash benefits under § 416.262, except actions solely involving transitions to eligibility between these types of benefits (see §§ 416.1403(a)(11) and (a)(12)).

(b) Suspension, reduction, or termination of your SSI benefits or special SSI cash benefits (see §§ 416.261 and 416.262) or suspension or termination of your special SSI eligibility status (see §§ 416.264 through 416.269);

* * * * *

16. Section 416.1403 is amended by adding new paragraphs (a)(12) and (a)(13) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(12) Transition to eligibility for special SSI cash benefits (§ 416.262) in a month immediately following a month for which you were eligible for regular SSI benefits; and

(13) Transition to eligibility for regular SSI benefits in a month immediately following a month for which you were eligible for special SSI cash benefits (§ 416.262).

* * * * *

[FR Doc. 93–24718 Filed 10–7–93; 8:45 am]
BILLING CODE 4190–29–P

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20 CFR Part 416

RIN 0960–AD35

Supplemental Security Income for the Aged, Blind, and Disabled; Treatment of Certain Royalties and Honoraria

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are proposing to amend the supplemental security income (SSI) regulations to reflect the provisions of section 5034 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90). The provisions of this section change the treatment of certain royalties and honoraria from unearned income to earned income. The effects of this statutory change depend on the individual case. We are also proposing to amend SSI regulations to clarify the definition of royalties.

DATES: We will consider any comments we receive by December 7, 1993. The provisions of section 5034 of Pub. L. 101–508 are effective for determinations of eligibility and benefit amount beginning December 1, 1991.

ADDRESSES: Comments should be submitted in writing to the Social Security Administration, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8470.

SUPPLEMENTARY INFORMATION:

Background

Section 5034 of OBRA '90, enacted November 5, 1990, amended section 1612(a)(1) and (2) of the Social Security Act (the Act). Prior to this amendment, the Act provided that royalties were counted as unearned income under the SSI program unless the royalties were from self-employment in a royalty-related trade or business. Honoraria also were counted as unearned income. As unearned income, any expenses of obtaining this income were not counted. Then, the first $20 of the SSI beneficiary's income in a month was excluded, and the remaining unearned income resulted in a dollar-for-dollar reduction in the SSI beneficiary's benefits.

This OBRA '90 amendment provides that any royalties earned by an individual in connection with any publication of the work of the individual, as well as that portion of any honoraria received for services rendered, are earned income under the SSI program. The provisions of section 5034 are effective for determinations of eligibility and benefit amount as of December 1, 1991.

As a result of this statutory provision, the statutory earned income exclusions, which in many cases are more generous than the unearned income exclusions, will now apply to such earnings. Under the earned income exclusions, SSA will exclude the first $65 of monthly earnings plus 50 percent of the remaining earnings per month. Other earned income exclusions, such as impairment-related work expenses, also may apply.

In many cases, the application of the earned income exclusions will result in considering a smaller portion of the royalties and honoraria as countable income. However, in those cases in which the individual receives a royalty for the publication of his or her work and incurs a large amount of expenses in obtaining this income, but does not have a royalty-related trade or business, the individual may have a greater

portion of his or her royalty treated as countable income. This is because there is no statutory or regulatory provision that permits the deduction of expenses from earned income that parallels the deduction of expenses for obtaining unearned income. Further, we believe the statute does not provide authority for us to permit, through regulations, the deduction of expenses from earned royalty income.

Current regulations in § 416.1121(c) state that royalties may include, among other things, payments to the owner of a mine, oil well, timber tract, or other natural resource for extraction of a product. In the past, we interpreted this provision to mean that royalties include the proceeds from timber sales as well as from timber leases.

We are clarifying this section of the regulations to make it clear that proceeds from the conversion of a resource are not income. For example, the term royalties may include the proceeds from timber leases, but not from timber sales. A timber sale is the conversion of a resource from one form (timber) to another (cash) as provided for in §§ 416.1103(c) and 416.1207(e). Thus, royalties would include fees for the use of the land, but not payments resulting from a sale.

Under that definition of royalties, if an owner of timberland enters into a long-term lease agreement which permits the lessee to manage and cut timber, with payment to be dependent on the amount of timber actually harvested, the payments to the lessor would be considered royalties. However, a contract for the sale of standing timber would not result in royalties. We propose to amend the regulations to clarify the definition of royalties accordingly.

Revised Regulations

We are proposing to revise §§ 416.1110, 416.1111, and 416.1121 to reflect the statutory changes of section 5034 of OBRA '90 and the change in the definition of royalties as follows:

- Section 416.1110, which lists what we consider to be earned income, is revised by adding a new paragraph (e) to provide that payments of royalties to an individual in connection with any publication of the work of the individual are earned income. Also, that portion of honoraria received in consideration of services rendered is included as earned income. Honoraria that are earned income include rewards and donations received in consideration of services rendered for which no payment can be enforced by law.
- Section 416.1111, which explains how we count each type of earned income, is revised by adding paragraph (f), which provides that payments of royalties to an individual in connection with the publication of the work of the individual and honoraria, to the extent received for services rendered, count at the earliest of the following points: when received, credited, or set aside for the individual's use.
- Section 416.1121(c) is revised by clarifying the definition of royalties and adding a cross-reference to show that payments of royalties to an individual in connection with the publication of the work of the individual are treated differently from other royalties.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 since the program and administrative costs of these regulations will be insignificant and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These proposed regulations impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance: No. 93.807–Supplemental Security Income.)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: May 14, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: July 30, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Part 416 of Title 20 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Subpart K of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. Section 416.1110 is amended by adding a new paragraph (e) as follows:

§ 416.1110 What is earned income.

* * * * *

(e) *Certain royalties and honoraria.* Royalties that are earned income are payments to an individual in connection with any publication of the work of the individual. (See § 416.1110(b) if you receive a royalty as part of your trade or business. See § 416.1121(c) if you receive another type of royalty.) Honoraria that are earned income are those portions of payments, such as an honorary payment, reward, or donation, received in consideration of services rendered for which no payment can be enforced by law. (See § 416.1120 if you receive another type of honorarium.)

3. Section 416.1111 is amended by adding a new paragraph (f) as follows:

§ 416.1111 How we count earned income.

* * * * *

(f) *Royalties and honoraria.* We count payments of royalties to you in connection with any publication of your work, and honoraria, to the extent received for services rendered, at the earliest of the following points: when you receive them, when they are credited to your account, or when they are set aside for your use. (See § 416.1111(b) if you receive royalties as part of your trade or business.)

4. Section 416.1121 is amended by revising paragraph (c) to read as follows:

§ 416.1121 Types of unearned income.

* * * * *

(c) *Dividends, interest, and certain royalties.* Dividends and interest are returns on capital investments, such as stocks, bonds, or savings accounts. Royalties are compensation paid to the owner for the use of property, usually copyrighted material or natural resources such as mines, oil wells, or timber tracts. Royalty compensation may be expressed as a percentage of receipts from using the property or as an amount per unit produced. (See § 416.1110(b) if you receive royalties as part of your trade or business and § 416.1110(e) if you receive royalties in

connection with the publication of your work.)

* * * * *

[FR Doc. 93-24717 Filed 10-7-93; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD02-93-002]

RIN 2115-AE47

Drawbridge Operation Regulations, St. Croix River, Minnesota and Wisconsin

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes changing the regulations governing the opening of the draw of the S36 Bridge over the St. Croix River at mile 23.4, at Stillwater, Minnesota. The present opening schedule has caused traffic delays and congestion in Stillwater, Minnesota. Revising the schedule should reduce the traffic congestion.

DATES: Comments must be received on or before November 22, 1993.

ADDRESSES: Comments may be mailed to Commander (ob), Second Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103-2832, Attention: Docket CGD2-93-02. Comments may also be delivered to room 2.107B at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments, the telephone number is (314) 539-3724.

The Bridge Branch, Second Coast Guard District, maintains the public docket for this rulemaking. Comments will become part of the public docket and the docket will be available for inspection or copying in room 2.107B at the above address.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, (314) 539-3724.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD02-93-002], identify the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person who wants an acknowledgment of the receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. The Coast Guard may change the proposal in view of the comments.

The Coast Guard does not plan to hold a public hearing. Persons may request a public hearing by writing to the Docket Clerk at the address under "ADDRESSES." If the Coast Guard determines that the opportunity to make oral presentations will aid the rulemaking process, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Wanda G. Renshaw, Project Officer, Bridge Branch, and Lieutenant Commander Arne O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Background and Purpose

The mayor of Stillwater, Minnesota has requested that the existing regulation governing the opening and closing of the draw of the S36 Bridge over the St. Croix River at mile 23.4 be changed. The requested change would require hourly openings of the draw from May 15 through October 15 from 8 a.m. to 10 p.m., Monday through Friday, and from 8 a.m. to 12 midnight, Saturday, Sunday, and Federal holidays.

The St. Croix River is heavily used by recreational craft. River excursion boats are the only known commercial navigation passing the bridge. A review of the bridge logs and traffic count data indicate that both vehicular traffic and the number of vessels requiring bridge openings has increased substantially. The increase in vessels has resulted in the bridge being open for vessels to pass through the draw for longer periods during the existing hourly and half hourly openings. Each opening is lasting longer than intended when the original opening schedule was established. Thus, the bridge is closed to vehicular traffic for longer periods creating a backlog of traffic in the downtown business district of Stillwater, Minnesota.

The proposed rulemaking will reduce the number of scheduled bridge openings during the boating season, May 15 through October 15. Less frequent openings, on the hour instead of every half hour, should relieve traffic congestion and delays in the City of Stillwater. The reduction in the number of bridge openings should serve to more efficiently manage the traffic flow on the approaches to the S36 Bridge.

The proposed regulation will maintain the scheduled hourly and emergency openings. It will also maintain the openings based upon two hours advance notice Monday through Friday from 10 p.m. to 8 a.m., and Saturdays, Sundays and Federal holidays from 12 midnight to 8 a.m.

Discussion of Proposed Amendments

Presently, the regulation requires the bridge to be opened every half hour from May 15 through October 15 from 11 a.m. to 3 p.m. and from 6 p.m. to 10 p.m., Monday through Friday, except Federal holidays, and from 8 a.m. to 11 a.m. and from 8 p.m. to midnight, Saturdays, Sundays and Federal holidays. The proposal will amend the bridge opening schedule to eliminate the requirement for scheduled openings on the half-hour. Scheduled openings from May 15 through October 15 will be amended to require opening on the hour only. The rescheduled openings should reduce the number of bridge openings during the day. This will allow for a better flow of automobile traffic, reducing traffic congestion in the city of Stillwater, Minnesota.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. Excursion boat operators have indicated that adjusting to the proposed hourly openings can be met without impact on their businesses.

Small Entities

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

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see "ADDRESSES") explaining why you think

your business qualifies and in what way and to what degree this proposal will economically affect your business.

An Initial Regulatory Flexibility Analysis discussing the impact of this proposal on small entities is available in the docket for inspection or copying where indicated under "ADDRESSES." The analysis indicates that the only businesses which will be directly affected by the amended bridge opening schedule, the excursion boat operators, will be able to adjust their schedules without impact on their businesses. However, one marina operator whose marina is located upriver from the bridge feels that the scheduling change will indirectly affect him. He feels that the change will cause him to lose business because boat owners will relocate their vessels down river, below the bridge.

Collection of Information

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

Federalism

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

Environment

The Coast Guard has reviewed the environmental impact of this proposal and concluded that under section 2.B.2 of the NEPA Implementing Procedures, COMDTINST M16475.1B, this proposal is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the human environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

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

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

2. Part 117 is amended by revising paragraphs (b) introductory text, (b)(1) and (b)(2) of § 117.667 to read as follows:

§ 117.667 St. Croix River.

* * * * *

(b) The draw of the S36 Bridge, Mile 23.4, at Stillwater, shall open on signal as follows:

(1) From May 15 through October 15, Monday through Friday, except Federal holidays:

(i) From 8 a.m. to 10 p.m., every hour on the hour;

(ii) From 10 p.m. to 8 a.m., if at least two hours notice is given.

(2) From May 15 through October 15, Saturdays, Sundays, and Federal holidays:

(i) From 8 a.m. to midnight, every hour on the hour;

(ii) From midnight to 8 a.m., if at least two hours notice is given.

* * * * *

Dated: September 23, 1993.

Paul M. Blayney,

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

[FR Doc. 93–24807 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–14–1–5455; FRL–4787–2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan Addressing PM–10 for El Paso

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This action proposes approval of a revision to the Texas PM–10 State Implementation Plan (SIP) for El Paso, Texas. PM–10 is defined as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The EPA is also proposing to approve the PM–10 SIP for El Paso, Texas, as meeting the requirements of section 179B of the Clean Air Act (CAA) regarding implementation plans and revisions for international border areas.

DATES: Comments on this proposed action must be received in writing on or before November 8, 1993.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Region 6 Office indicated. Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AP), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Air Control Board, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 655–7258.

SUPPLEMENTARY INFORMATION:

El Paso, Texas, was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the CAA, upon enactment of the Clean Air Act Amendments (CAAA) of 1990.[1] Please reference 56 FR 56694 (November 6, 1991, codified for Texas at 40 CFR 81.344) and 57 FR 13498, 13537 (April 16, 1992). The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of part D, title I of the CAA. Subpart 1 contains provisions generally applicable to all nonattainment areas and Subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, Subparts 1 and 4 overlap or conflict. The EPA has attempted to clarify the relationship among these various provisions in the General Preamble and, as appropriate, in this action.

The EPA has issued a "General Preamble" describing the EPA's preliminary views on how the EPA intends to review SIPs and SIP revisions submitted under Title I of the CAA, including those State submittals containing moderate PM–10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). The reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this proposed action and the supporting rationale. In this rulemaking action on the El Paso, Texas, moderate PM–10 SIP, the EPA is

[1] The 1990 Amendments to the Clean Air Act made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the PM-10 national ambient air quality standards (see Public Law No. 101-549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

proposing to apply its interpretations, taking into consideration the specific factual issues presented. Thus, the EPA will consider any timely submitted comments before taking final action on this proposal.

On November 15, 1991, the Governor of Texas submitted to the EPA the SIP revision for PM–10 concerning El Paso, Texas. The CAA specifies that States containing those moderate PM–10 nonattainment areas designated nonattainment under section 107(d)(4) of the Act were to submit SIPs to the EPA by November 15, 1991, and outlines certain required items to be included in the SIPs. These required items, due November 15, 1991, unless otherwise noted, include: (1) A comprehensive, accurate, and current inventory of actual emissions from all sources of PM–10 in the nonattainment area (section 172(c)(3) of the CAA); (2) a permit program to be submitted by June 30, 1992, which meets the requirements of section 173 for the construction and operation of new and modified major stationary sources of PM–10 (section 189(a)(1)(A)); (3) a demonstration (including air quality modeling) that the plan provides for attainment of the PM–10 National Ambient Air Quality Standards (NAAQS) as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable (section 189(a)(1)(B)); (4) provisions to assure that Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), for control of PM–10 will be implemented no later than December 10, 1993 (sections 172(c)(1) and 189(a)(1)(C)). For sources emitting insignificant (de minimis) quantities of PM–10, the EPA's policy is that it would be unreasonable and would not constitute RACM to require controls on the source (please reference 57 FR 13540). Also, when evaluating RACM and RACT, the technological and economic feasibility of the controls are relevant considerations (57 FR 13540–13544); (5) quantitative emission reduction milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate reasonable further progress (RFP) toward attaining the PM–10 NAAQS (section 189(c)); (6) contingency measures due November 15, 1993 (please reference 57 FR 13510–13512 and 13543–13544), that are to be implemented if the EPA determines that the area has failed to make RFP or to attain the primary standards by the applicable date (section 172(c)(9)); and (7) control requirements for major stationary sources of PM–10 precursors, unless the EPA determines inappropriate. The CAA, in section 189(e), states that control requirements applicable to major stationary sources of PM–10 will also be applicable to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not significantly contribute to PM–10 levels that exceed the PM–10 ambient standards in the area.

As outlined below, the State of Texas' SIP revision for PM–10 concerning El Paso, a moderate PM–10 nonattainment area, was reviewed against the applicable requirements. The reader is referred to the El Paso PM–10 SIP submittal and the EPA's supporting technical information for pertinent details regarding each requirement. These items are available for public review at the addresses indicated above.

Section 110(k) of the CAA sets out provisions governing the EPA's review of SIP submittals (see 57 FR 13565–13566). In this action, the EPA is proposing to grant approval of the plan revision submitted to the EPA on November 15, 1991, for El Paso, Texas, because it meets all of the applicable requirements of the CAA.

Analysis of State Submission

1. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[2] See also section 110(l) of the CAA. Also, the EPA must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

After providing adequate notice, the State of Texas held a public hearing on September 5, 1991, to entertain public comment on the PM–10 implementation plan for El Paso. Following the public hearing the plan was adopted by the State and signed by the Governor on November 5, 1991, and submitted to the EPA on November 15, 1991, as a proposed revision to the SIP.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. A letter dated December 31, 1991, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. As noted, in this action, the EPA proposes to approve the Texas PM–10 SIP submittal for El Paso and invites public comment on the action.

2. PM–10 Emission Inventory

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Further, section 110(a)(2)(K) generally authorizes the EPA to request any data necessary to perform air quality modeling for the purpose of predicting, among other things, impacts on the PM–10 NAAQS.

The State of Texas included two inventories in the El Paso PM–10 Moderate SIP: (1) An inventory for El Paso County (the City of El Paso is located in El Paso County) based on actual emissions for the year 1990; and (2) An inventory for El Paso County based on permit allowable emissions (where appropriate) for the year 1994. For 1990, the State calculated 1,082 tons/year of PM–10 emissions from point sources, 1,691 tons/year from area sources, and 4,640 tons/year from mobile sources (includes PM–10 emissions from paved and unpaved roads), for a total of 7,413 tons/year of PM–10 emissions. Projecting for 1994, and accounting for growth factors, the State calculated 1,413 tons/year of PM–10 emissions from point sources, 1,740 tons/year from area sources, and 4,399 tons/year from mobile sources (includes PM–10 emissions from paved and unpaved roads), for a total of 7,552 tons/year of PM–10 emissions. It is important to note that there were calculation errors in the two emission inventories submitted by the State. These calculation errors are discussed in detail in the Technical Support Document. Only one of the errors resulted in greatly different emissions estimates. This error involved PM–10 emissions from agricultural tilling. Instead of 126 tons/year, the 1990 inventory should have calculated PM–10 emissions from agricultural tilling operations to be 1,025 tons/year. The State was asked to re-examine its attainment

[2] Section 172(c)(7) of the CAA requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

demonstration, as discussed below in Section 4, to account for this additional amount of PM–10 emissions.

By cover letter dated November 20, 1992, from Lane Hartsock, Deputy Director of Air Quality Planning, Texas Air Control Board (TACB), to Thomas H. Diggs, Chief of the Air Planning Section, EPA Region 6, the State submitted a revised emissions inventory addressing the calculation errors. The State used this revised inventory for an additional attainment demonstration which will be discussed in Section 4 below.

3. Nonattainment New Source Review Permit Program

The State of Texas has submitted new source review regulatory revisions to the EPA. These revisions, submitted by cover letter from the Governor dated May 13, 1992, were submitted in part to meet requirements found in sections 173 and 189(a)(1)(A) of the CAA for the construction and operation of new and modified major stationary sources of PM–10. These revisions were due independently of the November 15, 1991, moderate PM–10 nonattainment area SIP requirements addressed in this action and will be addressed in detail in a separate **Federal Register** notice.

4. Demonstration of Attainment of the PM–10 NAAQS by December 31, 1994, but for Emissions Emanating From Mexico

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B)(i) of the CAA). Alternatively, the State must show that attainment by December 31, 1994, is impracticable (section 189(a)(1)(B)(ii)).

There have been several air quality studies conducted in the El Paso/Juarez air basin. Special receptor modeling and other studies in El Paso and across the United States border in Juarez, Mexico, conducted by the TACB, the EPA, the El Paso City-County Health District (EPCCHD), and Mexico's Secretariat of Urban Development and Ecology (SEDUE) (now known as the Secretariat for Social Development or SEDESOL), have included PM–10 and meteorological monitoring in both El Paso and Juarez, trends analyses of the monitoring data, trajectory analyses demonstrating PM–10 transport from Juarez into El Paso, and laboratory analyses of air samples. The most extensive study was performed in December of 1990—an 18 day project entitled the "El Paso/Juarez Winter PM–10 Receptor Modeling Scoping Study." Results from the study showed that generally, PM–10 concentrations were higher in Juarez, Mexico, than in El Paso, and a monitoring station in Juarez consistently reported higher PM–10 values than any other station during the special study period. In addition, when high PM–10 concentrations were measured in El Paso, trajectory analyses showed that many of the air parcels came from source regions within Juarez or areas outside Juarez in Mexico.

Section 179B(a) of the CAA provides that notwithstanding any other provision of law, a SIP required under the CAA shall be approved by the Administrator if: (1) The plan meets all requirements applicable to it under the CAA other than a requirement that such plan demonstrate attainment and maintenance of the relevant NAAQS by the specified attainment date; and (2) the submitting State establishes to the satisfaction of the Administrator that the SIP would be adequate to attain and maintain the relevant NAAQS by the specified attainment date, but for emissions emanating from outside of the United States. See generally 57 FR 13569–13570. In addition, for PM–10 nonattainment areas, section 179B(d) of the CAA specifies that notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to a PM–10 nonattainment area in such State, such State would have attained the NAAQS for PM–10 by the applicable attainment date, but for emissions emanating from outside the United States, then such PM–10 nonattainment area in the State shall not be subject to the reclassification to serious area provisions of section 188(b)(2) (failure to attain after the applicable attainment date). The EPA has construed this reclassification restriction to also extend to section 188(b)(1) of the CAA that pertains to reclassification before the attainment date where the EPA determines an area cannot practicably timely attain (57 FR 13569, footnote 42).

The State of Texas references section 179B of the CAA when presenting their demonstration. As set out in more detail below, the State has submitted a demonstration showing that the El Paso PM–10 moderate nonattainment area would be in attainment of the PM–10 NAAQS both currently and by December 31, 1994, based on dispersion modeling of United States (El Paso County) PM–10 emissions alone. Based on the EPA's review, the demonstration appears to be satisfactory. Accordingly, the EPA is proposing to approve the demonstration as showing that the SIP provides for timely attainment of the PM–10 NAAQS but for emissions emanating from Mexico.

The State of Texas used five years of hourly meteorological data (National Weather Service data from the El Paso International Airport for the years 1985–1989) and two sets of emissions inventory data for El Paso County (1990 actual point, area, and mobile source emissions, and 1994 projected allowable emissions) to model PM–10 NAAQS impacts in El Paso County. The State used a Gaussian Plume Multiple Source Air Quality Algorithm (Regional Air Model (RAM)) for modeling 1990 and 1994 PM–10 emissions, and also used the Valley Screening method for estimating PM–10 NAAQS impacts of significant elevated point sources on mountainous terrain, such as the nearby Franklin Mountains (1994 inventory only). PM–10 reductions due to some State-adopted control measures addressed in this proposal were not included in the modeling of the 1994 emissions inventory.

Based on the Gaussian Plume Multiple Source Air Quality Algorithm (RAM) modeling runs, the 1990 annual average PM–10 design concentration for the five year study period was 40.10 ug/m^3, below the annual PM–10 NAAQS of 50 ug/m^3. The annual PM–10 NAAQS is attained when the expected annual arithmetic mean concentration is less than or equal to 50 ug/m^3 (40 CFR 50.6). The 1990 24-hour PM–10 design concentration for the five year study period was 91.45 ug/m^3, below the 24-hour PM–10 NAAQS of 150 ug/m^3. The 24-hour NAAQS is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 ug/m^3 is equal to or less than one (40 CFR 50.6). For 1994, the modeling runs produced a maximum annual design concentration of 41.64 ug/m^3 and a maximum 24-hour design concentration of 114.08 ug/m^3, both below their respective NAAQS threshold levels. Please reference the Technical Support Document and the El Paso PM–10 SIP for pertinent details on the above modeling demonstrations.

As mentioned above in Section 2, the State was asked to re-examine the attainment demonstration using a revised inventory. The State submitted a revised attainment demonstration by cover letter dated November 20, 1992, to the EPA. This additional modeling resulted in insignificant increases in the maximum predicted PM–10 concentrations in El Paso County. Based on the revised modeling runs, the 1990 annual average PM–10 design concentration for the five year study period was 40.45 ug/m^3, below the annual PM–10 NAAQS of 50 ug/m^3. The

1990 24-hour PM–10 design concentration for the five year study period was 93.52 ug/m³, below the 24-hour PM–10 NAAQS of 150 ug/m³. For 1994, the revised modeling runs produced a maximum annual design concentration of 41.92 ug/m³ and a maximum 24-hour design concentration of 114.19 ug/m³, both below their respective NAAQS threshold levels. Please reference the revised El Paso PM–10 SIP documentation from Lane Hartsock dated November 20, 1992, for pertinent details on the above revised modeling demonstrations.

Complex terrain screening for the 1994 inventory was performed on all elevated point sources which had 24-hour average emissions of 0.5 gram per second or more. The Valley Screening method was used to determine PM–10 impacts on elevated terrain at plume height for each of the significant sources. Predicted impacts on the nearby Franklin Mountains at plume height for the indicated sources were negligible.

5. RACM and RACT for Control of PM–10 and Additional Control Measures

As noted, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C) of the CAA). The General Preamble contains a detailed discussion of the EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561). The EPA's interpretation of this requirement is set out here only in broad terms.

The State should first identify available control measures, evaluating them for their reasonableness in light of the feasibility of the controls and the attainment needs of the area. A State may reject an available control measure if the measure is technologically infeasible or the cost of the control is unreasonable. The SIP must demonstrate attainment of the NAAQS as expeditiously as practicable but no later than December 31, 1994 (unless the State demonstrates that attainment by that date is impracticable). Therefore, if a State adopts less than all available measures but demonstrates, adequately and appropriately, that RFP and attainment of the PM–10 NAAQS is assured, and application of all such available measures would not result in attainment any faster, then a plan which requires implementation of less than all available measures may be approved as meeting the RACM requirement. As a suggested starting point for determining RACM, the EPA has identified available control measures for sources of fugitive dust, residential wood combustion, and prescribed burning (see 57 FR 18072–18074 (April 28, 1992)). The State should add to the list of available measures in an area any measures that public commenters demonstrate may well be reasonably available in a particular circumstance.

The RACT for a particular source is similarly determined. The EPA's longstanding definition of RACT is the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (see 57 FR 13541). Thus, the EPA recommends that available control technology be applied to those existing sources in the area that are reasonable to control in light of the attainment needs of the area and the feasibility of controls.[3]

A State should submit a reasoned justification for partial or full rejection of any available control measure (including any available control technology) that explains, with appropriate documentation, why each rejected control measure is infeasible or otherwise unreasonable and, therefore, does not constitute RACM (or RACT) for the area. In those PM–10 nonattainment areas where mobile sources significantly contribute to the PM–10 air quality problem, States also must address the section 108(f) transportation control measures (see 57 FR 13561).

The SIP for moderate PM–10 nonattainment areas subject to section 179B must similarly provide for the implementation of RACM (including RACT). In such areas the implementation of potentially available control measures may not be "reasonably" available and, therefore, would not be required by RACM (including RACT) where it can be shown that the PM–10 NAAQS could be attained as expeditiously as practicable in the nonattainment area disregarding emissions emanating from outside the United States. By directing the EPA under section 179B to approve the SIP or SIP revision for a moderate PM–10 area showing that it would timely attain the NAAQS "but for" foreign emissions and by excluding such an area from reclassification to serious, Congress has avoided penalizing such areas by not making them responsible for control of emissions emanating from a foreign country over which they have no jurisdiction. The reclassification exclusion avoids subjecting such areas to the more stringent or "best" available control measures applicable in serious PM–10 nonattainment areas (section 189(b)(1)(B)). Further, section 179B(a)(2) by its plain terms requires the State to establish only that the SIP submitted would be "adequate" to timely attain and maintain the NAAQS, "but for" emissions from outside the United States.

Thus, no State is relieved from meeting all other applicable moderate area PM–10 SIP requirements, including the requirement to implement RACM. However, neither is any State required to shoulder more of a regulatory and economic burden than States not similarly affected, by having to implement measures that go well beyond those which the SIP demonstrates would otherwise be adequate to attain and maintain the PM–10 NAAQS "but for" emissions emanating from outside the United States. Such a requirement would be inconsistent with the apparent purpose of section 179B. Nevertheless, because the NAAQS reflect public health and welfare standards, the EPA encourages states to reduce emissions beyond the minimum necessary to satisfy the "but for" test in order to reduce the PM–10 concentrations to which their populations are exposed by virtue of the additional contribution from international transport.

The State of Texas in the El Paso SIP reviewed RACM and RACT for control of PM–10. Following is an analysis of the measures employed to control PM–10 in El Paso, Texas.

A. Fugitive Dust Control Measures

An evaluation of available fugitive dust control measures for the City of El Paso is included in appendix N of the El Paso PM–10 Moderate SIP. The State of Texas has incorporated provisions into the TACB Regulation I which control fugitive particulate emissions from materials handling, construction, roads, streets, alleys, and parking lots in the El Paso area. A Memorandum of Understanding (MOU), dated November 5, 1991, between the City of El Paso and the TACB, included in the SIP submittal, will serve as the basis for defining the division of responsibility for, and the commitments to carry out, pertinent provisions of Regulation I. In any event, the TACB has the ultimate enforcement authority to ensure the implementation of these fugitive dust control measures. Each pertinent section of Regulation I will be discussed below. Even though the TACB demonstrated that the El Paso PM–10 nonattainment

[3] The EPA has issued technological and economic parameters that should be considered in determining RACT for a particular source (see 57 FR 18073–18074).

area would be in attainment by December 31, 1994, without including the fugitive dust control measures, the State of Texas is implementing control measures for fugitive dust in the El Paso area. The State has authority under section 116 of the CAA to require these controls, and the EPA is proposing to approve the following provisions of TACB Regulation I as control measures beyond RACM which strengthen the Texas SIP. Moreover, as discussed later, the EPA is proposing to treat these and the other control measures that go beyond the minimum RACM requirement as fulfilling the requirement for contingency measures.

Section 111.141. This section cites certain provisions in Regulation I applicable to the El Paso area (including the Fort Bliss Military Reservation except for tactical training areas) and also cites appropriate compliance dates, with compliance being no later than December 31, 1991, for some provisions, and no later than December 10, 1993, for the remaining provisions.

Section 111.143. Part one of this section requires maximum control of material storage piles through application of water or suitable chemicals or other coverings. Part two of this section requires proper installation, maintenance and use of hoods, fans, and filters to enclose, collect, and clean emissions of any dusty materials (if applicable). Finally, part three of this section requires covering of all open bodied trucks, trailers, and railroad cars transporting materials which can create airborne particulate matter in public areas within the City of El Paso. It is important to note that this section was previously adopted by the TACB on June 16, 1989, after proper public notice and hearing (public hearings were held on February 1–2, 1989). This section was previously submitted to the EPA by cover letter from the Governor dated August 21, 1989.

Section 111.145. This section requires dust control (e.g., paving or chemical stabilization) at all construction and demolition sites in the City of El Paso, including control of access points to paved roads. It is important to note that parts 1 and 2 of this section were previously adopted by the TACB on June 16, 1989, after proper public notice and hearing (public hearings were held on February 1–2, 1989). These parts were previously submitted to the EPA by cover letter from the Governor dated August 21, 1989.

Section 111.147. Part one of this section requires dust control measures (i.e., paving, watering, chemical stabilization) for the following unpaved surfaces in the El Paso area: industrial facility roadways, public thoroughfares, commercial roads, residential roads, alleys (paving at the rate of at least 15 miles per year), and levee roads. Part two of this section requires removal of soil or other materials from roads by means of mechanical sweepers, including removal of sand applied on public thoroughfares for snow or ice control in the City of El Paso. In addition, a sweeping schedule and recordkeeping of such activities is specified. Also, this section gives the Executive Director, with the concurrence of the EPA, the option of granting a waiver from paving requirements for industrial roadways, provided the roadway owner can demonstrate that the cost of paving is economically unreasonable compared to other forms of dust control specified in section 111.147(1). It is important to note that parts 1(B) through 1(D) of this section were previously adopted by the TACB on June 16, 1989, after proper public notice and hearing (public hearings were held on February 1–2, 1989). These parts were previously submitted to the EPA by cover letter from the Governor dated August 21, 1989.

Section 111.149. This section requires parking surfaces in the City of El Paso with more than five parking spaces to be paved or uniformly covered with gravel. Temporary parking lots must apply water or suitable oil or chemicals to control dust, while all parking lots with more than 100 parking spaces must be paved or covered by an equivalent method to paving as determined by the Executive Director of the TACB. The equivalent method shall not include the utilization of waste materials from industrial processes. It is important to note that this section was previously adopted by the TACB on June 16, 1989, after proper public notice and hearing (public hearings were held on February 1–2, 1989). This section was previously submitted to the EPA by cover letter from the Governor dated August 21, 1989.

B. Off-road Recreational Vehicles

The State considers, and the EPA agrees, that PM–10 emissions due to off-road recreational vehicles are de minimis. According to the EPCCHD, there is no significant off-road vehicle use in the City of El Paso. As discussed earlier, where sources of PM–10 contribute insignificantly to the PM–10 problem in the area, the EPA's policy is that it would be unreasonable to require the sources to implement potentially available control measures. Therefore, such potentially available control measures are not "reasonably" available and RACM does not require controls on insignificant PM–10 sources (57 FR 13540).

C. Residential Wood Combustion Control Measures

An evaluation of available residential wood combustion control measures for the City of El Paso is included in appendix O of the El Paso PM–10 Moderate SIP. The State of Texas has incorporated provisions into Regulation I (section 111.111(c)) which require an episodic curtailment program to be implemented in the City of El Paso regarding wood combustion. This program mandates operating restrictions for solid fuel heating devices in the City of El Paso, including the Fort Bliss Military Reservation, during periods when National Weather Service data indicates that an atmospheric stagnation condition exists or is predicted to exist. The program contains exemptions to account for burn down periods, sole sources of heat, and temporary power losses. The City of El Paso also enforces an episodic curtailment program regarding wood combustion under Chapter 9.38 of the City Code. This City ordinance was submitted as part of the SIP. The TACB and the City of El Paso are working together on producing pamphlets and other materials for educating the public regarding residential wood combustion devices and wood smoke, as called for in the November 5, 1991, MOU between the City and the TACB. As in the case of fugitive dust control measures, this MOU between the City of El Paso and the TACB, submitted as a part of the SIP, serves as the basis for defining the division of responsibility for, and the commitments to carry out, the provisions of Section 111.111(c) and Chapter 9.38 of the City Code, both concerning solid fuel heating devices. Nevertheless, the TACB is responsible for the ultimate implementation and enforcement of this program. The TACB is implementing these residential wood combustion control measures even though attainment of the PM–10 standards for the El Paso area was demonstrated by December 31, 1994, without consideration of these adopted control measures. Thus, the EPA is proposing to approve the El Paso residential wood combustion control measures as control measures beyond RACM which strengthen the Texas SIP. As discussed further below, the EPA is proposing to treat these and other control measures that go beyond the minimum RACM requirement as fulfilling the requirement for contingency measures.

D. Prescribed Burning Control Measures

Prescribed burning, including agricultural or silvicultural burning, is controlled by the TACB Regulation I under Sections 111.101, 111.103, 111.105, and 111.107, which detail prohibitions for outdoor burning and general requirements for allowable outdoor burning. Please reference these sections of Regulation I attached to the Technical Support Document. It is important to note that these sections were previously adopted by the TACB on June 16, 1989, after proper public notice and hearing (public hearings were held on February 1–2, 1989). These sections were previously submitted to the EPA by cover letter from the Governor dated August 21, 1989. As stated earlier, the TACB is implementing these prescribed burning control measures even though attainment of the PM–10 standards for the El Paso area was demonstrated by December 31, 1994, without consideration of these adopted control measures, and the EPA is proposing to approve these and other measures as fulfilling the contingency measure requirement.

E. Point Sources

For El Paso, RACT includes control of existing stationary point sources for stack, process, and fugitive particulate emissions. RACT for a particular point source is determined on a case-by-case basis and considers the technological and economic feasibility of reducing emissions from that source. The State of Texas included an analysis of RACT for El Paso point sources that had total suspended particulate emissions equal to or greater than 25 tons per year. The analysis, concerning stack, process, and fugitive particulate emissions, is found in appendix P of the El Paso PM–10 SIP. This analysis was comprised of a current listing of RACT (appendix P) at specific emission points of PM–10 for El Paso point sources. Appendix P provides a description of control equipment and emissions in tons per year for the point sources. The TACB enforces RACT through federally enforceable permit conditions. The EPA is proposing to approve the El Paso PM–10 SIP as adequately containing RACT for stationary point sources.

In summary, the EPA is proposing to find that the State of Texas' PM–10 SIP for the El Paso nonattainment area includes adequate RACM/RACT as discussed in detail above. The State of Texas included a listing of RACT, federally enforceable in approved permits, being used at all major and other stationary sources in the El Paso area. In addition, the EPA views the State's prescribed burning, fugitive dust, and residential wood combustion control measures in Regulation I and the City ordinance as contingency measures that go beyond the core RACM control strategy. This is discussed further below. The EPA is also proposing to approve the MOU between the City of El Paso and the TACB which serves to define the division of responsibility for, and the commitments to carry out, the provisions of Regulation I and Chapter 9.38 of the City Code (City of El Paso episodic curtailment program regarding wood combustion).

6. Milestones and Reasonable Further Progress

Section 189(c) of the CAA requires that plan revisions for moderate PM–10 nonattainment areas contain quantitative milestones which are to be achieved every three years until the area is redesignated to attainment. The milestones must also demonstrate to the EPA that reasonable further progress (RFP) toward attainment of the PM–10 NAAQS is being met (see 57 FR 13539).

The EPA has attempted to reconcile the quantitative milestones and periodic reporting called for in section 189(c) with the EPA's proposed decision under section 179B to approve the El Paso PM–10 SIP as meeting the requirements for an international border area implementation plan. The State demonstrated that the El Paso nonattainment area would attain the PM–10 NAAQS both currently and by December 31, 1994, using current and projected United States (El Paso County) emissions alone. Also, the PM–10 problem in the El Paso area is international in scope (contribution from Mexico). Therefore, the EPA believes it is reasonable for El Paso to satisfy section 189(c) by reporting every three years, beginning on November 15, 1994, the air quality progress actually made in response to the implementation of control measures, and information addressing a potential change in circumstances in the area that may, in turn, warrant further air quality protection efforts. Specifically, the State should report to the EPA every three years the following information regarding the El Paso nonattainment area: (1) The status and effectiveness of the existing controls, including quantification of emission reductions achieved relative to those projected in the El Paso PM–10 SIP submittal, the subject of this proposed action, (2) significant changes in the inventory due to new source growth or other activities (to allow for a comparison with the 1990 base year PM–10 emission inventory, and the projected 1994 PM–10 emission inventory); and (3) an evaluation of any additional controls which may be feasible to reduce exposures and/or bring the area into attainment.

Reasonable further progress is defined in section 171(1) of the CAA as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date. Since part D does not dictate annual incremental reductions for moderate PM–10 areas, the EPA has broad discretion in determining RFP under section 171(1). The EPA is proposing to approve as satisfying RFP the annual incremental reduction in emissions provided for by the RACM (including RACT) being implemented in the area. Section 189(c) provides that the quantitative milestones also must demonstrate RFP. Thus, the EPA will assess the State's compliance with RFP for this area in conjunction with determining its compliance with the quantitative milestone requirement described above. Thus, when the State demonstrates the El Paso area's compliance with the quantitative milestone requirement it should also demonstrate that RFP has been achieved during each of the relevant three years.

7. Contingency Measures

As per section 172(c)(9) of the CAA, all nonattainment SIPs must contain contingency measures (due November 15, 1993) that are to be implemented if the area fails to make RFP or to attain the NAAQS by the applicable date (see 57 FR 13510–13512 and 13543–13544). These contingency measures are to be implemented immediately after the EPA determines failure of RFP or attainment of standards. The CAA does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures (57 FR 13511). However, since the purpose of the contingency measure requirement is to provide for the implementation of additional air quality control measures beyond the core control strategy to ensure that emissions reduction progress continues to be made in the event of SIP failure to produce RFP or attainment, contingency measures must consist of other available control measures that are not included in the RACM (including RACT) control strategy.

As addressed in the discussion of control measures, above, the State is implementing several control measures in El Paso that are in excess of those

needed to provide for timely attainment "but for" emissions from Mexico and that go beyond the RACM (including RACT) requirement. In this action, the EPA is proposing to approve the fugitive dust, residential wood combustion, and prescribed burning control measures previously discussed in this action, as contingency measures for the El Paso PM–10 SIP. Implementation of these measures should result in a PM–10 emission reduction of around 400–500 tons per year. These measures appear to go beyond RACM (including RACT). The State has demonstrated that the El Paso nonattainment area would be in attainment of the PM–10 NAAQS no later than December 31, 1994, based on U.S. emissions alone, without these control measures.

Section 172(c)(9) of the CAA specifies that contingency measures shall "take effect * * * without further action by the State or the Administrator." The EPA interprets this requirement to mean that no further rulemaking activities by the State or the EPA would be needed to implement the contingency measures (57 FR 13512). The EPA expects all actions needed to affect full implementation of the measures to occur within 60 days after the EPA notifies the State of its failure to achieve RFP or to attain (57 FR 13512).

The EPA is proposing to accept the control measures submitted by the State of Texas that are in excess of those necessary to provide for timely attainment of the PM–10 NAAQS "but for" emissions from Mexico, and that go beyond RACM (including RACT), as fulfilling the requirement for contingency measures because the measures will provide for continued emissions reduction progress beyond the core control strategy. It is the EPA's determination that since the State has acted to implement these precautionary measures along with the primary RACM (including RACT) control strategy that these measures essentially provide advance contingency benefit and satisfy the requirement that they "take effect without further action by the State or the Administrator."

The implementation of these control measures in conjunction with the primary control strategy should not disqualify treating them as contingency measures under section 172(c)(9) of the CAA. Section 172(c)(9) indicates that the SIP shall provide for the implementation of contingency measures to be undertaken if the area fails to make RFP or to timely attain the NAAQS. The State of Texas is, in effect, accelerating its implementation of contingency measures for El Paso. Alternatively, these measures would be undertaken at some later time if the area failed to make RFP or timely attain "but for" emissions from Mexico. It would, quite simply, be absurd to penalize or otherwise discourage the State from taking the arguably more precautionary air quality management step of accelerating the implementation of the contingency measures.

Finally, the EPA notes that the magnitude of emissions reduction progress provided by these measures appears reasonable in light of improved PM–10 air quality on the U.S. side of the border over the last three years. There have been no exceedances of the PM–10 annual standard, and 3 recorded exceedances of the 24-hour PM–10 standard (one in October, 1991, and two in October, 1992 at one site), since 1990. The three recorded exceedances were 166 ug/m³, 159 ug/m³, and 158 ug/m³, not too far over the 24-hour standard of 150 ug/m³. In addition, the TACB commits to developing future contingency measures provided that adequate information from Mexico becomes available. It is anticipated that the EPA, the TACB, the City of El Paso, and SEDUE (now SEDESOL) will continue their cooperative effort in studying the PM–10 air quality in the El Paso/Juarez air basin. The EPA agrees with the State of Texas that the PM–10 air quality problem in the El Paso/Juarez air basin is international in scope, and agrees with the State's commitment to provide future contingency measures if adequate information becomes available.

8. PM–10 Precursors

Section 189(e) of the CAA states that control requirements applicable to major stationary sources of PM–10 are also applicable to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not significantly contribute to PM–10 levels that exceed the PM–10 ambient standards in the area. The General Preamble contains guidance addressing how the EPA intends to implement section 189(e) (see 57 FR 13539–13540 and 13541–13542).

The State of Texas used annular denuder samplers during the December, 1990, special PM–10 study as a method to differentiate between gas and particulate phase compounds in the ambient air.[4] The results of the annular denuder sampling showed that a large majority of the sulfur compounds found on the samples were in the form of gaseous sulfur dioxide (SO_2), and not in the sulfate particulate phase, suggesting that secondary sulfate was only a minor contributor to high PM–10 concentrations in the study. For nitrogen compounds, a large majority of the compounds found in the samples were also gaseous, suggesting that nitrate was also a minor contributor to high PM–10 concentrations in the study. The concentrations of the particulate phase sulfates and nitrates constituted a small fraction of the 24-hour PM–10 standard, ranging from about 3–12 ug/m³, or 2–8 % of the 24-hour PM–10 standard (150 ug/m³). It is also important to note that the annular denuder sampling was conducted during a time of the year (December) in which adverse meteorological conditions would be expected in the El Paso/Juarez air basin. Further, based on review of the PM–10 monitoring data from both El Paso and Juarez, and of the trajectory analyses, it is very likely that emissions from Mexico contribute to the PM–10 precursor concentrations in El Paso. Thus, the concentrations referenced above are conservative estimates. Based upon the preceding study, PM–10 precursors do not appear to significantly contribute to high PM–10 concentrations in El Paso, Texas, and the EPA is proposing to grant the El Paso area the exclusion from control requirements as authorized under section 189(e) of the CAA.

9. Enforceability Issues

All required measures and other elements in the SIP must be enforceable by the State and the EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). The criteria include, for example: Ensuring that the rules contained in the SIP are explicit in their applicability to the regulated sources; ensuring that compliance dates are clearly specified; ensuring that compliance periods and test methods are clearly noted; ensuring that adequate recordkeeping is required; and ensuring that any exemptions or variances are clear in their applicability and in how they are triggered. In addition to enforceable requirements, nonattainment area plan provisions must contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

[4] Annular denuder sampling is one of many possible reasonable techniques that could be employed for assessing precursor contribution. EPA intends to assess the reasonableness of such techniques on a case by case basis (see 57 FR 13539).

The State of Texas has an enforcement program that will ensure that certain control measures contained in the El Paso PM–10 SIP (i.e., Regulation I and the City Ordinance) are adequately enforced. The State has also entered into an MOU with the City of El Paso which serves to define the division of responsibility regarding, and the commitments to carry out, the provisions of Regulation I and Chapter 9.38 of the City Code pertaining to control measures for fugitive dust and residential wood combustion devices. RACT for stationary point sources is enforced by the TACB through federally enforceable permit conditions.

10. Summary

The Governor of Texas submitted the moderate PM–10 SIP for El Paso to the EPA on November 15, 1991. The El Paso SIP analyzed PM–10 emissions from point and area sources around the El Paso region. Using a Gaussian Plume Multiple Source Air Quality Algorithm (RAM), the State demonstrated that the El Paso nonattainment area would attain the PM–10 NAAQS both currently and by December 31, 1994, using current and projected United States (El Paso County) emissions alone. The State also conducted a comprehensive RACM/RACT analysis, including a RACT analysis for El Paso stationary point sources. The State has adequately addressed RACT for El Paso stationary sources through federally enforceable permits. Further, the State has adopted certain provisions found in Regulation I which incorporate control measures for fugitive dust, prescribed burning, and residential wood combustion devices that go beyond RACM and that the EPA is proposing to approve as fulfilling the requirement for contingency measures. The State has also entered into an MOU with the City of El Paso which serves to define the division of responsibility regarding, and the commitments to carry out, the provisions of the TACB Regulation I and Chapter 9.38 of the City Code pertaining to control measures for fugitive dust and residential wood combustion devices.

Proposed Action

The EPA is proposing to approve the El Paso, Texas, moderate PM–10 SIP. The EPA is also proposing to approve the El Paso, Texas, moderate PM–10 SIP as meeting the requirements of section 179B of the CAA. All required SIP items have been adequately addressed as discussed in this **Federal Register** action, and the State of Texas has conducted a comprehensive RACM/RACT analysis.

Based on the above evaluation, the EPA proposes to approve the El Paso, Texas, moderate PM–10 nonattainment SIP. Additional requirements, such as the nonattainment new source review program for the area, will be addressed independent of this action.

Request for Public Comments

The EPA requests comments on all aspects of this proposal including the EPA's proposal to approve the PM–10 SIP for El Paso, Texas, as meeting the requirements of section 179B of the CAA regarding implementation plans and revisions for international border areas. As indicated at the outset of this action, the EPA will consider any comments received by 30 days from date of publication.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Executive Order 12291

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

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 20, 1993.

W.B. Hathaway,

Acting Regional Administrator (6A).

[FR Doc. 93–24814 Filed 10–7–93; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

Reef Fish Fishery of the Gulf of Mexico; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public hearing.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public hearing to receive public testimony on a proposed regulatory amendment for an experimental one-year move of the reef fish longline/buoy gear boundary line from 20 fathoms to 15 fathoms in two regions off Florida.

DATES: Written comments on the proposed actions must be received by November 12, 1993. The hearing is scheduled for Wednesday, October 27, 1993, from 7 p.m. to 10 p.m.

ADDRESSES: Comments should be addressed to Steven M. Atran, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609. The hearing will be held at the Madeira Beach City Hall Auditorium, 300 Municipal Drive, Madeira Beach. Florida (813–391–9951).

FOR FURTHER INFORMATION CONTACT: Steven M. Atran, 813–228–2815.

SUPPLEMENTARY INFORMATION: This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Beverly Badillo at the above Council address by October 20, 1993.

Dated: October 4, 1993.

Richard H. Schaefer,

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

[FR Doc. 93–24753 Filed 10–5–93; 9:22 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 194
Friday, October 8, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Request for Applicants to Provide Official Services in Hillsdale and Branch Counties, MI

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: Schneider Inspection Service, Inc. (Schneider), has asked that their designation be amended to remove Hillsdale and Branch Counties from their assigned geographic area. FGIS is asking persons interested in providing official services in these counties to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before November 9, 1993.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Schneider has asked to relinquish part of their assigned geographic area, Hillsdale and Branch Counties, in the State of Michigan. Schneider has not provided service to these two counties; however, Michigan Grain Inspection Services, Inc., has provided service. FGIS is asking persons interested in providing official services in these counties to submit an application for designation. The applicant selected for designation in Hillsdale and Branch Counties will be assigned by FGIS' Administrator according to Section 7(f)(1) of the Act.

Interested persons are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the geographic area specified above is for the period beginning April 1, 1994, and not to exceed 3 years as prescribed in Section 7(g)(1) of the Act. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: October 1, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–24760 Filed 10–7–93; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 920812–3170]

RIN 0693–AB10

Approval of Federal Information Processing Standards Publication 158–1, the User Interface Component of the Applications Portability Profile

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a revised standard, which will be published as FIPS Publication 158–1, The User Interface Component of the Applications Portability Profile.

SUMMARY: On October 20, 1992, notice was published in the **Federal Register** (57 FR 47839) that a revision of Federal Information Processing Standard 158, The User Interface Component of the Applications Portability Profile, was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve this revised standard as a Federal Information Processing Standards Publication, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This revised standard is effective May 2, 1994.

ADDRESSES: Interested parties may purchase copies of this revised standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Bagwill, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–3282, fax (301) 948–1784.

Dated: October 4, 1993.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication 158–1—Announcing the Standard for the User Interface Component of the Applications Portability Profile

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

Name of Standard. The User Interface Component of the Applications Portability Profile (FIPS Pub 158–1).

Category of Standard. Software Standard, Application Program Interface.

Explanation. This publication announces the adoption of the X Protocol, Xlib Interface, Xt Intrinsics and Bitmap Distribution Format specifications of the X Window System, Version 11, Release 5 (X Window System is a trademark of the Massachusetts Institute of Technology (MIT)) as a Federal Information Processing Standard. This FIPS is identical to FIPS 158, except that the specification is updated from Release 3 to Release 5 of the X Window System, Version 11. This standard is for use by computing professionals involved in system and application software development and implementation. This standard is part of a series of specifications needed for application portability. This standard covers the Data Stream Encoding, Data Stream Interface, and Subroutine Foundation layers of the reference model. It is the intention of NIST to provide standards for other layers of the reference model as consensus develops within industry. This standard addresses the user interface functional area of the Applications Portability Profile (NIST SP 500–187).

Approving Authority. Secretary of Commerce.

Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory.

Cross Index. The X Window System, Version 11, Release 5.

Related Documents.

a. Federal Information Resources Management Regulations subpart 201–20.303, Standards, and subpart 201–39.1002, Federal Standards.

b. FIPS 160, Programming Language C.

c. FIPS 151–2, POSIX: Portable Operating System Interface (POSIX)—System Application Program Interface [C Language]

d. Applications Portability Profile (NIST SP 500–187).

Objectives. This FIPS permits Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of this FIPS are:

a. To promote portability of computer application programs at the source code level.

b. To simplify computer program documentation by the use of a standard portable system interface design.

c. To reduce staff hours in porting computer programs to different vendor systems and architectures.

d. To increase portability of acquired skills, resulting in reduced personnel training costs.

e. To maximize the return on investment in generating or purchasing computer programs by insuring operating system compatibility.

f. To provide ease of use in computer systems through network-based bit-mapped graphic user interfaces with a consistent appearance. Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard specifications.

Applicability. This FIPS shall be used for network-based bit-mapped graphic systems that are either developed or acquired for government use where distributed/networked bit-mapped graphic interfaces to multi-user computer systems are required.

Specifications. The specifications for this FIPS are the following documents from the X Window System, Version 11, Release 5. These specifications define a C language source code level interface to a network-based bit-mapped graphic system. The computer program source code contained in Version 11, Release 5 is not part of the specifications for this FIPS. The specifications for this FIPS are the following documents from X Version 11, Release 5:

a. X Window System Protocol, X Version 11,

b. Xlib—C Language X Interface,

c. X Toolkit Intrinsics—C Language Interface,

d. Bitmap Distribution Format 2.1.

Implementation. This revised standard is effective May 2, 1994.

a. *Acquisition of a Conforming System.* Organizations developing network-based bit-mapped graphic system applications which are to be acquired for Federal use after May 2, 1994, and which have applications portability as a requirement shall consider the use of this FIPS. Conformance to this FIPS shall be considered whether the network-based bit-mapped graphic system applications are:

1. Developed internally,

2. Acquired as part of an ADP system procurement,

3. Acquired by separate procurement,

4. Used under an ADP leasing arrangement, or

5. Specified for use in contracts for programming services.

b. *Interpretation of the FIPS for the User Interface Component of the Applications Portability Profile.* NIST provides for the resolution of questions regarding the FIPS specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of this FIPS should be addressed to:

Director, Computer Systems Laboratory, Attn: APP User Interface Component FIPS Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

c. *Validation of Conforming Systems.* The X Consortium is developing a validation suite for measuring conformance to the Xlib component of this standard. NIST is considering the use of the X Consortium validation suite as the basis for an NIST validation suite for measuring conformance to this standard.

Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or

classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 522(b), shall be part of the procurement documentation and retained by the agency.

Where to Obtain Copies: Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the Massachusetts Institute of Technology and Digital Equipment Corporation.) When ordering, refer to Federal Information Processing Standards Publication 158–1 (FIPSPUB158–1), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 93–24846 Filed 19–7–93; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

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

ACTION: Notice of receipt applications for incidental take permits (P250F and P507G).

Notice is hereby given that the Washington Department of Wildlife (WDW) (P250F) and the Washington Department of Fisheries (WDF) (P507G) have applied in due form for an incidental take permit to take endangered or threatened species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing listed fish and wildlife permits (50 CFR Part 217–227).

WDW and WDF each request authorization to continue current operations of their hatchery facilities in the Columbia River basin for five years.

WDW currently operates four major steelhead and eleven resident finfish hatchery complexes. One new combination steelhead and resident finfish facility (Lewis River at Merwin Dam) is currently under construction. This facility is scheduled to become operational October 1993 and will replace fish production from three of the existing facilities with one central facility. The Cowlitz Hatchery and the Lewis River Facility under construction are located on tributaries to the Columbia River downstream of Bonneville dam. The remaining three steelhead hatchery complexes (Wells, Chelan Falls, and Eastbank) are located on the mainstem Columbia River in the mid-Columbia River basin upstream of the confluence with the Snake River. Additionally, WDW cooperates with a variety of local organizations in the operation of small projects to rear anadromous steelhead and sea-run cutthroat trout.

WDF currently operates seven major salmon hatchery complexes in the Columbia River basin. Two of these facilities, Cowlitz and Lewis River, are located on tributaries to the Columbia River below Bonneville Dam. The remaining five facilities, Priest Rapids, Rocky Reach, Eastbank, Wells, and Methow, are located above the confluence of the Snake and Columbia Rivers. The Methow facility is located on a tributary to the mid-Columbia River, while the other four are located on the mainstem.

These artificial propagation projects may result in the incidental takes of listed species, from ecological and genetic interactions between hatchery-produced fish and listed fish and from hatchery operations. Impacts on juvenile fish may include competition for food and space, disease transmission, predation by hatchery fish, and increased vulnerability to predation by other predators. Hatchery-produced salmon may impact the listed species through interbreeding, which could result in a loss in genetic variability and a swamping effect in the listed population.

WDW and WDF have submitted conservation plans that specify the steps they propose to take to monitor, minimize, and mitigate impacts.

Written data or views, or requests for a public hearing on these applications should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Hwy., suite 13229, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in the application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Hwy., suite 13229, Silver Spring, MD 20910 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503–230–5400).

Dated: October 4, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–24773 Filed 10–7–93; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

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

ACTION: Issuance of a scientific research Permit; Florida Department of Environmental Protection, Florida Marine Research Institute (P553).

On August 5, 1993, notice was published (58 FR 41736) that an application had been filed by Florida Department of Environmental Protection, Florida Marine Research Institute, to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222).

Notice is hereby given that on October 4, 1993 as authorized by the provisions of the ESA, NMFS issued Permit Number 878 for the above taking subject to certain conditions set forth therein.

Issuance of this Permit, as required by the ESA, was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is/are the subject of this Permit; (3) is

consistent with the purposes and policies set forth in Section 2 of the ESA. This Permit was also issued in accordance with and is subject to parts 217–222 of title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301–713–2322); and

National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, FL 33702 (813–893–3141).

Dated: October 4, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–24774 Filed 10–7–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: November 8, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to the Procurement List for production by the nonprofit agency listed:

Commodities

Bookcase, Steel, Contemporary
7110–00–601–9821
7110–00–601–9822
7110–00–135–1997
7110–00–135–1998
Nonprofit Agency: Knox County Association for Retarded Citizens, Knoxville, Tennessee

Brush, Sanitary
7920–00–141–5450
Nonprofit Agency: Lighthouse Industries, Long Island City, New York

Service

Janitorial/Custodial,Automated Flight Service Station, Seattle, Washington
Nonprofit Agency: Seattle Mental Health Institute, Inc., Seattle, Washington

G. John Heyer,

General Counsel.

[FR Doc. 93–24793 Filed 10–7–93; 8:45 am]

BILLING CODE 6820–33–P

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 93–1–92DRD]

1992 Audio Home Recording Act Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Order establishing procedural schedule.

SUMMARY: The Copyright Royalty Tribunal is establishing a procedural schedule for the 1992 Audio Home Recording Act (AHRA) distribution proceedings.

EFFECTIVE DATE: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009, (202) 606–4400.

SUPPLEMENTARY INFORMATION: By *Notice of Declaration of Controversy*, 58 FR 17576 (1993), the Tribunal declared a controversy, effective March 31, 1993, in the 1992 AHRA distribution proceeding. Thereafter, by *Notice*, 58 FR 29811 (1993), the Tribunal requested information regarding the status of settlement negotiations. To date, it appears that, although the parties have been actively pursuing a universal settlement in each of the relevant Funds, no such settlements have been obtained.

In view of the foregoing and the Tribunal's statutory deadline of March 31, 1994 as the date of completion of the distribution proceeding, the Tribunal must establish a procedural schedule for the proceeding.

Accordingly, the Tribunal adopts the following procedural schedule:

Exchange of Direct Cases—December 1, 1993
Discovery Period—December 2–31
Discovery Motions and Evidentiary Objections Due—December 20
Responses to Motions and/or Objections Due—December 31
Tribunal Rulings on Discovery—January 7, 1994
Evidentiary Hearing Commences—January 10

Dated: October 4, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–24716 Filed 10–7–93; 8:45 am]

BILLING CODE 1410–09–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Antitrust Aspects of Defense Industry Consolidation

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Antitrust Aspects of Defense Industry Consolidation will

meet in open session on October 18, 1993 at the Pentagon, room 1E801, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Ms. Amy Jeffress at (703) 697–9247.

Dated: October 4, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–24739 Filed 10–7–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Notice was published September 17, 1993, at 58 FR 48639 that the Naval Research Advisory Committee Panel on Littoral Warfare/Amphibious Warfare will meet on October 4 and 5, 1993, at the Marine Corps Base, Camp Pendleton, California. The meeting has been changed to add a session on October 6, 1993. The additional meeting session will commence at 8 a.m. and terminate at 2 p.m. on October 6, 1993. All sessions of the meeting will be closed to the public. All other information in the previous notice remains effective. In accordance with 5 U.S.C. b(e)(2), the meeting change is publicly announced at the earliest time.

For further information concerning this meeting contact: Commander R.C. Lewis, USN, Office of Naval Research, 800 North Quincy Street, Arlington, Virginia 22217–5660, Telephone Number (703) 696–4870.

Dated: September 30, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–24915 Filed 10–6–93; 9:12 am]

BILLING CODE 3810–AE–P–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Resolution of Potential Conflict of Interest

The Defense Nuclear Facilities Safety Board (Board) identified and resolved a potential conflict of interest situation related to its contractor, Sanford Cohen and Associates, Inc. (SC&A). This notice satisfies the requirements of 10 CFR 1706.8(e). Under the Board's Organizational and Consultant Conflicts of Interests Regulations, 10 CFR part 1706 (OCI Regulations), and organizational or consultant conflict of interest (OCI) means that because of other past, present, or future planned activities or relationships, a contractor or consultant is unable, or potentially unable, to render impartial assistance or advice to the Board, or the objectivity of such offeror or contractor in performing contract work for the Board is or might be otherwise impaired, or such offeror or contractor has or would have an unfair competitive advantage. While the OCI Regulations provide that contracts shall generally not be awarded to an organization where the Board has determined that an actual or potential OCI exists and cannot be avoided, the Board may waive this requirement in certain circumstances.

As a result of a competitive solicitation, the Board found SC&A to be the best qualified to provide technical support for a project regarding the evaluation of standards implementation at Department of Energy (DOE) defense nuclear facilities. The work requires technical assistance in the assessment for compliance and verification of implementation of standards applied at DOE defense nuclear facilities.

Prior to the award of the contract, SC&A advised that while no direct OCI would result from award of the Board's contract, potential concerns might arise from certain past, present, and potential future contracts with DOE, its contractors, and other Government entities. A summary of each situation, and the Board's evaluation and conclusion regarding any OCI prior to the award of the contract to SC&A, is as follows:

Contractual Relationships Involving DOE, Its Contractors, or Subcontractors

a. Under a subcontract to a DOE prime contractor, SC&A provides systems engineering support to DOE's Office of Civilian Radioactive Waste Management for work not related to defense nuclear facilities.

b. SC&A has a subcontract to provide technical assistance to the Office of NEPA Compliance of DOE's Office of Environment, Safety and Health (EH). The technical assistance is expected to take the form of an Environmental Impact Statement (EIS) review and the development of criteria for the review of NEPA documents.

c. SC&A has a contract with Battelle Memorial Institute Pacific Northwest Laboratories, to assist in environmental assessments for DOE's Office of Environment, Safety and Health. While this Task Order Contract may include assessments of contamination at defense nuclear facilities, SC&A had not yet received tasks under this contract for work involving defense nuclear facilities or that would otherwise overlap with the Board contract.

d. SC&A informed the Board that it had submitted a proposal to a DOE national laboratory that was not involved in work falling under the Board's jurisdiction. If successful, SC&A would be awarded a Basic Ordering Agreement (BOA) to assist the national laboratory in mixed-waste assessments. Work under the BOA could include assessments of contamination at defense nuclear facilities in connection with environmental clean-up issues. Under a BOA, a contractor only has the right to compete for specific tasks as they are issued.

After carefully examining each of these relationships, the Board concluded that there was no actual direct conflict of interest between the arrangements described in paragraphs (a)–(d) and the work SC&A was expected to perform under the Board contract. Further, the total value of this work was very small in relation to SC&A's annual revenues and did not represent a substantial financial and business dependence on DOE-related efforts. Moreover, in the event of a potential conflict with work under the Board's contract, SC&A represented that it has the right to refuse work under these arrangements. Because the contracts described in paragraphs (b)–(d) above contain broad scopes of work that could in the future involve areas of interest to the Board at defense nuclear facilities, it was difficult to predict precisely what tasks would be assigned to SC&A under those contracts and whether actual or potential OCIs would arise as a result. In order to avoid or mitigate any potential conflicts of interest arising in the future, the Board decided that it would generally require SC&A to refuse tasks under these contracts where (a) the scope of the work proposed under those agreements may significantly overlap with work SC&A is performing for the Board, or (b) the work to be performed by SC&A might otherwise give rise to a conflict of interest with work under the Board contract. The Board will ordinarily not assign tasks to SC&A where the Board's task would result in SC&A's evaluating services it has provided or would provide directly or indirectly for DOE or a DOE national laboratory, where the task involves issues within the scope of the work previously performed under a DOE effort. Under the OCI Regulations and the Board contract with SC&A,

SC&A must report to the Board all new and proposed work that may give rise to a conflict of interest, regardless of source. SC&A also agreed to refuse work from the DOE or its contractors that may give rise to a conflict of interest with respect to the work for the Board.

With respect to past activities, in 1990 SC&A provided technical consulting services to EG&G Idaho, Inc. under a DOE prime contract for the preparation of a requirements document for the specification of standards for the operation of mixed-waste laboratories. This project was very small and related to environmental measurements. SC&A also provide the services of three associates in 1990 to assist Westinghouse Savannah River Company, under a DOE contract, in the safety evaluation of K-Reactor for approximately three months. The Board concluded that any conflict that might be created as a result of the small amount of work previously performed under the 1990 contracts could be avoided by not tasking SC&A with evaluating products or services it previously provided to DOE or its contractors under those contracts.

Based on the foregoing factors, the Board determined that the existence of SC&A's current, previous, and proposed contracts with DOE contractors (including a DOE national laboratory) should not prevent the Board from awarding the contract for evaluation of standards implementation to SC&A. So long as the Board carefully monitors the work SC&A performs or proposes to do for others, it should be possible to prevent actual conflicts from developing, or to issue waivers where appropriate.

Contractual Arrangements Involving Associates of SC&A and DOE or Its Contractors

SC&A's Project Manager for the Board contract is under contract with the Office of Nuclear Energy Self-Assessment of the DOE Office of Nuclear Energy to participate in safety or environmental reviews of selected DOE facilities or activities. This individual's work had been limited, and DOE did not anticipate much, if any, activity relating to defense nuclear facilities under this contract. He does have the ability to refuse work under this arrangement and agreed to do so if an OCI would otherwise arise. A second individual proposed for the Board contract is listed on a DOE national laboratory registry of technical talent, but had not received any assignments from the laboratory. A third individual proposed for the Board contract conducts research unrelated to areas under the Board's jurisdiction as a summer faculty fellow at another DOE national laboratory, through an ongoing academic year grant to a university which employs this person. Neither the second nor the third individual was proposed as key personnel for the Board contract, and each of them has the right to decline further assignments from the laboratories.

The Board did not find an actual conflict of interest with the Board contract in the arrangements of any of these individuals. The amount of work involved in each of the cases is not significant enough to make the individual dependent on DOE or DOE contractors for his or her livelihood. Under the OCI Regulations, SC&A may not, and it must ensure that its employees, subcontractors, and consultants under the Board contract do not, enter into contractual arrangements with others that may involve an actual or potential OCI, and SC&A must promptly inform the Board in writing of any such proposed arrangement. The Board will therefore be informed in advance of any work for DOE or its contractors proposed to be entered into by SC&A, any of its associates or its subcontractors. If the Board determines that such work presents an actual or potential conflict of interest with the Board contract, the Board will inform SC&A that SC&A or the associate in question must refuse that work. Alternatively, the Board may choose not to authorize work for SC&A in areas where contractual arrangements of its associates present actual or potential conflicts of interest.

Contractual Arrangements Involving SC&A and Government Agencies Other than DOE

SC&A is performing under a contract with the U.S. Environmental Protection Agency (EPA) in an area that may overlap with work it will be asked to perform under the Board contract. Under the contract, SC&A furnishes services to support EPA's radiological waste, federal guidance and radioactive emergency response programs, and efforts directed to protecting human health. These programs encompass radiation sources and radionuclide contamination involving, among other things, DOE facilities. The technical areas in which SC&A might be rendering assistance under this contract may overlap with services the Board will request under its contract. The Board may request SC&A to perform a study of a matter at a defense nuclear facility that SC&A has already analyzed under the EPA contract. SC&A also has a contract with the Centers for Disease Control and Prevention (CDC), under which it is collecting data in support of a historical radiation dose reconstruction at the Idaho National Engineering Laboratory on CDC's behalf.

Although the work under both the EPA and the CDC contracts is for agencies other than DOE, a conflict of interest under the OCI Regulations could potentially arise if a task the Board wishes to have performed under its contract coincides with technical work already performed or in progress under the EPA or CDC contracts. The basis for the potential conflict would be that SC&A's previous work on an issue might impair its ability to be completely impartial or objective in performing work for the Board. In other words, insofar as SC&A had already reached certain conclusions and given certain advice in its work for the other entities, it might not be studying the matter for the Board from a completely neutral perspective.

The Board considered these situations and concluded that the EPA and CDC contracts to which SC&A is a party did not constitute impediments to awarding the Board contract to SC&A. First, even where work may overlap, the Board believed it more likely that the Board will benefit from SC&A's experience in performing similar work for EPA and CDC than it will suffer from lack of objectivity on the part of SC&A. The interests of EPA and CDC in a particular issue are more likely to parallel the Board's concerns than to conflict with them. Further, as discussed above, SC&A must disclose all new work potentially involving defense nuclear facilities. The Board will scrutinize SC&A's ongoing and completed work for EPA and CDC when assigning tasks under the Board contract so that conflict issues can be handled on a task-by-task basis. If and when a question of potential conflict of interest does arise, the Board will determine at that time how to proceed, including possible means of avoidance or mitigation, and whether a waiver is justified in the particular situation. Even in those situations where there are no actual or potential conflicts of interest, but the Board determines that overlapping assignments are undesirable in a particular situation, it can choose not to assign a particular task to SC&A. Consequently, the Board concluded that the EPA and CDC arrangements should not prevent the contract award to SC&A and no waiver was required prior to award, because of the unlikelihood that an OCI conflict of interest will actually develop.

Conclusion

In conclusion, the Board found no actual conflicts of interest that precluded the award of the contract to SC&A. The Board determined that it should be possible to avoid or substantially mitigate future actual conflicts of interest of SC&A with the Board contract through diligent monitoring of SC&A's actual and proposed work for others and enforcement of the "Work for Others" prohibitions under the OCI Regulations. Therefore, a waiver of the potential conflicts of interest (and the pertinent provisions of the OCI Regulations) and the award of the contract to SC&A was determined to be in the best interests of the Untied States Government because: (a) SC&A possesses outstanding expertise which will be of great value to the Board in its review of standards implementation; (b) the existence of SC&A's contractual arrangements with DOE contractors should not in themselves have an adverse affect on SC&A's ability to provide unbiased work products; (c) the Board can avoid or substantially mitigate actual conflicts of interest by monitoring work for others by SC&A and its associates and tasking work to SC&A accordingly; and (d) many of the other offerors responding to the Board's solicitation also had actual or potential conflicts of interest, so that the conduct of a new competitive procurement would by no means have assured avoidance of similar issues but would clearly have delayed further the start of the important technical work. Accordingly, pursuant to the applicable provisions of 10 CFR part 1706, the Chairman of the Board granted such a waiver.

Dated: October 4, 1993.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 93–24781 Filed 1–7–93; 8:45 am]

BILLING CODE 6820–KD–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Chandeleur Pipe Line Co.; Request Under Blanket Authorization

[Docket No. CP93–749–000]

October 4, 1993.

Take notice that on September 27, 1993, Chandeleur Pipe Line Company (Chandeleur), P.O. Box 740339, New Orleans, Louisiana 70174–0339, filed in Docket No. CP93–749–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point under Chandeleur's blanket certificate issued in Docket No. CP89–929–000 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.

Chandeleur proposes to construct a 12-inch tap and regulating station as a second delivery point to be included in the transportation service agreements covering service to International Paper Company (IP) under Chandeleur's Rate Schedules FT and IT. Chandeleur states that the proposed delivery point would be located on Chandeleur's Pascagoula Meter Station site in Jackson County, Mississippi. Chandeleur further states that the peak and average day deliveries at the point would be 15,000 MMBtu per day. Chandeleur advises that the additional delivery point would have no effect on Chandeleur's peak or annual deliveries. Chandeleur estimates that the cost of the facilities would be $75,000 which would be reimbursed by IP.

Any person or the 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. 93–24772 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–21–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 4, 1993.

Take notice that on September 29, 1993, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Tariff, First Revised Volume No. 1, the following proposed changes to be effective October 1, 1993;

Forty-third Revised Sheet No. 26

Thirty-eighth Revised Sheet No. 26.1

Columbia states that the aforementioned tariff sheets are being filed to reduce the Gas Inventory Charge (GIC) pursuant to § 26.6 of the General Terms and Conditions of Columbia's Tariff from $0.3702 per Dth to $0.3644 per Dth.

Columbia states that copies of the filing were served upon the Columbia's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24764 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–1–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 4, 1993.

Take notice that on October 1, 1993, Columbia Gas Transmission Corporation (Columbia) filed the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective November 1, 1993:

First Revised Sheet No. 262
First Revised Sheet No. 477
Original Sheet No. 480
Alternate Original Sheet No. 480
Original Sheet No. 481

Columbia states that this filing is being made in compliance with the Commission's Order on Compliance with Restructuring Rule issued July 14, 1993 in Docket No. RS92–5–000 to file an alternative recovery mechanism for the Weighted Average Cost of Gas (WACOG) surcharge previously approved by the Commission in Docket No. RP93–161. Columbia states that it is proposing an Unrecovered WACOG Surcharge which will recover on a commodity basis amounts which it would have been permitted to recover under the WACOG surcharge authorized

in Docket RP93–161. The Unrecovered WACOG Surcharge would apply to Columbia's restructured services and be billed to Columbia's converting sales customers.

Columbia states that a copy of the filing is being served on all parties to this proceeding, jurisdictional customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24770 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–205–000]

Koch Gateway Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 4, 1993.

Take notice that on September 30, 1993, Koch Gateway Pipeline Company (KGPC) tendered for filing proposed changes to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 50, to establish market-based storage rates on KGPC's system effective November 1, 1993. KGPC anticipates an effective date of April 1, 1994 for the applicable tariff sheets assuming the Commission exercises its authority under Section 4(e) of the NGA and suspends the effective date for the full five month statutory period. The instant filing is a limited Section 4(e) filing.

KGPC states this filing is made to establish market-based storage rates for rate schedules FSS and ISS. KGPC has not changed the costs allocated to either service from the levels approved in Docket No. RS92–26. Since authority to charge market-based rates is the only change KGPC is making to Rate Schedules FSS and ISS, this filing was made as a limited Section 4(e) filing.

KGPC is filing tariff sheets in Original Volume No. 50 as part of its tariff pending in Docket No. RS92–26. KGPC states that when KGPC receives final approval of its Docket No. RS92–26 filing, KGPC will file all of the pro forma tariff sheets in Original Volume No. 50 as Fifth Revised Volume No. 1. At that time, KGPC will file the tariff sheets proposed in this filing as part of Fifth Revised Volume No. 1. Alternatively, KGPC is filing the tariff sheets for Rate Schedules FSS and ISS in KGPC's currently effective tariff, Third Revised Volume No. 1, as part of this filing. KGPC does not intend for the instant sheets to become effective in Third Revised Volume No. 1 and is only filing those sheets since Fifth Revised Volume No. 1, which will implement Order No. 636 on KGPC's system, has not yet been filed pending the Commission's second order in Docket No. RS92–26.

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 St., NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All such petitions or protests must be filed on or before October 12, 1993. Protests will not serve to make protestants parties to the proceeding. Any person wishing to beome a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24768 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–89–000]

MIGC, Inc.; Informal Settlement Conference

October 4, 1993.

Take notice that on informal settlement conference will be convened in this proceeding on Wednesday, October 13, 1993 (and may be extended until Thursday, October 14, 1993). The conference will begin at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., room 6200, Washington, DC. The purpose of the conference is to explore the possibility of settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Robert L. Woods at (202) 208–1087 or Russell B. Mamone at (202) 208–0744.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24771 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–745–000]

Natural Gas Pipeline Company of America; Application

October 4, 1993.

Take notice that on September 28, 1993, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP93–745–000 an application pursuant to section 7(c) of the Natural Gas Act, requesting authorization to construct and operate additional facilities, and/or to replace existing facilities at three of Natural's existing storage fields, in order to increase Natural's maximum daily deliverability by an additional 250 MMcf per day, all as more fully set forth in the application on file with the Commission and open to public inspection.

More specifically, Natural states that it is proposing to construct and operate 16 injection/withdrawal wells, and associated piping and meters. Natural further states that it is proposing to replace one compress, and two segments of storage field lines. Natural states that the proposed construction, operation and/or replacement of facilities at two of its storage fields in Iowa, and one of its storage fields in Texas will increase the maximum daily deliverability from its storage operations.

Natural estimates that the construction cost of the proposed jurisdictional facilities to be approximately $14,650,000. Natural further states that it estimates the non-jurisdictional facilities for this project to cost an additional $6,137,000. Natural averred that the cost of the facilities required will be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 25, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in

determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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 Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24767 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–460–012]

Pacific Gas Transmission Co.; Proposed Change in FERC Gas Tariff

October 4, 1993.

Take notice that on September 30, 1993, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance proposed tariff sheets to be a part of its FERC Gas Tariff, Second Revised Volume No. 1. PGT states that the purpose of this filing is to implement new firm transportation service under Rate Schedule T–3.

PCT states that a copy of this filing is being served on PGT's jurisdictional customers, affected state regulatory commissions and all parties on the official service list as compiled by the Commission.

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 § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 93–24769 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EL93–62–000, and QF92–54–005]

Polk Power Partners, L.P.; Filing

October 4, 1993.

On September 21, 1993, Polk Power Partners, L.P. (Polk) filed a request for a limited waiver of the Commission's operating and efficiency standards applicable to natural gas-fired, topping-cycle qualifying cogeneration facilities under section 292.205 of the Commission's regulations. 18 CFR 292.205. Polk states that the Commission issued an order certifying the Mulberry Cogeneration Facility (Facility), a cogeneration facility to be located in Polk County, Florida, as a qualifying cogeneration facility. *Polk Power Partners, L.P.*, 61 FERC ¶ 61,030, *reh'g denied.* 61 FERC ¶ 61,300 (1992), *appeal pending sub nom. Liquid Carbonic Corporation* v. *FERC*, File No. 93–1095 (D.C. Cir.).

As certified, the Facility's useful thermal energy output was to be used to produce liquid carbon dioxide in a facility to be constructed and owned by Polk. The Polk states that because of the pendency of the appeal in the Court of Appeal for the District of Columbia Circuit, Polk has been forced to consider an alternative arrangement pursuant to which the useful thermal energy output the Facility would be used for the production of fuel-grade ethanol in a plant to be constructed by Polk and leased to an unaffiliated third party. Polk states that due to the change in the planned thermal host, the thermal host will not be complete until three months after the Facility is expected to begin producing electricity in July 1994. Polk states that because no useful thermal output would be produced for that three month period, the Facility would not satisfy the Commission's operating and efficiency standards for calendar year 1994. Polk requests a waiver to permit it to begin operation by June 30, 1994.

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 (1992)). All such motions or protests should be filed on or before October 29, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24765 Filed 10–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–204–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 4, 1993.

Take notice that on September 30, 1993, Texas Eastern Transmission Corporation (Texas Eastern), filed a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder to recover Account No. 858 costs (Stranded Costs) incurred as a consequence of Texas Eastern's implementation of Order No. 636.

Texas Eastern states that it is filing to recover Stranded Costs pursuant to section 15.2(D) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, as modified in compliance with the Commission's September 17, 1993 order in Docket No. RS92–11, *et al.*

Texas Eastern states that by this filing it seeks to recover known and measurable Stranded Costs totalling $3,642,520.68 incurred from the date of implementation of Order No. 636 on Texas Eastern's system, June 1, 1993, through August 31, 1993. Interest of $54,429.73 at the current FERC annual rate of 6.00% is added for carrying charges from the date of payment of the costs to the projected date of payment by the customers.

The proposed effective date of the filing is October 31, 1993.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-24763 Filed 10-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-126-000, et al. and RP92-235-000, et al.]

United Gas Pipe Line; Technical Conference

October 4, 1993.

On March 29, 1993, the Commission issued an order approving United Gas Pipe Line's proposed settlement in Docket No. RP92-235-000, *et al.* The Settlement provides for the continuation of United's experimental Market Responsive Storage and Delivery Service (MRSDS) through March 31, 1994. The settlement also provides that United meet with staff and other interested parties to evaluate the service.

Take notice that a technical conference will be held on Wednesday, October 20, 1993, at 10 a.m. to discuss United's MRSDS. The conference will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93-24766 Filed 10-7-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council (NPC).

Date and Time: Wednesday, October 20, 1993 at 9 a.m.

Place: The Madison Hotel, Dolley Madison Ballroom, Fifteenth and M Streets, NW., Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-5), Washington, DC 20585. Telephone: 202/586-3867.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda

—Call to order and introductory remarks by Ray L. Hunt, Chairman of the NPC.
—Remarks by the Honorable Hazel R. O'Leary, Secretary of Energy.
—Discussion of NPC Refining Study.
—Administrative matters.
—Discussion of any other business properly brought before the NPC.
—Public comment (10-minute rule).
—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. This notice is being published less than 15 days in advance of the meeting due to certain programmatic issues which had to be resolved prior to publication in the **Federal Register**.

Transcripts: Available for public review and copying at the Public Reading Room, room IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 4, 1993.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 93-24819 Filed 10-7-93; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 93-66-NG]

Nortech Energy Corp.; Order Granting Blanket Authorization to Import Natural Gas and Export Natural Gas From and to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Nortech Energy Corp. blanket authorization to import up to 40 Bcf of natural gas and export up to 40 Bcf of natural gas from and to Mexico over a two-year term beginning on the date of the first import or export delivery.

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, September 30, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-24818 Filed 10-7-93; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of September 3 through September 10, 1993

During the Week of September 3 through September 10, 1993, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 1, 1993

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 3 through September 10, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 9, 1993	Westport Energy Corporation and Westport Petroleum, Washington, DC.	LEF–0113	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, part 205, subpart V, in connection with the July 1986, confirmation of the Second Amended Plan of Reorganization by Westport Energy Corporation and Westport Petroleum Corporation.
Sept. 10, 1993	James L. Schwab, Spokane, WA	LFA–0320	Appeal of an Information Request Denial. If granted: The August 24, 1993 Freedom of Information Request Denial issued by the Office of Inspector General would be rescinded, and James L. Schwab would receive access to copies of all documents in the control or possession of the Nevada Field Office regarding work done concerning him by a criminal investigator in 1989.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
9/3/93 thru 9/10/93	Atlantic Richfield refund applications received	RF304–14482 thru RF304–14516
9/7/93	Frantic Auto Repair	RF265–2887
9/7/93	G & G Texaco	RF321–19878
9/7/93	Western Resources, Inc	RF321–19879

[FR Doc. 93–24817 Filed 10–7–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4704–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 20, 1993 Through September 24, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

DRAFT EISs

ERP No. D–BLM–K65148–NV Rating EO2, Bedell Flat Water and Natural Gas Pipelines Crossing Project, Right-of-Way Grants and COE Section 404 Permit, Washoe County, NV.

Summary: EPA expressed environmental objections because of potential adverse impacts to wetlands and other waters of the United States, air quality and biological resources. EPA requested additional information on mitigation for impacts to wetlands and biological resources, project purpose and need, air quality impacts, and groundwater contamination.

ERP No. D–FHW–C40131–NY Rating EC2, Long Island Expressway (I–495)/ Seaford—Oyster Bay Expressway (NY–135) Interchange Project, Improvements between Exit 43 South Oyster Bay Road to Exit 46 Sunnyside Boulevard, Funding and NPDES Permit, Town of Oyster Bay, Nassau County, NY.

Summary: EPA expressed environmental concerns about the project because of potential air quality impacts. EPA requested that the final EIS address this issue. Specifically, it needs to be demonstrated that: the carbon monoxide (CO) and mobile source emissions predictions provided are at least as conservative as those predicted by the use of the latest EPS approved models; the project will not cause or contribute to a violation of CO standards; and the project complies with New York State's congestion management system. EPA requested additional air quality intersection modeling and documentation that the project complies with New York State's congestion management system.

ERP No. D–HUD–K80032–CA Rating EC2, Martin Luther King, Jr. Plaza Development on the former Marritt College and University High School Site, Funding and Implementation, City of Oakland, Alameda County, CA.

Summary: EPA expressed environmental concerns due to the potential existance of hazardous waste and toxic substances. EPA requested additional information on these issues and discussion of pollution prevention and energy conservation.

Final EISs

ERP No. F–BLM–K67016–NV Cortez Gold Mines Expansion Project, Construction and Operation, Mining Plan of Operations Approval and Right-of-Way Permits, Special-Use Permit, NPDES and COE Section 404 Permits Issuance, Crescent Valley, south of Battle Mountain District, Lander and Eureka Counties, NV.

Summary: EPA had no objections to the preferred alternative. ERP No. FS–NOA–C64003–00, Shallow-Water Reef Fish Fishery Management Plan, Amendment 2, Updated Information, Puerto Rico and U.S. Virgin Islands.

Summary: EPA believed that the implementation of Amendment 2 of the Shallow-Water Reef Fish Fishery Management Plan will not result in any significant adverse environmental impacts. Accordingly, we have no objection to the Plan's implementation.

Dated: October 5, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–24824 Filed 10–7–93; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4704–3]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmenial Impact Statements Filed September 27, 1993 Through October 01, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930338, Draft EIS, AFS, CA, Shasta-Trinity National Forests Land and Resource Management Plan, Implementation, Humboldt, Modoc, Shasta, and Siskiyou, Tehama and Trinity Counties, CA, Due: December 30, 1993, Contact: Steve Fitch (916) 246–5222.

EIS No. 930339, Final EIS, AFS, WA, ID, OR, CA, Pacific Yew (Taxus brevifolia) Harvesting Program, Implementation, WA, OR, ID and CA, Due: November 08, 1993, Contact: Sally Campbell (503) 326–7755.

EIS No. 930340, Draft EIS, AFS, CA, Six Rivers National Forest Land and Resource Management Plan, Implementation, Humboldt, Trinity, Del Norte and Siskiyou Counties, CA, Due: January 06, 1994, Contact: Laura Chapman (707) 441–3537.

EIS No. 930341, Draft EIS, AFS, CA, Mendocine National Forest Land and Resource Management Plan, Implementation, Colusa, Glenn, Lake, Mendocino, Tehama and Trinity Counties, CA, Due: January 06, 1994, Contact: Daniel K. Chisholm (916) 934–3316.

EIS No. 930342, Draft EIS, AFS, AK, Polk Inlet Project, Long-Term Timber Sale Contract, Implementation, Tongass National Forest, Prince of Wales Island, AK, Due: November 22, 1993, Contact: Dave Arrasmith (907) 225–3101.

EIS No. 930343, Draft EIS, FAA, TX, New Austin Airport at Bergstrom Air Force Base (AFB) 1993 Master Plan, Approval, Funding, Property Acquisition and Construction, City of Austin, Travis County, TX, Due: November 30, 1993, Contact: Bill Perkins (817) 624–5609.

EIS No. 930344, Draft EIS, BLM, CO, Royal Gorge Resource Management Plan, Implementation, Canon City District, several Counties, CO, Due: January 10, 1994, Contact: Dave Taliaferro (719) 275–0631.

EIS No. 930345, Draft Supplement, AFS, MT, Beaver-Dry Timber Sales, Timber Harvest and Road Construction, Updated Information, Implementation, Helena National Forest, Lincoln Ranger District, Lewis & Clark and Powell Counties, MT, Due: November 22, 1993, Contact: Terry Eccles (406) 362–4265.

EIS No. 930346, Draft Supplement, VAD, IL, Northeastern Illinois Area National Cemetery Development, Construction and Operation, Updated Information Concerning New Site Selection, Joliet, Grant Park or Cissna Park, Possible COE Section 404 Permit, Kankanka, Iroquois or Will County, IL , Due: November 22, 1993, Contact: Robert J. Frazier, Jr. (202) 233–7085.

EIS No. 930347, Draft EIS, AFS, CA, OR, Klamath National Forest Land and Resource Management Plan, Implementation, Siskyou Co., CA and Jackson Co., OR, Due: November 22, 1993, Contact: Barbara Holder (916) 842–6131.

Amended Notices

EIS No. 930285, Draft EIS, FHW, NB, South Locust Street (also known as Old Highway 281) Transportation Improvements, I–80 to the Grand Island and north of US 34, Funding and COE Section 404 Permit, Hall County, NB, Due: November 22, 1993, Contact: Phillip E. Barnes (402) 437–5521.

Published FR 08–20–93—Review period extended due to the distribution of errata sheets concerning additional mitigation measures.

Dated: October 5, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–24825 Filed 10–7–93; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4787–5]

South Dakota; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region VIII).

ACTION: Notice of final determination of full program adequacy for South Dakota's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill Criteria will apply to all permitted and unpermitted MSWLFs.

South Dakota applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed South Dakota's application and proposed a determination that South Dakota's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received, EPA is today issuing a final determination that South Dakota's program is adequate.

EFFECTIVE DATE: The determination of adequacy for South Dakota shall be effective on October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Brian Rimar, Mail Code 8HWM-WM, Waste Management Branch, U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone (303) 293–1673.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the

requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF Criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

On September 27, 1993, the EPA Administrator signed the final rule extending the effective date of the landfill Criteria for certain classifications of landfills (proposed rule at 58 FR 40568, July 28, 1993). Thus, for certain small landfills, the Federal Criteria will not be effective until April 9, 1994, instead of October 9, 1993. The final ruling on the effective date extension is scheduled for publication in the **Federal Register** within a week after the signature date.

B. State of South Dakota

On April 29, 1993, South Dakota submitted an application for adequacy determination for the State's municipal solid waste landfill permit program. On July 20, 1993, EPA published a tentative determination of adequacy for all portions of South Dakota's program. Further background on the tentative determination of adequacy appears at 58 FR 38759 (July 20, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of the public hearing on the application. EPA and the State of South Dakota held a public hearing at 1 p.m. on September 14, 1993, in Pierre, South Dakota.

During its September 16, 1993, meeting, the South Dakota Board of Minerals and Environment approved State rule changes, effective October 18, 1993, to bring South Dakota's ground-water monitoring program into full Federal compliance.

EPA has reviewed South Dakota's application and has determined that all portions of the State's MSWLF permit program will ensure compliance with the revised Federal Criteria. In its application, South Dakota demonstrated that the State's permit program adequately meets the location restrictions, operating criteria, design criteria, ground-water monitoring and corrective action requirements, closure and post-closure care requirements, and financial assurance criteria in the revised Federal Criteria. In addition, the State of South Dakota also demonstrated that its MSWLF permit program contains specific provisions for public participation, compliance monitoring, and enforcement.

C. Public Comment

The EPA received the following public comments on the tentative determination of adequacy for South Dakota's MSWLF permit program.

Ten commenters supported EPA approval of the State of South Dakota application, expressing confidence in the South Dakota Department of Environment and Natural Resources and their municipal solid waste program.

Eleven commenters were opposed to State jurisdiction over the municipal solid waste landfill program on fee lands located within exterior boundaries of Indian Reservations. Eight commenters expressed support for State jurisdiction on fee lands located within exterior boundaries of Indian Reservations. EPA has responded to these comments in the section below entitled "Decision."

One commenter requested more time to comply with 40 CFR part 258 regulations. This comment is addressed in the section above entitled "Supplementary Information."

One commenter stated that the staffing level at the South Dakota Department of Environment and Natural Resources was not sufficient to carry out the program. Although the State/Tribe should demonstrate that adequate staffing and resources exist, EPA is not proposing specific resources and staffing requirements and will not judge the resource estimates with any upper or lower bounds for approval or disapproval. Each State/Tribe will have different resource requirements and strategies for ensuring compliance with part 258. The Agency intends to allow States/Tribes the flexibility to determine the best use of their resources. EPA believes that the State of South Dakota has demonstrated that adequate staffing and resources do exist. The Department of Environment and Natural Resources has a total of eight full time equivalent staff to administer the program, and 20 to 25 planned MSWLFs.

One commenter believed that permit documents for permit determination are not generally available for public review and comment prior to public notice by the South Dakota Department of Environment and Natural Resources. The Agency reviewed the South Dakota application to determine if the State provided for the following: MSWLF permit documents for permit determinations are made available for public review and comment; final permit determinations on MSWLF permit applications are made known to the public, and; the state has procedures to insure that public comments on permit determinations are considered. State procedures for following these requirements can be found in Section VI. Public Participation of South Dakota's Solid Waste Management Permit Program Application, April 1993. Furthermore, South Dakota Codified Law 1–27–1 specifically allows for open inspection of all records and documents during normal business hours. EPA believes that the State of South Dakota provides adequate opportunity for document review.

One commenter stated that final permit determinations may not be published widely. EPA is not specifying public notice procedures, although these must be adequate to effectively ensure public participation. EPA believes that South Dakota's current practice of publishing determinations in local newspapers is adequate.

One commenter believed that there is an inadequate procedure for considering public comment on proposed MSWLFs. EPA is not specifying prescriptive public participation requirements. Rather, the draft STIR outlines a framework to ensure that the public has an opportunity to express its views on the permit materials prior to permit issuance by the State/Tribe. A detailed discussion of the procedure for consideration of public comment can be found in Section VI. Public Participation found in South Dakota's Solid Waste Management Permit Program Application, April 1993. EPA believes that the State of South Dakota

will provide sufficient consideration of public opinion.

One commenter expressed concern over Administrative Rules of South Dakota (ARSD) 74:09:01:06, which he believes restricts citizen intervention in civil enforcement. This State rule does not allow citizen intervention in a contested case hearing. However, this rule has been overridden by State statutes 34A–10–1 and 34A–10–2, which specifically allow for public intervention.

One commenter felt that the South Dakota Board of Minerals and Environment excludes citizen groups from participation in contested case hearings, unless they are represented by an attorney. This requirement by the Board does not exclude citizens from full participation at hearings, but does require legal representation for citizen groups. The South Dakota Bar Association has issued an ethics opinion that appearance before administrative agencies on behalf of corporations or associations must be by licensed attorneys. EPA does not believe that such a requirement would exclude citizen participation. EPA is not specifying prescriptive public participation requirements. Furthermore, in Section VI. Public Participation of South Dakota's Solid Waste Management Permit Program Application, the State has listed three opportunities for public participation on the permitting of MSWLFs: Local government zoning and/or permit application public meetings; County Commission public meetings for resolution approval or disapproval, and; Board of Minerals and Environment case hearings.

One commenter requested clarification on the applicability of 40 CFR part 258 to ash monofills that dispose of co-mingled coal ash and ash from burning "refuse derived fuel," tires, and commercial and industrial wastes. The MSWLF criteria apply to landfills that accept wastes derived from households. Commercial and industrial wastes, and ash derived from such wastes, so long as not comingled with household waste, are not regulated under 40 CFR part 258. The Agency's current position with respect to combustion of coal ash and ash from the combustion of refuse derived fuel is that disposal of such comingled ash would be subject to 40 CFR part 258.

One commenter believed that the 40 CFR part 258 groundwater monitoring and assessment requirements are weaker than South Dakota's Groundwater Discharge Permit System. EPA is not requiring States/Tribes to replace current regulations with minimum Federal criteria. States/Tribes may continue to use groundwater monitoring and assessment requirements beyond those specified in the minimum Federal criteria.

One commenter stated that land application or recirculation of untreated leachate should not be allowed without a composite liner. The recirculation of leachate does require the use of a composite liner and leachate collection system, as required in 40 CFR 258.28(a)(2). However, EPA has concluded that the surface application of leachate over daily or interim cover areas does not require the use of a composite liner, as this application does not constitute placing of leachate in MSWLF units. In ARSD 74:27:13:24(1) surface application of leachate over daily and interim cover areas that are underlain by both a liner system and a leachate collection system is allowed. However, the recirculation of leachate in MSWLF units is prohibited in ARSD 74:27:13:27, which requires that all demonstrations for variances for MSWLFs must meet the requirements of 40 CFR part 258.

One commenter believed that groundwater regulations included in 40 CFR part 258 would be better addressed by the South Dakota Board of Water Management rather than the Board of Minerals and Environment. State statute 34A–6–1.13 gives the Board of Minerals and Environment the authority to issue MSWLF permits. Furthermore, the proposed STIR does not include prescriptive requirements regarding which State organizations should address groundwater topics.

One commenter questioned the criteria used by the State of South Dakota to define "no practicable alternative," in order for MSWLFs to qualify for the small landfill exemption. The requirement that the MSWLF be fifty miles or more from a regional facility was recommended in the State's solid waste management plan. This plan was produced with public input from throughout the State. This was determined to be the farthest practicable haul distance for the majority of the State. EPA has allowed States the flexibility to interpret "no practicable alternative" under conditions specific to the individual State.

One commenter maintained that use of the draft STIR as guidance is a violation of the Administrative Procedure Act (APA) requirements that a rule must go through notice and opportunity for comment. EPA does not believe that it is violating requirements of the APA. The Agency is not utilizing the draft STIR as a regulation which binds either the Agency or the States/Tribes. Instead, EPA is using the draft STIR as guidance for evaluating State/Tribal permit programs and maintains its discretion to approve State/Tribal permit programs utilizing the draft STIR and/or other criteria which assure compliance with 40 CFR part 258.

In addition, members of the public have an opportunity to comment on the criteria by which EPA assures the adequacy of State/Tribal MSWLF permit programs because the Agency discusses the criteria for approval of a permit program when it publishes each tentative determination notice in the **Federal Register**. In the tentative determination notice for the State of South Dakota's permit program, the Agency set forth for public comment the requirements for an adequate permit program (58 FR 38759–38761, July 20, 1993).

D. Decision

After reviewing the public comments, I conclude that South Dakota's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, South Dakota is granted a determination of adequacy for all portions of its municipal solid waste landfill permit program.

Today's decision to approve the South Dakota MSWLF permitting program does not extend to "Indian Country," as defined in 18 U.S.C. 1151, including the following "existing or former" Indian reservations in the State of South Dakota:

1. Cheyenne River;
2. Crow Creek;
3. Flandreau;
4. Lower Brule;
5. Pine Ridge;
6. Rosebud;
7. Sisseton;
8. Standing Rock; and
9. Yankton.

Before EPA would be able to approve the State of South Dakota MSWLF permit program for any portion of "Indian Country," the State would have to provide an appropriate analysis of the State's jurisdiction to enforce in these areas. In order for a State (or Tribe) to satisfy this requirement, it must demonstrate to the EPA's satisfaction that it has authority either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval. EPA has reason to believe that disagreement exists with regard to the State's jurisdiction over "Indian Country," and EPA is not

satisfied that South Dakota has, at this time, made the requisite showing of its authority with respect to such lands.

In withholding program approval for these areas, EPA is not making a determination that the State either has adequate jurisdiction or lacks such jurisdiction. Should the State of South Dakota choose to submit analysis with regard to its jurisdiction over all or part of "Indian Country" in the State, it may do so without prejudice.

EPA's future evaluation of whether to approve the South Dakota program for Indian Country," to include Indian reservation lands, will be governed by EPA's judgment as to whether the State has demonstrated adequate authority to justify such approval, based upon its understanding of the relevant principles of Federal Indian law and sound administrative practice. The State may wish to consider EPA's discussion of the related issue of tribal jurisdiction found in the preamble to the Indian Water Quality Standards Regulation (see 56 FR 64876, December 12, 1991).

Until EPA approves a State or Tribal MSWLF permit program for any part of "Indian Country" in South Dakota, the requirements of 40 CFR part 258 will, after the effective date of the Federal Criteria, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permit program. EPA is not, however, proposing at this time to determine that there is no adequate permit program in place in Indian Country in South Dakota for the purposes of section 4005(c)(2)(A) of RCRA.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on October 8, 1993. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: September 30, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93-24820 Filed 10-7-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4787-4]

Utah; Final Determination of Partial Program Adequacy of State/Tribal Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (Region VIII).

ACTION: Notice of final determination of partial program adequacy of Utah's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill Criteria will apply to all permitted and unpermitted MSWLFs.

Utah applied for a partial program determination of adequacy under section 4005 of RCRA. EPA reviewed Utah's application and made a tentative determination of adequacy for those portions of the MSWLF permit program that are adequate to ensure compliance with the revised MSWLF Criteria. After reviewing all comments received, EPA today is granting final approval to Utah's partial program.

EFFECTIVE DATE: The determination of adequacy for Utah shall be effective on October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Brian Rimar, Mail Code 8HWM-WM, Waste Management Branch, U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202-2466, telephone (303) 293-1673.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised

Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in STIR to allow partial approval if:

(1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with part 258;

(2) Changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and

(3) Provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of part 258.

As provided in the October 9, 1991, municipal landfill rule, EPA's national subtitle D standards will take effect in October 1993. Consequently, any remaining portions of the Federal Criteria which are not included in an approved State/Tribal program by October 1993 would apply directly to the owner/operator.

On September 27, 1993, the EPA Administrator signed the final rule extending the effective date of the landfill Criteria for certain classifications of landfills (proposed rule at 58 FR 40568, July 28, 1993). Thus, for certain small landfills, the Federal Criteria will not be effective until April 9, 1994, instead of October 9, 1993. The final ruling on the effective date extension is scheduled for publication in the **Federal Register** within a week after the signature date.

The requirements of the STIR, if promulgated, will ensure that any mixture of State/Tribal and Federal rules that take effect will be fully workable and leave no significant gaps in environmental protection. These practical concerns apply to individual partial approvals granted prior to the promulgation of the STIR rule. Consequently, EPA reviewed the program approved today and concluded that the State/Tribal and the Federal requirements mesh reasonably well and leave no significant gaps. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

EPA will review State/Tribal requirements to determine whether they are "adequate" under section 4005(c)(1)(C) of RCRA. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF Criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program. EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submissions of a schedule mandatory in STIR.

B. State of Utah

On July 20, 1993, Utah submitted an application to obtain a partial program adequacy determination for the State's municipal solid waste landfill permit program. On August 12, 1993, EPA published a tentative determination of adequacy for Utah's program. Further background on the tentative partial program determination of adequacy appears at 58 FR 42965 (August 12, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA also tentatively scheduled a public hearing for September 27, 1993, to be held if a sufficient number of peopled expressed interest in participating. After no one expressed interest, the Agency cancelled the public hearing.

During its September 9, 1993, meeting, the Utah Solid and Hazardous Waste Control Board adopted two proposed changes in the Utah Solid Waste Permitting and Management Rules: Deleting, at R315–303–4(f), the small landfill ground-water monitoring exemption; and adding, at R315–310–4(e)(v), the requirement for the owner/operator to provide the name, address, and telephone number of the person to contact about the facility during the post-closure period, as required by 40 CFR 258.61(c)(2).

EPA has reviewed Utah's application and has determined that all parts, with the exception listed below, of the State's MSWLF permit program will ensure compliance with the revised Federal Criteria.

In addition, the State of Utah demonstrated that its MSWLF permit program contains specific provisions for public participation, compliance monitoring, and enforcement.

EPA is not approving a portion of Utah's program. To ensure compliance with all the Federal Criteria, Utah needs to revise the following aspects of its permit program.

1. All requirements of State of Utah Solid Waste Permitting and Management Rules, R315–309, Financial Assurance, must be applicable to all permitted MSWLF units, as required by 40 CFR part 258, subpart G.

The State of Utah expects to complete the statutory and regulatory changes needed for full program approval by mid-1994.

As a State's/Tribe's regulations and statutes are amended to comply with the Federal landfill regulations, unapproved portions of a partially approved MSWLF program may be approved by the EPA. The State/Tribe may submit an amended application to EPA for review and an adequacy determination will be made using the same criteria as for the initial application. This adequacy determination will be published in the **Federal Register** summarizing the Agency's decision and the portion(s) of the State/Tribal MSWLF permit program affected and providing an opportunity to comment for a period of thirty (30) days. The adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another **Federal Register** notice will be published either affirming or reversing the initial decision while responding to the public comments.

C. Public Comment

EPA received three public comments on the tentative determination of adequacy for Utah's MSWLF permit program.

The State of Utah, in two comments, requested that EPA re-evaluate language in the tentative determination regarding jurisdiction over "Indian Country," especially the use of the term "former Indian reservation lands." The commenters requested that EPA approve the State's MSWLF permit program within the State of Utah except for Indian lands.

EPA has revised this language in the section below entitled "Decision."

One commenter maintained that use of the draft STIR as guidance is a violation of the Administrative Procedure Act (APA) requirements that a rule must go through notice and opportunity for comment. EPA does not believe that it is violating requirements of the APA. The Agency is not utilizing the draft STIR as a regulation which binds either the Agency or the States/Tribes. Instead, EPA is using the draft STIR as guidance for evaluating State/Tribal permit programs and maintains its discretion to approve State/Tribal permit programs utilizing the draft STIR and/or other criteria which assure compliance with 40 CFR part 258.

In addition, members of the public have an opportunity to comment on the criteria by which EPA assures the adequacy of State/Tribal MSWLF permit programs because the Agency discusses the criteria for approval of a permit program when it publishes each tentative determination notice in the **Federal Register**. In the tentative determination notice for the State of Utah's permit program, the Agency set forth for public comment the requirements for an adequate permit program (58 FR 42965–42967, August 12, 1993).

D. Decision

After reviewing the public comments, I conclude that Utah's application for partial program adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Utah is granted a partial program determination of adequacy for the following areas of its municipal solid waste permit program: 40 CFR part 258, subparts A, B, C, D, E, and F.

The State of Utah has not asserted jurisdiction over "Indian Country," as defined in 18 U.S.C. 1151, in its application for adequacy determination. Today's decision to approve Utah's application does not extend to the following Indian reservations in the State of Utah:

1. Goshute;
2. Navajo;
3. Northwestern Shoshoni;
4. Southern Paiute;
5. Five Affiliated Paiute;
6. Skull Valley; and
7. Uintah and Ouray.

Until EPA approves a State or Tribal MSWLF permit program in Utah for any part of "Indian Country" in Utah, the requirements of 40 CFR part 258 will, after the effective date of the Federal Criteria, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on October 8, 1993. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: September 30, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93–24816 Filed 10–7–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4787–3]

Wyoming; Final Determination of Partial Program Adequacy of State/Tribal Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (Region VIII).

ACTION: Notice of final determination of partial program adequacy of Wyoming's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit

program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill Criteria will apply to all permitted and unpermitted MSWLFs.

Wyoming applied for a partial program determination of adequacy under section 4005 of RCRA. EPA reviewed Wyoming's application and made a tentative determination of adequacy for those portions of the MSWLF permit program that are adequate to ensure compliance with the revised MSWLF Criteria. After reviewing all comments received, EPA today is granting final approval to Wyoming's partial program.

EFFECTIVE DATE: The determination of adequacy for Wyoming shall be effective on October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Gerald Allen, Mail Code 8HWM-WM, Waste Management Branch, U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone (303) 293–1496.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in STIR to allow partial approval if:

(1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with part 258;

(2) Changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and

(3) Provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of part 258.

As provided in the October 9, 1991, municipal landfill rule, EPA's national subtitle D standards will take effect in October 1993. Consequently, any remaining portions of the Federal Criteria which are not included in an approved State/Tribal program by October 1993 would apply directly to the owner/operator.

On September 27, 1993, the EPA Administrator signed the final rule extending the effective date of the landfill Criteria for certain classifications of landfills (proposed rule at 58 FR 40568, July 28, 1993). Thus, for certain small landfills, the Federal Criteria will not be effective until April 9, 1994, instead of October 9, 1993. The final ruling on the effective date extension is scheduled for publication in the **Federal Register** within a week after the signature date.

The requirements of the STIR, if promulgated, will ensure that any mixture of State/Tribal and Federal rules that take effect will be fully workable and leave no significant gaps in environmental protection. These practical concerns apply to individual partial approvals granted prior to the promulgation of the STIR rule. Consequently, EPA reviewed the program approved today and concluded that the State/Tribal and the Federal requirements mesh reasonably well and leave no significant gaps. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

EPA will review State/Tribal requirements to determine whether they are "adequate" under section 4005(c)(1)(C) of RCRA. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF Criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program. EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submissions of a schedule mandatory in STIR.

B. State of Wyoming

On November 6, 1992, Wyoming submitted an application to obtain a partial program adequacy determination for the State's municipal solid waste landfill permit program. On August 12, 1993, EPA published a tentative determination of adequacy for Wyoming's program. Further background on the tentative partial program determination of adequacy appears at 58 FR 42967 (August 12, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA also tentatively scheduled a public hearing for September 27, 1993, to be held if a sufficient number of peopled expressed interest in participating. After no one expressed interest, the Agency cancelled the public hearing.

During its hearing on September 17, 1993, the Wyoming Environmental Quality Commission approved emergency rules needed for the State of Wyoming to demonstrate compliance with substantial portions of the Federal Criteria. The emergency rules will be effective for 120 days beginning on October 8, 1993, and will be replaced by permanent rules prior to expiration.

EPA has reviewed Wyoming's application (including existing permanent rules and new emergency rules) and has determined that the following portions of the State's MSWLF permit program will ensure compliance with the revised Federal Criteria.

1. Location restrictions for airports, flood plains, wetlands, fault areas, seismic impact zones, and unstable areas (40 CFR 258.10 through 258.15).

2. Operating criteria for the exclusion of hazardous waste, cover materials,

disease vector control, explosive gases, air criteria, access requirements, run-on/run-off control systems, surface water requirements, liquids restrictions, and record keeping requirements (40 CFR 258.20 through 258.29).

3. Design criteria requirements (40 CFR 258.40).

4. Closure and post-closure requirements (40 CFR 258.60 through 258.61).

In addition, the State of Wyoming demonstrated that its MSWLF permit program contains specific provisions for public participation, compliance monitoring, and enforcement.

EPA is not approving certain portions of Wyoming's program. To ensure compliance with all the Federal Criteria, Wyoming needs to revise the following aspects of its permit program.

1. Wyoming will revise its regulations to incorporate the Federal ground-water monitoring and corrective action requirements in 40 CFR 258.50, 258.51, and 258.53 through 258.58.

2. Wyoming will develop new regulations to incorporate the financial assurance requirements in 40 CFR 258.70 through 258.72 and 258.74. Wyoming will revise its regulations to incorporate the financial assurance requirements in 40 CFR 258.73.

Wyoming has already begun to revise its permanent rules and expects to have the rule changes necessary for full program approval completed by early 1994.

As a State's/Tribe's regulations and statutes are amended to comply with the Federal landfill regulations, unapproved portions of a partially approved MSWLF program may be approved by the EPA. The State/Tribe may submit an amended application to EPA for review and an adequacy determination will be made using the same criteria as for the initial application. This adequacy determination will be published in the **Federal Register** summarizing the Agency's decision and the portion(s) of the State/Tribal MSWLF permit program affected and providing an opportunity to comment for a period of thirty (30) days. The adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another **Federal Register** notice will be published either affirming or reversing the initial decision while responding to the public comments.

C. Public Comment

EPA received one public comment on the tentative determination of adequacy for Wyoming's MSWLF permit program.

The commenter maintained that use of the draft STIR as guidance is a violation of the Administrative Procedure Act (APA) requirements that a rule must go through notice and opportunity for comment. EPA does not believe that it is violating requirements of the APA. The Agency is not utilizing the draft STIR as a regulation which binds either the Agency or the States/Tribes. Instead, EPA is using the draft STIR as guidance for evaluating State/Tribal permit programs and maintains its discretion to approve State/Tribal permit programs utilizing the draft STIR and/or other criteria which assure compliance with 40 CFR part 258.

In addition, members of the public have an opportunity to comment on the criteria by which EPA assures the adequacy of State/Tribal MSWLF permit programs because the Agency discusses the criteria for approval of a permit program when it publishes each tentative determination notice in the **Federal Register**. In the tentative determination notice for the State of Wyoming's permit program, the Agency set forth for public comment the requirements for an adequate permit program (58 FR 42967–42969, August 12, 1993).

D. Decision

After reviewing the public comments, I conclude that Wyoming's application for partial program adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Wyoming is granted a partial program determination of adequacy for the following areas of its municipal solid waste permit program: 40 CFR 258.10 through 258.15; 258.20 through 258.29; 258.40; and 258.60 through 258.61.

The State of Wyoming has not asserted jurisdiction over "Indian Country," as defined in 18 U.S.C. 1151, in its application for adequacy determination. Today's decision to approve Wyoming's application does not extend to the following Indian reservations in the State of Wyoming:

1. Wind River.

Until EPA approves a State or Tribal MSWLF permit program in Wyoming for any part of "Indian Country" in Wyoming, the requirements of 40 CFR part 258 will, after the effective date of the Federal Criteria, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on October 8, 1993. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: September 30, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93–24815 Filed 10–7–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–81022A; FRL–4645–5]

TSCA Chemical Substance Inventory Removal of 36 Incorrectly Reported Chemical Substances from the TSCA Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In an earlier notice published in the **Federal Register** of April 13, 1993 (58 FR 19251), EPA announced its intent to remove from the Toxic Substances Control Act (TSCA) Chemical Substance Inventory 39 chemical substances which were believed to have been incorrectly reported and listed. Five comments were received in response to the April 13, 1993 notice. EPA has determined that three of the chemical substances mentioned in the April 13, 1993 notice have been manufactured or imported for distribution in commerce prior to the date of the notice. The remaining 36 chemical substances were incorrectly reported or identified and listed on the Inventory. The 36 chemical substances listed in this document are deleted from the TSCA Inventory as of October 8, 1993.

EFFECTIVE DATE: The 36 chemical substances listed in this document are deleted from the TSCA Inventory as of October 8, 1993.

ADDRESSES: A record of the nonconfidential versions of these comments is available for viewing and photocopying in the TSCA Nonconfidential Information Center, Rm. E-G102, 401 M St., SW., Washington, DC. Documents may be viewed from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

EPA announced in the **Federal Register** of April 13, 1993 (58 FR 19251), its intent to remove from the Toxic Substances Control Act (TSCA) Chemical Substance Inventory 39 chemical substances which were believed to have been incorrectly reported and listed. Prior to the April 13, 1993 notice, persons who had originally reported the 39 chemical substances informed EPA that the chemical identities they reported to the Agency and included on the Inventory were incorrect. The corrected identities for these 39 chemical substances have been provided by the original submitters and added to the Agency's Master Inventory File. EPA reviewed each of these 39 chemical substances, as originally reported, to determine whether any other person had also reported the same chemical substance for the Inventory. No other manufacturers were found at the time. Therefore, in accordance with the established EPA policy that an erroneously or incorrectly reported chemical substance should be removed from the Inventory, EPA announced its intent to remove these chemical substances from the Inventory in the **Federal Register** of April 13, 1993.

The **Federal Register** of April 13, 1993, solicited public comments on the proposed removal action. EPA was specifically interested in knowing whether any of the 39 chemical substances had been manufactured, imported, or processed for TSCA commercial purposes other than research and development, as defined in the Inventory Reporting Regulation (40 CFR 710.2), by anyone between the period of January 1, 1975 through April 13, 1993. EPA was also interested in knowing whether any person could show that any of the 39 chemicals substances could have been properly reported for the Inventory. EPA also solicited comments from anyone who believed that any of the chemical substances should not be removed from the TSCA Inventory for any reason.

EPA received five comments in response to the April 13, 1993 notice. The five comments requested that CASRNs 29434-25-1, 54847-34-6, 67947-19-7, and 68441-81-6, not be removed from the Inventory.

II. Substances Not to be Removed

The Agency acknowledged that inclusion of CASRN 67947-19-7 in the **Federal Register** of April 13, 1993, was an error. Therefore, the Agency will not remove from the Inventory this chemical substance.

The Agency will also retain CASRNs 29434-25-1 and 54847-34-6 on the Inventory because the submitters of the comments concerning these two chemical substances provided evidence indicating that these substances have been in commercial production or importation prior to April 13, 1993.

The Agency reviewed the information regarding CASRN 68441-81-6 and its replacement CASRN and decided to delete the CASRN because the new CASRN is a better description of the substance as it was originally submitted to the TSCA Inventory.

The CASRNs and Chemical Abstracts Service (CAS) Index Names of the aforementioned three chemical substances not to be removed from the TSCA Inventory are as follows:

CASRN	CAS Index Name
29434-25-1	Silane, ethenyltriethoxy-, homopolymer
54847-34-6	Oxirane, 2,2'-[(1-methylethylidene) bis(4,1-phenyleneoxymethylene)]bis-, homopolymer, 2-propenoate
67947-19-7	Phosphoric acid, dimethyl ester, compd. with 2-aminoethanol (1:1)

III. Substances that are Removed from the Inventory

The Agency concluded that the remaining 36 chemical substances were not manufactured, imported, or processed for commercial purposes between January 1, 1975, and April 13, 1993, and thus are not eligible for continued inclusion on the Inventory. Therefore, Premanufacture Notification (PMN) requirements of section 5(a) of TSCA would apply to future manufacture or import of any of these 36 chemical substances. The 36 chemical substances to be removed from the Inventory are listed below in ascending CAS Registry Number sequence, and by their corresponding Chemical Abstracts Service (CAS) Index Names:

CAS	CAS Index Name
126-13-6	.alpha.-D-Glucopyranoside, 6-O-acetyl-1,3,4-tris-O-(2-methyl-1-oxopropyl)-.beta.-D-fructofuranosyl, 6-acetate 2,3,4-tris(2-methylpropanoate)
530-91-6	2-Naphthalenol, 1,2,3,4-tetrahydro-
1397-83-7	Alantol
3641-14-3	1H-1,2,4-Triazole-3-carboxylic acid, 5-amino-, methyl ester
9012-72-0	D-Glucan
25852-29-3	2-Propenoic acid, 2-ethylhexyl ester, polymer with 2-methyl-2-propenamide and N-octyl-2-propenamide

CAS	CAS Index Name
36409–57–1	Butanedioic acid, [(dodecyloxy)sulfonyl]-, disodium salt
52985–3–8	2-Propenoic acid, polymer with 2,2'-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)]bis[oxirane]
61792–39–0	Oxiraneoctanoic acid, 3-octyl-, ammonium salt
64683–43–8	3H-Indolium,2-[2-(3,5-diphenyl-1H-pyrazol-1-yl)ethenyl]-1,3,3-trimethyl-, chloride
64798–59–0	Benzenemethanaminium,ar-ethenyl-N,N,N-trimethyl-, chloride, polymer with 1,2-ethanediyl bis(2-methyl-2-propenoate)
65036–93–3	2-Propenoic acid, 2-ethylhexyl ester, polymer with N-octyl-2-propenamide
68037–89–8	Silsesquioxanes, 3-[(2-aminoethyl) amino]propyl, monohydrochlorides, polymers with ethylenimine
68083–89–6	1,2-Propanediol, polymer with 5-amino-1,3,3-trimethylcyclohexanemethanamine,1,1'-methylenebis[4-isocyanatocyclohexane] and 4,4'-(1-methylethylidene)bis[phenol]
68153–24–2	Peanut oil, glycerol trioleate-enriched, sulfated, sodium salt, reaction products with diethylene glycol, sapond., potassium salts
68187–82–6	Fats and Glyceridic oils, fish, bisulfited
68238–86–8	Starch, dihydrogen phosphate, 2-(diethylamino)ethyl ether, hydroxide, inner salt
68310–22–5	Cellulose, acetate butanoate, polymer with (chloromethyl)oxirane,4,4'-(1-methylethylidene)bis[phenol], triethoxyphenylsilane and 3-(triethoxysilyl)-1-propanamine
68441–81–6	Formaldehyde, polymer with 3-methylphenol, reaction products with 6-diazo-5,6-dihydro-5-oxo-1-naphthalenesulfonyl chloride
68511–01–3	C.I. Leuco Sulphur Green 36
68513–54–2	Castor oil, dehydrated, polymer with glycerol, methylstyrene, pentaerythritol, phthalic anhydride and soybean oil
68552–72–7	Fatty acids, tall-oil, polymers with ethylene glycol, formaldehyde, glycerol, linseed oil, maleic anhydride, pentaerythritol, phenol, phthalic anhydride, rosin, soybean oil and tung oil
68554–59–6	Siloxanes and Silicones, di-Me, polymers with 1,4-cyclohexanedimethanol, glycerol, isophthalic acid and Me Ph silsesquioxanes
68607–72–7	Siloxanes and Silicones, di-Me, polymers with ethylene glycol, Me Ph silsesquioxanes and trimethylolpropane
68609–62–1	Hexanedioic acid, polymer with hexahydro-2H-azepin-2-one and 1,6-hexanediamine, mixed with acrylonitrile-butadiene polymer, formaldehyde-4-(1,1,3,3-tetramethylbutyl)phenol polymer-vulcanized
68834–17–3	2-Propenoic acid, 2-methyl-, 2-hydroxypropyl ester, polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane
70776–86–2	2-Butanone, 4-[[[1,2,3,4,4a,9,10,10a-octahydro- 1,4a-dimethyl-7-(1-methylethyl)-1-phenanthrenyl]methyl](3-oxo-3-phenylpropyl)amino]-, [1R-(1.alpha.,4a.beta.,10a.alpha.)]-
70983–84–5	Fatty acids, safflower-oil, polymers with isophthalic acid, 4,4'-(1-methylethylidene)bis[cyclohexanol], trimellitic anhydride and trimethylolpropane
70984–00–8	Polyphosphoric acids, esters with C8-11-alc. distn. residues
70984–01–9	Polyphosphoric acids, mixed esters with C8-11 alc. distn. residues and C12-18 alcs.
72162–18–6	Formaldehyde, polymer with 4-(1,1,3,3-tetramethylbutyl)phenol, vulcanization products with ethylene-5-ethylidenebicyclo[2.2.1]hept-2-ene-propene polymer and polypropylene
72479–95–9	Chromium, 4-hydroxy-3-[(2-hydroxy-3,5-dinitrophenyl)azo]benzenesulfonate 4-hydroxy-3-[(3-hydroxy-4-nitrophenyl)azo]-1-naphthalene-sulfonate complexes, compds. with N-butyl-1-butanamine and N-cyclohexylcyclohexanamine
84731–63–5	Dodecanedioic acid, diisotridecyl ester
85883–90–5	2-Oxa-4,7-diaza-1-phosphaoctan-8-ol, 1,1-dihydroxy-4,7-bis[(phosphonooxy)methyl]-, dihydrogen phosphate (ester), 1-oxide, calcium sodium salt (2:5:6)
96278–62–5	Fatty acids, tall-oil, polymers with benzoic acid, bisphenol A, p-tert-butylphenol, formaldehyde, pentaerythritol and phthalic anhydride
96557–45–8	Carbonic dichloride, polymer with 1,6-hexanediol and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane,2-hydroxyethyl acrylate-blocked

Accordingly, the 36 chemical substances listed above are deleted from the TSCA Inventory as of October 8, 1993.

List of Subjects

Environmental protection, TSCA Inventory.

Dated: October 1, 1993.

Mary Ellen Weber,

Acting Director, Economics, Exposure and Technology Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–24813 Filed 10–7–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

FCC Renews Charter for Advisory Committee on Advanced Television Service

September 30, 1993.

The Charter for the Advisory Committee on Advanced Television Service has been renewed for a period of two years. The renewed charter is set to expire on September 29, 1995. For further information please contact Bill Hassinger on (202) 632–6460.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–24735 Filed 10–7–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1976]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

October 4, 1993.

Petitions for reconsideration, clarification and review have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed October 25, 1993. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition

must be filed within 10 days after the time filing oppositions has expired.

Subject: Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services (GEN Docket No. 90–314), (ET Docket No. 92–100).

Petition for Reconsideration

Number of Petitions Filed: 3

Petition for Clarification

Number of Petitions Filed: 1

Petition for Clarification or Partial Reconsideration

Number of Petitions Filed: 1

Petition For Reconsideration and Clarification

Number of Petitions Filed: 1

Petition For Review

Number of Petitions Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–24734 Filed 10–7–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–997–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–997–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for Alexander, Calhoun, Greene, Jackson, Jersey, Madison, Monroe, Morgan, Randolph, Scott, St. Clair, and Union Counties has been reopened. The incident period for these counties is April 23, 1993, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–24835 Filed 10–7–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–996–DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–996–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Hancock, Ida, Monroe, Plymouth, Poweshiek, and Wayne Counties for Public Assistance. (Already designated for Individual Assistance.)

Notice is hereby given that the incident period for this disaster is closed effective October 1, 1993.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–24836 Filed 10–7–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–995–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–995–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: September 29, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Christian, Dallas, Laclede, Lawrence, Phelps, Polk, Taney, Texas, Washington, Webster, and Wright Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–24837 Filed 10–7–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 3029
Name: George C. Cheng dba G.C. International Forwarding Company
Address: 9818 E. Camino Real Ave., Arcadia, CA 91007
Date Revoked: September 5, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3473
Name: New York Forwarding, Inc.
Address: 4300 Haddonfield Rd., Ste. 314, Pennsauken, NJ 08109
Date Revoked: September 7, 1993
Reason: Surrendered license voluntarily.

License Number: 3212
Name: Condor International Freight Forwarders, Inc.
Address: 7500 N.W. 54th Street, Miami, FL 33166
Date Revoked: September 12, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 2753
Name: Blanca R. Lopez dba ABY Forwarding
Address: 138 E. 234th Place, Carson, CA 90745
Date Revoked: September 15, 1993
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–24744 Filed 10–7–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P74–93]

Filing of Petition

In the matter of Petition for Temporary Exemption From Electronic Tariff Filing Requirements; petition of Ocean Tariff Bureau on behalf of various carriers.

Notice is hereby given of the filing of a petition by Ocean Tariff Bureau pursuant to 46 CFR 514.8(a), on behalf of various common carriers for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than October 8, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC. 20573–0001, shall consist of an original and 15 copies, and shall be served on Capt. Alex Yang, President, Ocean Tariff Bureau, 161 W. Victoria Street, Suite 240, Long Beach, California 90805.

Copies of the petition are available for examination at the Washington, DC. office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–24740 Filed 10–7–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition Nos. P72–93 and P73–93]

Petition of Pacific Coast Tariff Bureau on Behalf of West Coast/Middle East—USA Rate Agreement; et al.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the September 24, 1993, electronic filing deadline.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than October 8, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on the following:

P72–93—James C. Olsson, President, Pacific Coast Tariff Bureau, 221 Main Street, Suite 530, San Francisco, California 94105–1915

P73–93—Tanga S. FitzGibbon, Executive Vice President, Effective Tariff Management Corporation, 4000 Mitchellville Road, suite 326–B, Bowie, Maryland 20716

Copies of the petitions are available for examination at the Washington, D.C. office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–24741 Filed 10–7–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

White Eagle Financial Group, Inc. Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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 225.24) 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)).

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 to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than October 18, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelly, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. White Eagle Financial Group, Inc., Boca Raton, Florida; to become a bank holding company by acquiring 90 percent of the voting shares of Admiralty Bank, Palm Beach, Florida.

Board of Governors of the Federal Reserve System, October 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–24927 Filed 10–7–93; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N–0371]

New Drug Applications; Refusal to File; Meeting of Review Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the second regular meeting of its standing committee in the Center for Drug Evaluation and Research (CDER) that conducts a periodic review of CDER's use of its refusal to file (RTF) procedure, by which it refuses to file new drug applications (NDA's) that are facially deficient under FDA's regulations. This committee was established on a 1-year trial basis to conduct quarterly review meetings. FDA invites NDA applicants to use the committee's confidential mechanism to submit for review the names and numbers of NDA's that the agency has refused to file. The meeting described in this document continues the efforts of the agency to promote the timely, efficient, and consistent review of NDA's.

DATES: The second regular meeting of the committee will be held in November 1993. Submit requests for review by October 25, 1993.

ADDRESSES: Submit RTF review requests to Amanda B. Pedersen, FDA Chief Mediator and Ombudsman, Office of the Commissioner (HF097), Food and Drug Administration, rm. 1409105, 5600 Fishers Lane, Rockville, MD 20857, 30109443091306.

FOR FURTHER INFORMATION CONTACT: Janet M. Jones, Center for Drug Evaluation and Research (HFD092), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 30109443092894.

SUPPLEMENTARY INFORMATION: The importance to the public health of getting new drug therapies on the market as efficiently as possible has made improving the new drug evaluation process an FDA priority for a number of years. Thus, in 1985, FDA revised its regulations to streamline the process for submitting and reviewing NDA's (50 FR 7452, February 22, 1985). FDA supplemented these regulations with extensive guidelines to applicants on how to prepare complete applications and thus facilitate agency review (52 FR 10819, April 3, 1987). FDA similarly revised its investigational new drug application (IND) regulations

in 1987 to clarify and simplify the rules governing clinical testing of new drugs (52 FR 8798, March 19, 1987). FDA has further refined drug approval procedures to expedite marketing approval for therapies for serious or life-threatening illnesses (54 FR 41516, October 21, 1988) and to make such therapies available prior to marketing approval through mechanisms such as the "treatment IND" (52 FR 19466, May 22, 1987) and the "parallel track" (57 FR 13250, April 15, 1992) initiatives. The meeting described in this document continues the efforts of the agency to promote the timely, efficient, and consistent review of NDA's.

CDER is aware that a clear, well understood, and consistently applied RTF policy could improve substantially the efficiency of the new drug evaluation process. CDER recognizes that the practice of submitting an incomplete or inadequate application and then providing additional information during an extended review period is inherently inefficient and wasteful of agency resources. It also is unfair to those applicants who fulfill their scientific and legal obligations by submitting complete applications whose review may be delayed as incomplete applications, submitted earlier, undergo review and repair.

FDA regulations on filing applications, including grounds and procedures for refusals to file, are found in 21 CFR 314.101. In the past, some review divisions in CDER have refused to file applications only where the deficiencies were extreme, e.g., the total omission of a section required by 21 CFR 314.50, or the absence of any study even arguably adequate and well controlled, while others have applied this regulation more broadly. When deciding whether to file an application, CDER will exercise discretion, particularly when the application is for a medically important drug. CDER intends to make every effort to promote rapid development and review of applications.

Although an RTF is not a final determination, it is a significant step that delays, at least for a time, full review of an application. The applicant who receives an RTF notification may request an informal conference with the agency and, thereafter, may ask that the application be "filed over protest," as described under 21 CFR 314.101(a)(3) (See 57 FR 17950 at 17987, April 28, 1992). CDER believes that an RTF decision is, in general, of benefit to applicants as an early signal that the application has major deficiencies that would, most probably, result in a "not approvable" action or would introduce serious impediments to a prompt review.

CDER established the RTF review committee to periodically review RTF decisions to assess their scientific and procedural quality. The review will examine selected refusals to file to assess, among other things, the consistency of RTF practices across new drug evaluation offices and divisions, the need for additional guidance on NDA content and format, and the need to modify FDA's RTF policy.

The RTF review committee consists of senior CDER officials, a senior official from the Center for Biologics Evaluation and Research, and FDA's Chief Mediator and Ombudsman.

The committee held pilot meetings on September 24, 1992, and April 1, 1993. The notice of the establishment and first regular meeting of the committee appeared in the **Federal Register** of May 18, 1993 (58 FR 28983). The first regular meeting of the committee was held on July 28, 1993. At these meetings, the committee reviewed several NDA's that CDER has refused to file that were selected by the Office of the FDA Chief Mediator and Ombudsman. For the second regular meeting, applicants should submit RTF's proposed for committee review to the FDA Chief Mediator and Ombudsman, who will be responsible for compiling the list of RTF decisions for committee consideration. The committee and CDER staff (with the exception of the FDA Chief Mediator and Ombudsman) are not advised, either in the review process or thereafter, which of the RTF's were randomly chosen and which were submitted by applicants. The committee will evaluate the selected decisions for scientific content and consistency with agency regulations and CDER policy.

Because the committee's deliberations will deal with confidential commercial information, the RTF review meeting will be closed to the public. The committee's deliberations will be reported in the minutes of the meeting. Although those minutes will not be publicly available because they will contain privileged commercial information, summaries of the committee's deliberations, with all such privileged commercial information omitted, will be available from the FDA Chief Mediator and Ombudsman. If, following the committee's review, an RTF decision changes, the reviewing division will notify the applicant of the change.

FDA invites applicants to submit to the FDA Chief Mediator and Ombudsman the name and number of any NDA that CDER has refused to file during the past 12 months that they want the committee to review at its second meeting. Submissions should be made by October 25, 1993, to Amanda B. Pedersen, FDA Chief Mediator and Ombudsman (address above).

Dated: October 1, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–24721 Filed 10–7–93; 8:45 am]

BILLING CODE 4160–010–F

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, October 1, 1993.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request).

1. Epidemiology of Fatiguing Illness in San Francisco: A Population-Based Study—New—The purpose of this study is to generate population-based information about the prevalence of self-reported fatiguing illness in an ethnically diverse urban population. The study will also provide basic information about the extent to which criteria now included in the case definition of CFS are useful in identifying a unique syndrome associated with fatigue. Respondents: Individuals or households: Number of Respondents: 3,848; Number of Responses Per Respondent: 1; Average Burden per Response: .207 hours; Estimated Annual Burden: 798 hours.

2. Assessment of the Impact of the National Practitioner Data Bank—New—Data will be collected from users of the Data Bank to determine usefulness of the information provided by the Data Bank. Information will be used to determine problems among users and develop solutions. Data will be obtained from hospitals, licensure boards, malpractice insurers and other health care entities. Respondents: State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hr)
Medical Malpractice Insurers	150	1	.5
State Licensure Boards and Professional Societies	203	1	.58
Hospitals and Other Health Care Entities	970	1	.75
Nonusers of NPDB—Professional Societies and Other Health Care Entities	50	1	.10
Estimated total annual burden: 929 hours			

3. Effects of Social Environments on Psychological Functioning in Older People—New—This study examines the psychological effects of environmental conditions on the elderly. Its results should be extremely useful for developing environments and services making the later years fulfilling and satisfying. Its data is gathered through in-person interviews and self-filled forms from a representative sample, first interviewed in 1974. Respondents: Individuals or households: Number of Respondents: 665; Number of Responses Per Respondent: 2; Average Burden per Response: 2.75 hours; Estimated Annual Burden: 3,656 hours.

4. The Role of the Indian Health Service in the Child Protection/Abuse Arena—New—This is a survey of tribal representatives regarding the prevalence and incidence of child maltreatment and the services provided to and received by Indian families. This will effectively expand the scope of an existing project examining the role and responsibility of the Indian Health Service in child protection. Respondents: State or local governments.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Mail Survey	345	1	1 hr.
Telephone Interviews.	150	1	20 min.
Estimated total annual burden: 395 hours.			

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address:

Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC 20503.

Dated: October 1, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93–24719 Filed 10–7–93; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–93–3671; FR–3583–N–01]

Interest Rate for the Section 235(r) Mortgage Insurance Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of change in interest rate.

SUMMARY: This notice announces a change in the maximum interest rate for mortgages to be insured under section 235(r) of the National Housing Act. The section 235(r) maximum interest rate is to be determined by the Secretary of HUD and published in the **Federal Register**. Mortgage market conditions now dictate that the Secretary decrease the section 235(r) maximum rate from 7.50 percent to 7.00 percent. There is no change being made in the maximum margin of additional percentage points that may be added to the maximum rate if the established conditions are met.

Therefore, the maximum for the premium section 235(r) interest rate will be 8.50 percent (7.00 percent for the rate of interest and 1.50 percent for the margin of additional percentage points).

EFFECTIVE DATE: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Program Evaluation Division, room B–133, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 755–7470, Ext. 117, or (202) 708–4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 235(r) of the National Housing Act (12 U.S.C. 1715z) authorizes the Secretary to insure mortgages that refinance mortgages insured under section 235. The purpose of the program is to reduce the interest rate insured and assisted under section 235, so that the assistance payments which the Department pays on behalf of mortgagors are reduced. The regulations implementing the program are contained in 24 CFR part 235 (subpart H, on the refinancing of mortgages under section 235(r), was published on December 30, 1992 (57 FR 62452), and became effective on February 16, 1993). The interest rate for these loans is set by the Secretary and published in the **Federal Register** as authorized by 24 CFR 235.1202(b)(3). The previous section 235(r) interest rate of 7.50 percent was published in the **Federal Register** on April 7, 1993 (58 FR 18105). The market conditions dictate a change in the section 235(r) interest rate commencing on the date of publication of this notice.

On September 9, 1993, the Federal Home Loan Mortgage Corporation announced that the average interest rate for 30-year mortgages was 6.82 percent, down from 7.10 percent on August 19. Although the most recent (August 1, 1993) complete information on FHA loans indicated that at that time the majority of these loans were being originated at rates in excess of 7.00 percent, it is fair to assume that FHA rates have followed the same trend downward and are now in the vicinity of 7.00 percent. The bond market has continued to rally since the 235(r) interest rate was set at 7.50 percent on April 7, 1993. As a result of investors' reaction to legislation reducing the Federal budget deficit without inflationary impact, coupled with signs the economy may be weakening, bond yields have fallen dramatically. The yield on 30-year Treasury bonds was 7.47 percent on January 8, 1993 and dropped to 6.47 percent on the first trading day after passage of the budget legislation, and was 5.89 percent on September 10, 1993. The yield curve for Treasury bonds had climbed sharply upward because of investor uncertainty and lingering fear of inflation. Now

these fears are being eased almost entirely, and long-term rates are showing steady downward movement that may well continue over the short term.

Most FHA mortgages are funded in the GNMA mortgaged-backed securities market. On September 9, 1993, the GNMA 6.50 percent security, which in normal market conditions is backed with 7.00 percent FHA/VA loans, was trading in the two-month forward delivery market at about par. This means it would be logical for lenders to close these loans in the primary market at no discount points. The 7.00 percent GNMA securities are now trading at about 3 points premium.

Adjusting the section 235(r) rate to 7.00 percent will bring this rate back into line with the rest of the FHA current production loans. Therefore, the maximum rate for section 235(r) mortgages is 7.00 percent beginning with the publication date of this notice. The maximum margin of additional percentage points that may be added to the maximum rate under 25 CFR 235.1202(b)(3)(i)(B) will remain at 1.50 percent.

The subject matter of this notice is categorically excluded from HUD's environmental clearance procedures, in accordance with 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

Authority: 12 U.S.C. 1715z; 42 U.S.C. 3535(d).

Dated: October 4, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–24750 Filed 10–7–93; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. N–93–3430; FR–3234–N–02]

Announcement of Funding Awards for the Rent Supplement and Rental Assistance Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department as a result of competitions for funding under the Rent Supplement and Rental Assistance Program. The announcement contains the names and addresses of the award winners for the competition and the amounts of the wards.

DATES: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Albert B. Sullivan, Director, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–3730. The TDD number for the hearing impaired is (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Rent Supplement and Rental Assistance Program (RAP) Conversion to section 8 Loan Management Set-/aside Program is authorized under title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Pub. L. 102–139, Approved October 28, 1991) (the "1992 Appropriations Act").

Under the program, HUD awards funds to projects with HUD-insured or HUD-held mortgages with active Rent Supplement or RAP units whose owners are willing to convert these units to five-year Section 8 contracts.

A Notice of Funding Availability (NOFA) was published in the **Federal Register** on May 19, 1992, at 57 FR 21334. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards, as set out at the end of this Notice.

Dated: September 30, 1993.

Jeanne Engel,

General Deputy Assistant Secretary for Housing-Federal Housing, Commissioner.

RENT SUPPLEMENT/RENTAL ASSISTANCE PAYMENT (RAP) CONVERSION TO SECTION 8 LOAN MANAGEMENT SET-ASIDE FISCAL YEAR 1992

FHA No.	Project name and address	Units	Section 8 budget authority
000–44128	Revitize House, 6111 Montrose Road, Rockville, MD 20850. Owner: Montrose House Corp	32	819,850
044–44801	Dunn Family Sr Citizen, 8400 Engleman, Center Line, MI 48015. Owner: Dunn Family Sr Cit. Home, Inc.	16	211,595
054–44164	McBee Apartments, 1 Merritt Circle, Greenville, SC 29601 Owner: McBee Apts, LP	9	171,665
061–35125	Villa Marie Apts, Office Building, 3200 Deans Bridge RD., Augusta, GA 30906. Owner: Caritas Corp.	110	3,320,000
067–35006	Tampa Park Apts I, 1417 Tampa Park Plaza, Tampa, FL 33605–4821. Owner: Tampa Park Apts, Inc.	172	3,177,770
112–35032	Remond Cliff Plaza, 2928 Remond Drive, Dallas, TX 75211. Owner: Remond Cliff Plaza Associates.	92	2,016,960
117–44002	Horizon Apartments, 313 Horizon Drive, Altus, OK 73521. Owner: Horizon Apts, Ltd	1	15,510
091–35035	Wall Ann Apts, 607 Main Ave., Brookings, SD 57006. Owner: Wall Ann Apartments	11	180,115
091–35104	Pierre Senior Citizens, 1812 East Dakota, Pierre, SD 57006. Owner: Wall Ann Apartments	11	180,115
091–35104	Pierre Senior Citizens, 1812 East Dakota, Pierre, SD. Owner: Pierre Senior Citizens Homes	26	330,790
093–44803	Missoula Manor Homes, 909 West Central Ave., Missoula, MT. Owner: Missoula Manor Homes	25	429,000
093–44805	Miles City Eagles Manor, 1000 Palmer, Miles City, MT. Owner: Miles City Eagles Manor	33	411,310
101–35024	Durango Housing Corp., 110 5th Ave., Durango, CO. Owner: Durango Housing Corp	61	1,422,630
121–44068	Village Avante, 1670–A Del Monte Ave., Morgan Hill, CA 95037. Owner: United Community Housing III.	13	531,565
127–SH016	Garden Terrace, 500 N. Emerson St., Wenatchee, WA 98801. Owner: Wenatchee Brethern-Baptist Homes, Inc.	16	238,390
136–35074	Heritage Plaza PH 2, 1875 Benton Drive, Redding, CA 96003. Owner: 5 Counties C/C	59	1,262,910
171–55001	Tri Cities Low Cost, P.O. Box 1157, Pasco, WA 99301. Owner: Tri Cities Low Cost Housing, Inc	48	928,355
171–SH011	Mike Foye Home, 420 B West Adler, Walla Walla, WA 99362. Owner: Mike Foye Home, Inc	6	69,630

[FR Doc. 93–24749 Filed 10–7–93; 8:45 am]

BILLING CODE 4210–27–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-1917; FR-3350-N-52]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Air Force:* Bob Menke, USAF, Bolling AFB, SAF-MIIR, Washington, DC 20332-5000; (202) 767-6235; *GSA:* Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 208-0619; *U.S. Army:* Robert Conte, Dept. of Army, Military Facilities, DAEN-ZCI-P; Rm. 1E671, Pentagon, Washington, DC 20310-2600; (703) 693-4583; (These are not toll-free numbers).

Dated: October 1, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 10/8/93

Suitable/Available Properties

Buildings (by State)

New York

Bldg. T-808, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330438
Status: Unutilized
Comment: 1296 sq. ft., 1-story, needs repair, most recent use—storage, off-site use only

Bldg. T-4804, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330439
Status: Unutilized
Comment: 2500 sq.. ft., 1-story, needs repair, most recent use—storage, off-site use only

Bldg. T-4898, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330440
Status: Unutilized
Comment: 3536 sq. ft., 1-story, needs repair, most recent use—storage, off-site use only

Texas

Bldg. T-374
Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 219330480
Status: Unutilized
Comment: 8640 sq. ft., 1-story wood frame, needs rehab, located in National Historic District, off-site use only

Bldg. T-1170
Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 219330481
Status: Unutilized
Comment: 1144 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only

Bldg. T-1468
Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 219330482
Status: Unutilized
Comment: 1144 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only

Bldg. T-1492
Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army

Property Number: 219330483
Status: Unutilized
Comment: 2284 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only

Bldg. T–2066
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330484
Status: Unutilized
Comment: 4720 sq. ft., 2-story wood frame, needs rehab, most recent use—admin., off-site use only

Bldg. T–2509
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330485
Status: Unutilized
Comment: 3147 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only

Bldg. T–5901
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330486
Status: Unutilized
Comment: 742 sq. ft., 1-story wood frame, most recent use—admin., off-site use only.

Bldg. T–1464
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330487
Status: Unutilized
Comment: 3778 sq. ft., 1-story wood frame, needs rehab, most recent use—t-shirts and frame shop, off-site use only

Bldg. T–1874
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330488
Status: Unutilized
Comment: 3108 sq. ft., 1-story wood frame, needs rehab, off-site use only

Bldg. T–2011
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330489
Status: Unutilized
Comment: 150 sq. ft., 1-story wood frame, needs rehab, most recent use—storehouse, off-site use only

Bldg. T–2193
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330490
Status: Unutilized
Comment: 1800 sq. ft., 1-story wood frame, needs rehab, most recent use—storage shed, off-site use only

Bldg. T–2507
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330491
Status: Unutilized
Comment: 224 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only

Bldg. T–2510
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330492
Status: Unutilized
Comment: 3210 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only

Bldg. T–4044
Fort Sam Houston
San Antonio Co: Bexar TX 78234-5000
Landholding Agency: Army
Property Number: 219330493
Status: Unutilized
Comment: 263 sq. ft., 1-story brick, needs rehab, most recent use—storage, off-site use only

Bldg. T–2511
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330494
Status: Unutilized
Comment: 18,260 sq. ft., 1-story wood frame, needs rehab, most recent use—vehicle maintenance shop, off-site use only

Bldg. T–2512
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330495
Status: Unutilized
Comment: 18,260 sq. ft., 1-story wood frame, needs rehab, most recent use—vehicle maintenance shop, off-site use only

Bldg. T–2513
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330496
Status: Unutilized
Comment: 13,603 sq. ft., 1-story wood frame, needs rehab, most recent use—repair shop, off-site use only

Bldg. S–2516
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330497
Status: Unutilized
Comment: 3008 sq. ft., 1-story steel, most recent use—paint stripping plant, lead contaminants present, off-site use only

Bldg. T–2520
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330498
Status: Unutilized
Comment: 31,296 sq. ft., 1-story wood frame, needs rehab, most recent use—physical fitness, off-site use only

Bldg. T–2183
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330499
Status: Unutilized
Comment: 3000 sq. ft., 1-story wood frame, needs rehab, most recent use—stable, off-site use only

Bldg. T–6231
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330500
Status: Unutilized
Comment: 600 sq. ft., 1-story wood frame, most recent use—firing range, off-site use only

Bldg. T–6232
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330501
Status: Unutilized
Comment: 401 sq. ft., 1-story wood frame, most recent use—firing range, off-site use only

Bldg. T–6236
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330502
Status: Unutilized
Comment: 401 sq. ft., 1-story wood frame, needs rehab, most recent use—firing range, off-site use only

Bldg. T–2508
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330503
Status: Unutilized
Comment: 224 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Unsuitable Properties

Buildings (by State)

California

117 Bldgs.
Camp Parks Reserve
Camp Parks Co: Alameda CA 98433-
Landholding Agency: Army
Property Number: 219330448
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration

New Jersey

Bldg. TO0606, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330449
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. TO0608, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330450
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. SO5211, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330451
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. TO5308, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330452
Status: Unutilized

Reason: Other
Comment: Extensive deterioration

Bldg. TO6729, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330453
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. TO6883, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330454
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. TO7474, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330455
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. TO8512, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330456
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. TO9042A, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330457
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. TO9065, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330458
Status: Unutilized
Reason: Other
Comment: Extensive deterioration]

Bldg. TO9531, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330459
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. TO9612A, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330460
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. TO9980, Fort Dix
Ft. Dix Co: Burlington NJ 08640-
Landholding Agency: Army
Property Number: 219330461
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

New York

Facility 841
Griffiss Air Force Base
Rome Co: Oneida NY 13441–4520
Landholding Agency: Air Force
Property Number: 189330097
Status: Unutilized
Reason: Secured Area

Bldg. T–1295, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330464
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. T–1296, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330465
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. T–1297, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330466
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. T–1395, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330467
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. T–1495, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330468
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldgs. T–1595, T–1795
Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330469
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. T–1895, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330470
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. T–1995, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330471
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. T–3805, Fort Drum
Ft. Drum Co: Jefferson NY 13602-
Landholding Agency: Army
Property Number: 219330472
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Texas

Bldg. P–130
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330473
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. P–4201
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330474
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. T–2514
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330475
Status: Unutilized
Reason: Other
Comment: Pump house

Bldg. T–2916
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330476
Status: Unutilized
Reason: Other
Comment: Detached latrine

Bldg. T–3180
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330477
Status: Unutilized
Reason: Other
Comment: Detached latrine

Bldg. T–3192
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330478
Status: Unutilized
Reason: Other
Comment: Detached latrine

Bldg. T–3398
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330479
Status: Unutilized
Reason: Other
Comment: Detached latrine

Washington

Bldg. 1220
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011-
Landholding Agency: Air Force
Property Number: 189330091
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1224
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011-
Landholding Agency: Air Force
Property Number: 189330092
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 2004
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011-
Landholding Agency: Air Force
Property Number: 189330093
Status: Unutilized
Reason: Secured Area

Bldg. 2018
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011-
Landholding Agency: Air Force

Property Number: 189330094
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 2150
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011-
Landholding Agency: Air Force
Property Number: 189330095
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 2164
Fairchild Air Force Base
Fairchild AFB Co: Spokane WA 99011-
Landholding Agency: Air Force
Property Number: 189330096
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

267 Buildings, Fort Lewis
Ft. Lewis Co: Pierce WA 98433-
Landholding Agency: Army
Property Number: 219330462
Status: Unutilized
Reason: Secured Area

34 Buildings
Cantonment Area, Yakima Training Center
Co: Yakima WA 98901-
Landholding Agency: Army
Property Number: 219330463
Status: Unutilized
Reason: Secured Area

Land (by State)

Arizona

Salt River Vortac
North of intersection of Price Rd. & 1st St.
Mesa Co: Maricopa AZ 85201-
Landholding Agency: GSA
Property Number: 549330008
Status: Excess
Reason: Other
Comment: no legal access
GSA Number: 9-U-AZ-624

Colorado

Former ERDA Site
Black Bridge Park
Gunnison Co: Mesa CO 81501-
Landholding Agency: GSA
Property Number: 549330009
Status: Excess
Reason: Floodway
GSA Number: 7-GR-CO-463-D

[FR Doc. 93-24594 Filed 10-7-93; 8:45 am]

Billing Code 4210-29-F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (Public Law 92-463), an announcement is made of a meeting of the Colorado River Basin Salinity Control Advisory Council.

DATES: The meeting begins on Tuesday, October 26, 1993, at 1 p.m. and reconvenes on Wednesday, October 27, 1993, at about 2 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Crown Plaza, 111 North Central Avenue, Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley (Stan) W. Gappa, Colorado River Salinity Program Coordinator, Bureau of Reclamation, D-5003, P.O. Box 25007, Denver, CO 80225; telephone: 303-236-6782.

SUPPLEMENTARY INFORMATION: Advisory Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Department of the Interior, Department of Agriculture, and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss Colorado River Basin Salinity Control Activities and content of their annual report.

The meeting of the Advisory Council is open to the public. Any member of the public may file a written statement with the Council before, during, or after the meeting in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting.

Dated: October 1, 1993.

J. William McDonald,

Acting Deputy Commissioner.

[FR Doc. 93-24776 Filed 10-7-93; 8:45 am]

BILLING CODE 4310-94-M

Bureau of Land Management

[MT-920-03-4110-03, SDM 81158]

Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease SDM 81158, Fall River County, South Dakota, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in sec. 31 (d) and (e) of the Mineral Lands Leasing act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: September 27, 1993.

Karen L. Carroll,

Chief, Fluids Adjudication Unit.

[FR Doc. 93-24727 Filed 10-7-93; 8:45 am]

BILLING CODE 4310-DN-M

[WY-920-41-5700; WYW101300]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW101300 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW101300 effective May 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Mary Jo Rugwell,

Acting Supervisory Land Law Examiner.

[FR Doc. 93-24723 Filed 10-7-93; 8:45 am]

BILLING CODE 4310-22-M

[NV-930-4210-05; N-45233]

Corrected Notice of Realty Action: Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive Sale of Public Lands in Clark County, Nevada.

SUMMARY: The Notice of Realty Action published in the **Federal Register** on July 21, 1992 (57 FR 32230; FR Doc 92-17070), is hereby corrected with respect to the subdivision description of the lands located within section 4. The proper subdivision description is as follows:

Sec. 4, Lots 5 and 12, SE¼NE¼, E½SE¼.

All other terms and conditions of the Notice continue to apply.

Dated: October 1, 1993.

Colin P. Christensen,

Acting District Manager, Las Vegas, NV.

[FR Doc. 93-24724 Filed 10-7-93; 8:45 am]

BILLING CODE 4310-HC-M

[NM-030-4210-05; NMNM90654]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance to Dona Ana County under the provision of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). Dona Ana County proposes to use the land for the Chaparral Community Park.

T. 26 S., R. 5 E., NMPM,
Sec. 14, E½SE¼SW¼, W½SW¼SE¼.
Containing 40.00 acres, more or less.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before November 22, 1993.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at (505) 525-4349.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Classification Comments: Interested parties may submit comments involving the suitability of the land for Chaparral Community Park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planing and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the Chaparral Community Park.

Dated: September 28, 1993.

Linda S.C. Rundell,

District Manager.

[FR Doc. 93-24725 Filed 10-7-93; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-010-2200-04]

Availability of the Arizona Strip Resource Management Plan Amendment and Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976 and section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared an amendment and environmental assessment to its Arizona Strip Resource Management Plan. The amendment finds the following public lands suitable for exchange providing exchange is in the public interest.

Gila and Salt River Meridian, Arizona

T. 40 N., R. 15 W.,
Sec. 4, lot 1 (part)—that portion that is on the bluff above the Virgin River. Cadastral survey required.
Containing 30 acres more or less.

T. 40 N., R. 16 W.,
Sec. 35, SW¼ SW¼.
Containing 40 acres.

T. 41 N., R. 15 W.,
Sec. 28, SW¼ SW¼ SW¼ (part)—a small triangle southwest of the county road right-of-way Cadastral survey required.
Containing 5 acres more or less.

DATES: For a period of 30 days from November 8, 1993 interested persons may submit comments regarding the suitability determination to the District Manager, Bureau of Land Management, Arizona Strip District, 390 North 3050 East, St. George, Utah 84770.

Except for any portions under protest, the BLM's Arizona State Director may approve the plan after November 8, 1993.

Roger G. Taylor,

District Manager.

[FR Doc. 93-24731 Filed 10-7-93; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Outer Continental Shelf Gas and Oil Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of restricted joint bidders.

SUMMARY: 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 gas and oil lease sales to be held during the bidding period from November 1, 1993, through April 30, 1994. The List of Restricted Joint Bidders published April 9, 1993, in the **Federal Register** at 58 FR 18416 covered the period of May 1, 1993, through October 31, 1993.

Group I. Chevron Corporation; 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.; Shell Frontier Oil & Gas 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 & Oil Inc.; BP Exploration (Alaska) Inc.

Dated: October 4, 1993.

Tom Fry,

Director, Minerals Management Service.

[FR Doc. 93-24782 Filed 10-7-93; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Concession Permit; Acadia National Park, Maine

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession permit authorizing continued carriage ride services, horse camp facility, and day use parking and related services for visiting equestrians for the public at Acadia National Park, Maine for a period of three years from January 1, 1994, through December 31, 1996.

EFFECTIVE DATE: December 7, 1993.

ADDRESSES: Interested parties should contact the Regional Director, National Park Service, North Atlantic Region, Attention: Division of Concessions Program Management, 15 State Street, Boston, MA 02109-3572, Telephone (617) 223-5209, to obtain a copy of the prospectus describing the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1992, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit, providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the permit will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the permit will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the permit will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Regional Director not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: September 27, 1993.

Marie Rust,

Regional Director.

[FR Doc. 93-24720 Filed 10-7-93; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Proposed Glenn-Colusa Irrigation District Fish Screening Facilities Improvements, Sacramento River, Glenn County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement/environmental impact report, and to conduct a public scoping meeting.

SUMMARY: Pursuant to sections 3406(b)(20) and 3410 of the Central Valley Project Improvement Act, section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, and section 21002 of the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the Reclamation Board of the State of California (an independent State board), intend to prepare a joint environmental impact statement/environmental impact report (EIS/EIR) for the Glenn-Colusa Irrigation District's (GCID) proposed Fish Screening Facilities Improvements Project as its Hamilton City pumping plant on the Sacramento River, Glenn County, California. Reclamation, the Reclamation Board, and GCID propose to either improve the existing screens, build new screens, relocate the intake, restore the Sacramento River gradient by raising the water elevation about 3 feet in the vicinity of the pumping plant, or a combination thereof, to reduce mortality of chinook salmon and other species of fish.

DATES: Comments are requested on this notice concerning the scope of alternatives and impact analysis for the EIS/EIR. Written comments should be mailed by November 12, 1993. Oral comments will be taken at a scoping meeting on Wednesday, October 27, 1993, at 7 p.m.

ADDRESSES: Written comments should be addressed to the Reclamation Board, c/o Mr. Stacy Cepello, California Department of Water Resources, 2440 Main Street, Red Bluff, CA 96080. The scoping meeting will be held at the Willows Civic Memorial Building, 525 West Sycamore Street, Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shaffer, Environmental Specialist, Bureau of Reclamation, Mid-Pacific Region, MP-750, 2800 Cottage Way, Room W-2103, Sacramento, CA 95825, telephone: (916) 978-5487; or Mr. Stacy Cepello, Environmental Specialist, California Department of Water Resources, 2440 Main Street, Red Bluff, CA 96080, telephone: (916) 529-7352.

SUPPLEMENTARY INFORMATION: Under a water rights settlement contract with Reclamation, GCID diverts irrigation water from the Sacramento River at its Hamilton City pumping plant which is located about 5 miles northwest of Hamilton City in Glenn County, California.

Fish screens were installed at the plant in 1972 by the California Department of Fish and Game to prevent the entrainment of downstream migrating fish, primarily chinook salmon. The screens have operated since then with mixed success. Since construction of the fish screens, the morphology and hydrology of the Sacramento River main channel have changed. As a result, the gradient of the river has increased, and the water elevation at the fish screens has been lowered about 3 feet, rendering the screens less effective. Fishery agency biologists and engineers generally agree that modifying the fish screens and/or restoring the gradient of the river is needed to reduce fish mortality.

In 1990, the winter-run chinook salmon was listed as threatened under the Federal Endangered Species Act (ESA); and the United States brought an action pursuant to the ESA seeking an order to enjoin GCID from operating its Hamilton City pumping plant. As a result of settlement negotiations to allow GCID to continue to operate its pumping plant during peak winter-run chinook salmon downstream migration, GCID is required to pursue a long-term repair or replacement of its fish screens. Pursuant to sections 3406(b)(20) and 3410 of the Central Valley Project Improvement Act (Title 34 of Pub. L.

102–575), the Secretary of the Interior is authorized and directed to participate with the State of California and other Federal agencies in the implementation of the ongoing program to fully mitigate the fishery impacts associated with the operation of the pumping plant. For the EIS/EIR, Reclamation is the lead Federal agency, and the Reclamation Board, represented by the Department of Water Resources, is the lead State agency.

The EIS/EIR will evaluate the environmental impacts of various combinations of restoring the river gradient, relocating the intake and screen, and modifying the design of the screens. Analyses will include potential direct impacts to aquatic, riparian, and terrestrial resources, and potential secondary impacts to socioeconomic, recreation, and related resources for each alternative.

GCID; State, Federal, and local agencies; organizations; and interested persons have been addressing the issues related to fish mortality for many years, with concerted efforts to resolve the problem since 1989. On October 8, 1992, the Department of Water Resources conducted a preliminary public scoping session to solicit public input regarding needed fish screening facility improvements and potential direct and secondary impacts to the local area. A second scoping meeting will be held on October 27, 1993, to solicit additional comments regarding the alternatives and the associated potential direct and indirect environmental impacts.

For those persons requiring special services, please contact Mr. Stacy Cepello at the Department of Water Resources, telephone: (916) 529–7352. Please call Mr. Cepello as far in advance of the meeting as possible, and no later than October 20, 1993, to enable the Department of Water Resources to secure the needed services. If a request cannot be honored, the requester will be notified. A telephone device for the hearing impaired is available, TDD number (916) 653–6934.

Dated: October 1, 1993.

J. William McDonald,

Acting Deputy Commissioner.

[FR Doc. 93–24775 Filed 10–7–93; 8:45 am]

BILLING CODE 4310–94–M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Kost Brothers Incorporated—a Minnesota corporation, 1515 1st Avenue North, Moorhead, MN 56560.

2. Wholly owned subsidiaries which will participate in the operations, and state of incorporation:

(a) Elbow Lake Gravel, Inc.—a Minnesota corporation, Box 164, Elbow Lake, MN 56531.

(b) Hawley Ready-Mix, Inc.—a Minnesota corporation, PO Box 707, Hawley, Minnesota 56549.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–24828 Filed 10–7–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32348]

Indiana Harbor Belt Railroad Company and the Belt Railway Company of Chicago—Joint Relocation Project Exemption

On September 13, 1993, Indiana Harbor Belt Railroad Company (IHB) filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a portion of its Stockyard Branch Line in Chicago, IL, extending from milepost 2.02 to milepost 4.81 from its present location to a parallel and adjacent track owned and operated by The Belt Railway Company of Chicago (BRC). Under the proposal, IHB and BRC will consolidate rail traffic where their tracks parallel each other in Chicago from BRC 55th Street interlocking plant, westerly to 59th and Oak Park Streets. IHB will remove its main track, which is located approximately 75 feet north of BRC's double mainline tracks, and BRC will grant trackage rights over its mainline tracks to the IHB between the aforesaid locations. The parties intend to consummate the transaction on or after September 20, 1993.

IHB states that train service will remain the same following the relocation and that there are no industries or patrons served by the track that will be affected by the relocation. The purpose of the joint relocation is to eliminate excess facilities, develop operating economies, and improve safety.

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions imposed in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Roger A. Serpe, General Counsel, Indiana Harbor Belt Railroad Company, 175 W. Jackson Blvd., Suite 1460, Chicago, IL 60604.

Decided: September 30, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–24830 Filed 10–7–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree, United States v. Electro-Voice, Inc.

Notice is hereby given that a Consent Decree in *United States* v. *Electro-Voice, Inc.*, Civil Action No. 1:93CV753, was lodged with the United States District Court for the Western District of Michigan on September 20, 1993. This action was brought under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9606, 9607, with respect to the Electro-Voice Superfund Site located at 600 Cecil Street, Buchanan, Michigan. The Consent Decree provides that defendants will implement remediation for the First Operable Unit at the Electro-Voice Site and pay $24,223.55 of past response costs incurred by the U.S. Environmental Protection Agency in connection with the Site.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States* v. *Electro-Voice, Inc.*, D.O.J. Ref. No. 90–11–2–776.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Michigan, 399 Federal Building, Grand Rapids, Michigan 49503 and at the Region 5 office of the U.S. Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

A copy of the Consent Decree also may be examined at the Consent Decree

Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, telephone number (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. The proposed Consent Decree package consists of an 80 page Consent Decree and 113 pages of appendices and exhibits. A request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $20.00 (25 cents per page reproduction charge) for the Consent Decree only or $48.25 for the whole package payable to "Consent Decree Library."

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–24729 Filed 10–7–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Gas Utilization Research Forum

Notice is hereby given that, on August 27, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S. C. 4301 *et seq.* ("the Act"), Gas Utilization Research Forum ("GURF") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Unocal Corporation, Unocal Energy Resources Division, Brea, CA, has become a member of GURF.

No other changes have been made in either the membership or planned activity of the project. Membership in the project remains open, and GURF intends to file additional written notification disclosing all changes in membership.

On December 19, 1990, GURF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 16, 1991, 56 FR 1655.

The last notification was filed with the Department on March 11, 1992. A corrected notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1992, 57 FR 24848.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–24733 Filed 10–7–93; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research and Production Act of 1993—National Information Technology Center of Maryland, Inc.

Notice is hereby given that, on September 3, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Information Technology Center of Maryland, Inc. ("NITC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have become members of NITC: Consultare Group, Inc., Bethesda, MD; First National Bank of Maryland, Baltimore, MD; International Systems Development Corp., Rockville, MD; Personnel Assets, Germantown, MD; Morino Foundation, Great Falls, VA; Technology Access, San Rafael, CA; General Services Administration, Falls Church, VA; Intercon Systems Corporation, Herndon, VA; C3, Inc., Herndon, VA; Garcia Consulting, Inc., Arlington, VA; Office of the Assistant Secretary of Defense, Washington, DC; and the Mitre Corporation, McLean, VA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NITC intends to file additional written notification disclosing all changes in membership.

On September 12, 1991, NITC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 22, 1991 (56 FR 54586).

The last notification was filed with the Department on June 8, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 15, 1993 (58 FR 38140).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–24730 Filed 10–7–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; SciMed Life Systems, Inc.

Notice is hereby given that, on September 8, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), SciMed Life Systems, Inc. ("SciMed") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are SciMed Life Systems Inc., Maple Grove, MN; and Cardiovascular Imaging Systems Inc., Sunnyvale, CA. The parties agreed in March 1992 to cooperate in the development and production of ultrasound imaging guidewires, imaging hardware, and other related products and technology for coronary and peripheral intravascular applications.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–24732 Filed 10–7–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Quotas for Controlled Substances in Schedules I and II

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: 1994 Aggregate Production Quota.

SUMMARY: This document establishes initial 1994 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

DATES: This order is effective on October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to section 0.100 of

title 28 of the Code of Federal Regulations.

On July 27, 1993, a notice of the proposed initial 1994 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (58 FR 40159). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before August 26, 1993.

A company commented that the initial 1994 aggregate production quotas for codeine (for sale) and oxymorphone were insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, estimated export requirements and for the establishment and maintenance of reserve stocks. The companies' comments were based on their actual 1993 sales, forecasted 1994 domestic sales, actual 1993 exports and estimated 1994 exports.

After reviewing the relevant information, the DEA has determined that no increases are necessary for the initial 1994 aggregate production quotas for codeine (for sale) and oxymorphone at this time.

Several companies commented that the initial 1994 aggregate production quotas for amobarbital, amphetamine, codeine (for conversion), hydrocodone, methylphenidate, methadone, methadone intermediate (for conversion), morphine (for conversion), noroxymorphone (for conversion), opium, oxycodone (for sale), pentobarbital, phenylacetone and thebaine were insufficient to provide for the medial, scientific, research and industrial needs of the United States and for the establishment and maintenance of reserve stocks.

The DEA has reviewed the involved companies' current 1993 and forecasted 1994 sales and inventories and has adjusted the initial 1994 aggregate production quotas for amobarbital, amphetamine, codeine (for conversion), hydrocodone, methylphenidate, methadone, methadone intermediate (for conversion), noroxymorphone (for conversion), morphine (for conversion), opium, oxycodone (for sale), pentobarbital, phenylacetone and thebaine accordingly.

The DEA received updated information from several manufacturers which shows the necessity for adjustments of the initial 1994 aggregate production quotas for dextropropoxyphene, hydromorphone and fentanyl. The adjustments will provide for the estimated medical, scientific, research and industrial needs of the United States and for the establishment and maintenance of reserve stocks. The DEA has adjusted the 1994 initial aggregate production quotas for dextropropoxyphene, hydromorphone and fentanyl accordingly.

The DEA has received applications for manufacturing quotas from several manufacturers who were recently registered as bulk manufacturers of Schedule I and II controlled substances. The Schedule I and II controlled substances affected by this are lysergic acid diethylamide, methaqualone, 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine, phencyclidine and methcathinone. The DEA has adjusted the initial 1994 aggregate production quotas for these controlled substances to include the recent applications.

Pursuant to section 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

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

The Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Administrator has determined that this action does not require a regulatory flexibility analysis.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator of the DEA by section 0.100 of title 28 of the Code of Federal Regulations, the Administrator hereby orders that the 1994 initial aggregate production quotas, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Established initial 1994 quotas (in grams)
Schedule I	
2, 5–Dimethoxyamphetamine	15,400,000
Dimethylamphetamine	2
Heroin	4
Levo-alpha-acetylmethadol	150,000
Lysergic acid diethylamide	36
Mescaline	2
4-Methylaminorex	4
Methaqualone	12
Methcathinone	4
3, 4-Methylenedioxy-amphetamine	14
3, 4-Methylenedioxy-methamphetamine	12
N-Hydroxy-3, 4-methylene-dioxyamphetamine	2
Normorphine	2
Tetrahydrocannabinols	50,000
Schedule II	
Alfentanil	7,110
Amobarbital	300,000
Amphetamine	359,000
Cocaine	599,000
Codeine (for sale)	64,235,000
Codeine (for conversion)	12,046,000
Desoxyephedrine	1,065,000
1,043,000 grams of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 22,100 grams for methamphetamine.	
Dextropropoxyphene	117,053,000
Dihydrocodeine	395,000
Diphenoxylate	1,023,000
Eogonine (for conversion)	650,000
Fentanyl	101,000
Glutethimide	979,000
Hydrocodone	8,015,000
Hydromorphone	380,000
Levorphanol	6,400
Meperidine	8,480,000
Methadone	3,970,000
Methadone (for conversion)	220,000
Methadone Intermediate (for sale)	700,000
Methadone Intermediate (for conversion)	4,962,000
Methamphetamine (for conversion)	723,000
Methylphenidate	5,300,000
Morphine (for sale)	6,480,000
Morphine (for conversion)	75,668,000
Noroxymorphone (for sale)	150,000
Noroxymorphone (for conversion)	1,500,000
Opium	1,242,000
Oxycodone (for sale)	4,312,000
Oxycodone (for conversion)	3,400
Oxymorphone	1,400
Pentobarbital	14,430,000
Phencyclidine	32
Phenylacetone (for conversion)	1,952,000
Secobarbital	550,800
Sufentanil	620
Thebaine	9,298,000

Dated: September 29, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–24742 Filed 10–7–93; 8:45 am]

BILLING CODE 4410–09–M

Proposed 1994 Aggregate Production Quotas for Schedule I Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed 1994 Aggregate Production Quotas.

SUMMARY: This notice proposes 1994 aggregate production quotas for controlled substances in Schedule I of the Controlled Substances Act (CSA).

DATES: Comments or objections must be received on or before November 8, 1993.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of title 28 of the Code of Federal Regulations.

Applications have been made for manufacturing quotas for several Schedule I controlled substances. Based on a review of these applications and other information available to the DEA, the Administrator of the DEA, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826) and delegated to the Administrator by § 0.100 of title 28 of the Code of Federal Regulations, hereby proposes the 1994 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous base, be established as follows:

Basic class	Proposed 1993 aggregate production quota (grams)
4-Methoxyamphetamine	10
3-Methylfentanyl	10
Cathinone	2

All interested persons are invited to submit comments or objections, in writing, regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objects to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to sections (3)(c)(3) and 3(e)(2)(c) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

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

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of annual production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: September 30, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–24743 Filed 10–7–93; 8:45 am]

BILLING CODE 4410–09–M

National Institute of Corrections

Advisory Board Meeting

Time and Date: 9:45 a.m., Tuesday, November 9, 1993

Place: Old Colony Inn, Conference Center Ballroom, North, 625 First Street, Alexandria, Virginia

Status: Open.

Matters to be Considered: An update on the selection process for the NIC Director, progress reports on the Jail Suicide Update Newsletter and the NIC/SAMHSA Agreement, an update on technical assistance for prisons riots and disturbances, a budget update, and a NASA briefing. A review of issues forum on the mentally ill offender and follow-up Advisory Board issues forum on medical issues will also be presented.

Contact Person for More Information: Larry Solomon, Deputy Director, (202) 307–3106.

Larry Solomon,

Deputy Director.

[FR Doc. 93–24726 Filed 10–7–93; 8:45 am]

BILLING CODE 441036–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Florida
FL930060 (Oct. 8, 1993)
FL930061 (Oct. 8, 1993)
FL930062 (Oct. 8, 1993)
FL930063 (Oct. 8, 1993)
FL930064 (Oct. 8, 1993)
FL930065 (Oct. 8, 1993)
FL930066 (Oct. 8, 1993)
FL930067 (Oct. 8, 1993)
FL930068 (Oct. 8, 1993)
FL930069 (Oct. 8, 1993)
FL930070 (Oct. 8, 1993)
FL930071 (Oct. 8, 1993)
FL930072 (Oct. 8, 1993)
FL930073 (Oct. 8, 1993)
FL930074 (Oct. 8, 1993)
FL930075 (Oct. 8, 1993)
FL930076 (Oct. 8, 1993)
FL930077 (Oct. 8, 1993)
FL930078 (Oct. 8, 1993)
FL930079 (Oct. 8, 1993)
FL930080 (Oct. 8, 1993)
FL930081 (Oct. 8, 1993)
FL930082 (Oct. 8, 1993)
FL930083 (Oct. 8, 1993)
FL930084 (Oct. 8, 1993)
FL930085 (Oct. 8, 1993)
FL930086 (Oct. 8, 1993)

Volume II

Missouri
M0930020 (Oct. 8, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida
FL930017 (Feb. 19, 1993)
Kentucky
KY930001 (Feb. 19, 1993)
KY930002 (Feb. 19, 1993)
KY930003 (Feb. 19, 1993)
KY930004 (Feb. 19, 1993)
KY930007 (Feb. 19, 1993)
KY930029 (Feb. 19, 1993)
Massachussetts
MA930001 (Feb. 19, 1993)
MA930005 (Feb. 19, 1993)
MA930007 (Feb. 19, 1993)
West Virginia
WV930002 (Feb. 19, 1993)
West Virginia
WV930032 (Feb. 19, 1993)

Volume II

Arkansas
AR930001 (Feb. 19, 1993)
AR930003 (Feb. 19, 1993)
AR930008 (Feb. 19, 1993)
Illinois
IL930002 (Feb. 19, 1993)
Illinois
IL930015 (Feb. 19, 1993)
Kansas
KS930006 (Feb. 19, 1993)
KS930007 (Feb. 19, 1993)
KS930008 (Feb. 19, 1993)
KS930012 (Feb. 19, 1993)
KS930016 (Feb. 19, 1993)
KS930017 (Feb. 19, 1993)
KS930018 (Feb. 19, 1993)
KS930019 (Feb. 19, 1993)
KS930020 (Feb. 19, 1993)
KS930021 (Feb. 19, 1993)
KS930023 (Feb. 19, 1993)
KS930025 (Feb. 19, 1993)
Michigan
MI930040 (Oct. 1, 1993)
MI930041 (Oct. 1, 1993)
MI930052 (Oct. 1, 1993)
Oklahoma
OK930013 (Feb. 19, 1993)
OK930014 (Feb. 19, 1993)
OK930016 (Feb. 19, 1993)
OK930017 (Feb. 19, 1993)
OK930018 (Feb. 19, 1993)
OK930019 (Feb. 19, 1993)
OK930020 (Feb. 19, 1993)

Volume III

Utah
UT930001 (Feb. 19, 1993)
UT930004 (Feb. 19, 1993)
UT930005 (Feb. 19, 1993)
UT930006 (Feb. 19, 1993)
UT930007 (Feb. 19, 1993)
UT930008 (Feb. 19, 1993)
UT930009 (Feb. 19, 1993)
UT930010 (Feb. 19, 1993)
UT930011 (Feb. 19, 1993)
UT930012 (Feb. 19, 1993)
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UT930015 (Feb. 19, 1993)
UT930020 (Feb. 19, 1993)
UT930023 (Feb. 19, 1993)
UT930024 (Feb. 19, 1993)
UT930025 (Feb. 19, 1993)
UT930026 (Feb. 19, 1993)
UT930028 (Feb. 19, 1993)
UT930029 (Feb. 19, 1993)
UT930031 (Feb. 19, 1993)
UT930033 (Mar. 19, 1993)
Washington
WA930001 (Feb. 19, 1993)
WA930002 (Feb. 19, 1993)
WA930003 (Feb. 19, 1993)
WA930007 (Feb. 19, 1993)
WA930008 (Feb. 19, 1993)
WA930011 (Feb. 19, 1993)
WA930013 (Aug. 27, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 1st day of October 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–24519 Filed 10–5–93; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Behavior; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Physiology and Behavior.

Date and Time: October 27–29, 1993, 8:30 a.m. to 5:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203, Rm. 680.

Type of Meeting: Part—Open.

Contact Person: Dr. Fred Stollnitz, Program Director, Animal Behavior, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203, room 685, (703) 306–1421.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: Closed Session—October 27 and 29, 1993, 8:30 a.m. to 5:30 p.m., and October 28, 1993, 8:30 a.m. to 4 p.m. To review and evaluate proposals in Animal Learning and Behavior as part of the selection process for awards. Open Session—October 28, 1993, 4 p.m. to 5:30 p.m. for a discussion with the Acting Division Director of IBN and the Acting Assistant Director of BIO on research trends and opportunities in Animal Learning and Behavior.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 5, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–24840 Filed 10–7–93; 8:45 am]

BILLING CODE 7555–01–M

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, room 208, 1800 G Street NW., Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Bransford at the above address or (202) 357–7857.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Mary E. Clutter, Assistant Director for Biological Sciences, Chairperson

Constance K. McLindon, Director, Office of Information Resource Management, Executive Secretary

Judith S. Sunley, Executive Officer, Directorate for Mathematical and Physical Sciences

Nathaniel G. Pitts, Director, Office of Science and Technology Infrastructure

Luther S. Williams, Assistant Director for Education and Human Resources

Joseph Bordogna, Assistant Director for Engineering.

Dated: October 5, 1993.

John F. Wilkinson, Jr.,

Acting Director, Division of Human Resource Management.

[FR Doc. 93–24841 Filed 10–7–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Second Quarter CY 1993; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). During the second quarter of CY 1993, the following incidents at NRC licensees were determined to be abnormal occurrences (AOs) and are described below, together with the remedial actions taken. The events are also being included in NUREG–0090, Vol. 16, No. 2, ("Report to Congress on Abnormal Occurrences: April–June 1993"). This report will be available at the NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555 about three weeks after the publication date of this **Federal Register** Notice.

OTHER NRC LICENSEES

93–5 Medical Brachytherapy Misadministration at Parkview Memorial Hospital in Fort Wayne, Indiana

One of the AO reporting guidelines notes that a therapeutic exposure to a part of the body not scheduled to receive radiation should be considered an abnormal occurrence.

Date and Place—December 9, 1992; Parkview Memorial Hospital; Fort Wayne, Indiana.

Nature and Probable Consequences—On December 9, 1992, a 62-year-old patient was scheduled to receive a 500 centigray (cGy) (500 rad) radiation dose for vaginal cancer using a high-dose-rate brachytherapy treatment device. The device uses a 296,000 megabequerel (MBq) (8 curie (Ci)) iridium-192 (Ir-192) source.

The brachytherapy treatment was the final part of a curative radiation treatment series.

The location of the treatment area was unusual for vaginal treatments and required a different starting position for the Ir-192 source than is normally used for such treatments. Both the dosimetrist and the medical physicist performed the treatment calculations working together (the second series of calculations was not an independent check) and both used the incorrect starting location for the source position. The error was not detected, and the treatment was performed as scheduled. As a result, the intended 500 cGy (500 rad) radiation dose was delivered to an area 5.25 centimeters (2.07 inches) away from the intended treatment area. A small portion of the intended treatment area received a radiation dose ranging from 50 to 300 cGy (50 to 300 rad) according to the licensee.

On January 6, 1993, the error was discovered during a record review by a dosimetrist. The referring physician and the patient were informed of the error. The licensee reported the misadministration to NRC on January 7, 1993. The incident constitutes a misadministration because the radiation dose was administered to the wrong treatment site. On January 18, 1993, the patient received an additional treatment using the high dose rate brachytherapy treatment device. The treatment plan was revised to meet the intended objectives of the earlier treatment, taking into account the lower dose already received by a portion of the treatment area.

The licensee reported that no physical effect was observed as a result of the misadministration. The NRC retained a medical consultant to evaluate the

circumstances of the misadministration. The consultant concluded that no noticeable biological effect is expected as a result of the misadministration.

Cause or Causes—Because of the unusual configuration of the treatment area, the standard treatment parameters used for vaginal brachytherapy treatment were not applicable. A medical physicist and a dosimetrist prepared the dose calculations working together and made the same error in assuming the initial position of the treatment source.

The licensee's Quality Management Program requires that an independent check of the dose calculations be performed by a qualified individual before the treatment is initiated. Such an independent check was not performed.

Actions Taken To Prevent Recurrence

Licensee—The licensee has revised its procedures for preparing the treatment plans for the high-dose-rate brachytherapy procedures. It has made improvements in the calculation notebook and other related data used in preparing the treatment plans and the dose calculations.

NRC—NRC Region III conducted a special inspection on January 28 and 29, 1993, to review the circumstances surrounding the misadministration. An NRC medical consultant was also retained to review the case.

The NRC inspection determined that the licensee failed to follow its Quality Management Program requirement for an independent check of brachytherapy dose calculations. Other violations were identified which did not directly relate to the misadministration. A notice of violation was issued to the licensee.

93–6 Inoperable Research Reactor Scrams at University of Virginia in Charlottesville, Virginia

One of the AO reporting guidelines notes that a major deficiency in operating, management, or procedural controls that impact safety should be considered an abnormal occurrence.

Date and Place—April 28, 1993; the University of Virginia; Charlottesville, Virginia.

Nature and Probable Consequences—Since November of 1992, the University of Virginia's research reactor had been experiencing a series of spurious scrams. The scrams were occurring without any annunciator indication. Because of the design of the scram annunciator system, the licensee staff did not believe that the unannunciated scrams were being caused by electrical supply line noise. A member of the licensee's staff who was in charge of the electronic maintenance at the facility concluded that the most likely source of the problem was in the scram logic system. Therefore, when he experienced unannunciated scrams on April 28, 1993, while performing the duties of the Senior Reactor Operator (SRO), he independently began trouble-shooting the problem to try to isolate the source of the scrams. There was no specific procedure in place to provide guidance for the trouble-shooting activities.

With the reactor shutdown, the SRO first interchanged some of the electronic equipment in the reactor control console. That action did not remedy the situation so he interchanged some other equipment, i.e., two mixer/driver (MD) modules. The MD modules appeared to be identical in their external appearance and both had the same identification number. After approximately 30 minutes, no further scrams were received so the SRO briefly conferred with the Reactor Administrator about the situation, and the reactor was restarted. Neither the SRO nor the Reactor Administrator realized that the trouble-shooting actions (exchanging the MD modules) were maintenance activities. Therefore, no post-maintenance testing was performed to ensure that the safety systems were operating as required.

The reactor was operated at full power for the next 5.5 hours with a change in SROs every 2 hours. No scram signal was received during that period. During a normal shutdown of the reactor at the end of the day on April 28, another SRO, who was then in charge of reactor operations, decided to complete the shutdown by introducing an electronic period scram. The scram logic, however, failed to produce the expected period scram and the SRO manually scrammed the reactor, which resulted in safe shutdown of the reactor.

Cause or Causes—The principal cause of the incident was the SRO exchanging the MD modules in the reactor control console. This inadvertently defeated five of the scrams required for reactor operation. Other contributing causes were not recognizing the exchanging of the modules as a maintenance activity, lack of adequate procedures defining maintenance and trouble-shooting activities, and failure to perform post-maintenance testing of the safety system prior to restarting reactor operations.

Actions Taken To Prevent Recurrence

Licensee—The Reactor Director was notified of the problem when no scram was received the evening of April 28 and an investigation was begun into the cause of the problem. As a result of the investigation, the licensee initiated various corrective actions including: (1) Maintaining the reactor in safe shutdown until the problem was investigated, understood, and reviewed with the Reactor Safety Committee (RSC) and with the NRC; (2) notifying the University, the community, and the NRC of the problem; (3) requesting a peer review from the National Organization of Test, Research, and Training Reactors (TRTR); (4) determining the root cause(s) of the event and taking corrective actions; (5) determining if there were any problems with the hardware, schematics, and Standard Operating Procedures (SOPs) which may have contributed to this event and taking actions to correct the problems noted; and (6) determining if any administrative corrective actions were needed.

NRC—A reactive inspection was conducted on May 3, 1993. Staff members from NRC Region II and headquarters participated in this inspection. A follow-up inspection was conducted on June 3 and 4, 1993, again with participation from NRC Region II and headquarters. Apparent violations of regulatory requirements were identified and discussed with licensee management and the SRO involved in the incident during a June 29, 1993, enforcement conference held in the NRC Region II Office. The licensee presented its perspective on the significance of the event, its causes, and the licensee's corrective actions. A notice of violation and proposed imposition of civil penalty was issued by the NRC on July 28, 1993. Violations were imposed for operating the reactor without five safety system channels required by the Technical Specifications and for failing to verify that the safety system channels were operable following maintenance, as required by the Technical Specifications. These were categorized in the aggregate as a Severity Level II problem (Severity Levels I through V range from the most significant to the least significant) and a civil penalty of $2000 was proposed. The licensee paid the civil penalty on August 26, 1993.

93–7 Medical Brachytherapy Misadministration at Mercy Memorial Medical Center in St. Joseph, Michigan

One of the AO reporting guidelines notes that a therapeutic exposure to a part of the body not scheduled to receive radiation should be considered an abnormal occurrence.

Date and Place—February 16, 1993; Mercy Memorial Medical Center; St. Joseph, Michigan.

Nature and Probable Consequences—On February 16, 1993, at 5 p.m., a patient was undergoing a brachytherapy

procedure using cesium-137 (Cs-137) sources). The radiation oncologist involved in this procedure failed to properly rotate the insert of the brachytherapy device containing the sources, and one source containing 862.1 megabecquerel (MBq) (23.3 millicuries (mCi)) Cs-137 fell out of the insert onto the patient's bed. The source landed on an absorbent pad that was placed between the patient and the surface of the bed. The loss of the source was not observed by the oncologist or the medical physicist who was assisting him.

On February 17, at about 8:20 a.m., a nurse observed a small piece of metal between the patient and the absorbent pad. The nurse thought it was a small screw and retrieved it, placing it in a paper cup on the bedside table. The radiation oncologist and the medical physicist were notified, and they identified the object as a Cs–137 source. Using tongs, they placed it in a shielded storage container.

The dislodged source was subsequently placed in the treatment device, and the treatment plan was revised to reflect that the source was implanted for a reduced period of time. The revised treatment plan indicated that this implant time reduction for the one source would result in an underdose of about 6 percent to the intended treatment site.

The licensee calculated that the dislodged source resulted in a radiation dose of about 45.8 centigray (cGy) (45.8 rad) to the perineum, an area different from the intended treatment site. In addition, the licensee stated that there is no evidence of clinical effects on the patient as a result of the radiation exposure from the dislodged source.

This incident is considered a misadministration because a part of the patient's body received unscheduled radiation exposure. The licensee reported that both the patient and the referring physician had been notified of the incident.

The NRC staff calculated the dose to the nurse who discovered and handled the dislodged source. Based on information supplied by the nurse on her handling of the source, NRC calculated that she received a 4.25 cGy (4.25 rad) radiation exposure to the surface of the hand in contact with the source.

Cause or Causes—The cause of the misadministration was the radiation oncologist's failure to properly rotate the Cs–137 source insert while loading the source into the treatment device. In addition, the nurse who discovered the dislodged source had not received any training on the size and appearance of the brachytherapy sources.

Actions Taken To Prevent Recurrence

Licensee—The licensee conducted refresher training for its nurses to explain brachytherapy procedures and provided them with instructions.

NRC—NRC Region III conducted a special inspection from March 26 through April 7, 1993, to review the circumstances surrounding the misadministration. An NRC medical consultant was also retained to evaluate the circumstances of the event.

The inspection identified several apparent violations of NRC requirements including: (1) Substantial failure to implement a Quality Management Program for brachytherapy procedures; (2) failure of the RSO to adequately investigate the accident to identify a misadministration, and to assess overexposure to the nurses's hands; (3) failure to adequately instruct nurses caring for brachytherapy patients; and (4) failure to make evaluations to assure compliance with NRC exposure limits for occupational workers. On August 2, 1993, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $6,250. The licensee paid the civil penalties on August 12, 1993.

93–8 Medical Brachytherapy Misadministration at Keesler Medical Center, Keesler Air Force Base, in Biloxi, Mississippi

One of the AO reporting guidelines notes that a therapeutic exposure to a part of the body not scheduled to receive radiation should be considered an abnormal occurrence.

Date and Place—June 10, 1993; Keesler Medical Center; Kessler Air Force Base; Biloxi, Mississippi.

Nature and Probable Consequences—On June 14, 1993, the United States Air Force Radioisotope Committee Secretariat (RIC) notified NRC Region IV of an incident involving a brachytherapy treatment which occurred at Keesler Medical Center on June 10, 1993. The permittee's Radiation Safety Officer (RSO) was not present at the facility on June 10. The permittee staff involved with the treatment did not initially recognize the incident as a misadministration. The incident and related facts were reported to the RSO when he returned to the medical center on June 14. The RSO subsequently notified RIC of the incident, who in turn formally notified NRC. RIC's initial report noted that a patient who was to receive a total dose of 1400 centigray (cGy) (1400 rad) to the right lower lung had also received an unintended dose of approximately 2.09 cGy (2.09 rad) to the facial area.

The incident involved a brachytherapy treatment using an iridium-192 high-dose-rate remote afterloading device. The written directive prepared by the authorized user prescribed two treatment doses of 700 cGy (700 rad) each to be delivered to the lower lobe of the patient's right lung. The first treatment dose was administered on June 2, 1993, using a single endobronchial catheter, as prescribed in the written directive. The second treatment dose was to be administered on June 10, 1993, using two endobronchial catheters, one positioned in the lower lobe of the right lung and the second positioned in the middle lobe of the lung. The fractional dose prescribed for the lower lobe was delivered as intended. The fractional dose for the middle lobe was not delivered as prescribed in the written directive due to incorrect positioning of the source.

The mispositioning of the source resulted from an error in entering the length of the catheter into the treatment planning computer. The treatment plan established by the authorized user called for use of two catheters, each with a length of 150 centimeters (cm) (59.1 inches (in.). The length of the first catheter and source position was properly entered at the treatment planning computer console. The permittee's dosimetrist believed that the length and source position for the second catheter were properly entered. However, it was later discovered that due to an erroneous keystroke, a default value of 100 cm (39.4 in.) was entered as the length of the second catheter. This resulted in an error in the source position since the actual distance of source travel is determined by subtracting an "offset" value from the length of the catheter. The error in the source position was recognized by the authorized user as the treatment was underway and the treatment was promptly stopped.

Following consultation with the device manufacturer and review of the treatment planning computer data and the data available from the remote afterloading device control console, permittee representatives determined that the source had been positioned approximately 10 cm (3.9 in.) in front of the patient's face for a period of approximately 46 seconds. The estimated dose to the patient's face was determined to be approximately 2.09 cGy (2.09 rad). In the absence of the licensee's RSO, and based on advice provided by the manufacturer's

representative, the permittee's staff determined that the incident did not constitute a therapeutic misadministration. The remainder of the prescribed treatment dose was delivered to the middle lobe of the patient's right lung later that day. Through discussions with the RSO, the RIC, and the NRC staff, the permittee subsequently determined on June 14 that a misadministration had occurred and reported the incident to NRC and the patient as required.

NRC inspectors were at the medical center on June 23 and 24, 1993, to review the circumstances associated with the misadministration and its probable cause(s).

Cause or Causes—Based on interviews with permittee representatives and reenactment of the treatment planning and setup, the apparent root cause of the misadministration was determined to be an erroneous keystroke at the treatment planning computer console. The permittee's dosimetrist demonstrated for the NRC inspectors the sequence of steps taken during treatment planning, noting that the correct value of 150 cm (59.1 in.) had been entered for both catheters on June 10. However, the dosimetrist believed that after the length of the second catheter was entered, she depressed the "F2" function key to enter another treatment parameter and accidentally touched the "F1" function key with her hand at the same time. This caused the catheter length value to change to the default value of 100 cm (39.4 in.) with only the sound of a "beep" to warn the operator. Through repetitive testing of different keystroke sequences, the dosimetrist determined that this was the only sequence that would reproduce a reset of the catheter length to the default value once the length was manually entered at the treatment planning console. This sequence of steps was repeated for the inspectors several times during the inspection and in each instance, the catheter length defaulted to 100 cm (39.4 in.).

A contributing factor to the misadministration was the failure of permittee staff to verify the dwell positions for each catheter prior to performing the treatment as required by an "Operating Instruction" established by the permittee. Although this operating instruction was not incorporated in the permittee's Quality Management Program, it did require that individuals administering patient treatments using the high-dose-rate remote afterloading device verify both the source dwell time and source dwell positions prior to administering a treatment. This requirement was established to ensure that treatment parameters entered in the device control unit matched the parameters entered in the treatment planning computer. Both the dosimetrist and medical physicist who administered the treatment on June 10 acknowledged that they had only verified the source dwell times noted on the treatment planning and device control computer printouts. Although the dwell position value on both records was incorrect (because the error was propagated in both computer systems), the dosimetrist and physicist state that they probably would have identified the error if they had verified the dwell position prior to treatment.

Actions Taken To Prevent Recurrence

Permittee—Following the misadministration, the permittee modified a checklist that had been used by the staff to verify that certain actions were completed prior to treatment. The modifications included requirements to (1) physically measure each catheter prior to use for patient treatments and documents the measured length of the catheter on the checklist form, (2) document the planned distance from the end of the catheter to the first dwell position on the checklist form, (3) have the authorized user and medical physicist verify the documented catheter length and dwell positions and sign the checklist for approval, and (4) include a review of the checklist in the permittee's Quality Management Program.

NRC—An inspection was conducted on June 23 and 24, 1993, to review the misadministration and its probable cause(s). Based on the results of the inspection, two apparent violations were identified relative to the permittee's Quality Management Program. These included (1) a failure to implement and maintain a Quality Management Program that met the objective of ensuring that radiation from byproduct material was administered in accordance with a written directive, and (2) failure to indicate the radioisotope to be used by brachytherapy treatments in 22 written directives. In addition, several weaknesses were identified in the permittee's written Quality Management Program. The inspection findings indicated that the failure to verify the source dwell positions prior to performing a patient treatment was an isolated event and that the permittee staff had complied with the applicable operating instruction during previous patient treatments. A Notice of Violation was issued on July 20, 1993. A Civil Penalty was not proposed.

Dated at Rockville, MD, this 4th day of October 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–24785 Filed 10–7–93; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Safety Research Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The Nuclear Safety Research Review Committee (NSRRC) will hold a telephone conference meeting on October 27, 1993, from 4 p.m. until approximately 5:30 p.m. The designated conference room for the meeting will be the Rockville Room in the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814, with conference call hook-ups to participating Committee members not present in the conference room. The meeting will be held in accordance with the requirements of the Federal Advisory Committee Act (FACA). Except as noted below, this meeting is open for attendance by members of the public who wish to be present at the Committee's deliberations. Communication with Committee members not present in the conference room will be by speaker phone located in the designated conference room.

A portion of this meeting may be closed to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) and through him to the Commission on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The purpose of this meeting is to deliberate on a report submitted to the Committee by its Severe Accident Subcommittee on the accomplishments, status, completion plans, and personnel activities for programs pursued under the Nuclear Regulatory Commission's Severe Accident Research Program. The review will focus primarily on accomplishments and changes since the Committee's October 22, 1992 meeting.

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be subject to the approval of the Committee chairperson in

accordance with procedures established by the Committee.

I have determined in accordance with subsection 10(d) of Public Law 92–463 that it may be necessary to close a portion of this meeting, as noted above, to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

Inquiries regarding this notice, any subsequent changes in the status of the meeting, the filing of written statements, and requests to speak at the meeting may be made to the Designated Federal Officer, Mr. George Sege (telephone: 301/492–3904), Monday through Friday, between 8:15 a.m. and 5 p.m.

Dated: October 4, 1993.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–24798 Filed 10–7–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–3453]

Atlas Corporation

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of withdrawal of intent to amend source material license SUA–917, for the Atlas Corporation's uranium mill, near Moab, Utah, and a related finding of no significant impact regarding the proposed action.

SUMMARY: This notice withdraws the previously noticed (58 FR 38796) intent to approve the revised reclamation plan for uranium mill tailings at the Atlas Corporation's uranium mill near Moab, Utah.

ADDRESSES: Copies of the license amendment request and the staff evaluations previously noticed, as well as copies of comments received on the proposed licensing action, are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Lakewood, Colorado, and the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, D.C.

Comments on this notice of withdrawal may be mailed to David L. Meyer, Chief, Rules Review and Directives Branch, Office of Administration, P–223, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, with a copy to the Director, Uranium Recovery Field Office, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado, 80225.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado, 80225. Telephone: (303) 231–5800.

SUPPLEMENTARY INFORMATION: As noticed in the July 20, 1993, **Federal Register** (58 FR 38796), the Nuclear Regulatory Commission had proposed amendment of Source Material License SUA–917 to incorporate a revised tailings disposal area reclamation plan for Atlas Corporation's Moab Mill located near Moab, Utah. The proposed action was supported by a Technical Evaluation, and an Environmental Assessment and a Finding of No Significant Impact. The notice had a 30-day comment period which expired August 19, 1993.

Based on comments received on this proposed action, the Nuclear Regulatory Commission is withdrawing the Notice of Intent to Amend Source Material License SUA–917 for the Atlas Corporation's Moab Mill and the related Finding of No Significant Impact. The Nuclear Regulatory Commission intends to reevaluate reclamation of the tailings in place and at alternative locations, including environmental implications, before making a decision on approval of the revised reclamation plan.

Ramon E. Hall,

Director, Uranium Recovery Field Office, Nuclear Regulatory Commission.

[FR Doc. 93–24786 Filed 10–7–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Membership of the Performance Review Board (PRB)

AGENCY: Office of the United States Trade Representative.

SUMMARY: The following staff members are designated to serve on the Performance Review Board:

Performance Review Board (PRB)

Chair—Kathryn Early
Alternate Chair—John Hopkins
Members
- Howard Reed
- Carmen Suro-Bredie
- Ellen Frost
- Ira Wolf
- Thomas Nides
- Lorraine Green, Executive Secretary

EFFECTIVE DATE: September 28, 1993.

FOR FURTHER INFORMATION CONTACT: Lorraine Green, Director, Human Resources, (202) 395–7360.

John Hopkins,

Assistant United States Trade Representative for Administration.

[FR Doc. 93–24780 Filed 10–7–93; 8:45 am]

BILLING CODE 3190–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Notice of Extent to Offset Federal Income Tax Refund.

(2) *Form(s) submitted:* G–49A, G–49B.

(3) *OMB Number:* 3220–0181.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *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.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 300.

(9) *Total annual responses:* 300.

(10) *Average time per response:* .166 hours.

(11) *Total annual reporting hours:* 50.

(12) *Collection description:* Under Title 31 of the U.S. Code, the Railroad Retirement Board (RRB) may refer to the Internal Revenue Service for collection by tax refund offset, legally enforceable debts incurred by beneficiaries who received overpayments from the RRB. The Collection obtains information concerning the debtor's willingness to pay some or all of such debts or to state reasons for not doing so.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693).) Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–24736 Filed 10–7–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33009; File No. SR–PHLX–93–34]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Update Certain Provisions Due to the Change to Friday Expiration for Foreign Currency Options

October 4, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 13, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend Floor Procedure Advice ("Advice") B–10 and Advice E–1, due to the recent change from Saturday to Friday expiration for foreign currency options.[1] Specifically, Advice B–10, "Responsibility for Mismatched or "Out" Trades," refers to expiration Saturday, such that the addition of the phrase "of listed options" is proposed to clarify that respecting options that expire on Friday, Monday is too late to inform a registered options trader ("ROT") of a mismatched or "out" trade, because on Monday, the options that expired on Friday are no longer "listed options." In addition, because Advice E–1, "Required Staffing of Options Floor," also refers to "expiration Saturday," this reference should be replaced with language requiring a representative to remain on the trading floor on expiration day until the Exchange's last call of changes, deleting the reference to Saturday.

Finally, the PHLX proposes to amend Exchange Rule 1001(b)35 which contains the definition of "European style." According to the PHLX, this definition needs to be corrected to state that a European style option contract can only be exercised on the day it expires, rather than on the last trading day prior to expiration as it currently reads. The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

[1] See Securities Exchange Act Release No. 32623 (July 13, 1993), 58 FR 38803.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes certain amendments in light if the recent change to a Friday expiration for foreign currency options. Specifically, two Exchange Advices require clarification due to references to "expiration Saturday." Advice B–10 and Advice E–1 are currently both applicable to both the equity/index options floor and the foreign currency options floor. Advice E–1 would still contain a staffing requirement, but with the clarification that a representative be available until the Exchange's last call for adjustments on expiration day. Accordingly, this staffing requirement would apply on expiration Saturday for non-foreign currency options as well as on expiration Friday for foreign currency options. In addition, the proposed change to Rule 1001(b)35 corrects the definition of "European style" to reflect the change to Friday expirations for foreign currency options.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act in general, and in particular, section 6(b)(5), in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by updating the language in certain Exchange Rules to reflect the recent change from Saturday to Friday expirations for foreign currency options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and Subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–93–34 and should be submitted by October 9, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-24802 Filed 10-7-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-33008; File No. SR-PHLX-93-36]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to ITSFEA Procedures

October 4, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 17, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend PHLX Rule 761 and Floor Procedure Advice ("Advice") F-13, both of which concern supervisory procedures relating to the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA").[1] Both would be separated into paragraphs (a) and (b), and approval of the required procedures would be made by the Exchange, deleting the reference to the Designated Examining Authority ("DEA"). The text of the proposed rule change and the Exchange's forms related to ITSFEA are available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In response to Congressional enactment of the amendments to Section 15 of the Act that constitute ITSFEA, the Exchange filed and the Commission approved the Exchange's proposed rule change adopting procedures relating to ITSFEA in 1992.[2] At this time, the PHLX proposes to make minor changes to Exchange Rule 761 and Advice F-13. The first paragraph would become a separate paragraph (a) in order to emphasize that the written supervisory procedures required and acts prohibited by ITSFEA are applicable to all member organizations, regardless of any separate Exchange requirement. Accordingly, the Exchange's requirements become paragraph (b).

In addition, with respect to the approval of the requirements of paragraph (b), the reference to the DEA would be changed to the Exchange. The Exchange's ITSFEA requirements do not apply to those PHLX member organizations which have in place written supervisory procedures relating to ITSFEA pursuant to the rules of another national securities exchange, which were approved by that organization's DEA. As a result, only those PHLX member organizations for which the PHLX is also the DEA are subject to PHLX Rule 761. Thus, because the rule states that the procedures must be approved by the "respective DEA," the Exchange approves all of the procedures under this rule. Accordingly, changing the words "respective DEA" to "Exchange" renders the rule more explicit as to who approves the procedures.

Further, the Exchange proposes to move the sentence stating that organizations with DEA-approved ITSFEA procedures do not also have to meet the PHLX's requirement. The Exchange believes it is clearer to state who is exempt from the rule before listing the rule's requirements in detail. Accordingly, this sentence will appear in paragraph (b) immediately preceding the detailed requirements of sub-paragraphs (1) through (3).

Lastly, in order to facilitate compliance with the Exchange's ITSFEA requirements, the Exchange has developed a form which it believes reflects the requirements of Advice F-13. Specifically, Form F-13 is divided into three sections: (1) Section I is the Exchange's Notice of Insider Trading Advice containing a new employee's attestation;[3] (2) Section II is the List of Personal and Household Accounts filled out by employees;[4] and (3) Section III is the ITSFEA Accounts List used by an employee's supervisor in the course of the review of accounts.[5]

The Exchange believes that the proposed rule change is consistent with section 6 of the Act in general, and in particular, section 6(b)(5), in that it is designed prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and protect investors and the public interest, because it is intended to further the purposes of ITSFEA, including preventing the misuses of material, nonpublic information by brokers and dealers by clarifying PHLX Rule 760 and Advice F-13.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions

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[2] 17 CFR 200.30-3(a)(12) (1992).

[1] Public Law 100-704, 102 Stat. 4677.

[2] See Securities Exchange Act Release No. 30597 (April 16, 1992), 57 FR 14855.

[3] See PHLX Rule 761(b)(i).

[4] *Id.*

[5] See PHLX Rule 761(ii), (iii).

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–93–36 and should be submitted by October 29, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24803 Filed 10–7–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19757; 812–8570]

Boston Financial Tax Credit Fund VIII, a Limited Partnership, and Arch Street VIII Limited Partnership; Application for Exemption

October 4, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Boston Financial Tax Credit Fund VIII, A Limited Partnership (the "Partnership") and its general partner, Arch Street VIII Limited Partnership (the "General Partner").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would exempt the Partnership from all provisions of the Act to permit the Partnership to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

FILING DATE: The application was filed on September 10, 1993.

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 November 1, 1993, and should be accompanied by proof of service on 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 101 Arch Street, Boston, Massachusetts 02210.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership was formed on August 25, 1993, under the Massachusetts Uniform Limited Partnership Act. The Partnership will operate as a "two-tier" partnership, i.e., the Partnership, as limited partner, will invest in other limited partnerships ("Local Limited Partnerships") that in turn will engage in the ownership and operation of apartment complexes. Applicants believe that this two-tier structure is consistent with the purposes and criteria set forth in the SEC's release concerning two-tier real estate partnerships. Investment Company Act Release No. 8456 (August 9, 1974) ("Release No. 8456"). The apartment complexes are expected to qualify for low income housing tax credits under the Internal Revenue Code of 1986 (the "Code").

2. The Partnership's investment objectives are: (a) To provide current tax benefits in the form of tax credits which investors may use to offset their Federal income tax liability, (b) to preserve and protect the Partnership's capital, and (c) to provide limited cash distributions from the operations of the apartment complexes.

3. On August 31, 1993, the Partnership filed a registration statement under the Securities Act of 1933, pursuant to which the Partnership intends to offer publicly, in one or more series, 200,000 units of limited partnership interest ("Units") at $1,000 per Unit. The minimum investment will be five Units. Purchasers of Units will become limited partners ("Limited Partners") of the Partnership.

4. The Partnership will be controlled by the General partner, pursuant to the Partnership's partnership agreement (the "Partnership Agreement"). the Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnership. However, a majority-in-interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), remove any General Partner, and elect a replacement therefor, and dissolve the Partnership. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership.

5. The Partnership will not admit any subscribers as Limited Partners to the Partnership until the requested exemptive order is granted or the Partnership receives an opinion of counsel that it is exempt from registration under the Act. Any subscriptions for Units must be approved by the General Partner, which approval will be conditioned upon representations as to suitability of the investment for each subscriber. The suitability standards provide, among other things, that investment in the Partnership is suitable only for an investor who meets the following requirements: (a) In the case of an investor that is a corporation but not subject to Subchapter S of the Code and is neither closely-held nor a personal service corporation, such corporation should reasonably expect to have for each of the next twelve years sufficient Federal taxable income from all sources to utilize the tax credits anticipated from its investment in the Units, or (b) in the case of a noncorporate investor, such investor reasonably expects to have substantial unsheltered passive income or, if an individual, income tax liability during the next twelve years in respect of which the tax credits can be utilized, and either (1) has a net worth (exclusive of home, furnishings and automobiles) of at least $30,000 and an annual gross income of at least $30,000, (2) irrespective of annual income, has a net worth (exclusive of home, furnishings and automobiles) of at least $75,000, or (3) is purchasing in a

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[6] 17 CFR 200.30–3(a)(12) (1992).

fiduciary capacity for a person or entity having such net worth and annual gross income as set forth in clause (1) above or such net worth as set forth in clause (2) above, or (c) in the case of an investor that is a corporation subject to Subchapter S of the Code, each of the shareholders meets the criteria applicable to noncorporate investors, or (d) in the case of a partnership, each of its partners meets the criteria applicable to noncorporate investors. Units will be sold only to investors who meet these suitability standards, or more restrictive suitability standards as may be established by certain states for purchasers of Units within their respective jurisdictions. In addition, transfers of Units will be permitted only if the transferee meets the same suitability standards as had been imposed upon the transferor Limited Partner.

6. Although the Partnership's direct control over the management of each apartment complex is limited, the Partnership's ownership of interests in Local Limited Partnerships shall, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. The Partnership normally will acquire at least a 95% interest in the profits, losses, and tax credits of the Local Limited Partnerships. The Partnership also normally will acquire a significant interest in the cash distributions of the Local Limited Partnerships. Should the Partnership acquire less than 50% of the interest in any Local Limited Partnership, the Partnership will have at least a 50% vote to amend the Partnership Agreement of such Local Limited Partnership, dissolve such Local Limited Partnership, remove the Local General Partner and elect a replacement, and approve or disapprove the sale of substantially all of the assets of such Local Limited Partnership.

7. The Partnership Agreement and prospectus of the Partnership (the "Prospectus") contain numerous provisions designed to insure fair dealing by the General Partner with the Limited Partners. All compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and Prospectus. While the fees and other forms of compensation that will be paid to the General Partner and its affiliates will not have been negotiated at arm's length, applicants believe that the compensation is fair and on terms no less favorable to the Partnership that would be the case if such arrangements had been made with independent third parties.

8. During the offering and organizational phase, the General Partner and its affiliates will be reimbursed by the Partnership for expenses incurred in connection with organizing the Partnership and conducting the offering. Subject to certain adjustments, and as described in the Partnership Agreement, the General Partner agrees to pay such expenses in excess of sales commissions to the extent the expenses exceed 5.5% of the first $60,000.000 of the gross proceeds of the offering, and 4% of the remaining gross proceeds.

9. During the acquisition phase, the Partnership will pay the General Partner or its affiliates a fee, not to exceed 6% of the gross proceeds, for analyzing and evaluating potential investments in Local Limited Partnerships. During the operating phase, the General Partner or its affiliates may receive certain other fees paid by the Partnership, including without limitation and asset management fee paid in consideration of the administration of the Partnership's affairs, fees paid in consideration of property management services for some of the Local Limited Partnerships, and a fee paid in consideration for consulting services to some of the Local Limited Partnerships. During the liquidation phase, the General Partner generally will receive, subject to certain payments to the Limited Partners and certain other reductions, 5% of the proceeds from the sale or refinancing of Local Limited Partnership projects or interests. In addition to the foregoing fees and interests, the General Partner and its affiliates generally will be allocated 1% of profits and losses of the Partnership for tax purposes and tax credits.

10. All proceeds of the public offering of Units initially will be placed in an escrow account with Shawmut Bank, N.A. (Escrow Agent"). Pending release of the offering proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in a federally insured money market account that invests in short-term United States Government securities, securities issued or guaranteed by the United States Government, certificates of deposit, or time or demand deposits in commercial banks. Upon receipt of a prescribed minimum number of subscriptions, funds in escrow will be released to the Partnership and held in trust pending investment in Local Limited Partnerships.

Applicants' Legal Analysis

1. Applicants believe that the Partnership is not an "investment company" under section 3(a) of the Act. If the Partnership is deemed an investment company, however, applicants request an exemption under section 6(c) from all provisions of the Act.

2. Section 3(a)(1) of the Act provides that an issuer is an "investment company" if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Applicants, however, believe that the Partnership will not be an investment company under section 3(a)(1) because the Partnership will be in the business of investing in and being beneficial owner of apartment complexes, not securities.

3. The Units are not "face-amount certificates of the installment type," and so applicants submit that the Partnership is not an investment company as defined in section 3(a)(2) of the Act.

4. Applicants believe that the Local Limited Partnership interests do not constitute "investment securities" because those interests are not readily marketable, have no value apart from the value of the apartment complexes owned by the Local Limited Partnerships, and cannot be sold without severe adverse tax consequences. Accordingly, the Partnership should not be considered an investment company under section 3(a)(3) of the Act.

5. Release No. 8456 contemplates that investment companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for exemption from the Act pursuant to section 6(c). Section 6(c) provides that the SEC may exempt any person from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants believe that the Partnership will operate in accordance with the purposes and criteria set forth in Release No. 8456. The release lists two conditions, designed for the protection of investors, which must be satisfied to qualify for an exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

7. Applicants assert, among other things, that the exemption requested is both necessary and appropriate in the public interest because investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form.

8. Applicants also believes that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provided protection to investors in Units comparable to and in some respects greater than that provided by the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-24801 Filed 10-7-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25901]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 1, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) of complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 25, 1993, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective:

Consolidated Natural Gas Company (70-8231)

Consolidated Natural Gas Company ("CNG"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222-3139, a registered holding company, has filed a declaration under Section 12(b) of the Act and rule 45 thereunder.

CNG proposes to guarantee, through December 31, 1998, up to an aggregate principal amount of $750 million of the obligations of CNG Gas Services Corporation ("Gas Services"), its wholly owned subsidiary company, pursuant to certain gas purchase, sales and transportation contracts. Gas Services plans to use risk-management tools to reduce the CNG's risk. However, no additional guarantee of Gas Services' obligations would be made by CNG as long as there are any current defaults by Gas Services on any of its delivery obligations.

Eastern Utilities Associates, et al. (70-8255)

Eastern Utilities Associates ("EUA"), a registered holding company, and its nonutility subsidiary company, EUA Cogenex Corporation ("Cogenex"), both located at P.O. Box 2333, Boston, Massachusetts 02107, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Act and rules 43, 45 and 50(a)(5) thereunder.

In separate transactions, Cogenex proposes to acquire two energy management service companies, James L. Day Co., Inc. a New York corporation ("Day Co."), and Northeast Energy Management, Inc., a Maine corporation ("NEMI"). The acquisitions will be accomplished by the exchange of the common stock of these companies to Cogenex for common stock of EUA. The outstanding common stock of the companies will then be cancelled by operation of law. Cogenex will pay an aggregate purchase price for Day Co. and NEMI not to exceed $5 million and $12 million, respectively, as described in more detail below. The number of shares of EUA common stock to be exchanged in the transactions will be determined by their average closing market price over a five-day period before the relevant payment date.

Cogenex is an energy conservation company. It employs energy efficiency technology and equipment, participates in self-generation projects, and assists electric utilities in demand-side management ("DSCM") activities, including, but not limited to, shared-savings energy conservation projects and demand-side utility programs. At June 30, 1993, Cogenex's assets were $166.9 million. For the six month period ended June 30, 1993, Cogenex had revenues of $26.9 million and net income of $1.9 million, as compared to revenues of $44.2 million and net income of $2.8 million for the twelve months ended December 31, 1992.

Day Co. and NEMI are engaged in these same businesses. Day Co. is primarily engaged in the business of customization, installation and servicing of building temperature control systems and process control systems for the purpose of energy conservation. For example, Day Co. supplies and installs control systems for large commercial buildings. NEMI is an energy services contracting firm, which has a contract for DSM services with Central Maine Power Company ("Central Maine") for commercial/industrial energy efficiency projects. At June 30, 1993, Day Co. had assets of $2.8 million. For the six month period ended June 30, 1993, Day Co. had revenues of $3.3 million and net income of $108,000.

Day Co. stockholders will have two payment options, each payable only in EUA common stock. Under Option 1, the Day Co. stockholders will receive $3 million at closing plus a deferred earn-out amount ranging from zero up to $1 million depending on the level of Day Co. cumulative operating income, as defined, for approximately two years after closing. Under Option 2, the Day Co. stockholders will receive $2.5 million at closing, plus an earn-out amount ranging from zero up to $1.25 million based on cumulative operating income for approximately two years after closing, or, if a target cumulative operating income level is reached, up to an aggregate earn-out of $2.5 million based on cumulative operating income for approximately three years after closing. The closing price will be adjusted up or down on a dollar-for-dollar basis in the event that the shareholders' equity of Day Co. at closing is greater or less than $752,400, the amount of Day Co.'s shareholders' equity on December 31, 1992. Assuming an EUA common share price of $29.00 per share, up to 137,931 common shares of EUA could be issued in the acquisition under Option 1, and up to 172,414 shares under Option 2. The actual number of shares to be issued will be determined in accordance with the formula to be included in the merger agreement. Cash will be paid in lieu of fractional shares of common stock.

Cogenex will also assume Day Co. liabilities, including promissory notes to third parties up to $973,000, provided that the closing price will be reduced on a dollar-for-dollar basis for promissory notes in excess of this amount. Any guarantees of the liabilities of Day Co. by the Day Co. shareholders (and/or their spouses) must be discharged by Cogenex in connection with the closing.

Cogenex will pay a total consideration of approximately $12 million for NEMI. Assuming an EUA common share price of $29.00 per share, up to approximately 414,000 shares could be issued in the acquisition. The final amount of such consideration will be equal to the "gross value" of NEMI, defined as the net present value, using a discount rate of 14%, of 95% of NEMI's gross projected revenue reduced by the liabilities of NEMI to be assumed by Cogenex as a result of the merger. NEMI's gross projected revenue and the amount of liabilities to be assumed by Cogenex will be finally determined at or prior to closing. Cash will be issued in lieu of fractional shares of common stock.

Cogenex will defer and subject to offset a portion of the purchase price equal to $3 million (the "Hold Back") for certain NEMI indemnity obligations. The Hold Back will be paid upon the earlier of the second anniversary of closing or December 31, 1995 (the "Hold Back Payment Date"). Interest on the Hold Back will accrue from closing and be paid on the Hold Back Payment Date, at the base lending rate in effect from time to time and published by the First National Bank of Boston, compounded monthly. The Hold Back Amount and interest thereon will be paid also in EUA common shares.

As stated, EUA proposes to issue and sell 1,500,000 shares of new common stock, $5.00 par value, in order to effect the acquisitions described above. The maximum number of shares issued by EUA in connection with the acquisitions of Day Co. and NEMI will be based upon the formulas described above and will be less than the total number of shares to be registered under the Securities Act of 1933. The additional shares being registered are for possible use in connection with future Cogenex acquisitions for which it would seek subsequent Commission approval.

New England Electric System, et al. (70–8261)

New England Electric System ("NEES"), a registered holding company and its subsidiary companies, Massachusetts Electric Company ("Mass-Electric"), Narragansett Energy Resources Company ("Narragansett Energy"), New England Electric Transmission Corporation ("Transmission"), New England Energy Incorporated ("NEEI"), New England Hydro-Transmission Electric Company, Inc. ("NE-Hydro"), New England Hydro-Transmission Corporation ("Hydro-TransCorp"), New England Power Company ("NEP"), and New England Power Service Company ("NEPSCO"), all located at 25 Research Drive, Westborough, Massachusetts 01582, Granite State Electric Company ("Granite State"), 33 West Lebanon Road, Lebanon, New Hampshire 03766, and The Narragansett Electric Company ("Narragansett"), 280 Melrose Street, Providence, Rhode Island 02901 (collectively, "Applicants") have filed an application-declaration under Sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 43, 45, and 50(a)(5) thereunder.

From November 1, 1993 through October 31, 1993, certain subsidiaries request short-term financing authority up to the amounts listed below. Such financing will be made either through bank loans and/or through loans by the NEES intrasystem money pool ("Money Pool") and/or in the case of Mass-Electric, Narragansett, and NEP, through the issuance of commercial paper.

	Amount requested (millions)
Granite State	$10
Mass-Electric	150
Narragansett	100
Transmission	10
NE-Hydro	25
Hydro-TransCorp	25
NEP	375
NEPSCO	20
Total	715

Applicants state that the proceeds from the subsidiary companies' borrowings will be used: (1) To pay then outstanding notes initially issued to banks and/or dealers in commercial paper and/or the Money Pool; (2) to provide new money for capitalizable expenditures and/or to reimburse the treasury therefor; and (3) for other corporate purposes including working capital and the financing of construction and property acquisitions. Although no acquisition is anticipated at this time, proceeds from the borrowings may be used to acquire an interest in an exempt wholesale generator or in a foreign utility company as defined by the Act.

Applicants state that the bank loans will be evidenced by notes maturing less than one year from the date of issuance. Fees will be paid to the banks in lieu of compensating balance arrangements. The effective interest cost will not exceed the greater of the bank's base or prime lending rate, or the rate publishes in the Wall Street Journal as the high federal funds rate, plus, in either case, one percent.

It is stated that certain bank borrowings may be without prepayment privileges. Payment of any short-term notes prior to maturity will be made on the basis most favorable to the subsidiary companies, taking into account fixed maturities, interest rates, and any other relevant financial considerations.

Under the Money Pool, surplus funds that maybe available in the treasuries of the participating companies are used to make loans to the borrowing companies. All applicants request authority to lend to the Money Pool, but only Granite State, Mass-Electric, Narragansett, Transmission, NE-Hydro, Hydro-TransCorp, NEP, and NEPSCO propose to borrow from the Money Pool. Loans by the Money Pool may or may not be evidenced by notes. The interest rate for such loans will be the monthly average of the rate for high grade 30-day commercial paper sold through dealers by major corporations as published in the Wall Street Journal. Although there is no fixed maturity date for loans made by the Money Pool, such loans are payable on demand, and may be prepaid without penalty.

Mass-Electric, Narragansett, and NEP propose to issue and to sell commercial paper ("Commercial Paper") directly to one or more nationally recognized commercial paper dealers ("CP Dealers"). Initially, the CP Dealer will be the First Boston Corporation and/or Merrill Lynch Money Markets Incorporated.

The Commercial Paper will satisfy the requirements of Section 3(a)(3) of the Securities Act of 1993, will be in the form of unsecured promissory notes having varying maturities of not to exceed 270 days, and will be in denominations of not less than $50,000. Prepayment prior to maturity will be prohibited.

The CP Dealer will purchase the Commercial Paper from the issuer at a discount which will not be excess of the discount then prevailing for commercial paper of comparable quality and maturity which is sold by public utility issuers to commercial paper dealers. The CP Dealer will initially reoffer the commercial paper at the discount rate not more than ⅛ of 1% per annum less than the prevailing discount rate to the issuer.

The effective interest cost to the issuer of Commercial Paper will generally not exceed the effective interest cost of the base lending rate at the First National

Bank of Boston ("Bank"). However, the effective interest cost of such paper is based on the supply of, and the demand for, that and similar quality paper at the time of sale, and the interest cost has from time to time exceeded that of the base lending rate for brief periods. While it is not anticipated that the effective annual cost of borrowing through Commercial Paper will exceed the annual base-rate borrowing from the Bank, in order to obtain maximum flexibility, Commercial Paper with a maturity of not than 90 days may be issued with an effective cost in excess of the then-existing lending rate.

West Texas Utilities Company (70–8265)

West Texas Utilities Company ("WTU"), 301 Cypress Street, Abilene, Texas 79601–5820, an eclectic public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rules 42, 50 and 50(a)(5) thereunder.

WTU proposes to issue and sell up to an aggregate principal amount of $45 million of first mortgage bonds ("New Bonds"), in one or more series, from time to time through December 31, 1996. The New Bonds will have maturities of not less than five years nor more than forty years. WTU estimates that the New Bonds will be issued at an interest rate between 4.5% and 8.5% depending on market conditions and maturity, and in no event will the interest rate on the New Bonds exceed 11%.

The New Bonds will be issued under WTU's indenture dated August 1, 1943, to Harris Trust and Savings Bank and J. Bartolini, as Trustees, as amended and supplemented, ("Indenture") and secured by a first lien on substantially all of the properties now owned and hereafter acquired by WTU, except for properties specifically excepted from such liens. The New Bonds will be issued under one or more new supplements to the Indenture and will be authenticated against available unused net expenditures for bondable property and/or previously retired first mortgage bonds.

The proceeds from the sale of the New Bonds will be used principally to redeem all or a portion of one or more series of WTU's outstanding first mortgage bonds including $12 million aggregate principal amount of Series G Bonds, 7¼%, due January 1, 1999 ("Series G Bonds") and $23 million aggregate principal amount of Series H Bonds, 7⅞%, due July 1, 2003 ("Series H Bonds"), at the then current general redemption price (currently, 101.25% and 102.61% of the principal amount of the Series G Bonds and Series H Bonds, respectively), plus accrued and unpaid interest to the redemption date (collectively, "Old Bonds"). The Series G Bonds and Series H Bonds were issued in 1969 and 1973, respectively, under the Indenture and are currently refundable pursuant to their terms.

Any net proceeds not used for the redemption or repurchase of the Old Bonds will be used to repay outstanding short-term borrowings incurred or expected to be incurred primarily to finance construction expenditures, to provide working capital or for other general corporate purposes. In the event the proceeds from the issuance of the New Bonds are less than the amount required to redeem all of the Old Bonds, WTU will pay a portion of the redemption price from internally generated funds or available short-term borrowings.

WTU shall not redeem the Old Bonds with the proceeds of the sale of the New Bonds unless the estimated present value savings derived from the net difference between interest payments on a hypothetical new issue of bonds of a maturity comparable to the maturity remaining on the Old Bonds is, on an after-tax basis, greater than the present value of all redemption and issuance costs, assuming a discount rate based on the estimated interest rate on the New Bonds ("Net Present Value Savings"). If the New Bonds are issued with comparable maturities to the Old Bonds being redeemed, then Net Present Value Savings will be generated. However, given the current low rates of interest, WTU may wish to extend the maturities of the New Bonds beyond the maturities of the Old Bonds, in which case WTU may not realize Net Present Value Savings.

WTU requests authority to sell the New Bonds either: (1) Under competitive bidding pursuant to Rule 50 or, in the case of a delayed or continuous offering and sale pursuant to Rule 415 under the Securities Act of 1933, as amended, the alternative competitive bidding procedures as modified by the Commission's Statement of Policy dated September 2, 1982 (HCAR No. 22623); or (2) in a negotiated transaction with underwriters or agents under an exception from the requirements of competitive bidding under Rule 50(a)(5). Therefore, WTU requests authority to enter into negotiations with potential underwriters with respect to the interest rate, redemption provisions and other terms and conditions applicable to the New Bonds. It may do so.

WTU proposes to deviate from the Commission's Statement of Policy Regarding First Mortgage Bonds Subject to the Public Utility Holding Company Act of 1935 (HCAR No. 13105, February 16, 1956, as amended by HCAR No. 16369, May 8, 1969). WTU requests authority to include in the terms of the New Bonds provisions that they will either: (1) Not be redeemable at WTU's option for a period of up to a maximum of fifteen years; or (2) be issued with a refunding restriction that WTU would not be permitted to refund the New Bonds with lower cost debt securities for a specified period not exceeding fifteen years. The exact terms of any redemption or refunding restrictions would be determined at or about the time of sale of the New Bonds. WTU further proposes to issue the New Bonds with or without a sinking or retirement fund and requests a waiver from the requirement of a limitation on dividends.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–24746 Filed 10–7–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1878]

Determination Sudan

On August 12, 1993, Secretary of State Warren Christopher made the following determination:

"In accordance with section 6(j) of the Export Administration Act (50 U.S.C. App. 2405 (j)), I hereby determine that Sudan is a country which has repeatedly provided support for acts of international terrorism. The list of 6(j) countries as of this time therefore includes Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria."

Warren Christopher,

Secretary of State.

[FR Doc. 93–24838 Filed 10–7–93; 8:45 am]

BILLING CODE 4710–10–M

[Public Notice 1877]

Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation

will meet November 4–5, 1993, at 9 a.m. in the Department of State.

The Committee will meet in open session from 9 a.m. on the morning of Thursday, November 4, 1993, until noon of that day, in room 1205, Main State. The remainder of the Committee's sessions, until the end of this session on Friday, November 5, at 2 p.m., including several subcommittee meetings on November 3, will be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act (P.L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123.

Dated: October 4, 1993.

William Z. Slany,

Executive Secretary.

[FR Doc. 93–24839 Filed 10–7–93; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended October 1, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49156
Date filed: September 30, 1993
Parties: Members of the International Air Transport Association
Subject: Comp Telex Mail Vote 649, Amend Mileage Manual
Proposed Effective Date: November 1, 1993

Docket Number: 49157
Date filed: September 30, 1993
Parties: Members of the International Air Transport Association
Subject: TC3 Telex Mail Vote 650, Japan-Singapore fares
Proposed Effective Date: November 1, 1993

Docket Number: 49158
Date filed: September 30, 1993
Parties: Members of the International Air Transport Association
Subject: TC3 Telex Mail Vote 648, Taiwan-Japan fares, r-1—070t & r-2—085t
Proposed Effective Date: January 1, 1994

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–24796 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–62–P

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS–109, implemented by Regulation ER–1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 93–7–41, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning October 1, 1993, we have projected non-fuel costs based on the year ended June 30, 1993 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 93–9–38 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic	1.1756
Western Hemisphere	1.1151
Pacific	1.4702

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation:

Dated: September 30, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–24794 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–62–P

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 93–7–43 established the currently effective two-month SFFL applicable through September 30, 1993.

In establishing the SFFL for the two-month period beginning October 1, 1993, we have projected non-fuel costs based on the year ended June 30, 1993 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 93–9–37 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.4375
Latin America	1.3427
Pacific	1.8922
Canada	1.4185

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Dated: September 30, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–24795 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[GGD–93–065]

National Boating Safety Advisory Council; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Monday and Tuesday, November 1 and 2, 1993, at the Adam's Mark Hotel, 430 South Gulfview Boulevard, Clearwater Beach, Florida, beginning at 8:45 a.m. and ending at 4 p.m. The agenda for the meeting will be as follows:

1. Review of action taken at the 51st meeting of the Council.
2. Executive Director's Report.
3. Multiple-Use Waterways Subcommittee Report.
4. Personal Watercraft Definition and Requirements Subcommittee Report.
5. Overview of the National Marine Sanctuaries Program.
6. Presentation on the National Transportation Safety Board (NTSB) Study on Recreational Boating Safety.
7. Report of the Subcommittee for the Review of the National Transportation Safety Board Recreational Boating Safety Study, and Council Discussion.
8. Report on Inflatable Personal Flotation Devices (PFDs) and other PFD Issues.
9. Report on the National Association of State Boating Law Administrators Annual Conference.

10. Presentation on Field Sobriety Test Validation.

11. Report on the Role of Voluntary Safety Standards.

12. Chairman's Session.

Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Mr. Albert J. Marmo, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G–NAB), Washington, DC 20593–0001, or by calling (202) 267–1077.

Dated: October 5, 1993.

William J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–24804 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–14–M

[GGD–93–066]

National Boating Safety Advisory Council; Subcommittee Meetings

Pursuant to section 10 (a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of meetings of the National Boating Safety Advisory Council's Subcommittees on the Review of the National Transportation Safety Board Safety Study on Recreational Boating Safety, Personal Watercraft Definition and Requirements, and Multiple-Use Waterways to be held on Saturday, October 30, 1993, at the Adam's Mark Hotel, 430 South Gulfview Boulevard, Clearwater Beach, Florida, between 1 p.m. and 5:30 p.m. The agenda for each meeting will be to review the status of various projects undertaken by the subcommittee and initiate any necessary new tasks. Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Mr. Albert J. Marmo, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G–NAB), Washington DC 20593–0001, or by calling (202) 267–1077.

Dated: October 5, 1993.

William J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–24805 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

RTCA, Inc.; Twenty-Seventh Meeting of Special Committee 159

Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 159 meeting to be held October 18–22, 1993, starting at 9 a.m., in the RTCA Conference Room at 1140 Connecticut Avenue, SW., Suite 1020, Washington, DC 20036.

Specific Working Groups Sessions

October 18—Working Group 5, Fault Detection and Isolation

October 19—Working Group 2, GPS/GIC/WAD

October 20—Working Group 3, GPS/Other Navigation Systems

October 21—Working Group 4, Precision Landing Guidance & Airport Surface Surveillance

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of summary of the twenty-sixth meeting; (3) Review working group (WG) progress and identify issues for resolution (a) GPS/GLONASS (WG1) (b) GPS/GIC/WAD (WG2) (c) GPS/Other Navigation Systems (WG3) (d) GPS/precision Landing Guidance and Airport Surface Surveillance (WG4) (e) Fault Detection and Isolation (WG5) (f) Interference (Ad Hoc); (4) Review of EUROCAE activities; (5) Assignment/review of future work; (6) Other business (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 28, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–24788 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Second Meeting of Special Committee 180

Design Assurance Guidance for Complex, Electronic Hardware Used in Airborne Systems

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 180 meeting to be held October 25–26, 1993, starting at 9:30 a.m., in the RTCA Conference Room 1140 Connecticut Avenue, SW, Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Discussion of lessons learned from SC–167; (2) Finalize Terms of Reference Revision; (3) Identify goals, develop work program and examine milestones; (4) Assign tasks; (5) Review recruitment of other support; (6) Review status of EUROCAE involvement; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 28, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–24789 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee; Open Systems Development Subcommittee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Open Systems Development Subcommittee of the Federal Aviation Administration Research, Engineering and Development Advisory Committee to be held on Friday, November 5, 1993, at 9 a.m. The meeting will take place at TRW, 12900

Federal Systems Park Drive, Fairfax, VA 22033, in Conference Room 7150–C.

The purpose of this meeting is to review preliminary findings and recommendations of the Open Systems Development Subcommittee in preparation for the development of a report to be made to the members of the full advisory committee prior to final recommendations on Open Systems being submitted to the Federal Aviation Administration.

Attendance is open to the interested public but limited to space available. With the approval of the Subcommittee Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or plan to access the building to attend the meeting should contact Mrs. Eleanor Dex at TRW, telephone (703) 968–1700.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on October 4, 1993.

Martin T. Pozesky,

Executive Director, Research, Engineering and Development Advisory Committee.

[FR Doc. 93–24790 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Sixth Meeting of Special Committee 176

Airborne Loran-C Area Navigation Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 176 meeting to be held October 4, 1993, starting at 9 a.m., in the RTCA Conference Room at 1140 Connecticut Avenue, SW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of the summary of the fifth meeting; (3) Review Draft Change No. 1 to RTCA/DO–194; (4) Review ways to improve Loran coverage and accuracy; (5) Assignment of tasks; (6) Other business; (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 28, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–24791 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Eighth Meeting of Special Committee 178

Requirements for Aircraft Ground Surface Position Sensors

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 178 meeting to be held November 8–9, 1993, starting at 9 a.m., in the RTCA Conference Room at 1140 Connecticut Avenue, SW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review and approval of meeting agenda; (3) Approve summary of the seventh meeting held September 21–22, RTCA Paper No. 418–93/SC178–34 (enclosed); (4) Review draft report. Review each item and make additions, deletions, changes as required; (5) Breakout sessions if needed; (6) Recap of session; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 28, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–24792 Filed 10–7–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 1, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0003

Form Number: IRS Forms SS–4 and SS–4PR

Type of Review: Revision

Title: Application for Employer Identification Number (SS–4); Solicitud de Numero de Identificacion Patronal (SS–4PR)

Description: Taxpayers required to have an identification number for use on any return, statement, or other document must prepare and file Form SS–4 or Form SS–4PR (Puerto Rico only) to obtain a number. The information is used by the Internal Revenue Service and the Social Security Administration in tax administration and by the Bureau of the Census for business statistics.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations

Estimated Number of Respondents/Recordkeepers: 3,217,362

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form SS–4	Form SS–4PR
Recordkeeping	7 minutes	7 minutes.
Learning about the law or the form	18 minutes	20 minutes.
Preparing the form	44 minutes	44 minutes.
Copying, assembling, and sending the form to the IRS	20 minutes	20 minutes.

Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 4,761,932 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports,Management Officer.
[FR Doc. 93–24799 Filed 10–7–93; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

October 4, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Customs Service

OMB Number: 1515–0088
Form Number: None
Type of Review: Extension
Title: Foreign Assembler's Declaration (with Endorsement of Importer)
Description: This information is needed to substantiate a claim for duty-free treatment of U.S. fabricated components sent abroad for assembly and subsequently return to the United States.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 2,730
Estimated Burden Hours Per Respondent/Recordkeeper: 50 minutes
Frequency of Response: Other (with every importation of merchandise under this tariff classification).
Estimated Total Reporting Burden: 283,469 hours.
Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 93–24800 Filed 10–7–93; 8:45 am]
BILLING CODE 4820–02–M

UNITED STATES SENTENCING COMMISSION

Revisions to the Sentencing Guidelines for the United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding amendments to sentencing guidelines and policy statements effective November 1, 1993.

SUMMARY: The Sentencing Commission hereby gives notice of several actions taken pursuant to its authority under section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994 (a) and (u)). The Commission has reviewed amendments submitted to Congress on April 29, 1993, that may result in a lower guideline range and has designated five such amendments for inclusion in policy statement § 1B1.10 (Retroactivity of Amended Guideline Range). The Commission also has made several commentary amendments, explaining how particular guidelines are intended to be applied, and miscellaneous additions and corrections to the Statutory Index. Finally, the Commission has made a number of minor editorial revisions to the Guidelines Manual.

DATES: The Commission has specified an effective date of November 1, 1993, for these actions.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. Sections 994 (o) and (p) of title 28, United States Code, further direct the Commission to periodically review and revise guidelines and policy statements previously promulgated, and require that guideline amendments be submitted to Congress for review. Absent action of the Congress to the contrary, guideline amendments become effective following 180 days of Congressional review on the date specified by the Commission (i.e., November 1, 1993). Unlike new guidelines and amendments thereto issued pursuant to 28 U.S.C. 994 (a) and (p), sentencing policy statements, commentary, and amendments thereto promulgated by the Commission are not required to be submitted to Congress for 180 days' review prior to their taking effect.

In connection with its ongoing review of the Guidelines Manual, the Commission continues to welcome comment on any aspect of the sentencing guidelines, policy statements, and official commentary. Comments should be sent to: The United States Sentencing Commission, One Columbus Circle, NE., suite 2–500, South Lobby, Washington, DC 20002–8002, Attn: Office of Communications.

Authority: Section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994(a)).

William W. Wilkins, Jr.,
Chairman.

Additional Commentary Amendments and Modifications to the Statutory Index

1. Amendment: The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 16 by inserting the following at the end:

"Example: A defendant, who the court finds meets the criteria for a downward departure under this provision, has a Chapter Two offense level of 40, a 2-level reduction for a minor role from § 3B1.2, and a 3-level reduction for acceptance of responsibility from § 3E1.1. His final offense level is 35. If the defendant's Chapter Two offense level had been 36, the 2-level reduction for a minor role and 3-level reduction for acceptance of responsibility would have resulted in a final offense level of 31. Therefore, under this provision, a downward departure not to exceed 4 levels (from level 35 to level 31) would be authorized.".

Reason for Amendment: This amendment adds an example to clarify the operation of Application Note 16 of § 2D1.1, an application note added this amendment cycle. The effective date of this amendment is November 1, 1993.

2. Amendment: Appendix A (Statutory Index) is amended in the second paragraph of the introduction by deleting "or an attempt" and inserting in lieu thereof ", attempt, or solicitation".

Appendix A (Statutory Index) is amended by inserting the following at

the appropriate place by title and section:

"16 U.S.C. § 742j-1(a)	2Q2.1",
"16 U.S.C. § 773e(a)(2), (3),(4),(6)	2A2.4",
"16 U.S.C. § 773g	2A2.4",
"16 U.S.C. § 916c	2Q2.1",
"16 U.S.C. § 916f	2Q2.1",
"16 U.S.C. § 973c(a)(8), (10),(11),(12)	2A2.4",
"16 U.S.C. § 973e	2A2.4",
"16 U.S.C. § 1417(a)(5),(6), (b)(2)	2A2.4",
"16 U.S.C. § 3606	2A2.4",
"16 U.S.C. § 3637(a)(2), (3),(4),(6),(c)	2A2.4",
"16 U.S.C. § 4223	2Q2.1",
"16 U.S.C. § 4224	2Q2.1",
"16 U.S.C. § 4910(a)	2Q2.1",
"16 U.S.C. § 4912(a)(2)(A)	2Q2.1",
"16 U.S.C. § 5009(5),(6), (7),(8)	2A2.4",
"16 U.S.C. § 5010(b)	2A2.4",
"18 U.S.C. § 43	2B1.3",
"18 U.S.C. § 228	2J1.1",
"18 U.S.C. § 924(h)	2K2.1",
"18 U.S.C. § 2119	2B3.1",
"18 U.S.C. § 2322	2B6.1",
"22 U.S.C. § 2197(n)	2F1.1",
"26 U.S.C. § 7208	2F1.1",
"26 U.S.C. § 7212(a) (omnibus clause)	2J1.2, 2T1.1",
"26 U.S.C. § 7232	2F1.1",
"29 U.S.C. § 530	2B3.2",
"29 U.S.C. § 1131	2E5.3",
"30 U.S.C. § 1461(a)(3), (4),(5),(7)	2A2.4",
"30 U.S.C. § 1463	2A2.4",
"42 U.S.C. § 1973gg-10	2H2.1",
"42 U.S.C. § 9151(2),(3), (4),(5),	2A2.4",
"42 U.S.C. § 9152(d)	2A2.4",
"46 U.S.C. App. § 1707a (f)(2)	2B1.1",
"49 U.S.C. App. § 1687(g)	2B1.3"

Appendix A (Statutory Index) is amended by deleting:

"7 U.S.C. § 13(a)	2B1.1
7 U.S.C. § 13(b)	2F1.1
7 U.S.C. § 13(c)	2F1.1
7 U.S.C. § 13(e)	2F1.2",

and inserting in lieu thereof:

"7 U.S.C. § 13(a)(1)	2B1.1
7 U.S.C. § 13(a)(2)	2F1.1
7 U.S.C. § 13(a)(3)	2F1.1
7 U.S.C. § 13(a)(4)	2F1.1
7 U.S.C. § 13(c)	2C1.3
7 U.S.C. § 13(d)	2F1.2
7 U.S.C. § 13(f)	2F1.2";

In the lines referenced to 15 U.S.C. §§ 1172, 1173, 1174, 1175, and 1176 by deleting "2E3.3" and inserting in lieu thereof "2E3.1";

In the lines referenced to 16 U.S.C. §§ 1029 and 1030 by deleting "2A2.2, 2A2.3, 2Q2.1" and inserting in lieu thereof "2A2.4";

In the line referenced to 16 U.S.C. § 1857(1)(D) by deleting "2A2.3" and inserting in lieu thereof "2A2.4";

In the line referenced to 16 U.S.C. § 1857(1)(E) by deleting "2A2.2, 2A2.3" and inserting in lieu thereof "2A2.4";

In the line referenced to 16 U.S.C. § 1857(1)(F) by deleting "2A2.3" and inserting in lieu thereof "2A2.4";

In the line referenced to 16 U.S.C. § 1857(1)(H) by deleting "2A2.2, 2A2.3" and inserting in lieu thereof "2A2.4";

By deleting: "16 U.S.C. § 1857(2)2Q2.1";

In the line referenced to 16 U.S.C. § 1859 by deleting "2A2.2, 2A2.3, 2Q2.1" and inserting in lieu thereof "2A2.4";

In the line referenced to 16 U.S.C. § 2435(4) by deleting "2A2.3" and inserting in lieu thereof "2A2.4";

In the lines referenced to 16 U.S.C. §§ 2435(5), 2435(6), 2435(7), and 2438 by deleting "2A2.2, 2A2.3" and inserting in lieu thereof "2A2.4";

In the line referenced to 18 U.S.C. § 32(a),(b) by deleting "2A1.1–A2.3" and inserting in lieu thereof "2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3".

In the lines referenced to 18 U.S.C. §§ 201(b)(3) and 201(b)(4) by deleting "2J1.8" and inserting in lieu thereof "2J1.3";

In the lines referenced to 18 U.S.C. §§ 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 488, 493, 494, 497, 498, 499, 500, 502, 503, 505, 506, 507, 508, 509, 510, and 513 by deleting "2B5.2" and inserting in lieu thereof "2F1.1";

In the lines referenced to 18 U.S.C. §§ 553(a)(1) and 553(a)(2) by deleting "2B1.2" and inserting in lieu thereof "2B1.1";

In the line referenced to 18 U.S.C. § 641 by deleting ", 2B1.2";

In the line referenced to 18 U.S.C. § 642 by deleting "2B5.2" and inserting in lieu thereof "2F1.1";

In the line referenced to 18 U.S.C. § 659 by deleting ", 2B1.2";

In the line referenced to 18 U.S.C. § 662 by deleting "2B1.2" and inserting in lieu thereof "2B1.1";

In the line referenced to 18 U.S.C. § 664 by deleting "2E5.2" and inserting in lieu thereof "2B1.1";

In the line referenced to 18 U.S.C. § 666(a)(1)(C) by deleting "18 U.S.C. § 666(a)(1)(C)"and inserting in lieu thereof "18 U.S.C. § 666(a)(2)";

In the line referenced to 18 U.S.C. § 667 by deleting ", 2B1.2";

In the line referenced to 18 U.S.C. § 798 by deleting ", 2M3.6";

In the line referenced to 18 U.S.C. § 842(j) by deleting "2K1.2" and inserting in lieu thereof "2K1.1";

In the line referenced to 18 U.S.C. § 844(h) by deleting "2K1.4 (cffenses committed prior to November 18, 1988), 2K1.6, 2K1.7" and inserting in lieu thereof "2K2.4 (2K1.4 for offenses committed prior to November 18, 1988)";

In the lines referenced to 18 U.S.C. §§ 1003 and 1010 by deleting "2B5.2,";

In the line referenced to 18 U.S.C. § 1024 by deleting "2B1.2" and inserting in lieu thereof "2B1.1";

In the line referenced to 18 U.S.C. § 1028 by deleting ", 2L2.3, 2L2.4";

In the line referenced to 18 U.S.C. § 1082 by deleting "2E3.3" and inserting in lieu thereof "2E3.1";

In the line referenced to 18 U.S.C. § 1084 by deleting "2E3.2" and inserting in lieu thereof "2E3.1";

In the line referenced to 18 U.S.C. § 1153 by deleting "2B2.2,";

In the line referenced to 18 U.S.C. § 1163 by deleting ", 2B1.2";

In the lines referenced to 18 U.S.C. §§ 1301, 1302, 1303, 1304, 1306, and 1511 by deleting "2E3.3" and inserting in lieu thereof "2E3.1";

In the line referenced to 18 U.S.C. § 1541 by deleting "2L2.3" and inserting in lieu thereof "2L2.1";

In the lines referenced to 18 U.S.C. §§ 1542, 1543, and 1544 by deleting "2L2.3, 2L2.4" and inserting in lieu thereof "2L2.1, 2L2.2";

In the line referenced to 18 U.S.C. § 1704 by deleting "2B5.2,";

In the line referenced to 18 U.S.C. § 1708 by deleting "2B1.2,";

In the line referenced to 18 U.S.C. § 1716C by deleting "2B5.2" and inserting in lieu thereof "2F1.1";

In the lines referenced to 18 U.S.C. §§ 1852 and 1854 by deleting "2B1.2,";

In the line referenced to 18 U.S.C. § 1951 by deleting "2E1.5" and inserting in lieu thereof "2B3.1, 2B3.2, 2B3.3, 2C1.1";

In the line referenced to 18 U.S.C. § 1953 by deleting "2E3.3" and inserting in lieu thereof "2E3.1";

In the line referenced to 18 U.S.C. § 2113(a) by deleting "2B2.2" and inserting in lieu thereof "2B2.1";

In the line referenced to 18 U.S.C. § 2113(c) by deleting ", 2B1.2";

In the lines referenced to 18 U.S.C. §§ 2115, 2116, 2117, and 2118(b) by deleting "2B2.2" and inserting in lieu thereof "2B2.1";

In the line referenced to 18 U.S.C. § 2154 by deleting "2M2.2" and inserting in lieu thereof "2M2.1";

In the line referenced to 18 U.S.C. § 2156 by deleting "2M2.4" and inserting in lieu thereof "2M2.3";

In the line referenced to 18 U.S.C. § 2197 by deleting "2B5.2,";

In the line referenced to 18 U.S.C. § 2276 by deleting "2B2.2" and inserting in lieu thereof "2B2.1";

In the lines referenced to 18 U.S.C. §§ 2312 and 2313 by deleting ", 2B1.2";

In the lines referenced to 18 U.S.C. §§ 2314 and 2315 by deleting "2B1.2, 2B5.2,";

In the lines referenced to 18 U.S.C. §§ 2316 and 2317 by deleting ", 2B1.2";

In the lines referenced to 18 U.S.C. §§ 2318 and 2320 by deleting "2B5.4" and inserting in lieu thereof "2B5.3";

In the line referenced to 20 U.S.C. § 1097(a) by deleting "2B5.2,";

By deleting:

"21 U.S.C. § 842(a)(2)2D3.3
21 U.S.C. § 842(a)(9),(10) 2D3.5",

and inserting in lieu thereof:

"21 U.S.C. § 842(a)(2),(9),(10)2D3.2";

In the line referenced to 21 U.S.C. § 846 by deleting ", 2D3.3, 2D3.4, 2D3.5";

In the lines referenced to 21 U.S.C. §§ 954 and 961 by deleting "2D3.4" and inserting in lieu thereof "2D3.2";

In the line referenced to 21 U.S.C. § 963 by deleting ", 2D3.3, 2D3.4, 2D3.5";

In the line referenced to 22 U.S.C. § 4221 by deleting "2B5.2" and inserting in lieu thereof "2F1.1";

In the line referenced to 26 U.S.C. § 7203 by deleting "2T1.2" and inserting in lieu thereof "2T1.1";

In the line referenced to 26 U.S.C. § 7206(1),(3),(4),(5) by deleting "2T1.3" and inserting in lieu thereof "2S1.3, 2T1.1";

In the line referenced to 26 U.S.C. § 7206(2) by inserting "2S1.3," immediately before "2T1.4";

In the line referenced to 26 U.S.C. § 7207 by deleting "2T1.5" and inserting in lieu thereof "2T1.1";

In the line referenced to 26 U.S.C. § 7211 by deleting "2T1.3" and inserting in lieu thereof "2T1.1";

In the line referenced to 26 U.S.C. § 7212(a) by deleting "2A2.2, 2A2.3" and inserting in lieu thereof "2A2.4";

In the line referenced to 29 U.S.C. § 186 by deleting "2E5.6" and inserting in lieu thereof "2E5.1";

In the lines referenced to 29 U.S.C. §§ 431, 432, 433, 439, and 461 by deleting "2E5.5" and inserting in lieu thereof "2E5.3";

In the line referenced to 29 U.S.C. § 501(c) by deleting "2E5.4" and inserting in lieu thereof "2B1.1";

In the line referenced to 31 U.S.C. § 5316 by deleting "2S1.4" and inserting in lieu thereof "2S1.3";

In the line referenced to 31 U.S.C. § 5322 by deleting ", 2S1.4";

In the line referenced to 33 U.S.C. § 1232(b)(2) by deleting "2A2.2, 2A2.3" and inserting in lieu thereof "2A2.4";

In the line referenced to 33 U.S.C. § 1415(b) by inserting "§ 2Q1.2," immediately before "2Q1.3";

In the line referenced to 46 U.S.C. § 3718(b) by deleting "2K3.1" and inserting in lieu thereof "2Q1.2";

In the lines referenced to 49 U.S.C. §§ 1472(h)(2) and 1809(b) by deleting "2K3.1" and inserting in lieu thereof "2Q1.2";

In the line referenced to 50 U.S.C. § 783(b) by deleting "2M3.7" and inserting in lieu thereof "2M3.3"; and

In the line referenced to 50 U.S.C. § 783(c) by deleting "2M3.8" and inserting in lieu thereof "2M3.3".

The Commentary to § 2J1.1 captioned "Statutory Provision" is amended by deleting "Provision: 18 U.S.C. § 401" and inserting lieu thereof "Provisions: 18 U.S.C. §§ 401, 228".

The Commentary to § 2J1.1 captioned "Application Note" is amended in the caption by deleting "Note" and inserting lieu thereof "Notes"; and by inserting the following additional note:

"2. For offenses involving the willful failure to pay court-ordered child support (violations of 18 U.S.C. § 228), the most analogous guideline is § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft). The amount of the loss is the amount of child support that the defendant willfully failed to pay. Note: This guideline applies to second and subsequent offenses under 18 U.S.C. § 228. A first offense under 18 U.S.C. § 228 is not covered by this guideline because it is a Class B misdemeanor.".

Appendix A (Statutory Index) is amended in the second paragraph of the introduction by deleting "or an attempt" and inserting in lieu thereof ", attempt, or solicitation".

Reason for Amendment: This amendment makes Appendix A more comprehensive, conforms it to the consolidation of offense guidelines under amendments 481, 490, and 491 and deletes references to several Class B and C misdemeanor offenses to which the guidelines do not apply. In addition, it adds a reference to solicitations in the introductory paragraph of the commentary to the Statutory Index that was inadvertently omitted.

3. Amendment: The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 4 by inserting the following additional paragraph as the second paragraph:

"Absent an instruction to the contrary, the adjustments from different guideline sections are applied cumulatively (added together). For example, the adjustments from § 2F1.1(b)(2) (more than minimal planning) and § 3B1.1 (aggravating role) are applied cumulatively.".

Reason for Amendment: This amendment clarifies the Commission's intent that, absent an instruction to the contrary, adjustments from different guideline sections are to be applied cumulatively.

4. Amendment: The Commentary to § 1B1.7 is amended by deleting the second paragraph as follows:

"In stating that failure to follow certain commentary 'could constitute an incorrect application of the guidelines,' the Commission simply means that in seeking to understand the meaning of the guidelines courts likely will look to the commentary for guidance as an indication of the intent of those who wrote them. In such instances, the courts will treat the commentary much like legislative history or other legal material that helps determine the intent of a drafter.",

and inserting in lieu thereof:

"'[C]ommentary in the Guidelines Manual that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline.' Stinson v. United States, 113 S. Ct. 1913, 1915 (1993).".

Reason for Amendment: This amendment revises the commentary to this section to reflect the decision of the Supreme Court in Stinson v. United States, 113 S. Ct. 1913, 1915 (1993).

5. Amendment: The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" in the subdivision captioned "LSD, PCP, and other Schedule I and II Hallucinogens" by deleting:

"Phenylcyclohexamine (PCE) = 5.79 kg of marihuana"

and inserting in lieu thereof:

"N-ethyl-1-phenylcyclohexylamine (PCE)= 1 kg of marihuana".

Reason for Amendment: This amendment revises the equivalency for PCE to reflect a reassessment of the potency of this controlled substance by the Drug Enforcement Administration. In addition, this amendment corrects an error in the scientific name for this controlled substance.

6. Amendment: The Commentary to § 3B1.1 captioned "Application Notes" is amended by renumbering Notes 2 and 3 as 3 and 4, respectively; and by inserting the following additional note:

"2. To qualify for an adjustment under this section, the defendant must have been the organizer, leader, manager, or supervisor of one or more other participants. An upward departure may be warranted, however, in the case of a defendant who did not organize, lead, manage, or supervise another participant, but who nevertheless exercised management responsibility over the property, assets, or activities of a criminal organization.".

Reason for Amendment: This amendment clarifies the operation of this section to resolve a split among the courts of appeal. Compare United States v. Carroll, 893 F.2d 1502 (6th Cir. 1990) (requiring degree of control over other persons for § 3B1.1 to apply); United States v. Fuller, 897 F.2d 1217 (1st Cir.

1990) (same); United States v. Mares-Molina, 913 F.2d 770 (9th Cir. 1990) (same) and United States v. Fuentes, 954 F.2d 151 (3d Cir.) (same), cert. denied, 112 S.Ct. 2950 (1992) with United States v. Chambers, 985 F.2d 1263 (4th Cir.) (defendant may be a "manager" even though he did not directly supervise other persons), petition for cert. filed, No. 92–8737 (U.S. May 17, 1993).

7. Amendment: The Commentary to § 5E1.1 captioned "Background" is amended in the second paragraph by inserting the following additional sentence as the first sentence:

"A court's authority to decline to order restitution is limited.";

by inserting, immediately after "18 U.S.C. § 3663(d).", the following:

"The legislative history of 18 U.S.C. § 3579, the precursor of 18 U.S.C. § 3663, states that even '[i]n those unusual cases where the precise amount owed is difficult to determine, the section authorizes the court to reach an expeditious, reasonable determination of appropriate restitution by resolving uncertainties with a view toward achieving fairness to the victim.' S. Rep. No. 532, 97th Cong., 2d Sess. 31, reprinted in 1982 U.S. Code Cong. & Ad. News 2515, 2537.";

and by inserting the following additional sentence as the last sentence:

"Subsection (a)(2) provides for restitution as a condition of probation or supervised release for offenses not set forth in Title 18, United States Code, or 49 U.S.C. § 1472(h), (i), (j), or (n).".

The Commentary to § 5E1.1 captioned "Background" is amended by deleting the fifth paragraph as follows:

"A court's authority to deny restitution is limited. Even 'in those unusual cases where the precise amount owed is difficult to determine, section 3579(d) authorizes the court to reach an expeditious, reasonable determination of appropriate restitution by resolving uncertainties with a view toward achieving fairness to the victim.' S. Rep. No. 532, 97th Cong., 2d Sess. 31, reprinted in 1982 U.S. Code Cong. & Ad. News 2515, 2537.";

and by deleting the seventh paragraph as follows:

"Subsection (a)(2) provides for restitution as a condition of probation or supervised release for offenses not set forth in Title 18, United States Code, or 49 U.S.C. § 1472(h), (i), (j), or (n).".

Reason for Amendment: This amendment updates the background commentary of § 5E1.1 to reflect the redesignation of 18 U.S.C. § 3579 as 18 U.S.C. § 3663. In addition, it moves material from the fifth and seventh paragraphs to the second paragraph to enhance clarity.

8. Amendment: Section 1B1.10(d) is amended by deleting "and 461" and inserting in lieu thereof "454, 461, 484, 488, 490, and 499".

Reason for Amendment: This amendment expands the listing in § 1B1.10(d) to implement the directive in 28 U.S.C. § 994(u) in respect to guideline amendments that may be considered for retroactive application. The amendment numbers listed are those as they appear in Appendix C of the Guidelines Manual.

9. Amendment: The Commentary to § 3C1.1 captioned "Application Notes". is amended in Note 6 by inserting "; Bribery of Witness" immediately following "of Perjury"; by deleting "§ 2J1.8 (Bribery of Witness), or § 2J1.9 (Payment to Witness)" and inserting in lieu thereof "§ 2J1.9 (Payment to Witness), § 2X3.1 (Accessory After the Fact), or § 2X4.1 (Misprision of Felony)"; and by deleting "or prosecution" and inserting in lieu thereof ", prosecution, or sentencing".

Reason for Amendment: This amendment makes the listing of offense guidelines to which this section applies more comprehensive and corrects an inadvertent omission of a reference to "sentencing" in the commentary of this section. (The First Circuit noted this omission in *United States* v. *Agoro, 996 F.2d 1288 (1st Cir. 1993).*

[FR Doc. 93–24752 Filed 10–7–93; 8:45 am]

BILLING CODE 2210–40–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 194
Friday, October 8, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 14, 1993.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *U.S. Steel Mining Co., Inc.*, Docket No. WEVA 92–783. (Issues include whether the judge erred in concluding that U.S. Steel violated a notice to provide safeguards issued by the Secretary of Labor and in concluding that the violation was of a significant and substantial nature.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: October 5, 1993.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93–24989 Filed 10–6–93; 3:28 pm]

BILLING CODE 6735–01–M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 21, 1993.

PLACE: Hearing Room 965, One Lafayette Centre, 1120—20th Street, NW., Washington, DC. 20036–3419.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Oral Argument before the Commission in *McNally Construction and Tunneling, Inc.* (OSHRC Docket No. 90–2337.)

CONTACT PERSON FOR MORE INFORMATION: Patrick Moran, (202) 606–5410.

Dated: October 6, 1993.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 93–24936 Filed 10–6–93; 11:17 am]

BILLING CODE 7600–01–M

federal register

Friday
October 8, 1993

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Subtitle A and Part 92, et al.
Economic Opportunities for Low- and Very Low-Income Persons; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 135

[Docket No. R-93-1677; FR-2898-P-01]

RIN 2529-AA49

Proposed Amendments to Part 135—Economic Opportunities for Low- and Very Low-Income Persons

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule.

SUMMARY: Section 3 of the Housing and Urban Development Act of 1968 (section 3), as amended by the Housing and Community Development Act of 1992, requires that economic opportunities generated by HUD financial assistance for housing (including public and Indian housing) and community development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons. This proposed rule would make comprehensive amendments to HUD's section 3 regulations at 24 CFR part 135 to bring these regulations into conformity with the changes made to section 3 by the Housing and Community Development Act of 1992, and to make additional changes directed to facilitating compliance with section 3.

Elsewhere in today's edition of the **Federal Register**, the Department has published a proposed rule that would make conforming amendments to several parts in title 24 of the Code of Federal Regulations that include reference, or should include reference, to the part 135 regulations.

DATES: Comment due date: November 8, 1993.

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, 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 on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Maxine B. Cunningham, Office of Fair Housing Assistant and Voluntary Programs, Section 3 Compliance Division, Room 5232, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-2251 (voice/TDD). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until the requirements have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.** The public reporting burden for the collection of information requirements contained in this rule 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, New Executive Office Building, room 3001, Washington, DC 20503, Attention: HUD Desk Officer.

II. Background

Since its enactment, section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) has been a statutory basis for promoting the award of jobs and contracts, generated from projects receiving HUD financial assistance, to, respectively, low-income residents and businesses of the areas where the project to be assisted are located. Section 3 was recently amended, in its entirety, by section 915 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (the 1992 Act). Although the 1992 Act significantly revised section 3, it did not alter the objective of section 3—to provide economic opportunities to low-income persons. The 1992 Act, in fact, strengthens the section 3 mandate by: Clarifying the types of HUD financial assistance, activities, and recipients subject to the requirements of section 3; identifying the specific individuals and businesses who are the intended beneficiaries of the economic opportunities generated from HUD-assisted activities; and establishing the order of priority in which these individuals and businesses should be recruited and solicited for the employment and other economic opportunities generated from HUD-assisted activities.

As amended by section 915 of the 1992 Act, section 3 now read as follows:

Sec. 3 Economic Opportunities for Low- and Very Low-Income Persons

(a) *Findings.* The Congress finds that—

(1) Federal housing and community development programs provide State and local governments and other recipients of Federal financial assistance with substantial funds for projects and activities that produce significant employment and other economic opportunities;

(2) Low- and very low-income persons, especially recipients of government assistance for housing, often have restricted access to employment and other economic opportunities;

(3) The employment and other economic opportunities generated by projects and activities that receive Federal housing and community development assistance offer an effective means of empowering low- and very low-income persons, particularly persons who are recipients of government assistance for housing; and

(4) Prior Federal efforts to direct employment and other economic opportunities generated by Federal housing and community development programs to low- and very low-income persons have not been fully effective and should be intensified.

(b) *Policy.* It is the policy of the Congress and the purpose of this section to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.

(c) Employment—(1) Public and Indian housing program. (A) In general.—The Secretary shall require that public and Indian housing agencies, and their contractors and subcontractors, make their best efforts, consistent with existing Federal, State, and local laws and regulations, to give to low- and very low-income persons the training and employment opportunities generated by development assistance provided pursuant to section 5 of the United States Housing Act of 1937, operating assistance provided pursuant to section 9 of that Act, and modernization grants provided pursuant to section 14 of that Act.

(B) Priority.—The efforts required under subparagraph (A) shall be directed in the following order of priority:

(i) To residents of the housing developments for which the assistance is expended.

(ii) To residents of other developments managed by the public or Indian housing agency that is expending the assistance.

(iii) To participants in Youthbuild programs receiving assistance under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act.

(iv) To other low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(2) Other programs. (A) In general. In other programs that provide housing and community development assistance, the Secretary shall ensure that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

(B) Priority. Where feasible, priority should be given to low- and very low-income persons residing within the service area of the project or the neighborhood in which the project is located and to participants in Youthbuild programs receiving assistance under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act.

(d) Contracting. (1) Public and Indian housing program.—

(A) In general.—The Secretary shall require that public and Indian housing agencies, and their contractors and subcontractors, make their best efforts, consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with development assistance provided pursuant to section 5 of the United States Housing Act of 1937, operating assistance provided pursuant to section 9 of that Act, and modernization grants provided pursuant to section 14 of that Act, to business concerns that provide economic opportunities for low- and very low-income persons.

(B) Priority. The efforts required under subparagraph (A) shall be directed in the following order of priority:

(i) To business concerns that provide economic opportunities for residents of the housing development for which the assistance is provided.

(ii) To business concerns that provide economic opportunities for residents of other housing developments operated by the public and Indian housing agency that is providing the assistance.

(iii) To Youthbuild programs receiving assistance under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act.

(iv) To business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

(2) Other programs. (A) In general. In providing housing and community development assistance pursuant to other programs, the Secretary shall ensure that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, contracts awarded for work to be performed in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(B) Priority. Where feasible, priority should be given to business concerns which provide economic opportunities for low- and very low-income persons residing within the service area of the project or the neighborhood in which the project is located and to Youthbuild programs receiving assistance under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act.

(e) *Definitions.* For the purposes of this section, the following definitions shall apply:

(1) Low- and very low-income persons. The terms 'low-income persons' and 'very low-income persons' have the same meanings given the terms 'low-income families' and 'very low-income families', respectively, in section 3(b)(2) of the United States Housing Act of 1937.

(2) Business concern that provides economic opportunities. The term 'a business concern that provides economic opportunities' means a business concern that—

(A) provides economic opportunities for a class of persons that has a majority controlling interest in the business;

(B) employs a substantial number of such persons; or

(C) meets such other criteria as the Secretary may establish.

(f) *Coordination With Other Federal Agencies.* The Secretary shall consult with the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Commerce, the Administrator of the Small Business Administration, and such other Federal agencies as the Secretary determines are necessary to carry out this section.

(g) *Regulations.* Not later than 180 days after the date of enactment of the National Affordable Housing Act Amendments of 1992, the Secretary shall promulgate regulations to implement this section.

This proposed rule would amend HUD's section 3 regulations, codified at 24 CFR part 135, in their entirety, to incorporate the changes made to section 3 by the 1992 Act, and to make additional changes directed to facilitating compliance with section 3. (Unless the context indicates otherwise, the references to section 3 are to section 3 as amended by section 915 of the 1992 Act.)

As part of the process of development of the proposed rule, the Department held two meetings at HUD Headquarters on the subject of section 3, and invited to these meetings various housing authorities, industry groups and organizations that are currently subject to compliance with section 3, or that share interest in the regulatory implementation of section 3. The purpose of the meetings was to discuss, informally, the strengths and weaknesses of the existing section 3 regulations; the changes made to section 3 by the 1992 Act; and how the objectives of section 3 could best be achieved with minimum administrative burden on the entities subject to compliance with section 3. The meetings were held on March 12, 1993 and March 16, 1993. Organizations that participated in these meetings included the National Low Income Housing Coalition; the National Urban League; the Center for Community Change; the National League of Cities; the National Association for County, Community and Economic Development; the Association of Local Housing Finance Agencies; Coalition for Low Income Community Development; Council of State Community Development Agencies; the National Housing Law Project; Council of Large Public Housing Authorities; Maine Housing Authority; Chicago Housing Authority; the Salt Lake County Housing Authority; National Association of Housing and Redevelopment Officials; and the Public Housing Authorities Directors Association.

Recommendations concerning ways to implement section 3, and requirements that should, or should not, be part of section 3 regulations that were offered by the participants of these meetings included the following: the regulation should specify examples of good faith efforts to offer economic opportunities to low- and very low-income persons; compliance with section 3 should be determined by a numerical result (e.g., 20 percent employment); the Department should offer incentives or rewards to entities which achieve significant results from their good faith efforts, rather than impose sanctions against entities which fail or refuse to make good faith efforts; the regulation should require the use of community and neighborhood groups for assistance in identifying low- and very low-income persons seeking employment; the regulation should include rating factors for section 3 performance in future notices of funding availability; the regulation should minimize reporting requirements; the regulation should

establish reasonable dollar thresholds before compliance with section 3 becomes mandatory; the regulation should eliminate dollar thresholds to establish mandatory compliance with section 3; the regulation should revise income requirements for public housing residents who obtain employment as a result of a housing authority's compliance with section 3; and the regulation should provide maximum flexibility to housing authorities in implementing section 3. (The transcripts of the March 12th and March 16th meetings are part of the public comment file for this rule, and are available for public inspection.)

In developing the proposed new regulations for section 3, the Department took into consideration the comments and suggestions made by the participants at the March 12th and March 16th meetings, and, through this proposed rule, seeks further comment from these groups; similar organizations and associations; public housing agencies and Indian housing authorities; participants in HUD's housing programs and community development programs; low- and very low-income persons who are the intended beneficiaries of this rule and their advocates and representatives; and the public at large on the issues raised at the March 12th and 16th meetings (as noted above), and on the substance and organization of the proposed section 3 regulations.

A suggestion was made at the March 12th and March 16th meetings (and it is a suggestion that has been made before to the Department through other means, such as correspondence) that compliance with section 3 should be measured by a numerical result (e.g., compliance with section 3 is demonstrated by filling 20 percent of the job vacancies with low- and very low-income persons, or by awarding 20 percent of available contracts to section 3 business concerns). The Department did not adopt this suggestion in the proposed rule, and has not adopted this suggestion in the past, because establishment of a numerical result is not consistent with the objectives of section 3. Section 3 provides that to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, economic opportunities generated by the expenditure of HUD financial assistance should be given to low- and very low-income persons. This means that, if feasible and if consistent with existing Federal, State and local laws and regulations, all economic opportunities generated by HUD financial assistance must be given to low- and very low-income persons. Generally, however, this will not be feasible in every case. For example, with respect to employment opportunities, it is unlikely that in every hiring situation low- and very low-income persons will be qualified for every job opportunity generated from the expenditures of HUD financial assistance. Therefore, it is not possible to measure compliance with section 3 in terms of a numerical result, because numerical results will vary dependent upon the circumstances of the hiring, e.g., the types of jobs offered, the skills required for these jobs, and the qualifications of the low- and very low-income persons (residing within the metropolitan area, or nonmetropolitan county) to fill these jobs. Although every job may not be filled by a low-or a very low-income person, section 3 requires that efforts must be made to hire as many low- and very low-income persons to the greatest extent feasible.

The following section of the preamble presents an overview of the part 135 proposed rule. Consistent with the comprehensive amendment made to section 3 by section 915 of the 1992 Act, this proposed rule would amend part 135 in its entirety. Throughout the remainder of this preamble, the term "low-income persons" will be used to refer to both "low-income persons" and "very low-income persons."

III. Overview of Proposed Rule

The proposed rule would organize part 135 into six subparts: Subpart A—General Provisions; Subpart B—Economic Opportunities for Low and Very Low-Income Persons in Public and Indian Housing Programs; Subpart C—Economic Opportunities for Low and Very Low-Income Persons in Housing Programs; Subpart D—Economic Opportunities for Low and Very Low-Income Persons in Community Development Programs; Subpart E—Compliant and Compliance Review; and Subpart F—Reporting and Recordkeeping. The following discusses the principal regulatory sections within each subpart.

Subpart A—General Provisions

Section 135.1 Purpose and Scope

Section 135.1 of subpart A would describe the purpose of section 3 and the part 135 regulations, and also would clarify that neither section 3 nor the part 135 regulations require recipients of HUD financial assistance to create jobs or job training programs or to create contract opportunities.

Section 3 and the part 135 regulations require that where recipients of HUD financial assistance, and/or their contractors and subcontractors, intend to undertake hiring or intend to award contracts or subcontracts in connection with the expenditure of HUD financial assistance covered by section 3, the recipients, contractors and subcontractors must give a preference in hiring to low-income persons, and must give a preference in the award of contracts to business concerns which provide economic opportunities to low-income persons (These requirements are referred to as the "section 3 preference requirements.")

Section 135.3 Applicability

Section 135.3 would describe the HUD programs to which the section 3 preference requirements are applicable. With respect to HUD's public and Indian housing programs, the section 3 preference requirements apply to job training, employment, contracting, and other economic opportunities generated from the expenditure of the following three categories of assistance: (1) Development assistance provided pursuant to section 5 of the United States Housing Act of 1937 (the 1937 Act) (see 42 U.S.C. 1437); (2) operating assistance provided pursuant to section 9 of the 1937 Act (42 U.S.C. 1437g); and (3) modernization assistance provided pursuant to section 14 of the 1937 Act (42 U.S.C. 14371).

With respect to HUD's housing and community development programs, the section 3 preference requirements apply to job training, employment, contracting and other economic opportunities generated in connection with HUD housing and community development assistance that is expended for: (1) Housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; and (3) other public construction projects.

Section 135.7 Definitions

Section 135.7 would define the principal terms used in part 135. Certain terms defined in this section have been retained from the existing part 135 regulations; other terms have been retained with revisions; and several new terms are introduced. The terms defined in § 135.7 include the following:

"Low-income persons" and "very low-income persons" would be defined, in accordance with paragraph (e)(1) of section 3, to have the same meanings given these terms in section 3(b)(2) of the U.S. Housing Act of 1937.

"Section 3 business concern" (which would be used in part 135 in lieu of the term that is used and defined in paragraph (e)(2) of section 3—"business concern that provides economic opportunities") would be defined to

mean: a business concern that: (1) is 51 percent or more owned by low-income persons; or (2) employs a substantial number of low-income persons for the type of activity in which the business concern is engaged; or (3) is substantially owned, but less than 51 percent owned, by low-income persons, and employs low-income persons in key management positions. The first two criteria are established by paragraphs (e)(2)(A) and (B) of section 3. The third criterion is added by the Department, as permitted by paragraph (e)(2)(C) of section 3.

* * * The Department specifically requests comment on this third criterion, and invites the public to recommend other criteria which should qualify a business concern as a section 3 business concern.

In HUD's public and Indian housing programs, section 3 provides for coverage to be determined by the types of assistance utilized. Accordingly, "section 3 covered assistance" would be defined to refer only to the three categories of public and Indian housing assistance to which the statutory language of section 3 states that section applies. (See paragraphs (c)(1)(A) and (d)(1)(A) of section 3.)

In HUD's housing and community development programs, section 3 provides for coverage to be determined by the types of projects on which housing and community development assistance is expended. Accordingly, "section 3 covered project" would be defined to refer only to the types of projects (i.e., construction and rehabilitation) to which the statutory language of section 3 states that section 3 applies in HUD's housing and community development programs. (See paragraphs (c)(2)(A) and (d)(2)(A) of section.)

With respect to "other public construction project," which the section 3 statutory language establishes as a section 3 covered project activity, the regulatory definition would clarify that "other public construction project" refers to "other buildings or improvements (regardless of ownership) assisted with housing or community development assistance."

* * * The Department specifically requests comment from the public on this proposal to extend section 3 coverage, through the definition of "section 3 covered project," to all private, for-profit entities that receive HUD housing or community development assistance for a section 3 covered project, including private, for-profit businesses receiving Community Development Block Grant (CDBG) funding for economic development projects.

"Section 3 covered contract" would be defined to clarify that contracts subject to section 3 requirements are those that are awarded for "work" generated by the expenditure of section 3 covered assistance or in connection with a section 3 covered project. Contracts for the purchase of supplies and materials would not constitute section 3 covered contracts. The Department believes that this definition is consistent with section 3, which uses the term "contract for work."

Section 135.11 Section 3 Clause

Section 135.11 would require that all section 3 covered contracts include the "section 3 clause." The purpose of the section 3 clause (which also was required in § 135.20 of the existing part 135 regulations) is to notify the parties to a section 3 covered contract of their responsibilities under section 3, and to require their agreement to comply with the regulations in part 135. The section 3 clause has been revised (from that set forth in the existing part 135 regulations) to reflect current practices in HUD programs, and to reflect new terminology contained in section 3.

Section 135.13 Requirements Applicable to HUD NOFAs for Section 3 Covered Programs

Section 135.13 would impose certain requirements on all notices of funding availability (NOFAs) issued by HUD, which announce the availability of funding covered by section 3. First, § 135.13 would require that all applicants for section 3 covered funding must submit, as part of their application, a certification of compliance with the part 135 regulations. For PHAs, this requirement will be met if a PHA Resolution in Support of the Application (Form HUD 52471) is submitted. Second, § 135.13 would provide that each NOFA which awards funds on the basis of a rating and ranking system shall invite, but shall not require, an applicant to include, as part of its application materials, a description or summary of the applicant's past experience and achievements in providing economic opportunities to low-income persons. Applicants that submit this summary will be eligible to receive additional (bonus) points. The bonus points shall be awarded only to those applications determined to be technically acceptable for funding. The bonus points cannot be used to give undue advantage to applicants who fail to meet minimal standards or other technical program criteria specified in the NOFA. The Department anticipates that the bonus points will be used to give advantage to applicants that receive the highest cumulative ratings based on the other criteria specified in the NOFA.

* * * The Department specifically requests comments from the public on this proposal to award additional points to applicants that have previously demonstrated successful results in providing economic opportunities to low-income persons.

Subpart B—Economic Opportunities for Low and Very Low-Income Persons in Public and Indian Housing Programs

This subpart would provide for implementation of section 3 in HUD's public and Indian housing programs. Section 3 requires public housing agencies (PHAs) and Indian housing authorities (IHAs), their contractors and subcontractors to make their "best efforts, consistent with existing Federal, State, and local laws and regulations" to comply with the section 3 preference requirements. (PHAs and IHAs are referred to, collectively, as housing authorities (HAs), or, in the singular, housing authority (HA).) Because section 3 imposes a best efforts requirement on HAs, their contractors and subcontractors, the Department has determined that establishment of a dollar threshold, in connection with the expenditure of section 3 covered assistance, for purposes of triggering mandatory compliance with section 3 is not consistent with a best efforts requirement.

* * * The Department specifically requests comment on its determination that the establishment of dollar thresholds is not consistent with the section 3 best efforts requirement.

Section 135.30 General

Section 135.30 of subpart B would clarify that IHAs that receive section 3 covered assistance shall comply with the provisions of subpart B to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (ISDEA Act) (25 U.S.C. 450e(b)). Section 7(b) of the ISDEA Act provides that job training and employment opportunities, and contract opportunities, generated in connection with any contract, subcontract, grant or subgrant entered into for the benefit of Indians be given, respectively, to Indians, and to Indian-owned enterprises.

Section 135.30 also would clarify that it is the responsibility of the "HAs" to monitor their own operations and the operations of their contractors and

subcontractors to ensure compliance with the section 3 preference requirements.

Section 135.32 Training and Employment Opportunities

Section 135.32 of subpart B would address implementation of the section 3 training and employment preference. Section 135.32 would specify, consistent with the statutory language of section 3, the categories of low-income persons to whom HAs, their contractors and subcontractors must direct their best efforts to offer training and employment opportunities, and the order of priority in which these categories of low-income persons should be recruited for jobs. The categories of low-income persons and their order of priority, as established by paragraph (c)(1)(B) of section 3, are as follows: (1) Residents of the housing developments for which the assistance is expended; (2) residents of other developments managed by the HA that is expending the assistance; (3) participants in HUD Youthbuild programs; and (4) other low-income persons residing within the metropolitan area (or non-metropolitan county) in which the assistance is expended.

Section 135.32 also would provide examples of activities which HAs, their contractors and subcontractors may undertake, in any combination, and which, dependent upon the combination and the hiring circumstances, may demonstrate that best efforts were made to comply with the section 3 training and employment preference. (The criteria by which the activities of HAs, their contractors and subcontractors will be determined to have constituted best efforts are discussed later in this preamble.)

* * * The Department specifically requests public comment on the examples of best effort activities described in § 135.32, and solicits suggestions on other activities that would demonstrate that best efforts were made to meet the section 3 job training and employment preference.

Section 135.36 Contracting Opportunities

Section 135.36 of subpart B would address implementation of the section 3 contracting preference. Section 135.36, consistent with the statutory language of section 3, would specify the categories of section 3 business concerns to which HAs, their contractors and subcontractors must direct their best efforts to award contracting opportunities, and the order of priority in which these categories of section 3 business concerns should be given preference in the contract award process. The categories of section 3 business concerns and their order of priority, as established by paragraph (d)(1)(A) of section 3, are as follows: (1) Section 3 business concerns that are 51 percent or more owned by residents of the housing development or developments for which the section 3 covered assistance is expended, or which employ a substantial number of these persons; (2) section 3 business concerns that are 51 percent or more owned by residents of other housing developments managed by the HA that is expending the section 3 covered assistance, or which employ a substantial number of these persons; (3) HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended; and (4) business concerns that are 51 percent or more owned by low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended, or which employ a substantial number of these persons.

The fact that § 135.36, consistent with section 3 lists, in order of priority, the categories of section 3 business concerns to which best efforts must be directed, does not mean that § 135.36 (or section 3) authorizes set-asides or the restriction of competition to one or more of these categories of business concerns, and § 135.36 would clarify this point.

Section 135.36 also would provide specific procedures for implementing the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d), and which are utilized by HAs. The procedures in § 135.36 are modeled on those provided in 24 CFR 905.175 of HUD's Indian housing regulations, which provide for implementation of the Indian preference in contracting. Section 135.36 would provide that HAs must follow the procurement procedures set forth in this section. (Again, IHAs shall comply with these procedures to the maximum extent feasible, but not in derogation of, compliance with section 7(b) of the ISDEA Act.) Requiring HAs to follow the procedures in § 135.36 would mean that a HA should select the procurement method that is suitable for the type of procurement it intends to undertake (e.g., small purchase procedures, procurement by sealed bids, procurement by competitive proposals, etc.), and then must follow the procedures in § 135.36(c) that provide for implementation of the section 3 contracting preference for the procurement method selected.

Section 135.36 would clarify that the requirements imposed by this section apply only to HAs, and not to their contractors and subcontractors. The contractors and subcontractors of HAs are not required to follow the procurement procedures of 24 CFR 85.36(d). However, § 135.36 would require HA contractors and subcontractors to provide preference for section 3 business concerns in their procurement practices, and to undertake efforts that ensure compliance with the section 3 contracting preference.

Section 135.36 also would provide that before the completion of the contract award process, the contractor selected by the HA will have disclosed the activities that the contractor intends to undertake to comply with the section 3 training and employment preference or section 3 contracting preference, or both, if applicable, and the HA will have approved these activities as meeting the "best efforts requirement." The timing of disclosure of the intended best effort activities will vary depending upon the procurement method selected by the HA. For example, under the competitive proposal method of procurement, the disclosure will be made by all business concerns in their proposals, submitted in response to a Request for Proposals. If the HA determines that the activities intended to be undertaken by the contractor do not constitute best efforts, the HA and the contractor will negotiate the best effort activities to be undertaken by the contractor. When the HA and contractor reach agreement on best effort activities, the actions will be described in an attachment to the contract and made a part of the contract. If the HA and contractor fail to reach agreement on best efforts, the contractor will be determined to be not responsible, and therefore ineligible for the contract award. (Compliance with section 3 is a matter of responsibility.) The HA will select the next lowest responsive bidder, and either approve that bidder's best effort activities, or commence negotiation concerning these efforts as it did with the first bidder selected.

* * * The Department specifically requests comment on this proposal to disclose, and negotiate, as determined necessary by the HA, the best effort activities before the HA awards a contract to a contractor.

Section 135.36 also would provide examples of outreach activities which HAs, their contractors and subcontractors may undertake in any combination and which, dependent upon the procurement circumstances

and the combination of activities selected, may demonstrate that best efforts were made to comply with the section 3 contracting preference.

* * * The Department specifically requests public comment on these activities, and recommendations on other activities that would demonstrate best efforts were made to meet the section 3 contracting preference.

Sections 135.32 Documentation, and

Section 135.36 Evaluation of Best Efforts

Both §§ 135.32 and 135.36 would impose requirements on HAs (and only HAs) to document the best efforts undertaken to meet, respectively, the section 3 employment and contracting preferences. The information which the Department would request that HAs maintain would be as follows: with respect to training and employment, the number of low-income persons hired in comparison to the total number of persons hired at the end of an HA fiscal year, the types of training and employment positions filled by low-income persons, a description of the best efforts that were undertaken to train and hire low-income persons, and a description of the mechanism by which the HA ensured that its contractors and subcontractors complied with the section 3 training and employment preference. With respect to contracting, the information to be maintained would include the number and dollar value of contracts awarded to section 3 business concerns in comparison to the number and dollar value of contracts awarded to all business concerns at the end of an HA fiscal year, a description of the best efforts that were undertaken to award contracts to section 3 business concerns, and a description of the mechanism by which the HA ensured that its contractors and subcontractors complied with the section 3 contracting preference.

No recordkeeping requirements would be imposed by HUD on an HA's contractors and subcontractors. The regulations, however, would provide authority for the HA to impose such recordkeeping and reporting requirements on its contractors and subcontractors as may be necessary in order for the HA to comply with the recordkeeping and reporting requirements imposed by part 135.

Additionally, both §§ 135.32 and 135.36 would provide for evaluation of best efforts on the basis of the following criteria. With respect to training and employment, the Department will look at the efforts undertaken to make low-income persons aware of the training and employment positions to be filled, to encourage and facilitate the participation of low-income persons in the job application process, and to train and employ low-income persons who are qualified for the positions to be filled. With respect to contracting, the Department will look at the efforts undertaken to identify section 3 business concerns, and to make these business concerns aware of the contracting opportunities, to encourage and facilitate their participation in the procurement process, and to award contracts to section 3 business concerns that are capable of performing the contract work.

Section 135.38 Providing Other Economic Opportunities.

Section 135.38 of subpart B would provide examples of economic opportunities, other than job training, employment, and the award of contracts for work, that HAs may provide to low-income persons.

* * * The Department requests public comment on the examples of other economic opportunities provided in § 135.38, and requests suggestions of other economic opportunities that should be included in this section, and are consistent with the objectives of section 3.

Subpart C—Economic Opportunities for Low and Very Low-Income Persons in Housing Programs and

Subpart D—Economic Opportunities for Low and Very Low-Income Persons in Community Development Programs

Subpart C provides for implementation of section 3 in HUD's housing programs. Subpart D provides for implementation of section 3 in HUD's community development programs. Subparts C and D are discussed together in this preamble because, with few exceptions, these two subparts closely resemble each other. These two subparts closely resemble each other because section 3 imposes the same requirements on HUD's housing programs as it does on HUD's community development programs.

In addressing the preference requirements imposed on housing and community development programs, section 3 does not use the term "best efforts" as it does in connection with HUD's public and Indian housing programs. Section 3 provides that in HUD's housing and community development programs, the Secretary of HUD shall ensure that, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, training and employment opportunities are given to low-income persons, and contracting opportunities are given to section 3 business concerns. The Department has interpreted this language to mean that recipients (and their recipients, contractors, and subcontractors) of HUD housing and community development assistance must make "good faith efforts" (as opposed to best efforts) to meet the section 3 preference requirements when expending this assistance in connection with a section 3 covered project.

Section 135.50 General (Subpart C)

Section 135.70 General (Subpart D)

Each of these sections would establish a dollar threshold before compliance with the section 3 preference requirements would be mandatory. These sections would provide that recipients and contractors subject to compliance with subpart C or subpart D are those that receive, respectively, HUD housing program assistance (other than section 8 assistance, and other than Flexible Subsidy assistance as discussed below) or HUD community development program assistance for a section 3 covered project and for which the HUD share of the "project cost" (which is defined in § 135.7) exceeds $100,000. (As will be discussed below, section 8 assistance is excluded from section 3 coverage, and Flexible Subsidy assistance is treated differently under section 3 than other HUD housing program assistance.) Sections 135.50 and 135.70 also would provide that subparts C and D are applicable to subcontractors that are awarded a subcontract in connection with a section 3 covered project for which the HUD share of the project cost exceeds $100,000 *and* the subcontract exceeds $50,000. Once the threshold is met, the entire project would be subject to the section 3 preference requirements.

* * * The Department specifically requests public comment on the proposal to apply, once the dollar threshold is met, the section 3 preference requirements to the entire project, and not solely to that portion of the project that is assisted with HUD housing or community development assistance.

The Department proposes to lower the threshold to $100,000 from the $500,000 threshold provided in the existing part 135 regulations (see § 135.5(m)). The reasons for the reduction in the threshold are twofold. First, the $500,000 threshold in the existing regulation is based on total project cost, and not solely on the HUD share of the total project cost, as is proposed in this

rule. Second, section 915 of the 1992 Act substantially reduces section 3 coverage in HUD's housing and community development programs. As previously discussed in this preamble, in HUD's housing and community development programs, the requirements of section 3 are limited to construction and rehabilitation projects. Thus, the Department believes that a $100,000 threshold is reasonable for the types of covered projects specified by section 3, and is consistent with the statutory requirement that employment and contracting opportunities shall, to the greatest extent feasible, be given to low-income persons.

The use of "HUD share" of project cost takes into consideration the fact that in HUD assisted programs, other than HUD's public and Indian housing programs, recipients frequently receive assistance from several sources, of which HUD is only one. This is particularly the case in HUD's CDBG programs. In the CDBG programs, HUD awards financial assistance to State and local governments for a wide range of eligible community development activities, and the HUD assistance awarded to States and local governments may constitute only a portion of the assistance that will be used to support or undertake these activities. The States or local governments expend HUD assistance in conjunction with assistance provided from other public and private sources. The decision concerning how the financial assistance, obtained from various sources, will be expended and in what combination, if any, is left to the decision of the State or local government. For this reason, the Department proposes to limit the threshold amounts for section 3 covered housing and community development projects and activities to the "HUD share" of the project cost.

* * * The Department specifically requests public comment on the proposal to base the threshold amount on the HUD share of total project cost, rather than on the total project cost.

Section 135.50 of subpart C would exclude section 8 certificate and voucher assistance from section 3 coverage. Recipients of HUD assistance that are subject to section 3 do not include any ultimate beneficiary of the assistance, as for examples, tenants in the section 8 programs.

Section 135.50 of subpart C would establish a different dollar threshold for recipients (or multifamily project mortgagors) under HUD's Flexible Subsidy Program, the regulations for which are codified in 24 CFR part 219. HUD's Flexible Subsidy Program provides two types of assistance to troubled projects—operating assistance, and assistance for capital improvements. (Multifamily projects that have serious financial and physical problems are designated as "troubled.") Of these two types of assistance, only capital improvement assistance, which involves assistance for housing rehabilitation, is expended for a project activity that qualifies as a "section 3 covered project," as this term is defined in § 135.7. Accordingly, § 135.50 would provide that subpart C applies to multifamily project mortgagors that receive assistance under the Flexible Subsidy Program for rehabilitation, and for which the HUD share of the rehabilitation cost exceeds $7,500 per unit. Section 135.50 also would provide that subpart C applies to contractors and subcontractors that are awarded a contract or a subcontract in connection with assistance under the Flexible Subsidy Program for which the HUD share of the rehabilitation cost exceeds $7,500.

The per unit dollar threshold of $7,500 was based on the fact that since 1983, the Office of Housing has used the fixed dollar amount of $6,500 per unit as an indicator of "rehabilitation"—that is, when work is undertaken on a multifamily project to bring it into compliance with building codes, housing quality standards, etc. Applying to this amount a general increase factor of 39 percent for wood and masonry structure costs indicates that what may have cost $6,500 in 1983 would cost approximately $9,035 in 1993. However, to meet the section 3 "greatest extent feasible requirement" in the Flexible Subsidy Program, the Department would reduce this $9,035 per unit cost to $7,500 (and, thus, establish the dollar threshold at $7,500 per unit), to provide for increased section 3 coverage in this program.

Sections 135.50 and 135.70 would each define "HUD share" to mean the aggregate of funds received, respectively, from all HUD housing or community development programs for the project cost. (Sections 135.50 and 135.70 also would define "service area" and "neighborhood"—terms used in section 3 in connection with HUD housing and community development programs.)

* * * The Department requests public comment on the dollar thresholds established under subparts C and D, and on the definition of HUD share.

Sections 135.50 and 135.70 also would impose a responsibility on recipients of HUD housing or community development assistance to monitor their own operations and the operations of their contractors and subcontractors to ensure compliance with the section 3 preference requirements.

Section 135.52 Training and Employment Opportunities (Subpart C)

Section 135.72 Training and Employment Opportunities (Subpart D)

Sections 135.52 and 135.72 would address implementation of the section 3 training and employment preference in HUD's housing programs and HUD's community development programs, respectively. For HUD's housing and community development programs, section 3 does not require that good faith efforts must be directed to employ certain categories of low-income persons, but, rather, section 3 requires that, where feasible, priority should be given to hiring low-income persons residing within the service area or neighborhood in which the section 3 covered project is located, and to participants in HUD Youthbuild programs. (See paragraphs (c)(2)(B) and (d)(2)(B) of section 3.) Sections 135.52 and 135.72 would incorporate this statutory provision.

The Department believes that the "where feasible" language in section 3 was included because the Congress understood that the service area or neighborhood for some section 3 covered projects may not have low-income persons capable of undertaking the work to be performed in connection with a section 3 covered project. For example, the employment opportunities generated from a section 3 covered project that involves housing construction may be opportunities that require the ability to perform heavy labor, and the low-income persons residing in the neighborhood of this section 3 covered project may consist of a high percentage of elderly persons. In this situation, it would not be feasible to give priority consideration in hiring to the low-income persons in the neighborhood, but it may be feasible to give priority consideration to HUD Youthbuild program participants. If it is not feasible to give priority consideration in hiring to HUD Youthbuild program participants (there may not be any HUD Youthbuild programs in the metropolitan area of the section 3 covered project), section 3 would still require that good faith efforts should be made to employ low-income persons residing in the metropolitan area (or nonmetropolitan county) in which the section 3 covered project is located.

Additionally, § 135.72 would provide that where the section 3 covered project is assisted under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 *et seq.*) (McKinney Act), homeless persons residing in the service area or neighborhood in which the section 3 covered project is located shall be given the highest priority. This category of persons was added because the McKinney Act requires that preference be given to homeless persons for employment opportunities generated from the expenditure of assistance awarded under the McKinney Act.

Sections 135.52 and 135.72 also would provide examples of activities which recipients, contractors, and subcontractors may undertake, in any combination, and which, dependent upon the hiring circumstances and the combination of activities selected, may demonstrate that good faith efforts were made to comply with the section 3 training and employment preference.

Section 135.56 Contracting Opportunities (Subpart C)

Section 135.76 Contracting Opportunities (Subpart D)

Sections 135.56 and 135.76 would address implementation of the section 3 contracting preference. With respect to implementation of the contracting preference in HUD's housing and community development programs, section 3 provides that, where feasible, priority consideration should be given to awarding contracts to section 3 business concerns that provide economic opportunities for low-income persons residing in the service area or neighborhood in which the section 3 covered project is located, and to HUD Youthbuild programs. Sections 135.56 and 135.76 incorporate this statutory provision.

Sections 135.56 and 135.76 would provide that good faith efforts to award contracts to section 3 business concerns may be demonstrated by utilizing the procurement procedures provided in § 135.36(c) of subpart B. As discussed under subpart B, § 135.36(c) provides specific procedures for implementation of the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d). The procurement methods described in 24 CFR 85.36(d) are standard procurement methods, and in all likelihood, familiar to recipients, contractors and subcontractors subject to subparts C and D. Thus, the procurement procedures in § 135.36(c) may prove useful to recipients, contractors, and subcontractors, subject to subparts C and D, seeking to demonstrate compliance with the section 3 contracting preference. However, § 135.56 of subpart C would provide that for multifamily project mortgagors, demonstration of compliance with the section 3 contracting preference is not necessarily met by following the procurement procedures specified in § 135.36(c).

As use of the term "may" in §§ 135.56 and 135.76 indicates, the procurement procedures specified in § 135.36(c) are not required to be followed by recipients, contractors and subcontractors subject to subparts C and D. Nevertheless, in § 135.56, the Department is excluding multifamily project mortgagors under the Flexible Subsidy Program from this provision to avoid confusion on their part that the procurement procedures specified in § 135.36 are the only options available to demonstrate compliance with the section 3 contracting preference.

As noted earlier in this preamble, the Flexible Subsidy Program provides assistance to "troubled" multifamily projects, i.e., projects that have serious financial and physical problems. In many cases, the Flexible Subsidy assistance is provided to address a project's emergency health and safety problems (leaking gas stoves, falling balconies), and in these cases, the multifamily project mortgagor does not have the time to undertake procurement through formal procurement procedures. Through this rule, the Department does not wish to indicate to multifamily project mortgagors, who must, among other things, address emergency health and safety problems, that the procurement procedures of § 135.36 are the only options available to demonstrate compliance with the section 3 contracting preference. Additionally, the Flexible Subsidy Program is a program designed to restore or maintain the physical and financial soundness of eligible projects at the lowest possible cost to the Federal Government. Several of the procurement procedures set forth in § 135.36 provide for the award of a contract to a business concern that submits a bid that is higher than the lowest responsive bid, which is inconsistent with the requirements imposed by the Flexible Subsidy Program. Section 135.56 would provide, however, that multifamily project mortgagors must provide, where feasible, for preference to section 3 business concerns in the procurement practices that they follow.

* * * The Department specifically requests public comment from multifamily project mortgagors on how the section 3 contracting preference may be implemented in the Flexible Subsidy Program.

Sections 135.56 and 135.76 also would provide other examples of activities which may be undertaken in any combination, and which, dependent upon the procurement circumstances and the combination of activities selected, may demonstrate that good faith efforts have been made to award contracts to section 3 business concerns.

* * * The Department specifically requests comments from current, past and prospective recipients, contractors and subcontractors of HUD housing or community development assistance on the activities listed in §§ 135.56 and 135.76. The Department's requests comment on whether these activities are more suited to the types of endeavors that a local government or nonprofit entity may undertake, as opposed to a private local developer.

Sections 135.52, 135.72 Documentation, and

Sections 135.56, 135.76 Evaluation of Good Faith Efforts

The procedures for documenting and evaluating good faith efforts to meet the employment and contracting preferences of section 3, established in §§ 135.52, 135.56, 135.72, and 135.76, are similar to the documentation and evaluation procedures established in §§ 135.32 and 135.36.

With respect to good faith efforts in subparts C and D, and as discussed earlier in this preamble under §§ 135.50 and 135.70, recipients of HUD housing or community development assistance are responsible for monitoring their own operations and the operations of their contractors and subcontractors to ensure compliance with the section 3 preference requirements. Although monitoring responsibility is imposed on the recipient, the responsibility to provide preference to low-income persons with respect to training and employment opportunities, and to provide preference to section 3 business concerns with respect to contracting opportunities, falls on the entity or entities (whether it is the recipient, contractor or subcontractor) that is undertaking the hiring or procurement in connection with a section 3 covered project.

* * * The Department requests public comment, particularly by local jurisdictions, on whether local governments that receive funding under HUD's CDBG Program and that do not themselves engage in hiring and procurement activities, but rather pass the funding along to a project owner/developer which will engage in hiring

and procurement, should be required by the section 3 regulations to undertake more than monitoring responsibility—that is, should local governments be required to assist the project owner with outreach activities. The Department solicits comment on this issue because the preference requirements imposed by section 3, in large part, attempt to respond to the requests by local governments, particularly those in major urban areas, that the Federal Government do more (1) to address the under- and unemployment problem in these areas, and (2) to promote the employment of local residents. Since local governments have an interest in increased employment within their jurisdictions, especially employment of those persons who are under- and unemployed, the Department requests comment on what efforts and activities local governments should and can undertake not only to ensure that their recipients and contractors comply with section 3, but to further the objectives of section 3.

Subpart E—Complaint and Compliance Review

This subpart would establish the procedures for handling complaints alleging noncompliance with the part 135 regulations, and the procedures governing the review by the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) of a recipient's or contractor's compliance with the part 135 regulations.

Subpart F—Reporting and Recordkeeping

Subpart F would provide that the documentation required to be maintained under subparts B, C and D shall be maintained for a period of three years. Subpart F also would provide that each recipient which receives, directly from HUD, financial assistance covered by the requirements of part 135 shall submit to the Assistant Secretary for FHEO an annual report as the Assistant Secretary may request for the purpose of determining the effectiveness of section 3.

IV. Invitation to Comment

The Department requests thorough review of this proposed rule by the public, and particularly by PHAs, IHAs, States and local governments, multifamily project owners, contractors, and subcontractors that have been, and will continue to be subject to the requirements of section 3. Additionally, the Department requests comments from the intended beneficiaries of section 3—low-income persons and section 3 business concerns.

In this proposed rule, the Department has strived to provide PHAs, IHAs and other recipients with flexibility in implementing section 3 without, however, abdicating the Department's statutory responsibility to ensure, to the greatest extent feasible, that employment and other economic opportunities generated by HUD financial assistance be directed to low-income persons. Accordingly, the Department invites comments on all definitions and provisions set forth in the proposed rule, and on whether the proposed rule strikes an appropriate balance between flexibility in implementation, and diligence in enforcement of section 3. Additionally, the Department specifically requests comment on the issues listed in this section of the preamble. The majority of these issues already have been called to the attention of the public earlier in this preamble, but they are repeated in this section for the convenience of the commenters.

1—The appropriateness of the third criterion established by the Department for determining whether a business concern is a section 3 business concern, and any additional criteria that should be established;

2—(a) The definition of "section 3 covered project," which is the Department's interpretation of "covered" activities described in paragraphs (c)(2)(A) and (d)(2)(A) of section 3; and (b) the appropriateness of extending section 3 coverage, through the definition of "section 3 covered project" to all private, for-profit entities, including private, for-profit businesses receiving CDBG funding for economic development projects.

3—The Department's proposal to provide for additional (bonus) points in HUD NOFAs (that award funds on the basis of a rating and ranking system) for applicants that have demonstrated previous experience in providing economic opportunities to low-income persons, and how applicants for HUD funding envision this proposal working, or not working, in their programs;

4—The Department's determination that the establishment of dollar thresholds in HUD's public and Indian housing programs is *not* consistent with a statutory "best efforts" requirement;

5—The proposal that the intended best effort activities of an HA contractor must be approved by the HA before the contract award is completed;

6—Suggestions concerning economic opportunities, other than job training, employment, and contract awards, that may be provided to low-income persons;

7—Incentives that the Department should provide to encourage compliance with section 3;

8—(a) The appropriateness of the dollar thresholds established in subparts C and D, and (b) the appropriateness of basing the dollar thresholds in subparts C and D on the HUD share of project cost rather than on the total project cost;

9—The proposal to apply, once the dollar threshold is met, the section 3 preference requirements to the entire project, and not solely to that portion of the project that is funded with HUD housing or community development assistance;

10—The appropriateness of the "best effort" activities described in subpart B, and suggestions on activities that should be included or excluded;

11—The appropriateness of the "good faith" activities described in subparts C and D, and suggestions on activities that should be included or excluded;

12—Suggestions from multifamily project mortgagors assisted under HUD's Flexible Subsidy Program on how the section 3 contracting preference may be implemented in this program;

13—The distinctions, if any, that should be drawn between the efforts to be made by PHAs and IHAs (on which is imposed a "best efforts" requirement) and those to be made by recipients of HUD housing and community development assistance (on which is imposed a "good faith efforts" requirement) to comply with section 3;

14—The distinctions, if any, that should be drawn between the efforts required of recipients of HUD housing program assistance, and the recipients of HUD community development assistance;

15—Activities that local jurisdictions should undertake when they are not engaged in hiring or procurement, to promote the objectives of section 3 within their jurisdictions;

16—Suggestions on enforcement procedures the Department should undertake to ensure that recipients are complying with the section 3 preference requirements.

The Department requests that commenters who object to the inclusion of certain provisions in the proposed rule, not only express their opposition but explain how these provisions may be improved, or what provisions may work in lieu of the ones provided in the rule.

V. Justification for Reduced Comment Period

It is the Department's general policy to provide a 60-day public comment period. For this proposed rule, however, the Department is providing only a 30-

day public comment period. The purpose of the reduced public comment period is to help the Department have a section 3 final rule in place for the Federal Fiscal Year 1994 funding round. The Federal Fiscal Year (FY) begins October 1 of each year, and notices of funding availability, which make available to eligible applicants funding appropriated by the Congress for the new FY, generally begin being published in the **Federal Register** in the month of December.

The Department would like to have a final rule in place as quickly as possible, but particularly by the time the FY 1994 funding round begins, because the regulations of existing part 135 have not been amended substantively since their adoption in 1973. Thus, not only do the existing part 135 regulations fail to reflect the changes recently made to section 3 by the 1992 Act, the part 135 regulations fail to reflect the many changes in HUD's administration of its funded programs, and in HUD's procurement practices that have been implemented since 1973. Accordingly, recipients and contractors, subject to the requirements of section 3, are without adequate and appropriate guidance concerning how to carry out their responsibilities under section 3. The result of this inadequate guidance is that economic opportunities are not being provided to low-income persons and to businesses owned by or employing low-income persons as contemplated by section 3. This is particularly evident in the inner city areas of America's large urban centers, where the low-income population generally is high, and the economic opportunities are few.

The Department believes that it is in the interest of the public that final regulations which provide guidance for compliance with section 3—guidance that is consistent with the amended statutory language of section 3 and the structure and substance of current HUD programs—be developed as quickly as possible. The Department already has had the benefit of some public comment through the meetings held on March 12th and March 16th on the subject of section 3 at HUD Headquarters. To ensure maximum public comment in the 30-day period provided, the Department will send copies of the proposed rule to organizations that represent recipients subject to section 3, and to advocates of low-income persons and representatives of resident groups, to seek their assistance in soliciting expedited public comment on the proposed rule.

VI. Other Matters

Impact on the Economy

This proposed rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the proposed 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 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.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and, in so doing, certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Recipients and contractors that receive HUD financial assistance subject to the requirements are currently required, to the greatest extent feasible, to give economic opportunities generated by such assistance to low-income persons. This proposed rule, which would implement the amendments made to section 3 by the 1992 Act, provides greater guidance on how the requirements of section 3 may be met, and decreases the administrative burden on recipients from that contained in the existing part 135 regulations. For example, the proposed rule would eliminate the requirement that recipients must prepare an affirmative action plan, as contained in the existing part 135 regulations.

With respect to HUD housing and community development programs, the proposed rule, consistent with the changes made by the 1992 Act, limits section 3 coverage to three types of project activities: housing rehabilitation, housing construction, and other public construction. For these covered project activities, the proposed rule would lower the dollar threshold below that provided in the existing part 135 regulations, but would limit the threshold to the "HUD share" of the total project cost.

With respect to HUD's public and Indian housing programs, the proposed rule would eliminate the dollar threshold, thereby increasing the circumstances in which PHAs and IHAs must comply with the requirements of section 3. The Department believes, however, that this elimination of a dollar threshold in public and Indian housing programs is consistent with the statutory language that imposes a "best efforts" requirement on PHAs, IHAs, their contractors and subcontractors.

While the Department anticipates that this proposed rule would increase the number of small businesses that will benefit from the implementation of amended section 3, the Department also anticipates that the lowered dollar threshold in HUD's housing and community development programs, and the absence of a dollar threshold in HUD's public and Indian housing programs, may increase the number of small business concerns that will be subject to compliance with the part 135 regulations. However, as with those small businesses expected to benefit from the revised part 135 regulations, the increase in the number of small businesses that may be made subject to compliance with part 135 is not considered so great as to constitute a significant economic impact on a substantial number of small entities.

Additionally, to lessen the regulatory burden on small entities, the rule limits its reporting and recordkeeping requirements to those recipients that receive HUD financial assistance directly from the Department.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, *Federalism*, has determined that this proposed rule would not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. The proposed rule provides, consistent with section 3, that the preference requirements of section 3 are to be carried out consistent with existing Federal, State, or local laws and regulations.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule may have the potential to promote family formation, maintenance, and general well-being. If the revised part 135 regulations, as proposed by this rule, contribute to successful implementation of section 3, an increased number of low-income persons will be employed which may promote family unification and general well-being. Since the impact of this proposed rule is anticipated to be beneficial, no further review under the Order is necessary.

Regulatory Agenda

This rule was listed as sequence number 1542 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24430), under Executive Order 12291 and the Regulatory Flexibility Act.

Public Reporting Burden

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The following provisions of the rule have been determined by the Department to contain collection of information requirements:

Reference in rule	Number of respondents (recipients)	Number of responses per respondent	Total annual responses	Hours per response	Total hours
§ 135.32	33,000	1	33,000	1	33,000
§ 135.36	33,000	1	33,000	1	33,000
§ 135.52	403	1	403	1	403
§ 135.56	403	1	403	1	403
§ 135.72	25,000	1	25,000	1	25,000
§ 135.76	25,000	1	25,000		25,000
Total annual burden				3.0	116,806

Reference in rule	Number of respondents (contractors and subcontractors)	Number of responses per respondent	Total annual responses	Hours per response	Total hours
§ 135.32	42,750	1	42,750	1	42,750
§ 135.36	42,750	1	42,750	1	42,750
§ 135.52	750	1	750	1	750
§ 135.56	750	1	750	1	750
§ 135.72	31,500	1	31,500	1	31,500
§ 135.76	31,500	1	31,500	1	31,500
Total annual burden					150,000

List of Subjects in 24 CFR Part 135

Administrative practice and procedure, Community development, Equal employment opportunity, Government contracts, Grant programs: housing and community development, Housing, Loan programs: housing and community development, Reporting and recordkeeping requirements, Small businesses.

Accordingly, 24 CFR part 135 would be revised to read as follows:

PART 135—ECONOMIC OPPORTUNITIES FOR LOW AND VERY LOW-INCOME PERSONS

Subpart A—General Provisions

Sec.
135.1 Purpose and scope.
135.3 Applicability.
135.7 Definitions.
135.9 Delegation of authority.
135.11 Section 3 clause.
135.13 Requirements applicable to HUD NOFAs for section 3 covered programs.
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Subpart B—Economic Opportunities for Low- and Very Low-Income Persons in Public and Indian Housing Programs

135.30 General.
135.32 Training and employment opportunities.
135.36 Contracting opportunities.
135.38 Providing other economic opportunities.

Subpart C—Economic Opportunities for Low- and Very Low-Income Persons in Housing Programs

135.50 General.
135.52 Training and employment opportunities.
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Subpart D—Economic Opportunities for Low- and Very Low-Income Persons in Community Development Programs

135.70 General.
135.72 Training and employment opportunities.
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Subpart E—Complaint and Compliance Review

135.90 General.
135.92 Cooperation in achieving compliance.
135.94 Section 3 compliance review procedures.
135.96 Filing and processing complaints.

Subpart F—Recordkeeping and Reporting

135.100 Recordkeeping.
135.102 Reporting.

Authority: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 135.1 Purpose and scope.

(a) *Section 3.* The purpose of section 3 of the Housing and Urban

Development Act of 1968 (12 U.S.C. 1701u) (section 3) is to ensure that employment and other economic opportunities generated by HUD financial assistance shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

(b) *Part 135.* The purpose of this part is to establish the standards and procedures to be followed to ensure that the objectives of section 3 are met.

(c) *Providing economic opportunities to low- and very low-income persons.* (1) *Providing preference when opportunities are created.* Section 3 does not require that the expenditure of HUD financial assistance must result in the creation of employment and training opportunities or the award of contracts. However, where employment and contracting opportunities will be created by the expenditure of HUD financial assistance covered by section 3, section 3 requires that preference be given to low- and very low-income persons, and to business concerns that provide economic opportunities to low income persons.

(2) *"Low-income persons" to refer to low- and very low-income persons.* For purposes of this part, and unless the context indicates otherwise, the term "low-income persons," wherever it appears, refers to both low-income persons and very low-income persons of the metropolitan area (or nonmetropolitan county) in which section 3 covered assistance is expended, or in which a section 3 covered project is located. The efforts required by section 3 of recipients of HUD financial assistance to employ low-income persons and very low-income persons must be directed to both income groups.

§ 135.3 Applicability.

(a) *Applicability of Section 3.* Section 3 applies to HUD programs as follows:

(1) *Public and Indian housing programs.* Section 3 applies to job training, employment, contracting and other economic opportunities arising from the expenditure of the following public and Indian housing assistance (section 3 covered assistance):

(i) development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937;

(ii) operating assistance provided pursuant to section 9 of the U.S. Housing Act of 1937; and

(iii) modernization assistance provided pursuant to section 14 of the U.S. Housing Act of 1937.

(2) *Housing and community development programs.* Section 3 applies to job training, employment and contracting opportunities arising in connection with housing and community development assistance expended for the following projects (section 3 covered projects):

(i) housing rehabilitation (including reduction and abatement of lead-based paint hazards) projects;

(ii) housing construction projects; and

(iii) other public construction projects.

(b) *Appliability of Part 135.* Subparts A (General), E (Compliance), and F (Reporting and Recordkeeping) of this part are applicable to the HUD assistance described in paragraph (a)(1) of this section and the HUD-assisted projects described in paragraph (a)(2) of this section. Subpart B (Economic Opportunities for Low and Very Low-Income Persons in Public and Indian Housing Programs) applies to the HUD public and Indian housing assistance described in paragraph (a)(1) of this section. Subpart C (Economic Opportunities for Low and Very Low-Income Persons in Housing Programs) and Subpart D (Economic Opportunities for Low and Very Low-Income Persons in Community Development Programs) apply to the "projects" described in paragraph (a)(2) of this section.

§ 135.7 Definitions.

As used in this part:

Annual Contributions Contract (ACC) means the contract under the U.S. Housing Act of 1937 (1937 Act) between HUD and the PHA, or between HUD and the IHA, that contains the terms and conditions under which HUD assists the PHA or the IHA in providing decent, safe, and sanitary housing for low-income families. The ACC must be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization and/or operation of a low-income housing project under the 1937 Act, and the PHA or IHA agrees to develop, modernize and operate the project in compliance with all provisions of the ACC and the 1937 Act, and all HUD regulations and implementing requirements and procedures. (The ACC is not a form of procurement contract.)

Applicant means any entity which makes an application for section 3 covered assistance, and includes, but is not limited to any State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association.

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Business concern means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

Business concern that provides economic opportunities for low- and very low-income persons. See definition of "section 3 business concern" in this section.

Contract. See the definition of "section 3 covered contract" in this section.

Contractor means any entity which contracts to perform work generated by the expenditure of section 3 covered assistance, or for work in connection with a section 3 covered project.

Department or *HUD* means the Department of Housing and Urban Development, including its Regional and Field Offices to which authority has been delegated to perform functions under this part.

Housing and community development assistance means any financial assistance provided or otherwise made available through a HUD housing or community development program through any grant, entitlement, loan, loan guarantee, cooperative agreement, contract, and includes community development funds in the form of community development block grants, and loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance.

Housing development means low-income housing owned, developed, or operated by the public housing agencies or Indian housing authorities in accordance with HUD's public and Indian housing program regulations codified in 24 CFR Chapter IX.

HUD share. For HUD's housing programs, see the definition provided in § 135.50(e)(2) of this part. For HUD's community development programs, see the definition provided in § 135.70(e)(2) of this part.

HUD Youthbuild programs means programs that receive assistance under subtitle D of Title IV of the National

Affordable Housing Act (42 U.S.C. 12899), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

Indian housing authority (IHA) has the meaning given this term in 24 CFR 905.102.

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Low-income persons has the meaning given this term in section 3(b)(2) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(b)(2)) which is—families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families.

Metropolitan area means a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

Nonmetropolitan county means any county outside of a metropolitan area.

Project cost means the cost of a section 3 covered project (excluding administrative costs of the recipient), including acquisition costs, development hard costs (i.e., the actual costs of construction or rehabilitation), related soft costs associated with financing and development of the project (e.g., architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; costs to process the settlement of financing for the project) and relocation costs.

Public housing agency (PHA) has the meaning given this term in 24 CFR part 941.

Recipient means any entity which receives section 3 covered assistance, directly from HUD or from another recipient, or which receives HUD housing or community development assistance directly from HUD or from another recipient for a section 3 covered project, and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which section 3 applies and does not include contractors.

Secretary means the Secretary of Housing and Urban Development.

Section 3 means section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means a business concern, as defined in this section, that:

(1) Is 51 percent or more owned by low-income persons;

(2) Employs a substantial number of low-income persons for the type of activity in which the business concern is engaged; or

(3) Is substantially owned, but less than 51 percent owned, by low-income persons, and employs low-income persons in key management positions.

Section 3 clause means the contract provisions set forth in § 135.11 of this part.

Section 3 covered assistance means one or more of the following types of public and Indian housing assistance:

(1) Development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937;

(2) Operating assistance provided pursuant to section 9 of the U.S. Housing Act of 1937;

(3) Modernization assistance provided pursuant to section 14 of the U.S. Housing Act of 1937.

Section 3 covered contract means a contract or subcontract awarded by a recipient or contractor for work generated by the expenditure of section 3 covered assistance, or for work in connection with a section 3 covered project. Contracts for the purchase of supplies and materials do not constitute section 3 covered contract. However, wherever a contract for materials includes the installation of the materials, the contract constitutes a section 3 covered contract. For example, a contract for purchase and installation of a furnace would be a section 3 covered contract because the contract is a contract for work (i.e., the installation of the furnace) and thus is covered by section 3.

Section 3 covered project means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

Subcontractor means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of section 3 covered assistance, or arising in connection with a section 3 covered project.

Very low-income persons has the meaning given this term in section 3(b)(2) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(b)(2) which is—low-income families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

Youthbuild programs. See the definition of "HUD Youthbuild programs" in this section.

§ 135.9 Delegation of authority.

Except as may be otherwise provided in this part, the functions and responsibilities of the Secretary under section 3, and described in this part, are delegated to the Assistant Secretary for Fair Housing and Equal Opportunity. The Assistant Secretary is further authorized to redelegate functions and responsibilities to other employees of HUD; *provided however*, that the authority to issue rules and regulations under this part, which authority is delegated to the Assistant Secretary, may not be redelegated by the Assistant Secretary.

§ 135.11 Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. The parties to this contract will certify that they are under no contractual or other

impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places available to employees and applicants for training and employment.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in termination of this contract for default.

G. With respect to work to be performed in connection with section 3 covered public or Indian housing assistance, the housing authority and its contractor will agree to specific actions that will constitute the contractor's best efforts to offer job training and employment opportunities to low-income persons and/or contracting opportunities to section 3 business concerns, as applicable. These "best effort" activities will be described on the attachment to this contract and made a part of this contract.

H. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

§ 135.13 Requirements applicable to HUD NOFAs for section 3 covered programs.

(a) *Certification of compliance with part 135.* All notices of funding availability (NOFAs) issued by HUD which announce the availability of funding covered by section 3 shall include a provision in the NOFA that notifies applicants that section 3 and the regulations in part 135 are applicable to funding awards made under the NOFA, and shall require as an application submission requirement (which may be specified in the NOFA or application kit) a certification by the applicant that it will comply with the regulations in part 135. (For PHAs, this requirement will be met where a PHA Resolution in Support of the Application is submitted.) With respect to application evaluation, HUD will accept an applicant's certification unless there is evidence substantially challenging the certification.

(b) *Award of bonus points for previous section 3 or similar achievements.* (1) Each NOFA which provides for the selection of applicants by a rating and ranking process shall invite, but shall not require, an applicant to include as part of its application a description of the applicant's past experience and achievements in providing economic opportunities to low-income persons. This experience and achievements need not be limited to Section 3 covered assistance or projects. Economic opportunities include, but need not be limited to, training, employment and contracting. The NOFA or other notice made available to applicants will specify the criteria that will be used to evaluate an applicant's description of experience and achievements, and the number or range of bonus points that may be awarded. The bonus points cannot be used to give an undue advantage to applicants who fail to meet minimal standards or other technical program criteria specified the NOFA. Bonus points provided pursuant to this provision may be awarded only to those applicants determined to be technically acceptable for funding.

(2) This requirement is not applicable to funding where the authorizing legislation establishes the criteria for funding and prohibits HUD from establishing additional criteria.

§ 135.15 Approved apprenticeship programs and applicable regulations.

(a) Certain apprenticeship and trainee programs have been approved by various Federal agencies. Approved apprenticeship and trainee programs include: an apprenticeship program approved by the Bureau of Apprenticeship and Training of the Department of Labor, or a State Apprenticeship Agency, or an on-the-job training program approved by the Bureau of Apprenticeship and Training, in accordance with the regulations at 29 CFR part 5; or an apprenticeship or training program approved by HUD in accordance with HUD policies and guidelines, as applicable. Participation in an approved apprenticeship program does not, in and of itself, demonstrate compliance with the regulations of this subpart.

(b) Certain HUD-assisted construction, rehabilitation and maintenance activities are subject to federal labor standards, set forth in regulations and guidelines, requiring the payment of prevailing wage rates to all laborers and mechanics engaged in such work. Apprentices and trainees may be utilized on this work to the extent permitted under either Department of Labor regulations at 29 CFR part 5 or HUD policies and guidelines, as applicable. These requirements include adherence to the wage rates and ratios of apprentices or trainees to journeymen set out in approved apprenticeship and training programs, as described in paragraph (a) of this section.

Subpart B—Economic Opportunities for Low- and Very Low-Income Persons in Public and Indian Housing Programs

§ 135.30 General.

(a) *Purpose.* The purpose of this subpart is to provide for implementation of section 3 in HUD's public and Indian housing programs.

(b) *Section 3 preference requirements.* With respect to section 3 covered assistance, as defined in § 135.7, section 3 requires that PHAs and IHAs, their contractors and subcontractors, shall make their best efforts, consistent with existing Federal, State, and local laws and regulations, to:

(1) give the training and employment opportunities generated by section 3 covered assistance to low-income persons (the training and employment preference);

(2) award contracts for work to be performed in connection with section 3 covered assistance to section 3 business concerns (the contracting preference); and

(3) provide other economic opportunities to low-income persons and section 3 business concerns.

(c) *Applicability.* (1) This subpart applies to PHAs, IHAs, their contractors and subcontractors that receive "section 3 covered assistance," as this term is defined in § 135.7.

(2) IHAs that receive section 3 covered assistance shall comply with the procedures and requirements of this subpart B to the maximum extent consistent with, but not in derogation

of, compliance with section 7(b) of the Indian Self-determination and Education Assistance Act (25 U.S.C. 450e(b)). (See 24 CFR part 905.)

(3) PHAs and IHAs that receive other Federal or public assistance that is not covered by section 3 are encouraged to comply with the section 3 preference requirements with the respect to all job training, employment, and contracting opportunities that are generated by this other assistance.

(d) *Special use of "HA".* For purposes of this subpart, and except where the context indicates otherwise, the term "HA" refers collectively to a PHA and an IHA, and "HAs" refers collectively to PHAs and IHAs.

(e) *HA responsibility for monitoring compliance with section 3.* (1) Each HA shall be responsible for monitoring its own operations and the operations of its contractors and subcontractors to ensure compliance with the section 3 preference requirements. A finding by HUD that the HA has not provided adequate monitoring, or enforcement of the section 3 preference requirements also may result in a determination by HUD that the HA is in breach of the ACC or that the HA lacks administrative capacity.

(2) Failure to offer training and employment opportunities to low-income persons, or to award contracts to section 3 business concerns shall not be evidence in itself of noncompliance with the section 3 preference requirements. However, such failure may result in a review of records by HUD in the case of an HA, or by the HA or HUD, or both, in the case of contractor or subcontractor, to determine whether best efforts were undertaken to comply with the section 3 preference requirements.

§ 135.32 Training and employment opportunities.

(a) *General.* This section describes the specific categories of low-income persons to which best efforts must be directed in the offering of training and employment opportunities. This section also provides examples of activities that may be undertaken, in any combination, to demonstrate that best efforts were made to offer training and employment opportunities to low-income persons.

(b) *Preference for low-income persons.* (1) *Order of providing preference.* (i) HAs, their contractors and subcontractors shall direct their best efforts to give training and employment opportunities to the following low-income persons, in the order of priority presented:

(A) *Category 1:* residents of the housing development or developments for which the section 3 covered assistance is expended;

(B) *Category 2:* residents of other housing developments managed by the HA that is expending the section 3 covered housing assistance;

(C) *Category 3:* participants in HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended;

(D) *Category 4:* other low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended.

(ii) Best efforts to offer training and employment opportunities must first be directed to category 1 persons. These best efforts shall be expanded to include the succeeding categories of persons, in the order of priority shown in paragraph (b)(1)(i) of this section, if there are an insufficient number of persons in the immediately preceding category responding to the best efforts to offer training and employment opportunities, or meeting the qualifications of the positions to be filled.

(2) *Eligibility for preference.* A low-income person responding to the best efforts of an HA, contractor or subcontractor to offer training and employment opportunities to low-income persons, and seeking the preference in training and employment provided by this section, shall certify, or submit evidence to the HA, contractor or subcontractor, if requested, that the person is a category 1, 2, 3, or 4 person, as described in paragraph (b)(1)(i) of this section.

(3) *Eligibility for employment.* Nothing in this subpart shall be construed to require the employment of a category 1, 2, 3, or 4 person who does not meet the qualifications of the position to be filled.

(c) *Best efforts.* (1) *Flexibility in meeting best efforts.* The activities described in this paragraph (c) are options, not requirements, that may be undertaken to demonstrate that best efforts were made to comply with the section 3 training and employment preference. Other activities may be undertaken to comply with the section 3 training and employment preference, and HAs, their contractors and subcontractors are encouraged to develop innovative methods to increase training and employment opportunities for low-income persons.

(2) *Contractor's disclosure of best efforts before contract award.* A contract may not be awarded to a contractor (that intends to offer training and employment opportunities in connection with the contract) unless the contractor has disclosed to the HA the best efforts that the contractor intends to undertake to meet the section 3 training and employment preference, and the HA has approved these efforts in accordance with the procedures of § 135.36(c)(1)(iv).

(3) *Examples of best efforts.* The following presents examples of activities which may be undertaken, in any combination, and which may demonstrate that best efforts were made to offer training and employment opportunities to low-income persons.

(i) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in paragraph (b)(1)(i) of this section) reside.

(ii) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments where category 1 or category 2 persons reside.

(iii) Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and request the assistance of these organizations in notifying residents of the training and employment positions to be filled.

(iv) Scheduling (and advertising) a job informational meeting to be conducted by an HA or contractor representative or representatives at the housing development or developments where category 1 or category 2 persons reside.

(v) Arranging for an HA contractor representative or representatives to be available to provide assistance in completing job application forms to residents of the housing development or developments where category 1 or category 2 persons reside.

(vi) Arranging for an HA or contractor representative or employment specialist to conduct a workshop on applying and interviewing for jobs at the housing development or developments where category 1 or category 2 persons reside or at a location easily accessible to these residents.

(vii) Arranging for a location in the housing development or developments where category 1 persons reside where

job applications may be delivered to and collected by an HA or contractor representative or representatives.

(viii) Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or a location easily accessible to these residents.

(ix) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the HA's or contractor's training and employment positions.

(x) Consulting with community leaders, community organizations and other officials or organizations to assist with recruiting category 4 residents for the HA's or contractor's training and employment positions.

(xi) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(xii) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the section 3 business concerns identified in § 135.36(b)(1) of this part), that will undertake, on behalf of the HA contractor, the efforts to match eligible and qualified low-income persons with the training and employment positions that the HA or contractor intends to fill.

(xiii) Employing low-income persons directly on either a permanent or a temporary basis to perform work generated by section 3 assistance. (This type of employment is referred to as "force account labor" in HUD's Indian housing regulations. See 24 CFR 905.102, AND 905.201(a)(6).)

(xiv) Where there are more qualified low-income persons than there are positions to be filled, maintaining a file of eligible qualified low-income persons for future employment positions.

(xv) Encouraging category 1 and 2 persons to maintain on file with the HA, or with the contractor, as applicable, a copy of a current resume.

(xvi) Sponsoring employment and training programs for low-income residents through such programs as HUD's "Step-Up" employment and training program for public and Indian housing residents and other low-income persons (*See* 57 FR 46398), or through the JTPA Program, or through programs undertaken in association with local educational institutions.

(xvii) Undertaking such continued job training efforts as may be necessary to ensure the continued employment of low-income persons previously hired for employment opportunities.

(d) *Documentation of best efforts.* (1) To demonstrate that best efforts were made to comply with the section 3 training and employment preference, the HA shall:

(i) Amend its personnel policies to include a statement that the HA's personnel practices provide preference for low-income persons in training and employment opportunities as required by section 3; and

(ii) Not later than 45 days following the end of the HA fiscal year, the HA shall have documented the following:

(A) The total number of persons that were hired during the HA fiscal year, and the types of training and employment positions for which they were hired, and an indication of which positions, if any, were temporary or seasonal positions;

(B) The total number of low-income persons that were hired during the HA fiscal year, and the types of training and employment positions for which they were hired, and an indication of which positions, if any were temporary or seasonal positions;

(C) The best efforts that were undertaken to make the low-income persons identified in paragraph (b)(1)(i) of this section aware of the training and employment positions to be filled, and to encourage and facilitate their participation in the job application process;

(D) The mechanism by which the HA ensured that its contractors and subcontractors complied with the section 3 training and employment preference.

(2) The documentation required by paragraph (d)(1)(ii) of this section shall be maintained by the HA for review by HUD. The HA shall require appropriate and timely documentation of its contractor and subcontractors concerning their best efforts to comply with the section 3 training and employment preference in order that the HA may comply with the recordkeeping and reporting requirements of this part.

(e) *Evaluating best efforts.* A determination of whether best efforts were made to offer training and employment opportunities to low-income persons shall be based on evaluation of the efforts by the HA, contractor or subcontractor, as applicable, to:

(1) Make the low-income persons identified in paragraph (b)(1)(i) of this section aware of the training and employment positions to be filled;

(2) Encourage and facilitate the participation of low-income persons in the job application process; and

(3) Train and employ those low-income persons that are qualified for the positions to be filled.

§ 135.36 Contracting opportunities.

(a) *General.* This section describes the specific categories of section 3 business concerns to which best efforts must be directed in the offering of contracting opportunities. This section also describes specific procedures which must be used to implement the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d). Additionally, this section describes the outreach activities that may be undertaken to demonstrate that best efforts were made to award section 3 covered contracts (as defined in § 135.7) to section 3 business concerns.

(b) *Preference for section 3 business concerns.* (1) (i) *Order of providing preference.* HAs, their contractors and subcontractors shall direct their best efforts to award contracts to the following section 3 business concerns, in the order of priority presented:

(A) *Catetory 1:* Business concerns that are 51 percent or more owned by residents of the housing development or developments for which the section 3 covered assistance is expended, or which employ a substantial number of these persons.

(B) *Category 2:* Business concerns that are 51 percent or more owned by residents of other housing development or developments managed by the HA that is expending the section 3 covered assistance, or which employ a substantial number of these persons.

(C) *Category 3:* HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended.

(D) *Category 4:* Business concerns that are 51 percent or more owned by low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended, or which employ a substantial number of these persons.

(ii) The requirement to direct best efforts to the categories of business concerns listed in paragraph (b)(1)(i) shall not be construed to authorize set-asides or any restriction of competition to one or more these categories of business concerns.

(2) *Eligibility for section 3 preference.* A business concern seeking to qualify for a section 3 contracting preference shall certify or submit evidence, if requested, that the business concern is a category 1, 2, 3, or 4 section 3 business

concern, as provided in (b)(1)(i) of this section.

(3) *Ability to complete contract.* A section 3 business concern seeking a contract or a subcontract shall submit evidence to the HA, contractor, or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the HA, contractor, or subcontractor that the business concern has the ability to perform successfully under the terms and conditions of the proposed contract, as required by 24 CFR 85.36(b)(8) of HUD's procurement regulations.

(c) *Procurement procedures.* This paragraph (c) sets forth requirements applicable to all contracting by HAs, and also provides specific procedures that must be followed by HAs for implementing the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d). HA contractors and subcontractors may, but are not required to comply with procurement procedures provided in paragraphs (c)(2) through (c)(4) of this section to demonstrate compliance with section 3. A contractor or subcontractor that chooses not to follow the procedures in paragraphs (c)(2) through (c)(4) of this section, must provide for preference for section 3 business concerns in the procurement practices that they utilize.

(1) *Requirements and guidance applicable to all contracting. (i) Permissible use of lists of pre-qualified section 3 business concerns.* Use of lists of pre-qualified section 3 business concerns is permitted provided that use of such lists does not preclude potential bidders from qualifying during the solicitation period, and does not conflict with order of preference set forth in paragraph (b)(1)(i) of this section.

(ii) *Notification of availability of lists of section 3 business concerns by specialty.* Each Invitation for Bids (IFB) and each Request for Proposals (RFP) shall state whether the HA or contractor maintains lists of section 3 business concerns by specialty (e.g., plumbing, electrical, foundations) and by priority ranking (i.e., category 1, category 2, etc.) which are available to contractors and subcontractors, as applicable, to assist them in meeting their section 3 obligations concerning contracting opportunities.

(iii) *Inability to comply with contracting preference.* Where a determination is made that there are no business concerns which qualify as section 3 business concerns as provided in paragraph (b)(2) of this section, or that there are no section 3 business concerns which have the ability to perform successfully under the terms of the proposed contract as provided in paragraph (b)(3) of this section, the HA, contractor or subcontractor, as applicable, shall document in writing the basis for this determination, and shall maintain this written explanation with the documentation required by paragraph (e) of this section.

(iv) *Contractor's disclosure of best efforts before contract award.* Before a section 3 covered contract is awarded to a contractor, the contractor shall have disclosed to the HA the best effort activities intended to be undertaken by the contractor to comply with section 3 job training and employment preference or the section 3 contracting preference, or both, if applicable, and the HA shall have approved these best efforts. The timing of disclosure of the best effort activities by the contractor will depend upon the method of procurement selected by the HA. If the HA determines that the efforts intended to be undertaken by the contractor do not constitute best efforts, the HA and the contractor will negotiate the best effort activities to be undertaken by the contractor. Where the method of procurement utilized is sealed bid, the negotiations shall not affect the bid price or any material aspect of the bid. When the HA and contractor reach agreement on best effort activities, the actions will be described in an attachment to the contract and made part of the contract in accordance with § 135.11 of this part. If the HA and contractor fail to reach agreement, the contractor will be determined to be not responsible and, therefore ineligible for the contract award. (Compliance with section 3 is a matter of responsibility.) This paragraph (c)(1)(iv) is also applicable to section 3 covered contracts awarded to subcontractors.

(2) *Small Purchase Procedures.* For section 3 covered contracts aggregating no more than $25,000, the methods set forth in this paragraph (c)(2) or the more formal procedures set forth in paragraphs (c)(3) and (c)(4) must be utilized.

(i) *Solicitation.* (A) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of: The section 3 covered contract to be awarded with sufficient specificity; the time within which quotations must be submitted; and the information that must be submitted with each quotation.

(B) If the method described in paragraph (i)(A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations is acceptable when the HA has attempted, but has been unable, to obtain a sufficient amount of competitive quotations. In unusual circumstances, the HA may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the HA shall document the circumstances when it has been unable to obtain at least three quotations.

(ii) *Award.* (A) Where the section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified section 3 business concern is within 10 percent of the quotation of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

(B) Where the section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(3) *Procurement by sealed bids (Invitations for Bids).* Preference in the award of section 3 covered contracts that are awarded under a sealed bid (IFB) process shall be provided as follows:

(i) Bids shall be solicited from all businesses (section 3 business concerns, and non-section 3 business concerns). An award shall be made to the qualified section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid—

(A) is within the maximum total contract price established in the HA's budget for the specific project for which bids are being taken, and

(B) is not more than "X" higher than the total bid price of the lowest

responsive bid from any responsible bidder. "X" is determined as follows:

	x=lesser of:
When the lowest responsive bid is less than $100,000	10% of that bid or $9,000.
When the lowest responsive bid is:	
At least $100,000, but less than $200,000	9% of that bid, or $16,000.
At least $200,000, but less than $300,000	8% of that bid, or $21,000.
At least $300,000, but less than $400,000	7% of that bid, or $24,000.
At least $400,000, but less than $500,000	6% of that bid, or $25,000.
At least $500,000, but less than $1 million	5% of that bid, or $40,000.
At least $1 million, but less than $2 million	4% of that bid, or $60,000.
At least $2 million, but less than $4 million	3% of that bid, or $80,000.
At least $4 million, but less than $7 million	2% of that bid, or $105,000.
$7 million or more	1½% of the lowest responsive bid, with no dollar limit.

(ii) If no responsive bid by a section 3 business concern meets the requirements of paragraph (c)(3)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(4) *Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)).* For contracts and subcontracts awarded under the competitive proposals method of procurement (24 CFR 85.36(d)(3)), a Request for Proposals (RFP) shall be developed which shall identify all evaluation factors (and their relative importance) to be used to rate proposals. One of the evaluation factors shall address both the preference for section 3 business concerns and the acceptability of the best effort activities disclosed in proposals submitted by all business concerns (section 3 and non-section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components. The component of this evaluation factor designed to address the preference for section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 135.36(b)(1)(i). With respect to the second component (the acceptability of the best effort activities), the RFP shall require the disclosure of the contractor's intended best effort activities to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of acceptable best effort activities. The contract award shall be made to the responsible firm (either section 3 or non-section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.

(5) *Indian preference in IHA contracting.* The provisions of section 7(b) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450e) apply to IHAs. These provisions require to the greatest extent feasible that preference and opportunities for training and employment be given to Indians and that preference in the award of subcontracts and subgrants be given to Indian Organizations and Indian Owned Economic Enterprises, as these terms are defined in 24 CFR part 905. Where an IHA awards a contract providing Indian preference differentials allowed under 24 CFR 905.175, the IHA may allow additional differentials for section 3 preference not to exceed one-third of the differentials authorized for Indian preference. For all other contracts awarded, the IHA shall comply with the provisions of this § 135.36.

(d) *Examples of best efforts.* The following presents examples of activities which HAs, their contractors and subcontractors may undertake, in any combination, and which may demonstrate that best efforts were made to award contracts to section 3 business concerns.

(1) Advertising the contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.

(2) Contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.

(3) Providing written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.

(4) Following up with section business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

(5) Coordinating any pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.

(6) Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.

(7) Advising section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.

(8) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.

(9) Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by section 3 business concerns.

(10) Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.

(11) Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(12) Developing a list of eligible section 3 business concerns.

(13) Participating in the "Contracting with Resident-Owned Businesses"

program provided under 24 CFR part 963.

(14) Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.

(e) *Documentation of best efforts.* (1) To demonstrate that best efforts were made to award contracts to the section 3 business concerns identified in paragraph (b)(1)(i) of this section, the HA shall:

(i) Amend its procurement policies to include a statement that the HA's procurement practices provide for preference to section 3 business concerns, as required by section 3; and

(ii) Not later than 45 days following the end of each HA fiscal year, the HA shall have documented the following:

(A) The number and dollar value of all contracts that were awarded during the HA fiscal year;

(B) The number and dollar value of all contracts that were awarded to section 3 business concerns during the HA fiscal year;

(C) A description of the best efforts that were undertaken to award contracts to the section 3 business concerns; and

(D) A description of the mechanism by which the HA ensured that its contractors and subcontractors complied with the contracting preference of this subpart.

(2) The documentation required by paragraph (e)(1) of this section shall be maintained by the HA for review by HUD. The HA shall require appropriate and timely documentation of its contractors and subcontractors concerning their best efforts to comply with the section 3 contracting preference in order that the HA may comply with the reporting and recordkeeping requirements of this part.

(f) *Evaluating best efforts.* A determination of whether best efforts were made to award contracts to section 3 business concerns shall be based on evaluation of efforts by the HA, contractor, or subcontractor, as applicable, to:

(1) Identify section 3 business concerns;

(2) Make section 3 business concerns aware of the contracting opportunities;

(3) Encourage and facilitate the participation of section 3 business concerns in the procurement process; and

(4) Award contracts to those section 3 business concerns that are capable of performing the contract work in accordance with paragraph (b)(3) of this section.

§ 135.38 Providing other economic opportunities.

In accordance with the findings of the Congress, as stated in section 3, that other economic opportunities offer an effective means of empowering low-income persons, an HA is encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with section 3 covered assistance. Other economic opportunities may include, but are not limited to:

(a) Providing incentives to non-section 3 business concerns to form joint ventures with section 3 business concerns. Incentives may be provided through a competitive proposal method of procurement, or through a notice of funding availability that utilizes a rating system which assigns points to joint ventures which qualify as a "section 3 joint venture" as defined in this paragraph (a). The points assigned however may not be greater than those points assigned to one of the categories of section 3 business concerns listed in § 135.36(b)(1)(i) for which a contracting preference is provided. A section 3 joint venture means an association of business concerns, one of which qualifies as a section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the section 3 business concern:

(1) Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and

(2) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.

(b) Awarding contracts for supplies and equipment to section 3 business concerns or to business concerns which purchase supplies and equipment from section 3 business concerns.

Subpart C—Economic Opportunities for Low- and Very Low-Income Persons in Housing Programs

§ 135.50 General.

(a) *Purpose.* The purpose of this subpart is to provide for implementation of section 3 in HUD's housing programs.

(b) *Section 3 preference requirements.* With respect to work to be performed in connection with a "section 3 covered project" (as this term is defined in § 135.7), section 3 requires that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations:

(1) opportunities for training and employment be given to low-income persons (the training and employment preference); and

(2) contracts awarded for work to be performed in connection with a section 3 covered project be given to section 3 business concerns (the contracting preference).

(c) *Applicability.* (1) *General.* (i) Except as provided in paragraphs (c)(3) and (c)(4) of this section, this subpart applies to:

(A) Recipients that receive HUD housing program assistance for a section 3 covered project, for which the HUD share of the project cost exceeds $100,000; and

(B) Contractors and subcontractors that are awarded a contract or a subcontract in connection with a section 3 covered project for which the HUD share of the project cost exceeds $100,000, and the contract or subcontract exceeds $50,000.

(ii) Recipients that receive HUD housing program assistance for a section 3 covered project that does not meet the dollar thresholds set forth in paragraph (c)(1)(i) of this section, or that receive HUD housing program assistance for non-section 3 covered projects are encouraged to comply with the section 3 preference requirements with respect to all job training, employment, and contracting opportunities that are generated in connection with these projects.

(2) *IHAs.* IHAs that receive HUD housing program assistance for a section 3 covered project shall comply with the procedures and requirements of this subpart C to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). (See 24 CFR part 905.)

(3) *HUD's Flexible Subsidy Program.* (i) HUD's Flexible Subsidy Program (the regulations for which are codified at 24 CFR part 219) provides two types of assistance to troubled multifamily projects: operating assistance and capital improvement loans. Only the latter type of assistance which is provided for major repairs that constitute housing rehabilitation within the meaning of "section 3 covered project" (as this term is defined in § 135.7) is subject to compliance with the section 3 preference requirements. Therefore, with respect to the Flexible Subsidy Program, this subpart applies to:

(A) Multifamily project mortgagors that receive assistance under the

Flexible Subsidy Program for rehabilitation and for which the HUD share of the rehabilitation cost exceeds $7,500 per unit; and

(B) Contractors and subcontractors that are awarded a contract or a subcontract in connection with assistance under the Flexible Subsidy Program for which the HUD share of the rehabilitation cost exceeds $7,500 per unit.

(ii) For purposes of this subpart, and unless otherwise indicated, the responsibilities of the "recipient" as set forth in this subpart C shall apply to the multifamily project mortgagor that receives assistance under the Flexible Subsidy Program as provided in paragraph (c)(3)(i) of this section.

(4) *Inapplicability of section 3 to section 8 assistance.* Section 3 and the regulations of part 135 are not applicable to section 8 certificate or voucher assistance.

(d) *Recipient responsibility for monitoring compliance with section 3.* (1) Each recipient is responsible for monitoring its own operations, and the operations of its contractors and subcontractors to ensure compliance with the section 3 preference requirements.

(2) Failure to offer training and employment opportunities to low-income persons, or to award contracts to section 3 business concerns shall not be evidence in itself of noncompliance with the section 3 preference requirements. However, such failure may result in a review of records by HUD in the case of a recipient, or by the recipient or HUD, or both, in the case of a contractor or subcontractor, to determine whether good faith efforts were undertaken to comply with the section 3 preference requirements.

(e) *Definitions.* For purposes of this subpart:

(1) *Good faith efforts* means the activities undertaken to employ low-income persons for training and employment opportunities, and to award contracts to section 3 business concerns as required by section 3.

(2) *HUD share* means the aggregate of funds received from all HUD housing programs for the "project cost," as this term is defined in § 135.7.

(3) *Neighborhood area* means a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village, or similar geographical designation.

(4) *Service area* means the geographical area in which the persons benefitting from the section 3 covered project reside. The service area shall not extend beyond the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended.

§ 135.52 Training and employment opportunities.

(a) *General.* This section describes the specific categories of low-income persons to which priority consideration should be given, where feasible, in the offering of training and employment opportunities. This section also provides examples of activities that may be undertaken to demonstrate that good faith efforts were made to offer training and employment opportunities to low-income persons.

(b) *Preference for low-income persons.* Recipients, contractors and subcontractors shall direct their good faith efforts to give training and employment opportunities to low-income persons.

(1) *Priority consideration for certain low-income persons.* In making good faith efforts to hire low-income persons as required by section 3, priority consideration should be given, where feasible, to hiring the following low-income persons:

(i) Low-income persons residing in the service area or neighborhood in which the section 3 covered project is located; and

(ii) Participants in HUD Youthbuild programs.

(2) *Eligibility for preference.* A low-income person responding to the good faith efforts of a recipient, contractor or subcontractor to employ low-income persons, and seeking the preference in training and employment provided by this section, shall certify or submit evidence, if requested, that the person is a low-income person residing within the metropolitan area (or nonmetropolitan county) in which the section 3 covered project is located, or is a member of one of the categories of low-income persons identified in paragraph (b)(1) of this section.

(3) *Eligibility for employment.* Nothing in this subpart shall be construed to require the employment of a low-income person who does not meet the qualifications of the job to be filled.

(c) *Good faith efforts.* (1) *Flexibility in meeting good faith efforts.* The activities described in this section are options, not requirements, that may be undertaken to demonstrate that good faith efforts were made to comply with the section 3 training and employment preference. Other activities may be undertaken to comply with the section 3 training and employment preference, and recipients, contractors and subcontractors are encouraged to develop innovative methods to increase training and employment opportunities for low-income persons.

(2) *Examples of good faith efforts.* The following presents examples of good faith efforts which may be undertaken, in any combination, and which may demonstrate that good faith efforts were made to employ low-income persons, and to give priority consideration to hiring the low-income persons identified in paragraph (b)(1) of this section.

(i) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to dwelling units in the neighborhood in which the section 3 covered project is located.

(ii) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) at the site or proposed site of the section 3 covered project, and at public or private institutions operating within the neighborhood or service area of the section 3 covered project, such as grocery stores, shopping malls, schools, community colleges, homeless shelters, and transitional housing facilities.

(iii) Contacting neighborhood organizations, where they exist, in the neighborhood of the section 3 covered project, and requesting the assistance of these organizations in notifying neighborhood residents of the training and employment positions to be filled.

(iv) Scheduling (and advertising) a job informational meeting to be conducted or sponsored by the recipient at a location easily accessible within the service area or neighborhood in which the section 3 covered project is located.

(v) Developing promotional campaigns to inform low-income persons of the recipient's (anticipated and actual) training and employment needs resulting from section 3 covered projects.

(vi) Contracting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the recipient's training and employment positions.

(vii) Consulting with community leaders, community organizations, including resident councils and resident management corporations, and other officials or organizations to assist with recruiting low-income persons for the

recipient's training and employment positions.

(viii) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(ix) Contacting non-profit organizations and other public or private agencies operating or involved with job training programs for low-income persons about section 3 employment opportunities, including but not limited to agencies engaged in planning or implementation of training funded through the JTPA.

(x) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably a section 3 business concern, as defined in § 135.7), that will undertake, on behalf of the recipient, the efforts to match eligible and qualified low-income persons with the training and employment positions that the recipient intends to fill.

(xi) Where there are more qualified low-income persons than there are positions to be filled, maintaining a file of eligible qualified low-income persons for future employment positions.

(d) *Documentation of good faith efforts.* (1) To demonstrate that good faith efforts were made to comply with the section 3 training and employment preference, the recipient shall document:

(i) The good faith efforts that were undertaken by the recipient to make low-income persons (and, where feasible, particularly the low-income persons identified in paragraph (b)(1) of this section) aware of the training and employment positions to be filled, and to encourage and facilitate their participation in the job application process; and

(ii) The mechanism by which the recipient ensured that its contractors and subcontractors complied with the section 3 training and employment preference.

(2) The documentation required by paragraph (d)(1) of this section shall be maintained by the recipient receiving the funds directly from HUD for review by HUD. The recipient shall require appropriate and timely documentation of its recipients, contractors and subcontractors concerning their good faith efforts to comply with the section 3 training and employment preference in order that the recipient may comply with the recordkeeping and reporting requirements of this part. Where the recipient is a State which distributes funds for use by a local government or other public entity, or by a private entity, to carry out activities, the State shall require appropriate documentation of funded entities in order that the State may comply with the recordkeeping and reporting requirements of this part.

(e) *Evaluating good faith efforts.* A determination of whether good faith efforts were undertaken to offer training and employment opportunities to low-income persons shall be based on evaluation of the efforts by the recipient, contractor, or subcontractor, as applicable, to:

(1) Make low-income persons (and, where feasible, particularly those identified in paragraph (b)(1) of this section) aware of the training and employment positions to be filled;

(2) Encourage and facilitate the participation of low-income persons in the job application process; and

(3) Employ those low-income persons that are qualified for the positions to be filled.

§ 135.56 Contracting opportunities.

(a) *General.* This section describes the specific categories of section 3 business concerns to which priority consideration should be given, where feasible, in the award of section 3 covered contracts. This section also identifies specific procurement procedures, and describes outreach activities for implementing the section 3 contracting preference that may be undertaken to demonstrate that good faith efforts were made to award section 3 covered contracts to section 3 business concerns.

(b) *Preference for section 3 business concerns.* Recipients, contractors and subcontractors shall direct their good faith efforts to award contracting opportunities to section 3 business concerns.

(1) *Priority consideration for certain section 3 business concerns.* In making good faith efforts to award contracts to section 3 business concerns, priority consideration should be given, where feasible, to awarding contracts to the following section 3 business concerns:

(i) Section 3 business concerns which provide economic opportunities for low-income persons residing in the service area or neighborhood in which the section 3 covered project is located; and

(ii) Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs.

(2) *Eligibility for preference.* A business concern seeking to qualify for the section 3 contracting preference shall certify or submit evidence to the recipient, contractor, or subcontractor, if requested, that the business concern is a section 3 business concern as defined in § 135.7.

(3) *Ability to complete contract.* A section 3 business concern seeking a contract or subcontract shall submit evidence to the recipient, contractor or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the recipient, contractor or subcontractor that the business concern has the ability to perform successfully under the terms and conditions of the proposed contract or subcontract. Evidence may include record or references of past performance, and documentation of financial and technical resources.

(c) *Procurement procedures that provide for preference.* Except for multifamily project mortgagors in the Flexible Subsidy Program, good faith efforts to award contracts to section 3 business concerns may be demonstrated by utilizing the specific procedures set forth in § 135.36(c), which provide for implementation of the section 3 contracting preference. Multifamily project mortgagors in the Flexible Subsidy Program are not required to utilize the methods of procurement in 24 CFR 85.36(d) to which the procurement procedures of § 135.36(c) relate, and are not permitted to utilize methods of procurement that would result in their award of a contract to a business concern that submits a bid higher than the lowest responsive bid. A multifamily project mortgagor, or other recipient, contractor or subcontractor that chooses not to follow the procurement procedures of § 135.36(c) must ensure that, where feasible, the procurement practices it selects provide for preference to section 3 business concerns.

(d) *Examples of good faith efforts.* The following presents examples of good faith efforts which may be undertaken, in any combination, and which may demonstrate that good faith efforts were made to award contracts to section 3 business concerns.

(1) Advertise the contracting opportunities by prominently posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the service area or neighborhood in which the section 3 covered project is located.

(2) Contact community organizations and business associations and request their assistance in identifying and contacting section 3 business concerns.

(3) Provide written notice to known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.

(4) Follow up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

(5) Coordinate any pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.

(6) Carry out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities and, where appropriate, make such information available in languages other than English.

(7) Advise section 3 business concerns as to where they may seek assistance to overcome obstacles to securing contract awards such as difficulty with obtaining bonding, lines of credit, financing, or insurance.

(8) Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.

(9) Break out contract work items into economically feasible units to facilitate participation by section 3 business concerns.

(10) Contact agencies administering HUD Youthbuild programs, and notify these agencies of the contracting opportunities.

(11) Advertise the contracting opportunities though trade association publications, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(12) Develop a list of eligible section 3 business concerns.

(e) *Documentation of good faith efforts.* (1) To demonstrate that good faith efforts were made to award contracts to section 3 business concerns, the recipient shall:

(i) If the recipient maintains written procurement policies, include a statement that the recipient's procurement practices provide preference for section 3 business concerns as required by section 3; and

(ii) Not later than 45 days following the end of the recipient's fiscal year, the recipient shall have documented the following:

(A) The number and dollar value of all contracts that were awarded during the recipient's fiscal year;

(B) The number and dollar value of all contracts that were awarded to section 3 business concerns during the fiscal year;

(C) A description of the good faith efforts that were undertaken to award contracts to section 3 business concerns; and

(D) A description of the mechanism by which the recipient ensured that its contractors and subcontractors complied with the section 3 contracting preference.

(2) The documentation required by paragraph (e)(1) of this section shall be maintained by the recipient for review by HUD. The recipient shall require appropriate and timely documentation of its contractors and subcontractors concerning their good faith efforts to comply with the section 3 contracting preference in order that the recipient may comply with the reporting and recordkeeping requirements of this part.

(f) *Evaluating good faith efforts.* A determination of whether good faith efforts were made to award contracts to section 3 business concerns shall be based on evaluation of the efforts by the recipient to:

(1) Identify section 3 business concerns;

(2) Make section 3 business concerns aware of the contracting opportunities;

(3) Encourage and facilitate the participation of section 3 business concerns in the procurement process; and

(4) Award contracts to those section 3 business concerns that are capable of performing the contract work in accordance with paragraph (b)(3) of this section

Subpart D—Economic Opportunities for Low- and Very Low-Income Persons in Community Development Programs

§ 135.70 General.

(a) *Purpose.* The purpose of this subpart is to provide for implementation of section 3 in HUD's community development programs.

(b) *Section 3 preference requirements.* With respect to work to be performed in connection with a "section 3 covered project" (as this term is defined in § 135.7), section 3 requires that, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations:

(1) Opportunities for training and employment be given to low-income persons (the training and employment preference); and

(2) Contracts awarded for work to be performed in connection with a section 3 covered project be given to section 3 business concerns (the contracting preference.).

(c) *Applicability.* (1) *General.* (i) This subpart applies to:

(A) Recipients that receive HUD community development program assistance for a section 3 covered project, for which the HUD share of the project cost exceeds $100,000; and

(B) Contractors and subcontractors that are awarded a contract or subcontract in connection with a section 3 covered project for which the HUD share of the project cost exceeds $100,000, and the contract or subcontract exceeds $50,000.

(ii) A recipient that receives HUD community development program assistance for a section 3 covered project that does not meet the dollar thresholds set forth in paragraph (c)(1)(i) of this section, or that receives HUD community development program assistance for a non-section 3 covered project, is encouraged, but not required, to make good faith efforts to comply with the employment and contracting objectives of this subpart.

(2) *IHAs.* IHAs that receive HUD community development program assistance for a section 3 covered project shall comply with the procedures and requirements of this subpart D to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). (See 24 CFR part 905.)

(d) *Recipient responsibility for monitoring compliance with section 3.* (1) Each recipient is responsible for monitoring its own operations and the operations of its contractors and subcontractors to ensure compliance with the section 3 preference requirements. The State's responsibility under the State Community Development Block Grant Program and the HOME Program, with respect to program funds that the State distributed to local governments, shall be to:

(i) Require the local government, its recipients, contractors and subcontractors to make good faith efforts to adhere to the section 3 preference requirements;

(ii) Monitor the local governments; and as appropriate,

(iii) Assist local governments in meeting section 3 requirements.

(2) Failure to offer training and employment opportunities to low-income persons, or to award contracts to section 3 business concerns shall not be evidence in itself of noncompliance with the section 3 preference requirements. However, such failure may result in a review of records by HUD in the case of a recipient, or by the recipient or HUD, or both, in the case of contractor or subcontractor, to determine whether a good faith effort

was undertaken to comply with the section 3 preference requirements.

(e) *Definitions.* For purposes of this subpart:

(1) *Good faith efforts* means the activities undertaken to employ low-income persons for training and employment opportunities, and to award contracts to section 3 business concerns as required by section 3.

(2) *HUD share* means the aggregate funds received from all HUD community development programs for the "project cost," as this term is defined in § 135.7.

(3) *Neighborhood area.* See definition in 24 CFR 570.204(c)(1).

(4) *Service area* means the geographical area in which the persons benefitting from the section 3 covered project reside. The service area shall not extend beyond the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended. In HUD's Indian housing programs, the service area, for IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power, is limited to the area of tribal jurisdiction.

§ 135.72 Training and employment opportunities.

(a) *General.* This section describes the specific categories of low-income persons to which priority consideration should be given, where feasible, in the offering of training and employment opportunities. This section also provides examples of activities that may be undertaken to demonstrate that good faith efforts were made to offer training and employment opportunities to low-income persons.

(b) *Perference for low-income persons.* Recipients, contractors and subcontractors shall direct their good faith efforts to give training and employment opportunities to low-income persons.

(1) *Priority consideration for certain low-income persons.* In making good faith efforts to hire low-income persons as required by section 3, priority consideration should be given, where feasible, to hiring the following low-income persons:

(i) Low-income persons residing in the service area or neighborhood in which the section 3 covered project is located;

(ii) Participants in HUD Youthbuild programs; and

(iii) Where the section 3 project is assisted under the Steward B. McKinney Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), homeless persons residing in the service area or neighborhood in which the section 3 covered project is located shall be given the highest priority.

(2) *Eligibility for preference.* A low-income person responding to the good faith efforts of a recipient, contractor or subcontractor to employ low-income persons, and seeking the preference in training and employment provided by this section, shall certify or submit evidence, if requested, that the person is a low-income person residing within the metropolitan area (or nonmetropolitan county) in which the section 3 covered project is located, or is a member of one of the categories of low-income persons identified in paragraph (b)(1) of this section.

(3) *Eligibility for employment.* Nothing in this subpart shall be construed to require the employment of a low-income person who does not meet the qualifications of the job to be filled.

(c) *Good faith efforts.* (1) *Flexibility in meeting good faith efforts.* The activities described in this section are options, not requirements, that may be undertaken to demonstrate that good faith efforts were made to comply with the section 3 training and employment preference. Other activities may be undertaken to comply with the section 3 training and employment preference, and recipients, contractors and subcontractors are encouraged to develop innovative methods to increase training and employment opportunities for low-income persons.

(2) *Examples of good faith efforts.* The following presents examples of good faith efforts which may be undertaken, in any combination, and which may demonstrate that good faith efforts were made to employ low-income persons, and to give priority consideration to hiring the low-income persons identified in paragraph (b)(1) of this section.

(i) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to dwelling units in the neighborhood in which the section 3 covered project is located.

(ii) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) at the site or proposed site of the section 3 covered project, and at public or private institutions operating within the neighborhood or service area of the section 3 covered project, such as grocery stores, shopping malls, schools, community colleges, homeless shelters, and transitional housing facilities.

(iii) Contacting neighborhood organizations, where they exist, in the neighborhood of the section 3 covered project, and requesting the assistance of these organizations in notifying neighborhood residents of the training and employment positions to be filled.

(iv) Scheduling (and advertising) a job informational meeting to be conducted or sponsored by the recipient at a location easily accessible within the service area or neighborhood in which the section 3 covered project is located.

(v) Developing promotional campaigns to inform low-income persons of the recipient's (anticipated and actual) training and employment needs resulting from section 3 covered projects.

(vi) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the recipient's training and employment positions.

(vii) Consulting with community leaders, community organizations, including resident councils or resident management corporations, and other officials or organizations to assist with recruiting low-income persons for the recipient's training and employment positions.

(viii) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(ix) Contacting non-profit organizations and other public or private agencies operating or involved with job training programs for low-income persons about section 3 employment opportunities, including but not limited to agencies engaged in planning or implementation of training funded through the JTPA.

(x) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably a section 3 business concern, as defined in § 135.7), that will undertake, on behalf of the recipient, the efforts to match eligible and qualified low-income persons with the training and employment positions that the recipient intends to fill.

(xi) Where there are more qualified low-income persons than there are positions to be filled, maintaining a file of eligible qualified low-income persons for future employment positions.

(d) *Documentation of good faith efforts.* (1) To demonstrate that good faith efforts were made to comply with the section 3 training and employment

preference, the recipient shall document:

(i) The good faith efforts that were undertaken by the recipient to make low-income persons (and, where feasible, particularly the low-income persons identified in paragraph (b)(1) of this section) aware of the training and employment positions to be filled, and to encourage and facilitate their participation in the job application process;

(ii) The mechanism by which the recipient ensured that its contractors and subcontractors complied with the section 3 training and employment preference;

(iii) Where the recipient is a State which distributes funds for use by a local government or other public entity, or by a private entity, to carry out activities, the State shall document the mechanism by which it ensured that the funded entity complied with the section 3 training and employment preference.

(2) The documentation required by paragraph (d)(1) of this section shall be maintained by the recipient receiving the funds directly from HUD for review by HUD. The recipient shall require appropriate and timely documentation of its recipients, contractors and subcontractors concerning their good faith efforts to comply with the section 3 training and employment preference in order that the recipient may comply with the recordkeeping and reporting requirements of this part. Where the recipient is a State which distributes funds for use by a local government or other public entity, or by a private entity, to carry out activities, the State shall require appropriate documentation of funded entities in order that the State may comply with the recordkeeping and reporting requirements of this part.

(e) *Evaluating good faith efforts.* A determination of whether good faith efforts were undertaken to offer training and employment opportunities to low-income persons shall be based on evaluation of the efforts by the recipient, contractor, or subcontractor, as applicable, to:

(1) Make low-income persons (and, where feasible, particularly those identified in paragraph (b)(1) of this section) aware of the training and employment positions to be filled;

(2) Encourage and facilitate the participation of low-income persons in the job application process; and

(3) Employ those low-income persons that are qualified for the positions to be filled.

§ 135.76 Contracting opportunities.

(a) *General.* This section describes the specific categories of section 3 business concerns to which priority consideration should be given, where feasible, in the award of section 3 covered contracts. This section also identifies specific procurement procedures, and describes outreach activities for implementing the section 3 contracting preference that may be undertaken to demonstrate that good faith efforts were made to award section 3 covered contracts to section 3 business concerns.

(b) *Preference for section 3 business concerns.* Recipients, contractors and subcontractors shall direct their good faith efforts to award contracting opportunities to section 3 business concerns.

(1) *Priority consideration for certain section 3 business concerns.* In making good faith efforts to award contracts to section 3 business concerns, priority consideration should be given, where feasible, to awarding contracting to the following section 3 business concerns:

(i) Section 3 business concerns which provide economic opportunities for low-income persons residing in the service area or neighborhood in which the section 3 covered project is located; and

(ii) Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs.

(2) *Eligibility for preference.* A business concern seeking to qualify for the section 3 contracting preference shall certify or submit evidence to the recipient, contractor, or subcontractor, if requested, that the business concern is a section 3 business concern as defined in § 135.7.

(3) *Ability to complete contract.* A section 3 business concern seeking a contract or subcontract shall submit evidence to the recipient, contractor or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the recipient, contractor or subcontractor that the business concern has the ability to perform successfully under the terms and conditions of the proposed contract or subcontract. Evidence may include record or references of past performance, and documentation of financial and technical resources.

(c) *Procurement procedures that provide for preference.* Good faith efforts to award contracts to section 3 business concerns may be demonstrated by utilizing the specific procedures set forth in § 135.36(c), which provide for implementation of the section 3 contracting preference. A recipient, contractor or subcontractor that chooses not to follow the procurement procedures of § 135.36(c) must ensure that, where feasible, the procurement practices it selects provide for preference to section 3 business concerns.

(d) *Examples of good faith efforts.* The following presents examples of good faith efforts which may be undertaken, in any combination, and which may demonstrate that good faith efforts were made to award contracts to section 3 business concerns.

(1) Advertise the contracting opportunities by prominently posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the service area or neighborhood in which the section 3 covered project is located.

(2) Contact community organizations and business associations and request their assistance in identifying and contacting section 3 business concerns.

(3) Provide written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.

(4) Follow up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

(5) Coordinate any pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.

(6) Carry out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, and where appropriate make such information available in languages other than English.

(7) Advise section 3 business concerns as to where they may seek assistance to overcome obstacles to securing contract awards such as difficulty with obtaining bonding, lines of credit, financing, or insurance.

(8) Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.

(9) Break out contract work items into economically feasible units to facilitate participation by section 3 business concerns.

(10) Contact agencies administering HUD Youthbuild programs, and notify these agencies of the contracting opportunities.

(11) Advertise the contracting opportunities through trade association

publications, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(12) Develop a list of eligible section 3 business concerns.

(e) *Documentation of good faith efforts.* (1) To demonstrate that good faith efforts were made to award contracts to section 3 business concerns, the recipient shall:

(i) If the recipient maintains written procurement policies, include a statement that the recipient's procurement practices provide preference for section 3 business concerns as required by section 3; and

(ii) Not later than 45 days following the end of the recipient's fiscal year, the recipient shall have documented the following:

(A) The number and dollar value of all contracts that were awarded during the recipient's fiscal year;

(B) The number and dollar value of all contracts that were awarded to section 3 business concerns during the fiscal year;

(C) A description of the good faith efforts that were undertaken to award contracts to section 3 business concerns; and

(D) A description of the mechanism by which the recipient ensured that its contractors and subcontractors complied with the section 3 contracting preference.

(2) The documentation required by paragraph (e)(1) of this section shall be maintained by the recipient for review by HUD. The recipient shall require appropriate and timely documentation of its contractors and subcontractors concerning their good faith efforts to comply with the section 3 contracting preference in order that the recipient may comply with the reporting and recordkeeping requirements of this part.

(f) *Evaluating good faith efforts.* A determination of whether good faith efforts were made to award contracts to section 3 business concerns shall be based on evaluation of the efforts by the recipient to:

(1) Identify section 3 business concerns;

(2) Make section 3 business concerns aware of the contracting opportunities;

(3) Encourage and facilitate the participation of section 3 business concerns in the procurement process; and

(4) Award contracts to those section 3 business concerns that are capable of performing the contract work in accordance with paragraph (b)(3) of this section.

Subpart E—Complaint and Compliance Review

§ 135.90 General.

(a) *Purpose.* The purpose of this subpart is to establish the procedures for handling complaints alleging noncompliance with the regulations of this part, and the procedures governing the Assistant Secretary's review of a recipient's or contractor's compliance with the regulations in this part.

(b) *Definitions.* For purposes of this subpart:

(1) *Complaint* means an allegation of noncompliance with regulations of this part made in the form described in § 135.96(d).

(2) *Complainant* means the party which files a complaint with the Assistant Secretary alleging that a recipient or contractor has failed or refused to comply with the regulations in this part.

(3) *Respondent* means the recipient or contractor against which a complaint of noncompliance has been filed. The term "recipient" shall have the meaning set forth in § 135.7, which includes PHA and IHA.

§ 135.92 Cooperation in achieving compliance.

(a) The Assistant Secretary recognizes that the success of ensuring that low-income persons and section 3 business concerns have the opportunity to apply for jobs and to bid for contracts generated by HUD financial assistance depends upon the cooperation and assistance of HUD recipients. All recipients shall cooperate fully and promptly with the Assistant Secretary in section 3 compliance reviews, in investigations of allegations of noncompliance made under § 135.96, and with the distribution and collection of data and information that the Assistant Secretary may require in connection with achieving the economic objectives of section 3.

(b) The recipient shall refrain from entering into a contract with any contractor after notification to the recipient by HUD that the contractor has been found in violation of the regulations in this part. The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension or otherwise ineligible status.

§ 135.94 Section 3 compliance review procedures.

(a) The Assistant Secretary shall periodically conduct section 3 compliance reviews of selected recipients and contractors to determine whether these recipients are in compliance with the regulations in this part.

(b) A section 3 compliance review shall consist of a comprehensive analysis and evaluation of the recipient's or contractor's compliance with the requirements and obligations imposed by the regulations of this part, including an analysis of the extent to which low-income persons have been hired and section 3 business concerns have been awarded contracts as a result of the methods undertaken by the recipient to achieve the employment, contracting and other economic objectives of section 3.

(c) Where the section 3 compliance review reveals that a recipient or contractor has not complied with the requirements of this part, the Assistant Secretary shall notify the recipient or contractor of its specific deficiencies in compliance with the regulations of this part, and shall advise the recipient or contractor of the means by which these deficiencies may be corrected. HUD shall conduct a follow-up review with the recipient or contractor to ensure that action is being taken to correct the deficiencies.

(d) A continuing failure or refusal by the recipient to comply with the regulations in this part may result in the application of sanctions specified in the contract through which HUD assistance is provided, or the application of sanctions specified in the regulations governing the HUD program under which HUD financial assistance is provided. HUD will notify the recipient of any continuing failure or refusal by the contractor to comply with the regulations in this part for possible action under any procurement contract between the recipient and the contractor. Debarment, suspension and limited denial of participation pursuant to HUD's regulations in 24 CFR part 24, where appropriate, may be applied to the recipient or the contractor.

(e) Section 3 compliance reviews may be conducted before the award of contracts, and especially where the Assistant Secretary has reasonable grounds to believe that the recipient or contractor will be unable or unwilling to comply with the regulations in this part.

(f) Complaints alleging noncompliance with the regulations of this part, as provided in § 135.96, may also be considered during any compliance review conducted to determine the recipient's conformance with regulations in this part.

§ 135.96 Filing and processing complaints.

(a) *Who may file a complaint.* The following individuals and business concerns may, personally or through an authorized representative, file with the Assistant Secretary a complaint alleging noncompliance with the regulations of this part:

(1) Any low-income person on behalf of himself or herself, or as a representative of persons similarly situated, seeking employment, training or other economic opportunities with a recipient or contractor;

(2) Any section 3 business concern on behalf of itself, or as a representative of other section 3 business concerns similarly situated, seeking contract opportunities from a recipient or contractor.

(b) *Where to file a complaint.* A compliant must be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410.

(c) *Time of filing.* (1) A complaint must be received not later than 180 days from the date of the action or omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

(2) Where a complaint contains incomplete information, the Assistant Secretary shall request the needed information from the complainant. In the event this information is not furnished to the Assistant Secretary within sixty (60) days of the date of the request, the compliant may be closed.

(d) *Contents of complaint.* Each complaint must be in writing, signed by the complainant, and include:

(1) The complainant's name and address;

(2) The name and address of the respondent;

(3) A description of the acts or omissions by the respondent that is sufficient to inform the Assistant Secretary of the nature and date of the alleged noncompliance.

(e) *Dismissal of complaint.* Where the allegations in a complaint on their face, or as amplified by the statements of the complainant, disclose that the complaint is not timely filed or fails to present a valid allegation of noncompliance with the regulations in this part, the Assistant Secretary may dismiss the complaint without further action. The Assistant Secretary shall notify the complainant of the dismissal of the complaint and the reasons for the dismissal.

(f) *Notification and opportunity to respond to complaint.* Where the allegations in a complaint on their face, or as amplified by the statements of the complainant, present a valid allegation of noncompliance with the regulations in this part, the Assistant Secretary shall accept the complaint, and shall furnish the recipient or contractor against whom the complaint is directed (hereafter, respondent) with a copy of the complaint by certified mail. The respondent shall be allowed a period of 15 calendar days from the date of receipt of the copy of the complaint to submit a response to the Assistant Secretary.

(g) *Investigation of complaint.* The Assistant Secretary shall conduct an investigation of each complaint filed, and shall notify the complainant and the respondent in writing as to whether the Assistant Secretary intends to attempt to resolve the complaint.

(h) *Voluntary resolution of complaint.* (1) The Assistant Secretary will attempt, through informal methods, to obtain a voluntary and just resolution of the complaint, including:

(i) Specific relief for the complainant, and

(ii) Affirmative actions by the respondent to relieve the effects of past noncompliance, and to preclude the occurrence of future violations.

(2) Written notice of a proposed resolution of the complaint, and the terms of the proposed resolution, will be provided to the complainant and respondent, or their representatives, by the Assistant Secretary.

(3) The Assistant Secretary shall, from time to time, review compliance with the terms of any settlement agreement that may have been entered into by the complainant and the respondent, and may, upon a finding of noncompliance, reopen the complaint and take further action as provided in paragraph (i) of this section.

(i) *Referral of complaint for appropriate action under regulations governing the HUD funded program, and responsibilities of Award Official.* If the respondent fails or refuses to confer with the Assistant Secretary, or (1) fails or refuses to make a good faith effort to resolve the complaint, or if the Assistant Secretary finds for any other reason that voluntary resolution of the complaint is not likely to result, the Assistant Secretary may terminate efforts to resolve the complaint. The Assistant Secretary shall:

(i) In the case of a recipient that receives funds directly from HUD, refer the complaint to the Assistant Secretary for the HUD program under which the recipient received HUD assistance (Award Official) for appropriate action to be taken by the Award Official in accordance with the regulations governing that HUD program, which may include debarment, suspension and limited denial of participation in HUD programs.

(ii) In other cases, refer the matter for appropriate action under HUD's regulations at 24 CFR part 24, governing debarment, suspension and limited denial of participation in HUD programs.

(2) Within 30 days following referral of the complaint to the Award Official by the Assistant Secretary, the Award Official shall notify the parties in writing that the complaint has been referred to the Award Official for further action. This notification also will advise the parties of the action to be taken by the Award Official if a decision has been made by that date concerning the action to be taken. If no decision has been made by that date concerning the action to be taken, the notification shall so advise the parties that a decision is pending, and the parties shall receive timely notification of the action to be taken when such decision is made. If a determination is made to take no action, the notification shall disclose why no action is to be taken. The decision by the Award Official (and the type of action to be taken) or to take no action shall be made in consultation with the Assistant Secretary. If a determination is made to take action, the Award Official shall periodically advise the Assistant Secretary of the progress, results, or resolution achieved as a result of the action taken.

Subpart F—Recordkeeping and Reporting

§ 135.100 Recordkeeping.

(a) *Recordkeeping.* To assist HUD in determining whether a recipient or contractor is in compliance with the regulations of this part, the records described in this paragraph (a) must be maintained for the period specified in this paragraph (a). Failure to maintain these records for the applicable period shall constitute noncompliance with part 135.

(1) Recipients subject to subpart B shall maintain the documentation required by § 135.32(d) or by § 135.36(e), or both, for a period of three years from the date of preparation of the documentation.

(2) Recipients that receive funds directly from HUD and that are subject to subpart C shall maintain the documentation required by § 135.52(d) or by § 135.56(e), or both, for a period of three years from the date of preparation of the documentation.

(3) Recipients that receive funds directly from HUD and that are subject

to subpart D shall maintain the documentation required by § 135.72(d) or by § 135.76(e), or both, for a period of three years from the date of preparation of the documentation.

(b) *Access to records.* HUD shall have access to all records, reports, and other documents or items of the recipient or contractor that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program under which section 3 covered assistance is provided or otherwise made available to the recipient or contractor.

§ 135.102 Reporting.

Each recipient which receives, directly from HUD, financial assistance that is subject to the requirements of this part shall submit to the Assistant Secretary an annual report in such form and with such information as the Assistant Secretary may request, for the purpose of determining the effectiveness of section 3.

Dated: October 1, 1993.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–24747 Filed 10–7–93; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Subtitle A and Parts 92, 219, 570, 572, 574, 576, 583, 700, 889, 890, 905, 961, 963

[Docket No. R–93–1678; FR–3536–P–01]

RIN 2501–AB64

Economic Opportunities for Low- and Very Low-Income Persons—Proposed Conforming Amendments

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: Section 3 of the Housing and Urban Development Act of 1968 (section 3), as amended by the Housing and Community Development Act of 1992, requires that economic opportunities generated by HUD financial assistance for housing (including public and Indian housing) and community development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business that provide economic opportunities for these persons. Elsewhere in today's edition of the **Federal Register**, the Department has published a proposed rule that would make comprehensive amendments to HUD's section 3 regulations at 24 CFR part 135 to bring these regulations into conformity with the changes made to section 3 by the Housing and Community Development Act of 1992, and to make additional changes directed to facilitating compliance with section 3. This proposed rule would make conforming amendments to several parts in title 24 of the Code of Federal Regulations that include reference, or should include reference, to the part 135 regulations.

DATES: Comment due date: November 8, 1993.

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, 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 on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Maxine B. Cunningham, Office of Fair Housing Assistance and Voluntary Programs, Section 3 Compliance Division, room 5232, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2251 (voice/TDD). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Since its enactment, section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) has been a statutory basis for promoting the award of jobs and contracts, generated from projects receiving HUD financial assistance, to, respectively, low-income residents and businesses of the areas where the projects to be assisted are located. Section 3 was recently amended, in its entirety, by section 915 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (the 1992 Act). Although the 1992 Act significantly revised section 3, it did not alter the objective of section 3—to provide economic opportunities to low-income persons. The 1992 Act, in fact, strengthens the section 3 mandate by: Clarifying the types of HUD financial assistance, activities, and recipients subject to the requirements of section 3; identifying the specific individuals and businesses who are the intended beneficiaries of the economic opportunities generated from HUD-assisted activities; and establishing the order of priority in which these individuals and businesses should be recruited and solicited for the employment and other economic opportunities generated from HUD-assisted activities.

Elsewhere in today's edition of the **Federal Register**, the Department has published a proposed rule which would make comprehensive amendments to HUD's section 3 regulations at 24 CFR part 135 to being these regulations into conformity with the changes made to section 3 by the Housing and Community Development Act of 1992, and to make additional changes directed to facilitating compliance with section 3.

This proposed rule would make conforming amendments to several parts in title 24 of the Code of Regulations to include reference to the applicability of the part 135 regulations to the HUD program addressed by these parts. Several HUD Programs, particularly new HUD programs, include in their program requirements the applicability of section 3 to the program, but do not require compliance with the part 135 regulations. (See, for example, 24 CFR parts 576, 583, 700.) Compliance with the part 135 regulations was not included because the part 135 regulations are very outdated. The part 135 regulations have not been amended substantively since their original adoption in 1973, although statutory amendments were made to section 3 in 1974 and 1980. Additionally, several parts in 24 CFR currently refer to the part 135 regulations, but include reference to the former statutory language of section 3 (i.e., before its amendment by section 915 of the 1992 Act, the title of section 3 was "Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects"). The Department notes, however, that not all parts in 24 CFR which reference section 3 and the part 135 regulations require conforming amendments. (For example, see 24 CFR 941.208(a).)

In addition to these conforming amendment, this proposed rule would amend 24 CFR part 963—Contracting with Resident—Owned Businesses—to raise the dollar contract limit from $500,000 to $1,000,000. The purpose of the alternative procurement process provided by part 963 is to encourage PHAs to contract with resident-owned businesses for public housing services, supplies, or construction. The proposed

increase in the dollar contract limit is directed to encouraging additional contract opportunities for resident-owned businesses, which is consistent with the objectives of section 3.

Justification for Reduced Comment Period

Itr is the Department's general policy to provide a 60-day public comment period. For the part 135 proposed rule published elsewhere in today's edition of the **Federal Register**, and for this proposed rule, however, the Department is providing only a 30 day public comment period. The purpose of the reduced public comment period is to help the Department have a section 3 final rule and all conforming amendments in place for the Federal Fiscal Year 1994 funding round. The preamble to the part 135 proposed rule published elsewhere in today's edition of the **Federal Register** provides a more detailed justification for the reduced comment period.

Other Matters

Impact on the Economy

This proposed rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the proposed 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 or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; (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.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and, in so doing, certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would make conforming amendments to various parts in title 24 of the Code of Federal Regulations that include reference (and thus update this reference), or that should include reference to the part 135 regulations.

Environmental Impact

In connection with the development of the part 135 proposed rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding of No Significant Impact, which is also applicable to this proposed rule, is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, Federalism, has determined that this proposed rule would not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. The proposed rule would simply make conforming amendments to various parts in 24 CFR that include reference (and thus update this reference), or that should include reference to the part 135 regulations. The part 135 proposed rule, published elsewhere in today's **Federal Register**, provides, consistent with section 915 of the 1992 Act, that the preference requirements of section 3 are to be carried out consistent with existing Federal, State, and local laws and regulations.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule may have the potential to promote family formation, maintenance, and general well-being. This proposed rule would make conforming amendments to several parts in 24 CFR to update reference, or include reference to the part 135 regulations. No change in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 219

Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

24 CFR Part 572

Condominiums, Cooperatives, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 574

Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 576

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 583

Community facilities, Employment, Grant programs—housing and community development, Grant programs—social programs, Handicapped, Homeless, Indians, Mental health programs, Nonprofit organizations, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 700

Aged, Grant programs—housing and community development, Individuals

with disabilities, low and moderate income housing, Nutrition, Public Housing, Rent subsidies, Reporting and recordkeeping requirements, and Supportive services.

24 CFR Part 889

Aged, Capital advance programs, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 890

Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Reporting and recordkeeping requirements.

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 961

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 963

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations, subtitle A and parts 92, 219, 570, 572, 574, 576, 583, 700, 889, 890, 905, 961, and 963 would be amended as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

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

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. In § 92.350, paragraph (a)(4) would be revised to read as follows:

§ 92.350 Equal opportunity and fair housing.

(a) * * *

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations at 24 CFR part 135;

* * * * *

3. In § 92.631, a new paragraph (c)(5) would be added to read as follows:

§ 92.631 Indian preference.

* * * * *

(c) * * *

(5) *Local area residents.* In accordance with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135, IHAs, their contractors and subcontractors, shall make best efforts, consistent with existing Federal, State, and local laws and regulations (including section 7(b) of the Indian Self-Determination and Education Assistance Act), to give low- and very low-income persons the training and employment opportunities generated by section 3 covered assistance (as this term is defined in 24 CFR 135.7), and to give section 3 business concerns the contracting opportunities generated by section 3 covered assistance.

* * * * *

4. Appendix A.V. to subtitle A would be amended by revising the first sentence of paragraph (c)(1) in section 504 to read as follows:

Appendix A to Subtitle A—Hope for Public and Indian Housing Homeownership Program

* * * * *

V. Other Requirements.

* * * * *

Section 505. Nondiscrimination and equal opportunity.

* * * * *

(c) *Employment opportunities.* (1) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and the implementing regulations at 24 CFR part 135 shall apply. * * *

* * * * *

5. Appendix B.V. to subtitle A would be amended by revising the first sentence of paragraph (c)(1) in section 505 to read as follows:

Appendix B to Subtitle A—Hope for Homeownership of Multifamily Units Program

* * * * *

V. Other Requirements.

* * * * *

Section 505. Nondiscrimination and equal opportunity.

* * * * *

(c) *Employment opportunities.* (1) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and the implementing regulations at 24 CFR part 135 shall apply. * * *

* * * * *

PART 219—FLEXIBLE SUBSIDY PROGRAM FOR TROUBLED PROJECTS

6. The authority citation for part 219 would continue to read as follows:

Authority: 12 U.S.C. 1715z; 42 U.S.C. 3535(d).

7. A new § 219.126 would be added to read as follows:

§ 219.126 Other program requirements.

Assistance funded for capital improvements under this part, for which the HUD share of the rehabilitation cost equals or exceeds $7,500 per unit is subject to section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations at 24 CFR part 135. Contractors and subcontractors that are awarded a contract or a subcontract in connection with assistance funded for capital improvements under this part for which the HUD share of the rehabilitation cost equals or exceeds $7,500 per unit are also subject to the regulations at 24 CFR part 35.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

8. The authority citation for part 570 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

9. In § 570.487, a new paragraph (d) would be added to read as follows:

§ 570.487 Other applicable laws and related program requirements.

* * * * *

(d) States shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135. Section 3 requires that employment and other economic opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be given to low- and very low-income persons.

10. In § 570.607, paragraph (b) would be revised to read as follows:

§ 570.607 Employment and contracting opportunities.

* * * * *

(b) Grantees shall comply with section 3 of the Housing and Urban

Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135. Section 3 requires that employment and other economic opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be given to low- and very low-income persons.

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

11. The authority citation for part 572 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

12. In § 572.405, paragraph (c)(1) would be revised to read as follows:

§ 572.405 Nondiscrimination and equal opportunity requirements.

* * * * *

(c) *Employment opportunities.* (1) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; and Executive Order 11246 (3 CFR, 1964–1965 Comp., p. 339) (Equal Employment Opportunity) and implementing regulations at 41 CFR part 60.

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

13. The authority citation for part 574 would continue to read as follows:

Authority: 42 U.S.C. 12901–12912.

14. In § 574.600, paragraph (c) would be revised to read as follows:

§ 574.600 Nondiscrimination and equal opportunity.

* * * * *

(c) *Employment opportunities.* Grantees and project sponsors shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135. Section 3 requires that employment and other economic opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be given to low- and very low-income persons.

* * * * *

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

15. The authority citation for part 576 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

16. In § 576.79, paragraph (a)(4) would be revised to read as follows:

§ 576.79 Other Federal requirements.

(a) * * *

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations at 24 CFR part 135.

* * * * *

PART 583—SUPPORTIVE HOUSING PROGRAM

17. The authority citation for part 583 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 11389.

18. In § 583.325, paragraph (b)(4) would be revised to read as follows:

§ 583.325 Nondiscrimination and equal opportunity requirements.

* * * * *

(b) * * *

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations at 24 CFR part 135.

* * * * *

PART 700—CONGREGATE HOUSING SERVICES PROGRAM

19. The authority citation for part 700 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 8011.

20. In § 700.245, paragraph (c)(4) would be revised to read as follows:

§ 700.245 Other Federal requirements.

* * * * *

(c) * * *

(4) Employment Opportunities. The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135.

* * * * *

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

21. The authority citation for part 889 would continue to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 3535(d).

22. In § 889.265, paragraph (a)(4) would be revised to read as follows:

§ 889.265 Other Federal requirements.

(a) * * *

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations at 24 CFR part 135.

* * * * *

PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

23. The authority citation for part 890 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 8013.

24. In § 890.260, paragraph (a)(4) would be revised to read as follows:

§ 890.260 Other Federal requirements.

(a) * * *

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations at 24 CFR part 135.

* * * * *

PART 905—INDIAN HOUSING PROGRAMS

25. The authority citation for part 905 would continue to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee, and 3535(d).

26. In § 905.165, paragraph (c)(5) would be revised to read as follows:

§ 905.165 Indian preference.

* * * * *

(c) * * *

(5) *Local area residents.* In accordance with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135, IHAs, their contractors and subcontractors, shall make best efforts, consistent with existing Federal, State, and local laws and regulations (including section 7(b) of the Indian Self-Determination and Education Assistance Act), to give low- and very low-income persons the training and employment opportunities generated by section 3 covered assistance (as this term is defined in 24 CFR 135.7) and to give section 3 business concerns the contracting opportunities generated by section 3 covered assistance.

* * * * *

PART 961—PUBLIC HOUSING DRUG ELIMINATION PROGRAM

27. The authority citation for part 961 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 11901 *et seq.*

28. In § 961.29, paragraph (b)(4) would be revised to read as follows:

§ 961.29 Other Federal requirements.

* * * * *

(b) * * *

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; and

* * * * *

PART 963—PUBLIC HOUSING—CONTRACTING WITH RESIDENT-OWNED BUSINESSES

29. The authority citation for part 963 would continue to read as follows:

Authority: 42 U.S.C. 1437 and 3535(d).

30. In § 963.3, the second sentence would be revised to read as follows:

§ 963.3 Applicability.

* * * Public housing contracts eligible to be awarded under the alternative procurement process provided by this part are limited to individual contracts that do not exceed $1,000,000. * * *

31. In § 963.10, paragraph (d) would be revised to read as follows:

§ 963.10 Eligible resident-owned businesses.

* * * * *

(d) *Limitation on alternative procurement contract awards.* The business shall submit a certification as to the number of contracts awarded, and the dollar amount of each contract award received, under the alternative procurement process provided by this part. A resident-owned business is not eligible to participate in the alternative procurement process provided by this part if the resident-owned business has received under this process one or more contracts with a total combined dollar value of $1,000,000.

Dated: October 1, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–24748 Filed 10–7–93; 8:45 am]

BILLING CODE 4210–32–M

federal register

Friday
October 8, 1993

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Part 511

Rental Rehabilitation Program Closeout Requirements; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 511

[Docket No. R-93-1620; FR-3280-F-01]

RIN 2506-AB39

Amendment of Rental Rehabilitation Program Closeout Requirements

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends regulations governing the closeout of the Rental Rehabilitation Program (RRP), for which the statutory authorization has been repealed. Principally, the rule conforms RRP regulations to recent changes in the regulations for the HOME Investment Partnerships program (HOME) and one of the Homeownership and Opportunity for People Everywhere programs (HOPE 3), which make it possible for State and local governments (as RRP grantees) to contribute RRP program income as matching funds under the HOME or HOPE 3 programs, provided that the grantee's RRP has been closed out and the contribution is made in accordance with applicable HOME or HOPE program rules. This rule would extend the permissible uses of such RRP program income to the HOPE 1 and 2 programs as well. In addition, this rule also amends RRP regulations to allow HUD Field Offices, under certain conditions, to close out a Rental Rehabilitation grant without having to conduct an on-site monitoring of the grantee in advance of closeout. HUD will complete a subsequent on-site review as soon as feasible.

EFFECTIVE DATE: This regulation is effective November 8, 1993.

FOR FURTHER INFORMATION CONTACT: David M. Cohen, Director, Office of Affordable Housing Programs, room 7164, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-2685, or (202) 708-2565 (voice/TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment because the rule facilitates better use of moneys (program income) that become available to grantees in connection with a repealed Federal grant program and simplifies administrative requirements for winding up that program.

Because the Rental Rehabilitation Program (RRP) has been terminated, there is no point in continuing to require program income to be used primarily for RRP activities after program closeout. By revising the RRP requirements to broaden eligible uses, the Department can eliminate an outdated requirement and the need to enforce the requirement.

At the same time, the Department can facilitate participation in the CDBG, HOME, and HOPE programs by permitting RRP program income on hand at closeout or earned after closeout to be used or contributed for activities eligible under those other programs. Permitting the RRP program income to count as matching funds under HOME and the HOPE 1, 2, and 3 programs, if so requested by the HOME or HOPE grantee (CDBG does not require match), is also consistent with the policies of those programs concerning matching funds derived from program income of other Federal programs. In addition, it is consistent with recent regulatory changes specifically permitting RRP program income earned after closeout to be used as match in the HOME program (see 24 CFR 92.220(a)(1)(i), as amended at 57 FR 60966 (December 22, 1992)) and in the HOPE 3 program (see 24 CFR 572.220(b)(1)(ii)(C), published at 58 FR 36518, 36536 (July 7, 1993)).

Because the RRP has already been terminated, the change implemented by this rule is of immediate and temporary interest to RRP grantees and to HOME; HOPE 1, 2, and 3; and CDBG participants that can benefit from the relaxation of current RRP requirements. Therefore, delaying implementation of the rule to accommodate public procedure would undermine the purpose of the rule and would be contrary to the public's interest in the efficient and productive administration of federally funded programs.

Background

This final rule amends the Rental Rehabilitation Program (RRP) regulations to make it possible for RRP grantees to contribute or use RRP program income on-hand at the time of program close-out for activities eligible for assistance under the CDBG program, as well as for activities eligible for assistance under Title II (the HOME Investment Partnerships Program) and for Title IV of the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) (NAHA) (authorizing the Homeownership and Opportunity for People Everywhere (HOPE 1, 2, and 3) Programs), provided the particular grantee's RRP has been closed out. Most importantly, subject to applicable HOME or HOPE program rules, the program income could be used by a HOME participating jurisdiction to meet matching funds requirements under 24 CFR 92.220(a)(1)(i), or by a participant in a HOPE 1, 2, or 3 program as a matching funds contribution. (In addition to the HOME and HOPE 3 regulations cited above, program guidelines for the HOPE for Public and Indian Housing Homeownership Program (HOPE 1) and the HOPE for Homeownership of Multifamily Units Program (HOPE 2) were published on January 14, 1992, at 57 FR 1522 and 1558, respectively.)

The current RRP regulations require program income in the amount of $5,000 or more to be used only for eligible RRP activities. If the amount of program income on hand at program closeout is less than $5,000, or if any program income is received after program closeout, the program income must be used for either RRP or Community Development Block Grant (CDBG) eligible activities. However, this rule allows program income on hand at, or received after, closeout of the RRP to be used by the RRP grantee for activities eligible under the CDBG program; the HOPE 1, 2, or 3 programs; the HOME program; or the RRP, or to be contributed for use as matching funds under the HOME or HOPE programs. Use of these funds for any of the authorized programs would be subject to all applicable requirements for those programs.

Further, this final rule amends § 511.77(d) to allow HUD Field Offices, under specified conditions, to close out a RRP grant without first having to conduct an on-site monitoring of the grantee. The conditions are that grant expenditure data collected through the program's Cash and Management Information System must support the grantee's certification that grant funds have been expended in compliance with program requirements, and that the grantee must agree in writing to pay back the amount of any costs that are

determined by HUD to be ineligible based on subsequent on-site monitoring reviews or audits.

This change will expedite closeout of the RRP, and will provide HOME and HOPE 1, 2, and 3 grantees with additional sources of matching funds for the newer HOME or HOPE programs sooner than would be possible by retaining the requirement for on-site monitoring in advance of closeout. Removing the advance monitoring requirement also will permit HUD to devote more of its scarce staff and travel resources to the successful implementation of the HOME and HOPE 1, 2, and 3 programs. The monitoring of closed out RRP grants likely will be scheduled and conducted in conjunction with HOME or HOPE technical assistance or monitoring visits.

Other Matters

Major Rule

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An 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.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule is limited to a revision that would make it possible for grantees to use income from a terminated program for activities eligible for assistance under related current programs.

Environmental Review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k), the policies and procedures contained in this rule relate only to internal administrative procedures that concern the performance of accounting, auditing, and fiscal functions and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Council, 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 and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Specifically, the rule is limited to revising the regulations of the terminated Rental Rehabilitation Program (RRP) to make it possible for RRP grantees to use or contribute RRP grantees to use or contribute RRP program income for activities eligible for assistance under the CDBG; HOME; and HOPE 1, 2, and 3 programs, provided the RRP has been closed out. Thus the rule would eliminate an administrative requirement that no longer serves a useful purpose and which inhibits the use of resources in the most productive manner.

Executive Order 12606, 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. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

This rule was listed as Item 1518 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24425), in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 511

Administrative practice and procedure, Grant programs—housing and community development, Lead poisoning, Low and moderate income housing, Reporting and recordkeeping requirements, Technical assistance.

For the reasons stated in the preamble, part 511 of title 24 of the Code of Federal Regulations is amended as follows.

PART 511—RENTAL REHABILITATION GRANT PROGRAM

1. The authority citation for part 511 is revised to read as follows:

Authority: 42 U.S.C. 1437o and 3535(d).

2. Section 511.76 is amended by revising paragraphs (h) (1) and (2) to read as follows:

§ 511.76 Program income.

* * * * *

(h) * * *

(1) Before program closeout, program income shall be used for activities eligible under § 511.76(c); and

(2) Program income on hand at the time of program closeout or earned after program closeout shall be contributed to HOME or HOPE program grantees as a cash matching contribution in accordance with applicable HOME or HOPE program rules, or shall be used for activities that would be eligible under:

(i) Paragraph (c) of this section;

(ii) The Community Development Block Grant Program (24 CFR part 570);

(iii) The HOME Investment Partnerships Program (24 CFR part 92); or

(iv) Title IV (Homeownership and Opportunity for People Everywhere Programs) of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (HOPE 1 and 2 guidelines at 24 CFR subtitle A, appendices A and B, respectively, and HOPE 3 regulations at 24 CFR part 572).

3. Section 511.77(d) is revised to read as follows:

§ 511.77 Grant closeout.

* * * * *

(d) With respect to monitoring the grantee, either:

(1) The HUD Field Office has conducted an on-site monitoring of the grantee and has determined that the grantee's performance, with respect to any grant to be closed out, is satisfactory and is in compliance with Rental Rehabilitation program statutory and regulatory requirements, including § 511.10(a) and § 511.10(b); or

(2) A grant may be closed before on-site monitoring has been conducted, provided:

(i) The Cash and Management Information reports indicate the grantee's performance is satisfactory and is in compliance with Rental Rehabilitation program statutory and regulatory requirements;

(ii) There are no outstanding monitoring findings; and

(iii) The grantee agrees in writing to pay back the amount of any costs that are later found by HUD to be ineligible

based on a subsequent on-site monitoring review or audit.

Dated: October 1, 1993.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 93–24778 Filed 10–7–93; 8:45 am]

BILLING CODE 4210–29–M

federal register

Friday
October 8, 1993

Part IV

Department of Agriculture

Cooperative State Research Service

National Competitive Research Initiative Grants Program; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Competitive Research Initiative Grants Program (Competitive Research Grants Program); Fiscal Year 1994: Supplementary Solicitation for Applications

Applications are invited for competitive grant awards in agricultural, forest, and related environmental sciences under the National Competitive Research Initiative Grants Program (NCRIGP) administered by the Office of Grants and Program Systems, Cooperative State Research Service (CSRS), for fiscal year 1994. This solicitation is supplementary to that previously published in the **Federal Register** on September 7, 1993 (58 FR 47184).

Authority

The authority for this program is contained in section 2(b) of the Act of August 4, 1965, as amended by section 1615 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act) (7 U.S.C. 450i(b)) (1965 Act, as amended). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture (USDA). Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals from scientists at non-United States organizations will not be considered for support.

It is expected that Congress, in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994, will prohibit CSRS from using the funds available for the NCRIGP for fiscal year 1994 to pay indirect costs exceeding 14 per centum of the total Federal funds provided under each award on competitively-awarded research grants.

Applicable Regulations and Statutory Guidance

Regulations applicable to this program include, but are not limited to, the following:

(a) The regulations governing the NCRIGP, 7 CFR part 3200, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects;

(b) The USDA Uniform Federal Assistance Regulations, 7 CFR part 3015;

(c) The USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016;

(d) Section 1402 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by section 1602 of the FACT Act, which sets forth purposes that research supported by the NCRIGP should address; and

(e) Section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by section 1603 of the FACT Act, which defines "sustainable agriculture."

Project Types

The project types for which proposals are solicited include:

I. Conventional Projects

(a) Standard Research Grants: Research will be supported that is fundamental or mission-linked conducted by individual investigators, co-investigators within the same discipline, or multidisciplinary teams. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual may apply.

(b) Conferences: Scientific meetings that bring together scientists to identify research needs, update information, or advance an area of research are recognized as integral parts of research efforts. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual is an eligible applicant in this area.

II. Agricultural Research Enhancement Awards

In order to contribute to the enhancement of research capabilities in the research program areas described herein, applications are solicited for competitive grants to be awarded in the following categories:

(a) Postdoctoral Fellowships: In accordance with section 2(b)(3)(D) of the 1965 Act, as amended, for individuals who have received their doctoral degree after January 1, 1991, and no later than June 15, 1994.

(b) New Investigator Awards: Pursuant to section 2(b)(3)(E) of the 1965 Act, as amended, for investigators or co-investigators who have completed graduate or post-doctoral training, and are beginning their independent research careers.

(c) Strengthening Awards: Pursuant to sections 2(b)(3) (D) and (F) of the 1965 Act, as amended, proposals are solicited that request funds for Research Career Enhancement Awards, Equipment Grants, Seed Grants, or Strengthening Standard Research Project Awards.

Research Programs To Be Supported (Supplementary to those published in the September 7, 1993 Federal Register (58 FR 47184))

CSRS is soliciting proposals, subject to the availability of funds, for support of high priority research of importance to agriculture, forestry, and related environmental sciences, in the following Research Programs (the NCRIGP Division in which the program falls and the approximate amount of funds available to that Division follow in parentheses):

Water Resources Assessment and Protection (Natural Resources and the Environment Division, $22.396 M)

Biological Control Research (Plants Division, $41.485 M)

Assessing Pest Control Strategies (Plants Division, $41.485 M)

Agricultural Systems (all Divisions contributing, approximately $2 M total)

The solicitation, which contains Research Program descriptions and detailed instructions on how to apply, may be obtained by contacting the office indicated below. Please note that applicants who submitted NCRIGP proposals for fiscal year 1993 or who have recently requested placement on the list for fiscal year 1994 will automatically receive a copy of the fiscal year 1994 solicitation and any supplements.

Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245. Telephone: (202) 401–5048

Requests for solicitations and application materials may also now be made via Internet by sending a message with your name, complete mailing address, phone number, and materials that you are requesting to psb@darth.esusda.gov. Materials will be mailed as quickly as possible.

Postmark Dates for all NRICGP Programs

To be considered for funding during FY 1994, proposals must be postmarked by the following dates:

Postmarked dates	Program areas	Contacts (202)
Nov. 15, 1993	Improving Human Nutrition for Optimal Health	205–8250
Nov. 22, 1993	Plant Genome	401–1901
	Plant Genetic Mechanisms	401–5042
Dec. 6, 1993	Forest/Range/Crop/Aquatic Ecosystems	401–4082
	Pathology	401–4310
	Weed Science	401–4310
Dec. 13, 1993	Plant Responses to the Environment	401–4871
	Enhancing Reproductive Efficiency	401–6234
Dec. 20, 1993	Photosynthesis and Respiration	401–6030
Jan. 10, 1994	Entomology	401–5114
	Nematology	401–5114
	Alcohol Fuels	401–4310
Jan. 18, 1994	Sustaining Animal Health and Well-Being	401–6303
	Biological Control Research	401–5114
Jan. 24, 1994	Soils and Soil Biology	401–4082
	Food Characterization/Process/Product Research	401–1952
	Non-Food Characterization/Process/Product Research	401–1952
Jan. 31, 1994	Assessing Pest Control Strategies	401–5114
	Plant Growth and Development	401–5042
Feb. 7, 1994	Water Resources Assessment and Protection	401–4504
	Markets and Trade	401–4772
	Rural Development	401–4425
Feb. 14, 1994	Improved Utilization of Wood and Wood Fiber	401–1952
	Ensuring Food Safety	401–4399
	Nitrogen Fixation/Nitrogen Metabolism	401–6030
	DOE/NSF/USDA Program on Collaborative Research in Plant Biology:	
	Research Coordination	401–4871
	Research Training	401–4871
Feb. 22, 1994	Research Career Enhancement Awards	401–6234
	Equipment Grants	401–6234
	Seed Grants	401–6234
	Agricultural Systems	401–1901
Mar. 7, 1994	Improving Animal Growth and Development	205–0250
	Identifying Genetic Mechanisms and Gene Mapping (Animal)	401–4399

Done at Washington, DC this 4th day of October 1993.

William D. Carlson,

Associate Administrator, Cooperative State Research Service.

[FR Doc. 93–24831 Filed 10–7–93; 8:45 am]

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federal register

Friday
October 8, 1993

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Part 172, et al.
Crashworthiness Protection Requirements for Tank Cars; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 173, 179

[Docket No. HM-175A; Notice No. 93-19]

RIN 2137-AB89

Crashworthiness Protection Requirements for Tank Cars

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA is proposing revisions to the Hazardous Materials Regulations (HMR) that would improve the crashworthiness of tank cars and restrict the continued use in hazardous materials service of tank cars that no longer meet current safety requirements. Included are proposals to expand the use of thermal protection systems and head protection on tank cars used for transporting certain hazardous materials; add new requirements for bottom discontinuity protection; prohibit the use of self-energized manways located below the liquid level of the cargo; revise "grandfather" provisions that allow certain uses of tank cars; and require the use of pressure tank cars, that are more resistant to puncture, for all poisonous by inhalation (PIH) materials and certain other high hazard materials. The intended effect of these actions is to enhance the safe transportation of hazardous materials in tank cars.

DATES: *Written comments:* Comments must be received on or before February 7, 1994.

Public hearing. A public hearing will be held at 10 a.m., January 6, 1994.

ADDRESSES: *Written comments:* Address comments to the Dockets Unit, DHM-30, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001. Commenters should identify the docket and notice number, and, if possible, submit five copies in response to this notice. Commenters needing a confirmation of receipt of their comments should include a self-addressed stamped postcard that shows the docket number (i.e., Docket HM-175A). Interested persons may review the comments to this notice, and publications referenced in it, between the hours of 8:30 a.m., and 5 p.m., Monday through Friday, except holidays. The Dockets Unit is located in room 8417 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590-0001.

Public hearing: The public hearing noted above will be held in room 2230 of the Nassif Building at the same street address. Persons desiring to make oral statements at the hearing should notify the Federal Railroad Administration (FRA) Docket Clerk by telephone (202-366-0635) or in writing by December 22, 1993. Mail written requests to: Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., room 8201, Washington DC, 20590-0001. Each request must identify the speaker; organization represented, if any; daytime telephone number; and the anticipated length of the presentation, not to exceed 10 minutes. Written text of the oral statement should be presented to the hearing officer prior to the oral presentation. The hearing may conclude before 5 p.m. if all persons wishing to testify have been heard.

FOR FURTHER INFORMATION CONTACT: Edward W. Pritchard (Telephone 202-366-9178) or James H. Rader (Telephone 202-366-0510), Hazardous Materials Division, or Thomas A. Phemister (Telephone 202-366-0635), Trial Attorney, Office of Chief Counsel, FRA, Washington DC, 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

Based on research and on a continuing review of serious accidents involving the transportation of hazardous materials in tank cars in the United States and Canada, RSPA has issued a number of regulations to improve the survivability of tank cars in accidents. In these rulemakings, RSPA required the installation of a tank head puncture resistance system (head protection), a coupler vertical restraint system (shelf couplers), insulation, and a thermal protection system for certain high-risk cargoes.[1]

The record shows that these systems, working in combination, have reduced the potential harm to human health and the environment tremendously.[2]

On May 15, 1990, RSPA published an Advance Notice of Proposed Rulemaking (ANPRM) under Docket HM-175A (55 FR 20242). The notice solicited comments on the costs and safety benefits that would be derived should the HMR be amended to: (1) Require thermal protection or head protection, or both, on new and existing tank cars that are constructed of aluminum or nickel, or that are used to transport certain hazardous materials; (2) disallow the use of the half-head shield as an option to meet head protection requirements; (3) prohibit the use of tank cars that have a manway opening located below the liquid level of the material transported; (4) disallow the use of so-called "non-pressure" tank cars to transport materials toxic by inhalation; (5) increase the start to discharge pressure setting on certain tank car; (6) establish specifications for the securement and accident survivability of tank car tank closure fittings; and (7) phase out certain "grandfather" provisions. This ANPRM also solicited comments on what changes or design modification should be considered in place of the retrofitting of tank cars that do not conform to the safety requirements for new tank cars. RSPA published a Supplemental Advance Notice of Proposed Rulemaking (SANPRM) on August 29, 1990 (55 FR 35327), requesting information on four additional tank car related safety issues. Specifically, the SANPRM requested comments on the costs and safety benefits that would be derived should the HMR be amended to (1) prohibit bottom outlets on new and existing tank cars used to transport certain hazardous materials; (2) establish a maximum permissible safety relief valve capacity for materials that are toxic by inhalation; (3) require that, for new and existing tank cars, the exterior surface of a carbon steel tank and the inside surface of a carbon steel jacket be given a protective coating when foam-in-place insulation is applied; and (4) permit reductions in the safety vent size, or increases in the tank test pressure and vent bursting pressure, on new and existing tank cars used to transport certain hazardous materials.

[1] The difference between a thermal protection system and insulation is that a thermal protection system protects the tank from a pool or torch fire environment; in contrast, insulation protects the contents of the tank from ambient temperature differentials, much like home insulation.

[2] The discussions in the following rulemakings provide greater detail about each of these safety system requirements: Interlocking Couplers and Restrictions of Capacity of Tank Cars, Docket HM-38, 35 FR 14215 (September 9, 1970); Tank Car Tank Head Protection, Docket HM-109, 41 FR 21475 (May 26, 1976); Shippers; Specifications for Pressure Tank Cars, Docket HM-144, 42 FR 46306 (September 15, 1977); Shippers, Specifications for Tank Cars, Docket HM-174, 49 FR 3473, (January 27, 1984); Specifications for Railroad Tank Cars Used to Transport Hazardous Materials, Docket HM-175, 49 FR 3468 (January 27, 1984); Transportation of Hazardous Materials, Miscellaneous Amendments, Docket HM-166W, 54 FR 38790 (September 20, 1989); and Performance-Oriented Packaging; Changes to Classification, Hazard Communication, Packaging and Handling Requirements Based on UN Standards and Agency Initiative, Docket HM-181, 55 FR 52402 (December 12, 1990).

RSPA received over 50 comments in response to the ANPRM and the SANPRM from members of private trade associations and the various industries that own, lease, transport or use tank cars. All comments were given full consideration and FRA and RSPA appreciate the information and opinions received. Based on those comments and on research conducted by the FRA, this notice proposes new regulations or revisions to the HMR in the following subject areas: (1) Tank head protection; (2) thermal protection; (3) self-energized manways below the tank liquid level; (4) the use of non-pressure tank cars for materials with a poison-inhalation hazard; (5) "grandfathering," that is, the permissive, continued use of tank cars conforming to former regulatory standards; (6) protection of bottom discontinuities on tank cars; (7) protective coatings on insulated tanks; and (8) the use of tank cars of limited and designated specifications with greater protection in accidents for transporting materials with health and environmental risks.

Based on comments made to some of the issues raised in the ANPRM and the SANPRM, and research done by the FRA, RSPA and FRA concluded that several topics raised in these earlier notices are either too technically complex or insufficiently developed to be resolved by regulatory proposals now. RSPA will consider action on safety relief devices, top fitting protection, and gasket specifications in a separate rulemaking action. Also, consideration will be given to making certain operational changes, for instance, restricting train placement, in lieu of tank car design or specification changes under a future rulemaking docket.

Tank cars built to the DOT 111 specification have received a great degree of interest since the ANPRM and SANPRM were published in this docket. With over 160,000 in use today, they constitute about two-thirds of the North American tank car fleet, and they remain a critical resource for movement of industrial chemicals and other materials in commerce. The issues surrounding this specification tank car are many and complex, but FRA and RSPA are committed to improving an already good safety record in the transportation by railroad of hazardous materials and to addressing forthrightly the hazards these cars may pose in certain situations.

Since the early 1970s, FRA and RSPA have been engaged in a program to improve the tank car fleet with respect to crashworthiness. The DOT program has proceeded from those cars used to transport the most hazardous commodities to those cars carrying commodities posing relatively less serious hazards. This NPRM is part of that process and addresses several key facets of low-pressure tank cars, including the DOT 111s. Among the proposals discussed in more detail below are those that would remove the DOT 111 tank car from the transportation of PIH materials, the transportation of Class 2 materials, and from the transportation of environmentally sensitive halogenated organic compounds (HOCs). Proposals in this notice also include the required installation of head and thermal protection on tank cars transporting thermally reactive materials. As will be developed more fully in the text that follows, comments are requested on the possibility of replacing DOT 111 tank cars constructed of aluminum or nickel plate with those made of stainless steel, or with lined or coated carbon steel tank cars. Additionally, current rulemaking actions and FRA mandated inspection and maintenance programs address other parts of the larger DOT program of progressive safety improvement.

II. Tank Head Protection

After a series of railroad accidents in the late 1960s and early 1970s involving head punctures of tank cars, FRA and RSPA began, in 1976, to require half-head protection for tank cars transporting flammable compressed gases (now Division 2.1 materials) and for tank cars transporting anhydrous ammonia and ethylene oxide (Docket HM–109). The design of, and criteria for, head protection were based on tests performed by the FRA, the Association of American Railroads (AAR), and the Railway Progress Institute (RPI) Tank Car Safety Research and Test Project in the early 1970s.

These tests showed that head punctures caused by over-speed impacts in railroad classification yards generally occurred at speeds above 12 mph, and often happened when a loaded tank car struck a standing empty car, causing the empty car to "jump" and ram its coupler into the head of the oncoming tank. Reviewing incidents on main-line trackage, a recent analysis of accident data showed that objects such as broken rails and couplers may penetrate the top half of the tank head indicating that head protection is essential, even though not 100 percent effective, in a train derailment.

In a recent FRA research effort on puncture resistance,[3] FRA conducted full- and 1/5-scale experimental studies to evaluate the relative puncture resistance of DOT 105A500W and 112J340W tank cars. The research results show that puncture resistance is strongly influenced by impact location, by head and jacket thickness and by insulation thickness. Based on the results of the studies, FRA expects that certain DOT 105A tank cars in chlorine service may meet the 18 mph threshold for puncture resistance prescribed in § 179.105(c)(4). The Coltman/Hazel report demonstrates that puncture resistance is an inter-related function of head thickness, insulation thickness, and jacket thickness, at least, and that the concept of "head protection" must include more than just traditional head shields. Some existing tank cars may in fact meet the performance standard through an increase in the thickness of the tank jacket, the tank head, or the insulation system.

Most commenters to the earlier notices in this docket expressed support for the application of full-head protection to new tank cars and to those existing tank cars without head protection used for PIH materials and Division 2.1 flammable gases regardless of tank car capacity. All commenters agreed that there is no need to require full-head protection on existing tank cars built to the current standard (49 CFR 179.100–23) allowing half-head protection. Most commenters did not support an across-the-board requirement for full-head protection on tank cars constructed from either aluminum or nickel plate. Both the National Transportation Safety Board (NTSB) and the Association of American Railroads expressed the need to require full-head protection on tank cars transporting thermally reactive materials (i.e., materials that decompose or polymerize when exposed to heat). These comments are discussed in more detail below.

Tank cars currently equipped with half-head protection: The AAR/RPI Tank Car Safety Research and Test Project analyzed the effectiveness of the requirements to install shelf couplers and half-head protection on Class DOT 112 and 114 tank cars. They reported that, based on accident data, these improvements were 95 percent effective in preventing head punctures.[4] While the RPI report combines shelf couplers with head protection and evaluates this protection *system*, the data is fully

[3] Coltman, M., & Hazel, M. Jr., Chlorine Tank Car Puncture Resistance Evaluation, (1992) Federal Railroad Administration, Washington, DC (NTIS DOT/FRA/ORD–92/11).

[4] Phillips, E. A., Analysis of Tank Cars Damaged in Accidents 1965 through 1986, (RA–02–6–55), 1989, AAR–RPI Railway Tank Car Safety Test and Research Project, AAR Technical Center, Chicago, IL.

applicable to this proceeding because all tank cars transporting hazardous materials are required to have shelf couplers.

Because tank cars currently equipped with a half-head protection system are already 95 percent effective against preventing head punctures, FRA and RSPA agree with commenters that there is neither a safety need nor an incremental cost justification to require a retrofit of full-head protection on those tank cars.

Head protection systems for existing tank cars with capacities less than 18,500 gallons: In 1984, the final rule published under Docket HM–175 did not require Class DOT 105 tank cars with a capacity of less than 18,500 gallons and transporting flammable gases, anhydrous ammonia, or ethylene oxide to be fitted with head protection. This provision is contained in Notes 23 and 24 to § 173.314(c) and § 173.323(c)(1). The preamble to HM–175 noted that RSPA would continue to evaluate the need for new or amended rules applicable to tank cars. These "smaller" cars were not covered earlier primarily because their predominant service is in chlorine transportation and, in that service, they are covered with thick cork or urethane foam insulation, believed by many at the time to offer sufficient protection against puncture.[5] In addition, these smaller capacity tank cars did not have the same history of tank head punctures that demanded the change and retrofit program mandated for the larger capacity DOT 112 and 114 tank cars. Summarized, the priorities in 1984 pointed to the need to provide head protection first to other segments of the tank car fleet.

In comments filed in response to the ANPRM in this docket, the NTSB said the accident data for the last 20 years clearly demonstrates the vulnerability of tank heads to puncture and urged RSPA to move expeditiously to issue and implement final rules that would require full-head protection for all DOT 105 tank cars, including those tank cars with a capacity less than 18,500 gallons. Several commenters to the May 5 and November 6, 1987 notices of proposed rulemaking (NPRMs) under Docket HM–181 agreed that the former grandfathering of tank cars based on capacity was no longer justified. The Chlorine Institute agreed that head protection systems are now warranted for on the cars they used. FRA and RSPA agree with these commenters and, for the stated reasons, RSPA proposes to remove the 18,500 gallon limitation.

Tank cars transporting materials in Division 2.2: RSPA is proposing to require full-head protection on all new tank cars and on those existing tank cars that currently do not have head protection, regardless of tank car capacity, when used to transport materials classed in Division 2.2 (non-flammable gas). Not only can these containers violently rupture if they are punctured, but the released cargo may kill or injure through asphyxiation or other impairment of the human cardiac, nervous, or pulmonary systems.

Existing tank cars without head protection: RSPA disagrees with those commenters who argue that there is no need to require full-head protection on existing tank cars equipped with no head protection. The benefits of head protection are real, are predictable, and are quantifiable. Where earlier rules required head protection on other cars, it was a matter of recognizing the highest priority needs first. The question is not one of demanding low-priority safety benefits, but the need to expand the safety base of hazardous materials transportation in tank cars.

Based on an accident history that highlighted the problem of coupler override in switch yard impacts, the first head shield requirements prescribed protection for the lower half of the tank head. It is now time to expand the head protection system priorities to include main line derailments. In these accidents, often involving higher speeds than yard derailments, tank cars may roll over while derailing or couplers may break because of high train-action forces; in either case, draft sill override may occur. However it happens, FRA is aware that the top half of the tank head is vulnerable to puncture. For example, on January 14, 1980, in Ridgefield, Washington, a Burlington Northern freight train struck a mud slide. The train action forces in that accident caused the coupler of a DOT 112S340W tank car transporting anhydrous ammonia to break. An adjacent box car over-rode the coupler and the half-head shield on the anhydrous ammonia tank car and punctured the top half of the tank head. Twenty thousand gallons of anhydrous ammonia were released and two train crew members died in the plume.

RSPA and FRA consider the small additional cost of installing full-head protection on cars that now have no head protection system, as compared with adding only half-head protection, is justified on the basis of increased safety. RSPA proposes that the installation of a tank head puncture resistance system on tank cars transporting Class 2 materials be phased-in over a 10-year period.

Tank cars constructed from aluminum and from nickel plate: Tank cars constructed from aluminum plate commonly transport fertilizer ammoniating solutions, hydrogen peroxide solutions, and nitric acids and tank cars constructed from nickel plate commonly transport acetyl chloride and bromine. After a 1983 release of nitric acid resulting from a puncture in an aluminum tank car head in Denver, Colorado, the NTSB urged the FRA to conduct a full scale testing and evaluation program to develop a head shield to protect aluminum tank car heads from puncture and, if needed, mandate installation of head shields at an early date.[6] FRA conducted the research and found that the threshold velocity needed to puncture a tank head constructed from aluminum is four mph.[7] Such low puncture resistance supports the need for full-head protection on new and existing tank cars constructed from aluminum plate in hazardous materials service. Because the properties of nickel plate are similar to those of aluminum plate, FRA and RSPA also believe that the use of full-head protection on tank cars constructed from nickel plate should be required as well.[8] These changes are proposed in this notice.

Several commenters stated that RSPA should consider the characteristics of the particular hazardous material to be transported before requiring steel head protection on tank cars constructed from either aluminum or nickel plate. Based on the low puncture resistance characteristics of aluminum and nickel plate, RSPA disagrees with these commenters.

With advances in alloy metallurgy and in the capabilities of tank car coatings, linings, and claddings, it may

[5] Recent tests, see Coltman and Hazel, cited earlier, tend to confirm that view. These tests revealed that some stub sill to tank head configurations, with a modified reinforcing pad and bracket, may withstand the puncture resistance performance criteria, but some chlorine tank cars may not offer puncture resistance fully satisfying the performance criteria originally adopted for larger flammable gas tank cars.

[6] Denver and Rio Grande Western Railroad Company Yard Accident Involving Punctured Tank Car, Nitric Acid Vapor Cloud and Evacuation, Denver, Colorado, April 3, 1983, National Transportation Safety Board Report NTSB/RAR–85/10, National Transportation Safety Board, Washington, DC.

[7] Larson, W.G., Aluminum/Cold Temperature Tank Car Puncture Resistance Tests, (FRA/ORD 91/06), (1991), (NTIS DOT/FRA/ORD/91/06), Federal Railroad Administration, Washington, DC.

[8] "Constructed from nickel plate" means that the tank shell is built of steel with a high nickel content, conforming to specification ASTM B162, AAR TC133, or AAR TC134. A "nickel clad" tank car has a protective inner coating or lining of nickel applied to the parent steel.

now be more possible than it once was to transport in steel tank cars many of the products that today move in aluminum or nickel cars.[9] RSPA and FRA specifically request comments as to whether the use of other than steel tank cars should be disallowed with respect to all or to certain hazardous materials based on the low puncture resistance of aluminum and nickel shells; and, if so, what the effective date of such a requirement should be.

Tank cars transporting thermally reactive materials: RSPA agrees with those commenters who suggested the need for full-head protection on tank cars transporting thermally reactive materials.[10] Many of these materials, if released, react violently with other materials and may decompose with explosive force. As an example, in a 1989 investigation into the collision and derailment of a Montana Rail Link freight train, the NTSB found that the puncture of a tank car containing hydrogen peroxide resulted in a release of product. When the hydrogen peroxide combined with contaminants on the ground, a chemical reaction occurred causing a fire; the fire heated and ignited nearby polyethylene pellets and that fire led to an explosion of the hydrogen peroxide tank car releasing a force equivalent to 10 tons of TNT (tri-nitro-toluene). Fragments of the tank car penetrated homes within a fourth of a mile and one home, located one-half mile away, was penetrated by a section of the liquid eduction tube.[11]

In its comments, the Association of American Railroads supplied the following list[12] of thermally reactive materials that it believes should only be transported in tank cars with full-head protection:

acetaldehyde
acrolein
acrylic acid
acrylonitrile
butyl acrylate
chloroprene
crotonaldehyde
dimethylaminoethyl methacrylate
dimethylhydrazine, unsymmetrical
dinitrotoluene
ethyl acrylate
ethyl nitrite
ethyl methacrylate
ethylene imine
ethylene oxide
hydrazine, anhydrous
hydrogen cyanide
hydrogen peroxide solution
isobutylacrylate
isoprene
isopropyl nitrate
methacrylic acid
methacrylonitrile
methyl acrylate, inhibited
methyl isopropenyl ketone
methyl methacrylate monomer, inhibited
methyl vinyl ketone
methyl isopropenyl ketone
motor fuel anti-knock compound
nitroethane
proplyene imine
propylene oxide
styrene monomer
sulfur trioxide
vinyl acetate
vinyl ethyl ether
vinyl isobutyl ether
vinyl toluenes
vinylidene chloride
vinyl pyridene
vinyltrichlorosilane

FRA and RSPA agree with the AAR that this is an appropriate listing of the thermally reactive materials likely to move by railroad; however, the AAR list also contained other commodities that are not specifically named in the Hazardous Materials Table (HMT), and some of them move in substantial quantities. FRA and RSPA request comments on the identification of additional thermally reactive materials, on whether a generic description such as "thermally reactive materials, n.o.s." is proper for inclusion in the HMT, and on the best way to ensure that the proper packaging requirements (such as "B" codes in the Special provisions in § 172.102) are attached to appropriate commodities.

Based on the risks that these materials pose in the transportation system and based on the effectiveness of head protection systems, RSPA proposes to require full-head protection for new cars and for existing cars without head protection when transporting thermally reactive materials.

III. Thermal Protection Systems

At about the same time as action was being taken to provide head protection for tank cars, RSPA began to require the application of a thermal protection system on tank cars transporting Division 2.1 materials (flammable gases) or ethylene oxide after a series of major railroad accidents that involved fires and ruptures of non-insulated pressure tank cars.[13] The design and criteria of the thermal protection system were based on tests performed for the FRA at the U.S. Army Ballistics Research Laboratory in White Sands, New Mexico, and at the Transportation Test Center in Pueblo, Colorado.

These tests revealed that a 33,600-gallon non-protected tank car filled with propane will rupture within 24 minutes after exposure to a pool fire. Rupture occurs when the residual strength of the tank shell falls below the force generated by the vapor pressure of the cargo exerted on the inside surface of the tank shell.[14] Further testing by FRA demonstrated that a tank car filled with propane and equipped with a thermal protection system vented its cargo through the safety relief valve before the tank car shell ruptured when subjected to either a 100-minute pool fire or a 30-minute torch fire.[15] These periods were chosen because they provided emergency response personnel the needed time to assess the accident and to initiate remedial actions, such as evacuating an area.

The performance standard for thermal protection considers the tank and its cargo as a whole system. Many insulation materials also provide good thermal protection so these materials,

[9] In § 179.100–7 of the final rule for Docket HM–181F, Performance-Oriented Packaging Standards; Miscellaneous Amendments, 58 FR 50224 (September 24, 1993), RSPA has authorized certain stainless steel alloys for the construction of DOT 105, 109, 112, and 114 pressure tank cars.

[10] In 1974, the Department studied the self-reaction hazards of chemical substances that are thermally unstable. The thermal decomposition of 30 commercially available materials at 300 °C were reviewed. The report reviewed the thermal sensitivity of the 30 materials using thermal surge stimuli, differential scanning calorimetry, and a system designed to determine quantitatively the percent decomposition of the materials. The amount of gas resulting from the thermal decomposition was also reported. The report shows that the hazard potential of these materials is related to the percent of thermal decomposition, the amount of gas liberated in decomposition, the flammability of the material, and the reactivity of the material in air. For further information, see Kayser E.G., The Thermal Decomposition of Thirty Commercially Available Materials at 300 °C, DOT Report No. TES–20–74–1, (1974), Department of Transportation, Washington, D.C.; and Tsang, W. & Domalski, E.S., An Appraisal of Methods for Estimating Self-Reaction Hazards, DOT Report TES–20–74–8, (1974), Department of Transportation, Washington, DC.

[11] Collision and Derailment of Montana Rail Link Freight Train with Locomotive Units and Hazardous Materials Release, Helena, Montana, February 2, 1989, National Transportation Safety Board Report NTSB/RAR–89/05, National Transportation Safety Board, Washington D.C.

[12] The names of some commodities on this list have been edited to conform to the proper shipping names shown in the Hazardous Materials Table at 49 CFR 172.101.

[13] Shippers; Specifications for Pressure Tank Car Tanks, Docket HM–144, 42 FR 46306 (September 15, 1977).

[14] Some sources refer to this phenomenon as a tank car BLEVE. That term, the acronym for Boiling Liquid Expanding Vapor Explosion (BLEVE), is technically imprecise to describe a thermally induced tank car rupture although it has become useful in the emergency response training field. A more complete description of tank car thermal ruptures, together with a technical discussion of the BLEVE, can be found in Emergency Action Guides, ©1990, Association of American Railroads, Washington, DC, pp. V–VII.

[15] This is the current performance standard in 49 CFR 179.105–4.

when analyzed with the tank and the cargo, may show that nothing further needs to be installed on the car to achieve passage of the Federal pool and torch fire performance tests. Research sponsored by the FRA on urethane foam and glass fiber insulation systems show that urethane foam insulation will pass the pool and torch fire requirements and that glass fiber insulation will also pass both tests provided the insulation is held in place with a plastic or wire scrim. Owners of tank cars with either of these systems, or another comparable system, may find that their thermal analysis of the car shows the presence of sufficient thermal protection to meet the performance standard. In this case, the tank car owner would have to verify only that the insulation material installed on the tank car is capable of passing the pool and torch fire verification or "proof" tests in part 179. Owners may find that a car will pass the performance standard with only minor modifications, such as applying a thermal protection system to the manway nozzle.[16]

While this notice is not the place for a detailed discussion of thermodynamics as applied to tank cars or of the use of thermal modelling as an acceptable approach for performing thermal analysis, the results of FRA research support the modelling concept.[17] Research shows that the thermal analysis should consider as a minimum a 100-minute pool fire having a flame intensity of 815.6 °C ± 37.77 °C (1500 °F ± 100 °F) over the entire surface of the tank car (including discontinuities); a 30-minute torch fire having a flame intensity of 1,204 °C ± 37.77 °C (2200 °F ± 100 °F) and a torch velocity 64.37 km/h ± 16.09 km/h (40 mph ± 10 mph). Other vital factors include the following: the cargo in the tank car, the angle of rollover, the diameter of the tank car, shell thickness, the capacity of the tank, the safety relief valve flow capacity and flow rating pressure, the safety relief valve start-to-discharge pressure, net absorptivity and emissivity of the tank car shell surface, the bursting strength of the tank, the thermal conductance of the tank car jacket and tank car shell material, the conductivity of the thermal protection system, the pressure of any nitrogen padding, the initial temperature of the tank car and its cargo, and the gas compressibility factor.

In some cases, the use of a high capacity safety relief valve with a low start-to-discharge pressure setting, the use of certain insulating materials, and the use of thicker or higher strength steels may be sufficient to meet the thermal protection performance requirements. As an example, if a tank car is constructed from TC128 steel plate 9/16-inch thick and has an adequately sized safety relief valve, some low vapor pressure cargoes may vent completely through the safety relief valve before the tank ruptures in a 100-minute pool fire or 30-minute torch fire. Such a car would conform to the performance standard for thermal protection and could be marked accordingly for that particular cargo.

As an example of how thermal modelling works, in a research contract for Occidental Chemical Corporation, the IIT Research Institute found that the urethane foam insulation applied to the company's DOT 105A tank cars was adequate to prevent failure of the tank in a 100-minute pool fire, when loaded with sulfur monochloride or sulfuryl chloride.[18]

Most commenters responding to the ANPRM and the SANPRM supported the need for a thermal protection system on tank cars transporting Division 2.1 (flammable gas) or 2.3 (poisonous gas) materials, regardless of tank car capacity. In contrast, some commenters opposed the application of a thermal protection system to tank cars transporting Division 2.2 materials (nonflammable gases) and anhydrous ammonia. In discussing tank cars constructed from either aluminum or nickel plate, most commenters said that the cargo within the tank should determine the need for a thermal protection system.

Class 2 materials: Under the current rules, tank cars used to transport Division 2.1 materials must have a thermal protection system, unless the tank car is a Class DOT 105 tank car that is also less than 18,500 gallons. There are no requirements for thermal protection for Division 2.2 materials. For Division 2.3 materials, the regulations contain grandfather clauses and other limited provisions that, overall, present an inconsistent regulatory scheme. Many commenters suggested the use of a thermal protection system for all Division 2.1 and 2.3 materials and RSPA agrees that these materials should be transported only in tank cars that have appropriate safeguards against fire. A comprehensive approach for all Division 2.1 and 2.3 materials, as proposed here, will require the owner or the shipper to assure an equivalent level of thermal protection, as prescribed in current § 179.105–4. This would require performing an analysis of the characteristics of the material and of the thermal resistance capabilities of the tank car, taking into consideration the safety relief valve start-to-discharge pressure setting and relief capacity and all areas of the tank car that are not afforded protection from fire (such as stub sills, bolsters, and protective housings). Such a whole systems approach ensures that all tank cars transporting a Division 2.1 or 2.3 material will have sufficient thermal resistance in a fire; in FRA's experience, all such materials will require the full measure of safety that only a thermal protection system can provide. This approach, analyzing the loaded car and designing a system to meet the standard for protection in pool and torch fires, is compatible with the regulatory framework of performance standards for packagings that has grown out of Docket HM–181. Because tank cars may transport different cargoes, and because changing cargoes may affect the whole system, owners or shippers may choose to perform a "worst case" analysis based on all the commodities the car is likely to carry.[19]

In 1981, a joint effort between the Chlorine Institute and the RPI–AAR Tank Car Safety Research and Test Project resulted in the development of an insulation system to protect a chlorine tank car involved in a fire. The developed insulation system maintains back plate (inside surface of the tank car shell) temperatures below 250.56 °C (483 °F). Since 1985, chlorine tank cars have been required to be equipped with half-head protection and an insulation system that meets the above requirements. The system consists of 5.08 cm (2 inches) of ceramic fiber covered by 5.08 cm (2 inches) of glass fiber encased in an eleven gauge steel

[16] The following research report contains additional information on the effectiveness of urethane foam and fiberglass: Wright, W.P., Slack W.A., and Jackson W.F., Evaluation of the Thermal Effectiveness of Urethane Foam and Fiberglass as Insulation Systems for Tank Cars, NTIS DOT/FRA/ORD–87/11 (1987), Federal Railroad Administration, Washington, DC.

[17] For example, further information about the effects of a pool fire on a tank car are available in Johnson, M.R., Temperatures, Pressures and Liquid Levels of Tank Cares Engulfed in Fires, NTIS DOT/FRA/OR&D–84/08.11 (1984), Federal Railroad Administration, Washington, DC. The procedures outlined in the cited work are being updated by the AAR and should be available from that organization prior to publication of a final rule in this docket.

[18] Johnson, Milton R., Fire Effects on Tank Cars Containing Sulphur Monochloride and Sulfuryl Chloride, IITRI Project VO8230 (1993), Occidental Chemical Corporation, Pasadena, Texas.

[19] Owners are reminded that 49 CFR 173.31 (a)(4) limits the use of tank cars to those commodities for which they are authorized. Authorized (or approved) commodities are those listed on the certificate of construction or an AAR R–1 form. (See the AAR Specifications for Tank Cars Section 1.4.3.1 and Appendix R, Section R4.04.)

jacket. Prior to 1985, the chlorine insulation system consisted of 10.16 cm (4 inches) of polyurethane foam or cork. The insulation system used today was incorporated into the HMR in 1981 by RSPA.[20] After reviewing the Chlorine Institute's insulation system, FRA and RSPA consider the thermal resistance capabilities of the current insulation system acceptable for the transportation of chlorine. This notice does not propose any new thermal protection requirements for chlorine.

While commenters do not agree on the need for thermal protection for Division 2.2 (non-flammable gas) materials, in the notice today, RSPA is proposing to require such a system if, after an analysis of the effects of a 100-minute pool fire and a 30-minute torch fire, there will be a release of the cargo from the tank car other than through the safety relief valve. An AAR publication states that "[a]t a chemical accident, there are generally two reasons for an evacuation, one is to protect the public from any toxic, poisonous, or noxious vapors or fumes generated by the product itself . . ., the second is to protect the public from thermal ruptures and the container debris that may be hurled from an incident site."[21] Many Division 2.2 materials have both of these characteristics. For example, in the same publication, the AAR states that containers of dichlorodifluoromethane may rupture violently in fire due to increasing pressure and that the decomposition of dichlorodifluoromethane evolves highly toxic phosgene, fluorides, halogen acids, hydrogen chloride and carbonyl halides. Of the 125 materials most frequently shipped by rail,[22] only 4 fall into the Division 2.2 category: anhydrous ammonia;[23] carbon dioxide, refrigerated liquid; argon, refrigerated liquid; and dichlorodifluoromethane.

Anhydrous ammonia is transported in DOT 105A300W, 105S300W, 105J300W, 112S340W, 114S340W, 112J340W, and 114J340W specification tank cars (including the same class tank car with a higher marked tank test pressure). All these cars, with the exception of the DOT 112S and 114S tanks, are either insulated or have a thermal protection system. The RPI commented that, for anhydrous ammonia, there were three fire-induced ruptures in the 22-year RPI database reporting history (1965–1986):

—Orleans Road, West Virginia (11–28–77);
—Crestview, Florida (4–8–79); and,
—Hutchinson, Kansas (9–10–81).

Commenters to the ANPRM stated that even if the Class DOT 112 and 114 tank cars in the above accidents had been equipped with thermal protection, it would not have prevented their ruptures. Not only is this argument an exercise in historical speculation, but RSPA and FRA point to the proven benefits of the head shield, shelf coupler, thermal protection combination and conclude that thermal protection, at the very least, could have delayed the thermal rupture of the tanks by keeping the internal temperature of the tank shell below that at which it begins to thin and lose strength. Delay of ruptures, and not their absolute prevention, was the goal of the thermal protection systems, and that goal has been met.

Carbon dioxide is transported in DOT 105A500W specification tank cars equipped with two regulator valves, a reclosing pressure relief device, a frangible disc, and an insulation system with good thermal performance (a thermal conductance of 0.03 B.t.u. per square foot per degree fahrenheit differential). Consequently, existing and new tank cars in carbon dioxide service have sufficient thermal resistance and this notice would impose no new thermal protection requirements for those tank cars.

Argon, refrigerated liquid is transported in DOT 107A seamless-steel high-pressure cylinders that are mounted on a freight car structure. This notice would impose no new requirements for these types of tank cars because the carrying capacity of each cylinder is small and, if released, there would be no imminent or substantial harm to human health or the environment.

Dichlorodifluoromethane is commonly transported in DOT 114A tank cars having no insulation or thermal protection. As discussed later under the heading of "Health and environmental risks," dichlorodifluoromethane is banned from land disposal and RSPA believes that these tank cars are not equipped with the protection needed to ensure the protection of human health and the environment.

In this notice, RSPA proposes to require the owner or shipper of a tank car used to transport a Class 2 material to perform an analysis that will predict the behavior of the tank car in a 100-minute pool fire and in a 30-minute torch fire. If the analyses show that there will be a release of the cargo from the tank car, other than through the safety relief valve, a thermal protection system will be required. To analyze the thermal effects on a tank car, RSPA will allow the use of computer assisted thermal modelling. A possible alternative to the proposed performance standard is for RSPA to analyze each specific tank car/safety relief valve/compressed gas combination. This alternative approach is reasonably certain to lead to a patchwork of regulatory requirements rather than a single logical and consistent standard. The proposals contained in this notice are designed to reduce the violent rupture of a tank car in a fire environment.

Thermally reactive materials: For some thermally reactive materials,[24] the critical temperature for the tank car and its contents may be the heat at which the material undergoes decomposition or polymerization rather than the temperature at which the steel of the tank becomes so plastic that it begins to lose tensile strength. RSPA and FRA agree with the commenters that tank cars transporting thermally reactive materials need a thermal protection system.

Accidents involving thermally reactive materials can be dramatic. On August 2, 1988, at 9 p.m., at Brazoria, Texas, 13 cars of a Union Pacific freight train derailed.[25] Seven of the derailed cars contained acetaldehyde and none of these cars had a thermal protection system (nor was it required). Two acetaldehyde cars sustained coupler punctures and released their contents, which ignited. The resulting fire engulfed 4 other acetaldehyde cars and each of them had a total failure, or rupture, of the tank shell within 5 to 10 minutes after the derailment. Witnesses reported "3–4 explosions between 9:05 and 9:10." It would be speculation to assume that a thermal protection system would have extended the time before rupture of these cars, but the effectiveness of the combination of head shields, shelf couplers, and thermal protection has been amply demonstrated.

As with Class 2 materials, RSPA believes that the best approach for applying thermal protection systems on

[20] Transportation of Hazardous Materials; Miscellaneous Amendments, Docket HM–166U, 52 FR 13034, (April 20, 1987).

[21] Emergency Action Guides, p. VII.

[22] Annual Report of Hazardous Materials Transported by Rail / Year 1992, Association of American Railroads, Bureau of Explosives, Washington, DC, p. 3ff.

[23] Anhydrous ammonia meets the criteria of poisonous by inhalation and for international transportation is classified in Division 2.3 Zone D.

[24] A listing of the thermally reactive materials affected by this proposal appears earlier, in the section discussing the need for head protection systems on cars.

[25] Union Pacific derailment at Brazoria, Texas, FRA Accident Investigation No. 137–88, Railroad Report No. 0888H0200, August 2, 1988.

tank cars transporting thermally reactive materials is to require the owner or the shipper to perform an analysis of the predictable performance of the loaded car in a fire environment and to apply a thermal protection system that will (1) prevent the release of any cargo, other than through the safety relief valves, in a 100-minute pool fire and a 30-minute torch fire and (2), for the same time periods, maintain the internal temperature of the chemical in the tank below a level that will accelerate the decomposition or polymerization of the lading.

Tank cars constructed from aluminum and nickel plate: Recent tests performed for the FRA at the Transportation Test Center in Pueblo, Colorado, show that during the torch fire test the back plate temperatures[26] of a non-protected tank car constructed from aluminum plate will reach 427 °C (800 °F.) within 3 minutes and the aluminum plate will melt through in 5 minutes.

In the pool fire test, back plate temperatures reached 427 °C within 25 minutes; 75 minutes short of the carbon steel standard. The pool fire tests also showed that glass fiber insulation enclosed within an eleven gauge steel jacket offers no additional protection at all. The high temperatures from the test flame caused the glass fiber to lose tensile strength and fail, leaving the aluminum plate exposed to the direct radiant heat from the jacket. Because the glass fiber melted and fell away from the tank shortly after initiating the test, the thermocouples on the aluminum back plate showed a rapid temperature rise above 427 °C within 30-minutes, 70 minutes short of the carbon steel standard. When testing a thermal protection system and/or aluminum plate combination, however, FRA found that aluminum back plate temperatures during the 100-minute pool fire test remained well below 427 °C.[27]

Although FRA did not conduct fire tests on tank cars constructed from nickel plate, RSPA considers the properties of nickel plate similar to those of aluminum and the proposed rules will treat them similarly.

In consideration of the FRA research summarized above, and based on the comments received, FRA and RSPA consider thermal protection essential for tank cars constructed from either aluminum or nickel plate when used to transport a Class 2 or thermally reactive material. FRA and RSPA believe that all such cars will need protection. RSPA proposes to require the owner of a tank car constructed from aluminum or nickel plate that is used to transport a Class 2 or thermally reactive material to perform an analysis of the tank car in a 100-minute pool fire and in a 30-minute torch fire. If the analysis shows that there will be a release of the cargo from the tank car, other than through the safety relief valve, a thermal protection system will be required.

Compressed gases that are poisonous by inhalation: Commodities in this category include Division 2.3 materials and anhydrous ammonia. As with liquid PIH materials (see below), and based on the proven ability of tank jackets to reduce shell punctures, RSPA is proposing the use of a tank car that has a jacket conforming to § 179.100–4 of this subchapter and a tank test pressure of at least 300 psi for compressed gases that are also PIH. Bottom outlets would not be authorized.

In a 1987 report on the vulnerability of pressure tank car shells to puncture, the RPI found that shelf couplers, hardboard insulation (cork), increased shell thickness, thermal protection, small tank car size and increased jacket thickness proved effective towards reducing the frequency of shell punctures.[28] The report summarizes a 20½-year history of accident data on shell punctures of pressure tank cars and concludes that the 11-gauge steel jacket provides a measure of shell protection.

RSPA is proposing that tank cars transporting PIH materials that did not require a tank jacket prior to the effective date of any final rule in this docket must have a tank jacket that conforms to the requirements of § 179.100–4 of this subchapter no later than 10 years from the final rule's effective date.

Liquid materials poisonous by inhalation: The regulations adopted under Docket HM–181[29] require the application of a thermal protection system on a tank car used to transport a PIH liquid material. Persons seeking further information on PIH liquid materials should refer to that proceeding.

On September 24, 1993, RSPA published a final rule, under Docket HM–181F (58 FR 50224), containing provisions that removed the applicability of Special Provision B14 for tank cars (a requirement for insulation), revised Special Provision B74 to allow the optional use of an insulated DOT 105S tank car or a non-insulated, but thermally protected, DOT 112J or 114J tank car for "liquid" PIH materials, allowed the construction of pressure tank cars from ASTM Type 304L or 316L stainless steel plate, and revised Note 30 in § 173.314(c) to authorize the use of DOT 105S tank cars for chlorine; hydrogen chloride, refrigerated liquid; methyl bromide; nitrosyl chloride; nitrous oxide; and sulfur dioxide.

IV. Self-energized manways located below the liquid level of the cargo

On September 8, 1987, in a railroad yard in New Orleans, Louisiana, a tank car equipped with a self-energized bottom manway and loaded with butadiene developed a leak and caught fire. At one point, the flames were large enough that both spans of a bridge on Interstate 10 were engulfed. After the investigation, the NTSB concluded that "it is unlikely that a hazardous materials leak through a bottom manway during transportation could be stopped." The NTSB urged the FRA to prohibit the transportation of tank cars that have a manway opening located below the liquid level of the lading in hazardous materials service.[30] Because the design of bottom manways depends in part on the weight of the product and the pressure in the tank to make the seal fully effective, RSPA and FRA agree with the NTSB's conclusion.

The design was never popular and FRA believes that there are only 14 such cars in the United States fleet. Other tank cars of this construction that might operate in the United States would be of Canadian or Mexican origin. Most commenters expressed support for the removal of internal self-energized manways located below the liquid level of the cargo, with one commenter proposing no new construction and the modification of existing tank cars within 2 years. FRA and RSPA support the commenters' suggestions and RSPA is proposing to revise § 173.31 to prohibit the use of internal self-energized

[26] 49 CFR 179.105–4(d) and (e) describes the procedures for conducting the pool fire and torch fire tests, respectively. The "back plate temperature" measurement determines the heat on the non-insulated side of the test material, that is, on the side away from the direct flame. The standard for carbon steel tank cars declares a test failure if any of the nine required thermocouples detects a temperature in excess of 427 °C. (800 °F.)

[27] Larson, W.G., Fire Tests on Insulation for Aluminum Tank Cars, NTIS DOT/FRA/ORD–87/04, (1987) Federal Railroad Administration, Washington, DC.

[28] Phillips, E.A., Review of Pressure Car Shell Puncture Vulnerability, RA–09–6–52, (1987), AAR–RPI Railway Tank Car Safety Research and Test Project, AAR Technical Center, Chicago, Illinois.

[29] Performance Oriented Packaging, Docket HM–181, 55 FR 52402, (December 21, 1990).

[30] Butadiene Release and Fire from GATX 55996 at the CSX Terminal Junction Interchange, New Orleans, Louisiana, September 8, 1987, National Transportation Safety Board Report NTSB/HZM–88/01, National Transportation Safety Board, Washington, DC.

manways located below the liquid level of the cargo after a 2-year period. For new tank cars, RSPA is proposing to revise the construction standard for Class DOT 114 tank cars in § 179.103–5, thereby prohibiting further new construction of tank cars with internal self-energized manways located below the liquid level of the cargo; existing cars would have to be modified.

V. Non-Pressure tank cars for materials poisonous by inhalation

With the publication of the Docket HM–181 final rule, as of October 1, 1993, nearly all liquefied compressed gas PIH materials must be transported in Class DOT 105, 112, and 114 pressure tank cars with a test pressure that conforms to § 173.31(a)(14). In §§ 173.314 and 173.323, however, certain PIH materials are authorized in Class DOT 111A tank cars. For instance, the regulations authorize the transportation of methyl bromide (§ 173.314) and ethylene oxide (§ 173.323) in DOT 111A100W4 specification tank cars.

In a recent research report,[31] the FRA found that, in a single car national risk profile, the transportation of ethylene oxide in a DOT 111A100W4 tank car involves significantly greater risk than the transportation of the same material in a DOT 105J500W tank car. Characteristics and parameters evaluated in this assessment included the toxicity, the fire hazard, and the explosion hazard. In comments to the ANPRM, the Railway Progress Institute (RPI) reported that, during the time period of 1965 through 1986, DOT 111A tank cars involved in accidents and damaged were slightly more than three times as likely to lose cargo as were DOT 105 cars in similar situations.[32]

The Raj/Turner report amply demonstrates (and AAR/RPI Tank Car Safety Test and Research Project data support) that it is "improbable" to assume that any single DOT 111A or DOT 105 car would be involved in an accident. Based on FRA accident data, however, a significant number of such cars will be involved in accidents during their service life. Accordingly, because of the hazards associated with these materials and the performance superiority of the DOT 105 car for this service, this notice proposes to remove the Class DOT 111A tank car as an authorized packaging for Division 2.3 materials. The majority of the commenters to the ANPRM support prohibiting non-pressure tank cars for the transportation of PIH materials.

VI. Phasing out of Various Grandfather Clauses

"Grandfather" clauses in several regulations allow tank cars constructed or built before a certain date to remain in service without modification. As an example, in § 173.314(c), Notes 23 and 24 allow the continued use of DOT 105A tank cars for certain compressed and flammable gases if they were built before September 1, 1981, while tank cars built after that date must meet a more stringent DOT 105S or 105J standard.

The NTSB stated, in a March 1, 1988 letter to RSPA that it was time to stop using tank cars that fail to meet current minimum safety requirements for the transportation of hazardous materials under grandfather clauses. The NTSB indicated that grandfather clauses could result in a reduced level of safety. The AAR also petitioned RSPA to amend § 173.314(c) Note 30 (P–1138):

> Because it does not provide any assurance that tank cars with head protection will be used for PIH [poisonous by inhalation] compressed gas service in the foreseeable future. * * * [C]ompanies will be able to use tank cars without head protection for PIH compressed gas service for the next thirty years. * * *

Although the majority of commenters did not support the phasing out of grandfather clauses from the regulations, expressing special concern about banning formerly approved materials of construction, RSPA agrees with both the NTSB and the AAR that there should be no allowance for the permanent use of tank cars that do not meet minimum safety requirements. In this notice, RSPA is not proposing to abandon older materials of construction, but rather to eliminate specific grandfather clauses that are no longer compatible with the needs of safety.

As further illustration, in § 171.102, special provision "B63" continues to allow the use of DOT 105A100W, 111A100W4, 112A200W and 114A340W tank cars for ethyl chloride and ethyl methyl ether, provided the cars were constructed before September 1, 1991.[33] These tank cars do not provide an equivalent level of safety to other tank cars used for Division 2.1 materials, because these tank cars do not have head protection or thermal protection systems. This notice proposes to remove special provision "B63" from column 7 of the hazardous materials table; thereby prohibiting the use of non-protected tank cars for these two materials.

The current § 173.314(c) also allows the use of Class DOT 111A non-pressure tank cars for certain Class 2 (compressed gas) materials, such as ammonia solutions, ethylamine, ethyl chloride and ethyl methyl ether. This notice proposes to remove the authorization for the use of Class DOT 111A non-pressure tank cars for Class 2 materials.

The proposed revision to § 173.323(c)(1) will remove the DOT 111A100W4 car as a proper packaging for ethylene oxide and will "sunset" its head protected and thermally protected DOT 111J alternative. Based on information obtained by the FRA, there are no DOT 111J tank cars in the national fleet; therefore, RSPA is proposing to remove the authorization for these tank cars on the effective date of this rule.

VII. Bottom Outlets

There are two principal issues concerning bottom outlets: first, whether or not they should be permitted at all and, second, whether, if permitted, they can and should be protected against damage during a derailment, when the tank car may separate from its wheel assemblies and allow any bottom fitting to fail following a collision with the ground.

Nearly all commenters to the ANPRM opposed the total elimination of bottom outlets on tank cars. One commenter stated that the benefits to be realized from removing bottom outlets are much smaller than the costs. Another pointed out that removing the bottom outlet on approximately 45,000 tank cars would require extensive modifications to the top fittings on those cars. Another commenter stated that the elimination of the bottom outlet would have drastic economic implications, such as preventing tank car to cargo tank transfers at many facilities. Commenters also said that eliminating bottom unloading fittings would prevent the continuation of highly successful unit-train operations, with good safety records, in sulfuric acid service, and it would require the installation of top unloading racks at facilities now using the bottom outlet to unload the tank car. Finally, commenters said that prohibiting bottom outlets would make cleaning of certain cars difficult, if not impossible.

RSPA agrees with the commenters that banning bottom outlets altogether may decrease safety at tank car

[31] Raj, P.K., and Turner, C.K., Hazardous Materials Transportation In Tank Cars/Analysis of Risks—Part 1, NTIS DOT/FRA/ORD–92/34, (1993), Federal Railroad Administration, Washington, DC.

[32] Phillips, E.A., Analysis of Tank Cars Damaged in Accidents 1965 through 1986, RA–02–8–55, (1989), AAR–RPI Railway Tank Car Safety Test and Research Project, AAR Technical Center, Chicago, Illinois.

[33] Prior to the issuance of Docket HM–181, these two materials were classed as a flammable liquid.

unloading facilities by requiring employees to climb on top of cars to connect and disconnect transfer hoses. In addition, with top unloading it is typical to pump air into the car to displace the cargo out the liquid eduction line; the elimination of bottom outlets would expose more employees to high-pressure air inlet lines. The concerns at unloading facilities, however, are no less important than reducing the chances of a release of a hazardous material from the bottom outlet, sheared off in a derailment, on a tank car.

To balance these competing interests, RSPA is proposing to require accident damage protection for, instead of removal of, bottom fittings.

In 1978, the AAR developed bottom discontinuity protection requirements for new tank car construction. Over a period of years, these requirements were extended to existing tank cars on a priority schedule determined by the nature of the commodity transported. AAR-developed bottom discontinuity protection consists of either a metal "skid" protecting the portion of the bottom outlet that protrudes beyond the shell or the machining of a "breakage groove" in the valve assembly.

The Chemical Manufacturers Association, an industry association of chemical and petroleum producers and shippers, along with other tank car owners and users, supports the AAR's design. A report from the AAR/RPI Tank Car Safety Research and Test Project that shows that, taking bottom outlet valves and washouts as a group, the overall effectiveness of the AAR's bottom discontinuity protection requirements was 55 percent during the period 1971 through 1986.[34] Additionally, the RPI reports that bottom outlet protection led to a 42 percent reduction in the average cargo loss.

RSPA is proposing to require bottom outlet protection for all tank cars equipped with bottom unloading devices. New cars would have to meet the requirement as of the effective date of any final rule published under this docket. Those existing cars that are outside the scope of the AAR requirements would have 10 years from the effective date of the final rule to meet the standard. As proposed, bottom outlet protection systems would have to conform to paragraphs E9.00 and E10.00 of the AAR Specification for Tank Cars, M–1002. Paragraphs E9.00 and E10.00 generally require the protection of each valve and fitting from mechanical damage by the tank, another protective device, such as a tank saddle or skid plate, or the underframe. Furthermore, paragraphs E9.00 and E10.00 require that the protective device must be designed as follows—

(1) A load, normal to the slope of the protective device, whose vertical component equals the rail load minus the weight (mass) of the trucks;

(2) The above load must be considered as concentrated on any transverse line on the protective device;

(3) The stresses in the tank shell, the protective device, and its connections to the tank shell must not exceed the minimum tensile strength of the material. In addition, the combined stress in the tank shell due to the load specified above and an internal pressure, equal to the safety relief valve start-to-discharge pressure, may not exceed the minimum tensile strength of the shell material. The stresses in the webs of the protective device may not exceed the critical buckling stress;

(4) The longitudinal slope of the protective device must not exceed 1:3;

(5) Any vertical extension of the discontinuity below the protective device must be designed to break off without rupturing the tank or releasing lading. The protective device must extend down to, or below, the level of the discontinuity, or its designed breaking point. For bottom outlets, the skid should extend down to the breakage groove, or to the extreme outward projection of the parts comprising the equivalent of a breakage groove;

(6) The skid, when used, must be of fabricated, cast or forged design and be of a material compatible with that to which it is attached;

(7) The design of the protective device must take into account any abrupt change in stiffness from the long, rigid protective device to the flexible tank shell;

(8) Bottom outlet valve handles, unless stowed separately, must be designed to either bend or break free on impact, or the handle in the closed position must be located above the bottom surface of the skid; and

(9) Bottom profile of the protective device must provide a sliding surface without discontinuities.

VIII. Protective Coatings on Insulated Tank Cars

In recent years, it has become ever more apparent that the insulation of jacketed tank cars has an undesirable side effect. FRA has learned of several insulated tank cars with severe corrosion or pitting on the outer surface of the shell, or the inner surface of the jacket. It is not exactly known whether the corrosion stems from the physical properties of the insulation itself or whether the corrosion develops when insulation becomes impregnated or contaminated with water or a chemical from the atmosphere in which the tank car operates. Research within the industry has led to the development of protective coating materials.

In 1988, AAR petitioned RSPA[35] to amend the regulations to incorporate a require protective coatings on the exterior of a tank car and the interior of a tank car jacket to retard rust or corrosion for new car construction. Most comments received to the ANPRM supported a requirement similar to that suggested by AAR. One commenter asked RSPA to consider adopting a recommended practice for applying protective coatings on tank cars that is now under development by the National Association of Corrosion Engineers (NACE).

RSPA is proposing to adopt the suggestions made by the commenters and by the AAR to require protective coatings for all new tank cars[36] and for existing tank cars when a repair to the tank car requires the complete removal of the jacket. The NACE proposal is under consideration at meetings of the AAR Tank Car Committee and will be reviewed in that context. If warranted, a subsequent rulemaking proceeding may propose the adoption of this or other anti-corrosion protocols.

IX. Health and Environmental Risks

Beginning with the Rivers and Harbors Act of 1899, Congress has passed many laws to protect human health and the environment from hazardous substances and wastes. Major modern environmental legislative programs began after 1970 with the passage of the Resource Conservation and Recovery Act of 1976 to control and manage hazardous waste disposal sites; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) to clean-up abandoned hazardous waste sites; the Toxic Substances Control Act to require testing of manufactured materials to determine their effect on human health and the environment; and the Federal Insecticide, Fungicide and Rodenticide Act to require the registration and

[34] Phillips, E.A., Bottom Discontinuity Protection Effectiveness on DOT 111A Stub Sill Tank Cars, RA–09–7–60, (1992), AAR–RPI Railway Tank Car Safety Test and Research Project, AAR Technical Center, Chicago, Il.

[35] Rulemaking petition No. P–1050.

[36] Current requirements, at 49 CFR 179.100–4(a) and 197.200–4(a), state ". . . protective coating is not required when foam-in-place insulation that adheres to the tank or jacket is applied." The proposal here would require protective coatings on all insulated tank cars.

regulation of chemicals that manufacturers produce. With the enactment of CERCLA in 1980, the body of law directed at environmental protection merged into hazardous materials transportation law as Congress required the Secretary of Transportation to list all hazardous substances as hazardous materials.

In 1984, Congress enacted the Hazardous and Solid Waste Amendments of 1984,[37] prohibiting the continued land disposal (including spillage or leakage) of untreated wastes because of the potential of these wastes to cause harm to human health and the environment. The statute requires the Environmental Protection Agency (EPA) to set

levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of the hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.[38]

As enacted, the legislation set forth a series of deadlines that would restrict further land disposal of certain wastes if no levels or methods of treatment were set by EPA. Untreated wastes, as identified by Congress and set forth in the legislation, were restricted from land disposal after a certain date. All such deadlines have now passed.

The rationale for restricting wastes from land disposal focuses primarily on the relationship between disposal of a hazardous waste and ground water quality. In 40 CFR part 261, EPA classified wastes as hazardous based on the potential of those wastes to cause harm to human health and the environment. EPA's determinations include the potential harm of the material on human health and the environment as a result of the characteristics of the material (reactivity, ignitability, corrosivity, or toxicity) as seen in ground water or a surface water pathway.

Based on information on untreated wastes and on other environmental contaminants such as pesticides, RSPA proposes certain new requirements for HOCs that are banned from land disposal by the EPA. HOCs pose a risk to human health and the environment when transported in large capacity tank cars because, in addition to toxicity, when released, HOCs are persistent in soil and have the potential for large scale soil and groundwater contamination. In addition, when HOCs are released they have the potential to cause depression of the central nervous system by acting as a general anesthetic, inhibiting activity in the brain and spinal cord and lowering a person's functional capacity. After systemic absorption, other potential acute toxicities include hepatotoxicity (toxic effects in the liver), nephrotoxicity (toxic effects in the kidneys), and cardiac arrhythmias induced by sensitization of the heart to adrenaline or adrenaline-like compounds. Animal studies and accidental human poisonings have shown that these and other organ toxicities may be produced by acute exposure to organic solvents, such as certain HOCs.[39]

In addition to the acute or chronic toxicity of these materials, HOCs are persistent in soil and difficult to remove (or clean up) after a spill. Railroads have incurred enormous costs for environmental clean-up after the release or disposal of HOCs. As an example, on September 28, 1982, several cars of an Illinois Central Gulf freight train derailed at Livingston, Louisiana. As a result of the derailment, one tank car spilled approximately 14,000 gallons of perchloroethylene (an HOC). Two weeks after the incident, the Louisiana Department of Natural Resources (DNR) detected perchloroethylene in concentrations of up to 25 parts per million (ppm) in the soil at the derailment site. It was also discovered that the chemical had migrated well beyond the derailment location. The town of Livingston obtains its drinking water from wells by tapping a deep aquifer and, to prevent human health risks from the chemical, the DNR established a 0.3 ppm concentration of perchloroethylene as the criterion for the maximum safe level of groundwater contamination. Since the accident, the railroad has incurred over $20 million in environmental clean-up costs.

In creating and enacting the environmental legislation referenced earlier, Congress made evident its concern about constituents that are both mobile and potentially hazardous to human health and the environment. Based on these concerns, EPA has identified and listed in 40 CFR Part 268, Appendix III, HOCs that share these characteristics. The EPA list represents a comprehensive, yet enforceable, list of HOCs. RSPA, in keeping with Congressional intent, is concentrating first on wastes that are known to create a substantial risk of harm to human health and the environment and, in this proceeding, RSPA is proposing improved packagings for certain HOCs transported by railroad and identified as regulatory priorities by the EPA.

In a recent report on the cost effectiveness of transporting HOCs in pressure tank cars,[40] the AAR identified 10 of 83 HOCs that are currently transported by rail in non-pressure tank cars without safety improvements such as head protection and thus present a greater than acceptable risk of harm to humans and the environment. The AAR states that these HOCs should be transported by rail in pressure tank cars. In support of its thesis, AAR shows that, within the last 10 years, the release of HOCs in railroad accidents has resulted in environmental clean-up costs exceeding $50 million and that, even though these materials accounted for less than one percent of the total car volume of hazardous materials movements, their releases accounted for 60 percent of all railroad environmental clean-up costs. The AAR report concludes that the net present value of the benefit minus the costs of using a DOT 105A300W specification tank car for the transportation of HOCs over a 30-year lifetime is $60.5 million.

The AAR report suggests that shippers should use DOT 105A300W or DOT 105A500W specification tank cars to minimize the risks of transporting HOCs. RSPA and FRA have recently learned that the railroad and chemical industry associations have adopted a recommendation for the jacketed DOT 105S200W and the non-jacketed DOT 112S200W tank car to transport HOCs. From a puncture resistance standpoint, neither RSPA nor FRA considers that these tank cars provide equivalent puncture resistance, because the DOT 105S200W tank car has the additional protection afforded by its jacket.[41] This view is supported by an RPI report cited earlier.[42] RPI reviewed 20½ years of accident data and concluded that DOT 105A tank cars and non-jacketed DOT 112A tank cars had about the same

[37] The act amended RCRA secs. 3004(d)(1), (e)(1), and (g)(5) (42 U.S.C. 6924(d)(1), (e)(1), and (g)(5)).

[38] RCRA sec. 3004(m)(1) (42 U.S.C. 6924(m)(1)).

[39] Williams, Phillip L. & Burson, James L., "Industrial Toxicology," in James, Robert C., The Toxic Effects of Organic Solvents, Van Norstrand Reinhold, New York, 1985, pp 230–232.

[40] Barkan, Glickman, & Harvey, Benefit-Cost Analysis of Using Type 105 Tank Cars Instead of Type 111 Tank Cars to Ship Environmentally Sensitive Chemicals, R–794, (1991), AAR Document Distribution Center, Chicago, IL.

[41] Simple puncture resistance calculations show that the DOT 105S200W and the 112S340W have about 13 percent more shell puncture resistance than the non-jacketed DOT 112S200W tank car. Adding a jacket to the DOT 112S200W tank car removes this deficit. FRA calculated puncture resistance by multiplying 75 percent of the tensile strength of the steel used in the tank shell by the thickness of the plate. For jacketed tank cars a similar calculation was made for the 11 gauge jacket and the result was added to the tank shell calculation.

[42] Phillips, Review of Pressure Car Shell Puncture Vulnerability.

degree of vulnerability to puncture. The comparability is explained by the average thickness of the steels in the two groups of cars: The DOT 105A has an average shell thickness of 1.49 cm (0.585 inches) and a 0.30 cm (0.119 inches) steel jacket, for a total of 1.79 cm (0.705 inches); the DOT 112A has an average shell thickness of 1.757 cm (0.692 inches). In summary, the thinner 105A car achieves equivalency with the thicker 112A car through the extra protection provided by its jacket.

RSPA and FRA consider that adequate accident damage protection is provided by the use of an 11-gauge metal jacket (in addition to head shields) on DOT 105S tank cars and on DOT 112J and 114J tank cars. The metal jacket and head shields on these tank cars blunt the impacting forces from couplers, wheels, track, and other objects along the carrier's right of way. According to FRA research, this blunting effect is directly proportional to the thickness of the tank jacket or head shield and is effective in preventing tank punctures.[43]

Therefore, to provide equivalent puncture resistance, RSPA is proposing the use of a DOT 105S200W, a jacketed DOT 112S200W, or a 112S340W tank car for HOCs.

Rules developed by the EPA, require the "initial generator" of a hazardous waste to make a determination as to whether or not the waste is restricted from land disposal based on the generator's knowledge of the waste. In such cases, the generator must maintain all supporting data used to make the determination on-site in the generator's files. Under the provisions contained in this notice, shippers (i.e., generators) would retain responsibility for making a determination of whether or not an HOC is restricted from land disposal.

Furthermore, in a 1991 report, the NTSB urged RSPA and FRA to consider environmental contamination and its effects on human health when authorizing the use of tank cars.[44] The NTSB recommended RSPA and FRA:

establish [ ] a working group . . . to expeditiously improve the packaging of the more dangerous products (such as those that are highly flammable or toxic, or pose a threat to health through contamination of the environment). . . .

RSPA and FRA agree with the NTSB that there is a need to consider long-term health effects and environmental risks when authorizing packages for hazardous materials and, in this notice, RSPA proposes the mandatory use, for the transportation of materials that pose a potential harm to human health and the environment, of tank cars that are more likely to survive a railroad accident. On May 15, 1992, the NTSB closed the recommendation to FRA, but urged "FRA to expedite its rulemaking activities under Docket HM-175A. . . ." RSPA and FRA believe that the actions taken in this notice are responsive to the NTSB's letter and recommendation.

RSPA believes that using the EPA list of wastes that are prohibited from land disposal is a consistent and easily understood course of action for targeting potential materials that should be transported in improved packaging.

As to other materials that could potentially cause harm to human health and the environment, RSPA, in cooperation with other DOT agencies and the EPA, will address them in future rulemaking actions when more information on each chemical and its transportation risks becomes available. RSPA asks for comments on the number of tank car shipments, if any, and the tank car specifications used for other materials banned from land disposal by the EPA. This information will help RSPA evaluate the need to develop future rulemaking actions.

X. Implementation of New Requirements.

FRA and RSPA have considered many factors in developing the compliance periods proposed in this notice. These factors include:

- The safety benefits of the proposals made in this notice,
- The need to establish priorities for the proposed modifications,
- The possible impact of these proposals on other safety initiatives mandated by FRA, RSPA, and the railroad industry and the capacity of shops and repair facilities to handle these initiatives,
- Minimizing equipment shortages,
- The realization, based on the best estimates available of the number of tank cars affected by these proposals, that no governmental entity can achieve change overnight merely by mandating it.

For tank cars built on or after the effective date of the final rule published under this docket, the proposed requirements would take effect immediately. For tank cars built prior to the effective date ("existing tank cars"), the compliance dates are summarized in the table below.

Under "Option A," in the table, most of the proposed compliance dates are set at 10 years from the effective date of the final rule under this docket. This 10-year period will allow tank car owners to coordinate necessary retrofit modifications with the "thorough inspection" interval for tank cars in Interchange Rule 88.B.1,[45] and with the retest interval for most single-unit tank car tanks specified in § 173.31(c). A 10-year period also coincides with the duration frequently specified in typical full term tank car leases, whether a true lease or a financing vehicle.

FRA and RSPA believe that certain tank car types and car/commodity combinations should be considered for shorter retrofit periods, with 5 years given to bring existing cars into compliance. "Option B" in the table presents these intervals. For instance, aluminum and nickel tank cars are more vulnerable to tank puncture and tanks used for transporting PIH materials or thermally reactive materials present special hazards.

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[43] Coltman, M., & Hazel, M., Jr., Chlorine Tank Car Puncutre Resistance Evaluation, Report DOT/FRA/ORD-92-11, (1992) Federal Railroad Administration, Washington, DC.

[44] Transport of Hazardous Materials by Rail, National Transportation Safety Board Safety Study, Report NTSB/SS-91/01, National Transportation Safety Board, Washington, DC.

[45] Field Manual of the Interchange Rules, adopted by the Association of American Railroads, Mechanical Division, Washington, DC 1992. At intervals not to exceed ten years, major components of the car must be inspected, including body bolsters and center plates, center sills, crossbearer, cross ties, draft systems and components, end sills, side sills, and trucks.

Implementation of Requirements for Existing Tank Cars

SAFETY FEATURE	Current Requirements	Proposed Requirements	Compliance: Option "A"	Compliance: Option "B"
Tank head protection				
Tank cars currently equipped with half-head protection	Currently authorized in §§ 179.105-5 and 179.100-23	Would be authorized by § 173.31(a)(19)	N/A	N/A
Class 105 tank cars < 18,500 gallons	Head protection not required	Full-head protection would be required by § 173.31(a)(19)	10 years	10 years
Tank cars transporting Division 2.2 materials	Head protection not required	Full-head protection would be required by § 173.31(a)(19)(i)	10 years	10 years
Aluminum and nickel tank cars	Head protection not required	Full-head protection would be required by § 173.31(a)(19)(ii)	10 years	5 years
Tank cars transporting thermally reactive materials	Head protection not required	Full-head protection would be required by § 173.31(a)(19)(ii)	10 years	5 years
Shell protection				
Tank cars transporting materials poisonous by inhalation	Some require shell protection	Would be required by § 173.31(a)(21)	10 years	5 years
Thermal protection systems				
Division 2.1	Thermal protection required, except for Class DOT 105 cars < 18,500 gallons	Would be required by § 173.31(a)(20) based on an analysis	10 years	10 years
Division 2.2	Thermal protection not required	Would be required by § 173.31(a)(20) based on an analysis	10 years	10 years

SAFETY FEATURE	Current Requirements	Proposed Requirements	Compliance: Option "A"	Compliance: Option "B"
Division 2.3	Some require thermal protection	Would be required by § 173.31(a)(20) based on an analysis	10 years	5 years
Thermally reactive materials	Some require thermal protection	Would be required by § 173.31(a)(20) based on an analysis	10 years	5 years
Aluminum and nickel tank cars	Thermal protection not required	Would be required, based on an analysis, if the car is carrying a Class 2 or thermally reactive material	10 years	5 years
Self-energized manways				
	Authorized by § 179.103-5(a)(1)	Would be prohibited by §§ 173.31(a)(21) and 179.103-5.	2 years	2 years
Non-pressure tank cars for PIH materials				
	Authorized for certain materials	Would be prohibited by § 171.102, Special Provisions B72 and B74 and by §§ 173.314 and 173.323	Immediately	Immediately
Grandfather clauses				
	Authorized for certain materials	Would be removed in §§ 172.102, 173.314, and 173.323	Varies: Details are elsewhere in this chart	Varies: Details are elsewhere in this chart
Bottom outlet protection				
	Except for breakage grooves, industry requirements only	Would be required by §§ 173.31(a)(22) and 179.20	AAR standard: immediately; all others: 10 years	AAR standard: immediately; all others: 10 years
Protective coatings on insulated tank cars				
	Required, except for polyurethane foams, by §§ 179.100-4(a) and 179.200-4(a)	Would be required by §§ 173.31(f)(3), 179.100-4(a), and 179.200-4(a)	New construction: immediately; existing cars: when repair requires complete removal of the tank jacket	New construction: immediately; existing cars: when repair requires complete removal of the tank jacket

SAFETY FEATURE	Current Requirements	Proposed Requirements	Compliance: Option "A"	Compliance: Option "B"
Health and environmental risks				
	Authorized in non-pressure Class DOT 111 cars	DOT 105S200W, jacketed 112S200W, or 112S340W pressure tank cars would be required	10 years	10 years

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Substantive comments are solicited on the appropriateness of these compliance periods. Comment is also requested on the means by which proposed compliance might be scheduled, e.g., through a requirement to retrofit at the next retest date, at a change of ownership, or when a tank car is changed to a commodity service that requires the protection afforded by any of the retrofits proposed in this notice.

XI. Review by Section

Part 172

Section 172.101. In the Hazardous Materials Table, Special Provision 23 would be added, in Column 7, of the entries for the following thermally reactive materials:

Acetaldehyde
Acrolein, inhibited
Acrylic acid, inhibited
Acrylonitrile, inhibited
Butylacrylate
Chloroprene, inhibited
Crotonaldehyde, stabilized
Dimethylaminoethyl methacrylate
Dimethylhydrazine, unsymmetrical
Dinitrotoluenes, liquid
Dinitrotoluenes, molten
Dinitrotoluenes, solid
Ethyl acrylate, inhibited
Ethyl methacrylate
Ethyl nitrite solutions
Ethylene oxide, pure or with nitrogen
Ethyleneimine, inhibited
Hydrazine, anhydrous *or* Hydrazine aqueous solutions *with more than 64 per cent hydrazine, by mass*
Hydrogen cyanide, anhydrous, stabilized
Hydrogen peroxide, aqueous solutions with more than 40 per cent but not more than 60 per cent hydrogen peroxide tabilized as necessary).
Hydrogen peroxide, aqueous solutions with not less than 20 per cent but not more than 40 per cent hydrogen peroxide (stabilized as necessary)
Hydrogen peroxide, stabilized or Hydrogen peroxide aqueous solutions, stabilized with more than 60 per cent hydrogen peroxide
Isobutyl acrylate
Isoprene, inhibited
Isopropyl nitrate
Methacrylic acid, inhibited
Methacrylonitrile, inhibited
Methyl acrylate, inhibited
Methyl isopropenyl ketone, inhibited
Methyl methacrylate monomer, inhibited
Methyl vinyl ketone
Motor fuel anti-knock mixtures
Nitroethane
Propylene oxide
Propyleneimine, inhibited
Styrene monomer, inhibited
Sulfur trioxide, inhibited
Sulfur trioxide, uninhibited
Vinyl acetate, inhibited *mixed isomers*
Vinyl ethyl ether, inhibited
Vinyl isobutyl ether, inhibited
Vinyl toluene, inhibited
Vinylidene chloride, inhibited
Vinylpyridenes, inhibited
Vinyltrichlorosilane

Section 172.102. Special Provision 23 would be added to specify that thermally reactive materials must be packaged according to the HMR. Special Provision B63 would be removed, thus prohibiting the use of tank cars without head protection or thermal protection for the transportation of ethyl chloride and ethyl methyl ether.

Part 173

Section 173.31. Several changes would be made to this section.

Paragraph (a)(14) would be amended by adding a new requirement that all tank cars used to transport a PIH material must have a tank test pressure of at least 300 psi. This proposed requirement is consistent with other regulations adopted under Docket HM-181 for PIH liquids.[46] Several shipping names appearing in current § 173.31(a)(14)(i) would be revised for consistency with proper shipping names shown in the § 172.101 table.

Several new paragraphs would be added.

Proposed paragraph (a)(19) would require head protection for all tank cars transporting Class 2 materials or thermally reactive materials and for all tank cars constructed from aluminum and nickel plate.

Proposed paragraph (a)(20) would require a thermal protection system on tank cars transporting Class 2 materials and thermally reactive materials. For thermally reactive materials, the rule would require sufficient thermal protection to preclude the cargo from reaching the point of decomposition or polymerization. As discussed in the preamble, the need for a thermal protection is based on an analysis of the thermal characteristics of the cargo and the tank car. Taking the whole system into consideration, certain existing tank cars may have sufficient thermal resistance to meet these requirements.

Proposed paragraph (a)(21) would require shell puncture resistance protection on tank cars used for transporting PIH materials.

Proposed paragraph (a)(22) would require the removal of internal self-energized manways on certain tank cars within 2 years.

Proposed paragraph (a)(23) would require bottom discontinuity protection for all tank cars. The proposed protection requirements would conform to paragraph E9.00 and E10.00 of the AAR Specifications for Tank Cars, M-1002.

Proposed paragraph (a)(24) would be added to require the use of DOT 105S200W, jacketed 112S200W, or non-jacketed 112S340W specification tank cars for HOCs that are banned from land disposal under the Environmental Protection Agency regulations contained in 40 CFR part 268.

Proposed paragraph (f)(3) would be added to require protective coatings for all types of insulation materials if the complete jacket is removed to effect tank car repairs.

Readers should be aware that RSPA proposed to revise and restructure the provisions contained in current § 173.31

[46] For further information see Performance-Oriented Packaging Docket HM-181, 55 FR 52402 (December 12, 1990).

under Docket HM–201, 58 FR 48485, September 16, 1993. Therefore, any changes adopted under either of the two dockets would be made consistent with the other and in the text ultimately published in the bound volumes of the Code of Federal Regulations.

Section 173.314. The table in paragraph (c) would be amended by removing the individual authorized tank car specifications and adding the authorized tank car classes. This change will ensure that the authorized tank car conforms to § 173.31(a)(14) concerning tank test pressure. The notes following the table would also be amended by removing all tank car "design requirements." Only those notes that apply to filling limits would be retained. The current notes following the table in § 173.314(c) would be redesignated, revised, or removed as follows:

Note 1, no change.

Note 2 would be editorially revised and moved to proposed § 173.314(n).

Note 3 and *Note 4* would be revised and moved to proposed § 173.314(j), applicable to all Division 2.1 (flammable gas) materials.

Note 5 would be editorially changed for clarity.

Note 6 would be editorially revised and moved to proposed § 173.314(o).

Note 7 would be removed. This provision allows the transportation of multi-unit-tank cars tanks (ton containers) by rail and highway only. A provision restricting the transport of multi-unit tank car tanks by air is unnecessary because quantity limitations for these commodities exceeded the maximum allowed by air. RSPA also believes there is no valid reason for not authorizing the transport of these units by water.

Note 8 would be editorially revised and moved to proposed § 173.314(l).

Note 9 would be moved to proposed § 173.314(j) and made applicable to all materials with a Division 2.1 hazard.

Note 10 would be editorially revised and moved to § 173.314(m).

Note 11 would be editorially revised and included in proposed § 173.314(m).

Note 12 would be revised and the filling density requirements would be moved to proposed Note 6, and the design requirements would be moved to proposed § 173.314(k).

Note 13 would be removed to eliminate duplication of the marking requirements prescribed in Special Provision B12, §§ 173.314(a)(5), and 172.332(a)(i)(i).

Note 14 would be removed because it is not referenced in the table.

Note 15 would be included with certain other design requirements applicable to tank cars used for 2.1 materials in proposed § 173.314(j).

Note 16, which is currently reserved, would be removed.

Note 17, which references § 173.314(g) would be removed.

Note 18 would be editorially revised and moved to proposed Note 7.

Note 19 would be editorially revised and moved to proposed Note 8.

Note 20 would be editorially revised and moved to proposed Note 4.

Note 21 would be editorially revised and moved to proposed Note 3.

Note 22, referencing the requirements in § 173.245, would be incorporated into the table under the entry for Division 2.3, Zone A materials.

Note 23 and *Note 24* would be removed based on other proposals in this notice concerning the elimination of grandfather clauses.

Note 25 would be editorially revised and moved to proposed Note 2.

Note 29 and *Note 30* would be removed based on other proposals in this notice concerning the elimination of grandfather clauses.

Section 173.323. Paragraph (c)(1) would be revised to require DOT 105 tank cars used for transporting PIH materials to have a tank test pressure of at least a 300 psi. Authorization for the use of a DOT 111J100W4 tank car would be removed.

Part 179

Section 179.16. Proposed § 179.16 containing the tank head puncture resistance requirements found in current §§ 179.100–23 and 179.105–5 would be added. The test verification requirements in current § 179.105–5(b) and (c) would be editorially revised and placed in a new Appendix A of part 179.

Section 179.18. Proposed § 179.18, containing thermal protection requirements found in current § 179.105–4, would be added. Editorial revisions would be made for clarity and for consistency with other changes proposed in this notice. The proposed regulatory text in this notice references a research report[47] that contains an analytical thermal model. FRA expects that AAR will have the model available on a computer disc by the time any final rule is issued in this docket.

Section 179.20. Proposed § 179.20, containing bottom discontinuity protection requirements, would be added. As proposed in this notice, bottom discontinuity protection must conform to paragraphs E9.00 and E10.00 of the AAR Specifications for Tank Cars, M–1002.

[47] Johnson, M.R., op. cit., Temperatures, Pressures, etc.

Section 179.22. Proposed § 179.22 would be added. This section would consolidate the marking requirements currently in §§ 179.100–21, 179.105–8, 179.200–25, and 179.203–3.

Section 179.100–4. This section would be amended by removing the phrase, "except that a protective coating is not required when foam-in-place insulation that adheres to the tank or jacket is applied" at the end of the first paragraph.

Section 179.100–21. The marking requirements contained in this section would be consolidated with other marking requirements in proposed new § 179.22. Therefore, current § 179.100–21 would be removed.

Section 179.100–23. The head protection requirements contained in this section would be moved to proposed § 179.16(d). Therefore current § 179.100–23 would be removed.

Section 179.103–1. Paragraph (c), which provides that a manway may be located other than at the top of the tank, would be removed.

Section 179.103–2. Paragraph (a) containing manway cover requirements would be revised.

Section 179.103–5. Paragraph (a)(I) would be revised by removing the first two sentences, thus eliminating the authorization for a self-energizing manway located below the liquid level of the cargo in the tank car.

Section 179.105. Current §§ 179.105– through 179.105–8 containing special requirements for DOT 105S, 105J, 111J, 112S, 112J, 112T, 114S, 114J, 114T specification tank cars would be removed because they are unnecessary. The applicable requirements concerning head protection and thermal protection would be moved to proposed §§ 179.16, 179.18, and a new Appendix B to Part 179 as appropriate. The marking requirements would be moved to § 179.22.

Section 179.200–4. This section would be revised by removing the phrase, "except that a protective coating is not required when foam-in-place insulation that adheres to the tank or jacket is applied" at the end of the first paragraph.

Section 179.200–25. The marking requirements contained in this section would be consolidated with other marking requirements in proposed § 179.22. Therefore, current § 179.200–25 would be removed.

Section 179.200–27. The head protection requirements would be contained in proposed § 179.16. Therefore, current § 179.200–27 would be removed.

Section 179.203. Current § 179.203–1 through 179.203–3 containing special

requirements for DOT 111 tank cars are unnecessary and would be removed. The restriction in paragraph (c) against the use of DOT 111 tank cars built after March 1, 1984, for the transportation of flammable gases or ethylene oxide would be incorporated into §§ 173.314 and 173.323. The applicable head protection and thermal protection requirements would be contained in proposed §§ 179.16 and 179.18, respectively. Therefore, current § 179.203–2 is unnecessary and would be removed. The marking requirements would be moved to proposed § 179.22.

XII. Regulatory Analysis and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This proposed rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and, therefore, is not a major rule. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the Docket.

The main benefit found in the regulatory evaluation is that head protection and thermal protection would reduce the risk of rare but catastrophic accidents. The materials and tank cars selected were those which posed large potential risk, even if their accident history has not shown many accidents. One catastrophic accident would be too many.

The rule would significantly reduce the risk of fatalities and injuries from releases of gases and volatile liquids that are PIH, including anhydrous ammonia, and from explosive reactions involving ethylene oxide and thermally reactive materials. The release or explosion of these materials have the potential to affect thousands of people in urban and suburban areas. Preventing just one major release or explosion in a densely populated area could save the lives of hundreds of people and amount to hundreds of millions of dollars in benefits. By reducing the risk of fatalities, the proposal would also reduce the frequency, magnitude, and hence the cost of evacuations, which can affect thousands of people for days. The proposal would also reduce the frequency, magnitude and cost of transportation delays that can affect rail and highway traffic for many hours or even days.

The proposal would also reduce the risk of releasing some hazardous materials, especially Halogenated Organic Compounds, HOC's, into the environment. They are exceptionally costly to clean up once released. In the first year, under Option A, the cost reduction would be about $490,000, and the cost reduction would increase to about $4,900,000 in the tenth and subsequent years. That means that the reduction in cleanup costs alone would more than offset the cost of the proposal after the tenth year.

The proposals under Option A in the accompanying Notice of Proposed Rulemaking could cost up to $79 million in discounted costs over the first 10 years. They could cost up to $9.7 million in the first year, rising to $11.7 million in the tenth year. Each year after that the proposal could cost up to $2 million. Option B would cost more.

Costs, in some cases, have been difficult to estimate and, because of conservative assumptions, may significantly overstate actual costs. For example, the costs of additional protection for new and retrofit tank cars carrying thermally reactive materials account for an estimated $7.3 million annually or about $54.75 million, or 69 percent of total discounted costs under Option A over 10 years. (Seventy-six percent of costs when the weight penalty is excluded.)

However, these costs may be significantly overstated because it has been assumed that all cars carrying thermally reactive materials will require additional protection. In fact, for many tank cars, the testing of the tank car and the cargo at the given performance specification in the rule may require no additional thermal protection measures.

The relative cost-effectiveness of many of the provisions will also be influenced by the actual manner in which cars removed from one type of service cascade into other types of service. Based on available data, including data provided by commenters, the DOT seeks to determine how the requirements of this rule can be made most cost-effective while substantially reducing the risk of sometimes often rare but potentially catastrophic accidents.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Hazardous Materials Transportation Act (HMTA) contains an express preemption provision (49 App. U.S.C. 1804(a)(4)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazard materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(4) The written notification, recording, and reporting of unintentional release in transportation of hazardous materials; or

(5) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

This proposed rule concerns design, manufacturing, repairing, and other requirements for packages represented as qualified for use in the transportation of hazardous materials.

If adopted as final, this rule would preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d)) as the Federal requirements.

The HMTA (49 App. U.S.C. 1804(a)(5)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the ninetieth day following the date of issuance. RSPA requests comments on what the effective date of Federal preemption should be for the requirements in this proposed rule that concern covered subjects. RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

Based on limited information concerning the size and nature of the entities likely to be affected by this proposed rule, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The major impacts of this rule center on tank car owners, which are primarily large corporations, and on offerers and transporters of hazardous materials in tank cars. This certification is subject to modification as a result of a review of comments received in response to this proposal.

D. Intermodalism/Modal Diversion

FRA reviewed the proposals in this notice to investigate their potential for diverting rail hazardous materials traffic to truck. FRA's concern was that, if diversion was likely, the safety impacts on highway transportation would need

to be studied to fulfill the Department's responsibility for multi-modal systems safety. The study examined the amount of traffic moving by rail, the average distance each chemical moves, proportionate rail share, and the number of tank cars estimated to require modification if the proposals in this rule are made final. The study concluded that, for most commodities, disruption to rail service would occur if modification were required within one year.[48] As long as the compliance period exceeds one year, FRA believes that sufficient cars will be available to handle the projected traffic volumes. A copy of FRA's paper, "Divertibility of Certain Hazardous Materials," is available in the docket for review by interested persons.

E. Paperwork Reduction Act

The information collection requirements contained in proposed §§ 179.16 and 179.18 are being submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, Attention: Desk Officer for the Department of Transportation. Comments must reference the title of this notice, "Crashworthiness Protection Requirements for Tank Cars."

F. Regulatory Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I would be amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

2. In the § 172.101 Hazardous Materials Table, the following changes are made.

a. For the following entries, Special Provision "23" would be added in Column (7), in appropriate numeric sequence:

Acetaldehyde
Acrolein, inhibited
Acrylic acid, inhibited
Acrylonitrile, inhibited
Butylacrylate
Chloroprene, inhibited
Crotonaldehyde, stabilized
Dimethylaminoethyl methacrylate
Dimethylhydrazine, unsymmetrical
Dinitrotoluenes, liquid
Dinitrotoluenes, molten
Dinitrotoluenes, solid
Ethyl acrylate, inhibited
Ethyl methacrylate
Ethyleneimine, inhibited
Hydrazine, anhydrous or Hydrazine aqueous solutions with more than 64 percent hydrazine by mass
Hydrogen cyanide, anhydrous, stabilized
Hydrogen peroxide, aqueous solutions with more than 40 per cent but not more than 60 percent hydrogen peroxide (stabilized as necessary)
Hydrogen peroxide, aqueous solutions with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary)
Hydrogen peroxide, stabilized or Hydrogen peroxide aqueous solutions, stabilized with more than 60 percent hydrogen peroxide
Isobutyl acrylate
Isoprene, inhibited
Isopropyl nitrate
Methacrylic acid, inhibited
Methyl acrylate, inhibited
Methyl isopropenyl ketone, inhibited
Methyl methacrylate monomer, inhibited
Methyl vinyl ketone
Motor fuel anti-knock mixtures
Nitroethane
Propylene oxide
Propyleneimine, inhibited
Styrene monomer, inhibited
Sulfur trioxide, inhibited
Sulfur trioxide, uninhibited
Vinyl acetate, inhibited
Vinyl ethyl ether, inhibited
Vinyl isobutyl ether, inhibited
Vinyl toluene, inhibited *mixed isomers*
Vinylidene chloride, inhibited
Vinylpyridenes, inhibited
Vinyltrichlorosilane

b. For the entry "Ethylene oxide, pure or with nitrogen", Special Provision "23" would be added in Column (7), in appropriate numeric sequence.

c. For the entries "Ethyl nitrite solutions" and "Methacrylonitrile, inhibited", Special Provision "23" would be added in Column (7), in appropriate numeric sequence.

3. In § 172.102, in paragraph (c)(1), Special Provision 23 would be added in proper numeric sequence, to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

23 This material is thermally reactive and must be packaged as such under the provisions of this subchapter.

* * * * *

§ 172.102 [Amended]

4. In addition, in § 172.102, in paragraph (c)(3), Special Provision "B63" would be removed.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

5. The authority citation for part 173 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 1817; 49 CFR part 1, unless otherwise noted.

6. In § 173.31, paragraph (a)(14) would be revised and paragraphs (a)(19) through (a)(24), and (f)(3) would be added to read as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

(a) * * *

(14) Tank test pressure must be equal to or greater than the greatest of the following:

(i) Except for shipments of anhydrous hydrogen chloride, refrigerated liquid;

[48] Of the many commodities affected by this proposal, 28 of those moving in the largest volume were selected for examination; 27 of the 28 commodities studied showed a relative insensitivity to diversion, at least as caused by the proposals in this notice. The remaining commodity, hydrogen cyanide, is not authorized to move in a cargo tank or a portable tank.

carbon dioxide, refrigerated liquid; ethylene, refrigerated liquid; hydrogen; or vinyl fluoride, 133 percent of the sum of lading vapor pressure at the reference temperature of 46°C (115°F) for non-insulated tank cars or 41°C (105°F) for insulated tank cars plus static head, plus gas padding pressure in the vacant space of tank car;

(ii) 133 percent of the maximum loading or unloading pressure, whichever is greater;

(iii) 300 p.s.i. for materials that are poisonous by inhalation;

(iv) The minimum pressure prescribed by the specification in Part 179 of this subchapter; or

(v) The minimum test pressure prescribed for the specific hazardous material in the applicable packaging section in Subpart F or Subpart G of this part.

* * * * *

(19) *Tank head puncture resistance requirements.* The following tank cars must have a tank head puncture resistance system meeting the requirements of § 179.16 of this subchapter, or a tank head puncture resistance system meeting the requirements of Part 179 of this subchapter in effect at the time of installation.

(i) Except as otherwise provided in this section, tank cars used for transporting Class 2 materials must conform to the requirements of § 179.16 of this subchapter. Tank cars used for transporting Class 2 materials that did not require a tank head puncture resistance system prior to [EFFECTIVE DATE OF FINAL RULE] must have a tank head puncture resistance system installed that conforms to the requirements of § 179.16 of this subchapter no later than [10 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

(ii) Tank cars that are used for transporting thermally reactive materials or that are constructed of aluminum or nickel plate must have a tank head puncture resistance system conforming to the requirements of § 179.16 of this subchapter no later than [10 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

(20) *Thermal protection requirements.* With the exception of Class DOT 107A tank cars, tank cars used for transporting Class 2 materials or thermally reactive materials must conform to the requirements of § 179.18 of this subchapter. In addition, tank cars used for transporting thermally reactive materials must have sufficient thermal resistance to prevent the cargo within the tank car from reaching the temperature of decomposition or polymerization within a 100-minute pool fire or a 30-minute torch fire. The use of computer assisted thermal modeling is an acceptable approach for analyzing the fire effects on the tank car. Tank cars used for transporting a Class 2 material or a thermally reactive material that did not require a thermal protection system prior to [EFFECTIVE DATE OF FINAL RULE] must have a thermal protection system installed that conforms to the requirements of § 179.18 of this subchapter no later than [10 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

(21) *Shell puncture resistance requirements for materials poisonous by inhalation.* In addition to the requirements of paragraph (a)(20) of this section, each tank car used for transporting a material that is poisonous by inhalation must have a jacket that conforms to § 179.100–4 of this subchapter. Bottom outlets are not authorized. Tank cars that did not require a tank jacket prior to [EFFECTIVE DATE OF FINAL RULE] must have a tank jacket installed that conforms to the requirements of § 179.100–4 of this subchapter no later than [10 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

(22) *Self-energized manways.* Tank cars constructed before [EFFECTIVE DATE OF FINAL RULE] with a self-energized manway located below the liquid level of the lading must have the self-energized manway removed no later than [2 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

(23) *Bottom discontinuity protection.* Tank cars must have bottom discontinuity protection that conforms to the requirements of E9.00 and E10.00 of the AAR Specifications for Tank Cars. Tank cars that do not require bottom discontinuity protection under the terms of Appendix Y of the AAR Specifications for Tank Cars as of [EFFECTIVE DATE OF FINAL RULE] must conform to these requirements no later than [10 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

(24) *Halogenated organic compounds forbidden from land disposal.* Notwithstanding any other requirement of this subchapter, tank cars used for the transportation of HOCs that are forbidden from land disposal under EPA regulations contained in 40 CFR Part 268, must conform to a DOT 105S200W, DOT 112S200W with a jacket that conforms to § 179.100–4 of this subchapter, or DOT 112S340W specification tank car no later than [10 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

* * * * *

(f) * * *

(3) *Protective coatings.* Unless the exterior tank car shell or interior tank car jacket has a protective coating, after a repair that requires the complete removal of the tank car jacket, the exterior tank car shell and the interior tank car jacket must have a protective coating applied to prevent the deterioration of the tank shell and tank jacket.

7. In § 173.314, the section heading and paragraph (c) would be revised and paragraphs (j) through (o) would be added to read as follows:

§ 173.314 Compressed gases in tank cars and multi-unit tank cars.

* * * * *

(c) *Authorized gasses, filling limits for tank cars.* A compressed gas in a tank car or a multi-unit tank car must be offered for transportation in accordance with § 173.31 and this section. The named gases must be loaded and offered for transportation in accordance with the following table:

BILLING CODE 4910–60–P

Proper shipping name	Outage and filling limits (see Note 1)	Authorized tank car class
Ammonia, anhydrous, or ammonia solutions > 50 percent ammonia	Note 2	105, 112, 114
	Note 3	106
Ammonia solutions with > 35 percent ammonia by mass	Note 3	105, 109, 112, 114
Argon, compressed	Note 4	107
Boron trichloride	Note 3	105, 106
Carbon dioxide, refrigerated liquid	Note 5	105
Chlorine	Note 6	105
	125	106
Chlorine trifluoride	Note 3	106, 110
Chlorine pentafluoride	Note 3	106, 110
Dimethylamine, anhydrous	Note 3	105, 106, 112
Dimethyl ether	Note 3	105, 106, 110
Dinitrogen tetroxide, inhibited	Note 3	105, 106, 110
Division 2.1 materials not specifically identified in this table.	Note 3	105, 106, 110, 112, 114
Division 2.2 materials not specifically identified in this table.	Note 3	105, 106, 109, 110, 112, 114
Division 2.3 Zone A materials not specifically identified in this table.	None	See § 173.245
Division 2.3 Zone B materials not specifically identified in this table.	Note 3	105, 106, 110, 112, 114
Division 2.3 Zone C materials not specifically identified in this table.	Note 3	105, 106, 110, 112, 114
Division 2.3 Zone D materials not specifically identified in this table.	Note 3	105, 106, 109, 110, 112, 114
Ethylamine	Note 3	105, 106, 110, 112, 114
Helium, compressed	Note 4	107
Hydrogen	Note 4	107
Hydrogen chloride, refrigerated liquid	Note 7	105
Hydrogen sulphide, liquified	68	106
Methylamine, anhydrous	Note 3	105, 106, 112
Methyl bromide	Note 3	105, 106
Methyl chloride	Note 3	105, 106, 1121
Methyl mercaptan	Note 3	105, 106
Nitrogen, compressed	Note 4	107
Nitrosyl chloride	124	105
	110	106
Nitrous oxide, refrigerated liquid	Note 5	105
Oxygen, compressed	Note 4	107
Phosgene	Note 3	106
Sulfur dioxide, liquified	125	105, 106, 110
Sulfuryl fluoride	120	105
Vinyl fluoride, inhibited	Note 8	105

Notes:

1 The filling density for liquefied gases is hereby defined as the weight of gas in the tank to the weight of water the tank will hold. For determining the water capacity of the tank in pounds, the weight of one gallon of water at 15.55 °C (60 °F.) in air is 3.777 kg (8.32828 pounds).

2 The liquefied gas must be so loaded so that the outage is at least two percent of the total capacity of the tank at the reference temperature of 46 °C (115 °F.) for non-insulated tanks and 41 °C (105 °F.) for insulated tanks.

3 The requirements of § 173.24b(a) apply.

4 The gas pressure at 54.44 °C (130 °F.) in any non-insulated tank car may not exceed 7/10 of the marked test pressure, except that a tank may be charged with helium to a pressure 10 percent in excess of the marked maximum gas pressure at 54.44 °C (130 °F.) of each tank.

5 The liquid portion of the gas at −17.77 °C (0 °F.) must not completely fill the tank.

6 The maximum permitted filling density is 125 percent. The quantity of chlorine loaded into a single unit-tank car may not be loaded in excess of the normal lading weights nor in excess of 81.65 Mg (90 tons).

7 89 percent maximum to 80.1 percent minimum at a test pressure of 620.53 kPa (90 psig), when offered for transportation.

8 59.6 percent maximum to 53.6 percent minimum at a test pressure of 723.95 kPa (105 psig), when offered for transportation.

* * * * *

(j) *Special requirements for flammable gases.* For single unit tank cars, interior pipes of loading and unloading valves, sampling devices, and gaging devices with an opening for the passage of the cargo exceeding 1.52 mm (0.060 inch) diameter must be equipped with excess flow valves. For single unit tank cars constructed before December 30, 1971, gaging devices must conform to this paragraph no longer than [10 YEARS FROM EFFECTIVE DATE OF FINAL RULE]. The protective housing cover must be provided with an opening, with a weatherproof cover, above each safety relief valve that is concentric with the discharge of the safety relief valve and that has an area at least equal to the valve outlet area. Class 109 tank cars and tank cars manufactured from aluminum or nickel plate are not authorized.

(k) *Special requirements for chlorine.* The requirements of § 173.31(a)(20) do not apply. Tank cars built after September 30, 1991, must have an insulation system consisting of 5.08 cm (2 inches) glass fiber placed over 5.08 cm (2 inches) of ceramic fiber. Tank cars must have excess flow valves on the interior pipes of liquid discharge valves. Tank cars constructed to a DOT 105A500W specification may be marked as a DOT 105A300W specification with the size and type of safety relief valves required by the marked specification.

(l) *Special requirements for hydrogen sulphide.* Each multi-unit tank car must be equipped with adequate safety relief devices of the fusible plug type having a yield temperature not over 76.66 °C (170 °F.), and not less than 69.44 °C (157 °F.). Each device must be resistant to extrusion of the fusible alloy and leak tight at 55 °C (130 °F.). Each valve outlet must be sealed by a threaded solid plug. In addition, all valves must be protected by a metal cover.

(m) *Special requirements for nitrosyl chloride.* Single unit tank cars and their associated service equipment, such as venting, loading and unloading valves, and safety relief valves, must be made of metal or clad with a material that is not subject to rapid deterioration by the lading. Multi-unit tank car tanks must be nickel clad and have safety relief devices incorporating a fusible plug having a yield temperature of 79.44 °C (175 °F.). Safety relief devices must be vapor tight at 54.44 °C (130 °F.).

(n) *Special requirements for hydrogen chloride.* Each tank car must be equipped with one or more safety relief devices. The discharge outlet for each safety relief device must be connected to a manifold having a non-obstructive discharge area of at least 1.5 times the total discharge area of the safety relief devices connected to the manifold. All manifolds must be connected to a single common header having a non-obstructed discharge pointing upward and extending above the top of the car. The header and the header outlet must each have a non-obstructive discharge area at least equal to the total discharge area of the manifolds connected to the header. The header outlet must be equipped with an ignition device that will instantly ignite any hydrogen discharged through the safety relief device.

(o) *Special requirements for carbon dioxide, refrigerated liquid and nitrous oxide, refrigerated liquid.* The requirements of § 173.31(a)(20) do not apply. Each tank car must have an insulation system so that the thermal conductance is not more than 0.03 B.t.u. per square foot per hour, per degree fahrenheit temperature differential. Each tank car must be equipped with one safety relief valve set to open at a pressure not exceeding 75 percent of the tank test pressure and one rupture disc set to function at a pressure less than the tank test pressure. The discharge capacity of each safety relief device must be sufficient to prevent building up of pressure in the tank in excess of 82.5 percent of the test pressure of the tank. Tanks must be equipped with two regulating valves set to open at a pressure not to exceed 350 psi on DOT 105A500W tanks and at a pressure not to exceed 400 psi on DOT 105A600W tanks. Each regulating valve and safety relief device must have its final discharge piped to the outside of the protective housing.

8. In § 173.323, paragraph (c)(1) would be revised to read as follows:

§ 173.323 Ethylene oxide.

* * * * *

(c) * * *

(1) *Tank cars.* Class DOT 105 tank cars. Notwithstanding the requirements of § 173.31(a)(14) of this subchapter, each tank car must have a tank test pressure of at least 300 psi no later than [10 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

9. The authority citation for part 179 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

10. Section 179.16 would be added to read as follows:

§ 179.16 Tank head puncture resistance systems.

(a) *Performance standard.* When the regulations in this subchapter require a tank head puncture resistance system, the system shall be capable of sustaining, without any loss of cargo, coupler-to-tank head impacts at relative car speeds of 18 mph when:

(1) The weight of the impact car is at least 119,294.79 kg (263,000 pounds);

(2) The impacted tank car is coupled to one or more backup cars that have a total weight of at least 217,724.33 kg (480,000 pounds) and the hand brake is applied on the first car; and

(3) The impacted tank car is pressurized to at least 100 psi.

(b) Compliance with the requirements of paragraph (a) of this section shall be verified by full scale testing according to Appendix A of this part or by installing full head shields or full tank head jackets on each end of the tank car conforming to the following—

(1) The tank head puncture resistance system must be at least ½-inch thick, shaped to the contour of the tank head and made from steel having a tensile strength greater than 55,000 psi.

(2) The securement of the tank head puncture resistance system must meet the impact test requirements of the AAR Specifications for Tank Cars, paragraph AAR 24–5.

(3) The workmanship requirements of the AAR Specifications for Design, Fabrication and Construction of Freight Cars apply.

11. Section 179.18 would be added to read as follows:

§ 179.18 Thermal protection systems.

(a) *Performance standard.* When the regulations in this subchapter require thermal protection on a tank car, the tank car must have sufficient thermal resistance that an analysis conforming to paragraph (b) of this section shows that there will be no release of any cargo within the tank car, except release through the safety relief valve, when subjected to:

(1) A pool fire for 100-minutes; and

(2) A torch fire for 30-minutes.

(b) *Thermal Analysis.* (1) Compliance with the requirements of paragraph (a) of this section shall be verified by modelling the fire effects on the entire surface of the tank car according to the procedures outlined in [*a future document for incorporation by reference based on "Temperatures, Pressures and Liquid Levels of Tank Cars Engulfed in Fires", NTIS DOT/FRA/OR&D–84/08.11, (1984), Federal Railroad Administration, Washington D.C.*]. The analysis must also consider the fire effects on and the heat flux through tank discontinuities, protective housings, underframes, metal jackets, insulation, and thermal protection. A complete record of each analysis shall be made, retained and, upon request, made available for inspection and copying by an authorized representative of the Department.

(2) When the analysis shows the thermal resistance of the car does not conform to paragraph (a) of this section, the thermal resistance of the car must be increased by using a listed material under paragraph (c) of this section or by testing an unlisted system and verifying it according to appendix B of this part.

(c) *Systems that no longer require test verification.* RSPA maintains a list of thermal protection systems that comply with the requirements of Appendix B of this Part and that no longer require test verification. Information necessary to equip tank cars with one of these systems is available in the Dockets Unit, room 8421, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590–0001, between the hours of 8 a.m. and 5 p.m., Monday through Friday.

(d) *Exterior tank car color.* Notwithstanding the provisions of § 179.101–1(a) Table, Note 4, each DOT 112 and 114 specification tank car equipped with a thermal protection system that complies with the requirements of paragraph (a) of this section is not required to be painted white.

12. Section 179.20 would be added to read as follows:

§ 179.20 Service equipment; protection systems.

If an applicable tank car specification authorizes location of filling or discharge connections in the bottom shell, the connections must be designed, constructed, and protected according to paragraphs E9.00 and E10.00 of the AAR Specifications for Tank Cars, M–1002.

13. Section 179.22 would be added to read as follows:

§ 179.22 Marking.

In addition to any other marking requirement in this subchapter, the following marking requirements apply:

(a) Each tank car must be marked according to the requirements in Appendix C of the AAR Specifications for Tank Cars.

(b) Each tank car that is equipped with a tank head puncture resistance system must have the letter "S" substituted for the letter "A" in the specification marking.

(c) Each tank car that is equipped with a tank head puncture resistance system and a thermal protection system enclosed in a metal jacket must have the letter "J" substituted for the letter "A" or "S" in the specification marking.

(d) Each tank car that is equipped with a tank head puncture resistance system and a non-jacketed thermal protection system must have the letter "T" substituted for the letter "A" or "S" in the specification marking.

14. In § 179.100–4, in paragraph (a), the last sentence would be amended by removing the phrase "except that a protective coating is not required when foam-in-place insulation that adheres to the tank or jacket is applied".

15. In § 179.103–1, paragraph (c) would be removed and reserved.

16. In § 179.103–2, paragraph (a) would be revised to read as follows:

§ 179.103–2 Manway cover.

(a) Manway cover must be of approved design.

* * * * *

17. In § 179.103–5, paragraph (a)(1) would be amended by removing the first two sentences.

18. In § 179.200–4, in paragraph (a), the last sentence would be amended by removing the phrase ", except that protective coating is not required when foam-in-place insulation that adheres to the tank or jacket is applied".

19. In addition to the amendments set forth above, part 179 would be amended by removing the following sections:

§ 179.100–21
§ 179.100–23
§ 179.105
§ 179.105–1
§ 179.105–2
§ 179.105–3
§ 179.105–4
§ 179.105–5
§ 179.105–6
§ 179.105–7
§ 179.105–8
§ 179.200–25
§ 179.200–27
§ 179.203
§ 179.203–1
§ 179.203–2
§ 179.203–3

20. Appendix A to part 179 would be added to read as follows:

Appendix A to Part 179—Procedures for Tank Head Puncture Resistance Test

This test procedure is designed to verify the integrity of new or untried tank head puncture resistance systems and to test for system survivability after coupler-to-tank head impacts at relative speeds of 18 mph.

(a) *Tank head puncture resistance test.* A tank head puncture resistance system must be tested under the following conditions:

(1) The ram car used must weigh at least 119,294.79 kg (263,000 pounds), be equipped with a coupler, and duplicate the condition of a conventional draft sill including the draft yoke and draft gear. The coupler must protrude from the end of the ram car so that it is the leading location of perpendicular contact with the standing tank car.

(2) The impacted test car must be loaded with water at six percent outage with internal pressure of at least 100 psi and coupled to one or more "backup" cars which have a total weight of 217,724.33 kg (480,000 pounds) with hand brakes applied on the first car.

(3) At least two separate tests must be conducted with the coupler on the vertical centerline of the ram car. One test must be conducted with the coupler at a height of 53.34 cm (21 inches), plus-or-minus one-inch, above the top of the sill; the other test must be conducted

with the coupler height at 78.74 cm (31 inches), plus-or-minus 2.54 cm (1 inch) above the top of the sill. If the combined thickness of the tank head and any additional shielding material is less than the combined thickness on the vertical centerline of the car, a third test must be conducted with the coupler positioned so as to strike the thinnest point.

(b) One of the following test procedures must be applied:

Minimum weight of attached ram cars in kg (pounds).	Minimum velocity of impact in km/hour (mph).	Restrictions
119,294.79 (263,000) . . .	28.96 (18)	One ram car only
155,582.18 (343,000) . . .	25.49 (16)	One ram car or one car plus one rigidly attached car.
311,164.36 (686,000) . . .	22.53 (14)	One ram car plus one or more rigidly attached cars.

(c) A test is successful if there is no visible leak from the standing tank car within one hour after impact.

22. Appendix B to part 179 would be added to read as follows:

Appendix B to Part 179—Procedures for Simulated Pool and Torch Fire Testing

This test procedure is designed to measure the thermal effects of new or untried thermal protection systems and to test for system survivability when exposed to a 100-minute pool fire and a 30-minute torch fire.

(a) *Simulated pool fire test.* (1) A pool fire environment must be simulated in the following manner:

(i) The source of the simulated pool fire must be hydrocarbon fuel with a flame temperature of 871 °C (1600 °F) plus-or-minus 37.8 °C (100 °F) throughout the duration of the test.

(ii) A square bare plate with thermal properties equivalent to the material of construction of the tank car must be used. The plate dimensions must be not less than one foot by one foot by nominal 1.59 cm (⅝-inch) thick. The bare plate must be instrumented with not less than nine thermocouples to record the thermal response of the bare plate. The thermocouples must be attached to the surface not exposed to the simulated pool fire and must be divided into nine equal squares with a thermocouple placed in the center of each square.

(iii) The pool fire simulator must be constructed in a manner that results in total flame engulfment of the front surface of the bare plate. The apex of the flame must be directed at the center of the plate.

(iv) The bare plate holder must be constructed in such a manner that the only heat transfer to the back side of the bare plate is by heat conduction through the plate and not by other heat paths.

(v) Before the bare plate is exposed to the simulation pool fire, none of the temperature recording devices may indicate a plate temperature in excess of 37.8 °C (100 °F) nor less than 0 °C (32 °F).

(vi) A minimum of two thermocouple devices must indicate 427 °C (800 °F) after not less than twelve minutes nor more than fourteen minutes of simulated pool fire exposure.

(2) A thermal protection system must be tested in the simulated pool fire environment described in paragraph (a)(1) of this appendix in the following manner:

(i) The thermal protection system must cover one side of a bare plate as described in paragraph (a)(1)(ii) of this appendix.

(ii) The non-protected side of the bare plate must be instrumented with not less than nine thermocouples placed as described in paragraph (a)(1)(ii) of this appendix to record the thermal response of the plate.

(iii) Before exposure to the pool fire simulation, none of the thermocouples on the thermal protection system configuration may indicate a plate temperature in excess of 37.8 °C (100 °F) nor less than 0 °C (32 °F).

(iv) The entire surface of the thermal protection system must be exposed to the simulated pool fire.

(v) A pool fire simulation test must run for a minimum of 100-minutes. The thermal protection system must retard the heat flow to the plate so that none of the thermocouples on the non-protected side of the plate indicate a plate temperature in excess of 427 °C (800 °F).

(vi) A minimum of three consecutive successful simulation fire tests must be performed for each thermal protection system.

(b) *Simulated torch fire test.* (1) A torch fire environment must be simulated in the following manner:

(i) The source of the simulated torch must be a hydrocarbon fuel with a flame temperature of 1,204 °C (2200 °F) plus-or-minus 37.78 °C (100 °F) throughout the duration of the test. Furthermore, torch velocities must be 64.37 km/h ± 16.09 km/h (40 mph ± 10 mph) throughout the duration of the test.

(ii) A square bare plate with thermal properties equivalent to the material of construction of the tank car must be used. The plate dimensions must be at least four feet by four feet by nominal 1.59 cm (⅝-inch) thick. The bare plate must be instrumented with not less than nine thermocouples to record the thermal response of the plate. The thermocouples must be attached to the surface not exposed to the simulated torch and must be divided into nine equal squares with a thermocouple placed in the center of each square.

(iii) The bare plate holder must be constructed in such a manner that the only heat transfer to the back side of the plate is by heat conduction through the plate and not by other heat paths. The apex of the flame must be directed at the center of the plate.

(iv) Before exposure to the simulated torch, none of the temperature recording devices may indicate a plate temperature in excess of 37.8 °C (100 °F) or less than 0 °C (32 °F).

(v) A minimum of two thermocouples must indicate 427 °C (800 °F) in a time of four plus-or-minus five minutes of torch simulation exposure.

(2) A thermal protection system must be tested in the simulation torch fire

environment described in paragraph (b)(1) of this appendix in the following manner:

(i) The thermal protection system must cover one side of the bare plate identical to that used to simulate a torch fire under paragraph (b)(1)(ii) of this appendix.

(ii) The back of the bare plate must be instrumented with not less than nine thermocouples placed as described in paragraph (b)(1)(ii) of this appendix to record the thermal response of the material.

(iii) Before exposure to the simulated torch, none of the thermocouples on the back side of the thermal protection system configuration may indicate a plate temperature in excess of 37.8 °C (100 °F) nor less than 0 °C (32 °F).

(iv) The entire outside surface of the thermal protection system must be exposed to the simulated torch fire environment.

(v) A torch simulation test must be run for a minimum of 30-minutes. The thermal protection system must retard the heat flow to the plate so that none of the thermocouples on the backside of the bare plate indicate a plate temperature in excess of 427 °C (800 °F).

(vi) A minimum of two consecutive successful torch simulation tests must be performed for each thermal protection system.

Issued in Washington, DC, on September 29, 1993, under authority delegated in 49 CFR part 106, Appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93–24397 Filed 10–7–93; 8:45 am]

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Part VI

Department of Transportation

Coast Guard

46 CFR Parts 30, 31 and 32

Requirements for Longitudinal Strength, Plating Thickness, and Periodic Gauging for Certain Tank Vessels; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30, 31 and 32

[CGD 91-209]

Requirements for Longitudinal Strength, Plating Thickness, and Periodic Gauging for Certain Tank Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing minimum longitudinal strength and plating thickness standards for tank vessels that carry oil cargoes. The regulations also require the periodic gauging of these vessels after they reach the age of 30 years. The regulations are established as required by the Oil Pollution Act of 1990 (OPA 90). The purpose of the regulations is to reduce the likelihood of oil spills from structural failure of tank vessels, particularly in the case of unclassed tank barges.

EFFECTIVE DATE: November 8, 1993.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593-0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Thomas Jordan, Project Manager, at (202) 267-6751 or Phil Alman, G-MTH-3, at (202) 267-2988.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Thomas Jordan, Project Manager, and Pamela M. Pelcovits, Project Counsel, Oil Pollution Act (OPA 90) Staff.

Regulatory History

On March 23, 1993, the Coast Guard issued a notice of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 54). The Coast Guard received 26 public comments on the proposal. A public hearing was not requested, and one was not held.

Statutory Basis and Purpose

Section 4109 of the Oil Pollution Act of 1990 (Pub. L. 101-380) (OPA 90), found as a statutory note following 46 U.S.C. 3703, requires the issuance of regulations on two matters related to the structural integrity of vessels that carry oil in bulk as cargo or cargo residue. These new regulations will: (1) Establish minimum standards for plating thickness, and (2) require periodic gauging of the plating thickness of all tank vessels over 30 years old operating on the navigable waters of the United States or the waters of the Exclusive Economic Zone.

The purpose of the regulations is to ensure adequate structural integrity of tank vessels throughout their service life. This will reduce the likelihood of a vessel breaking apart and spilling a substantial quantity of its cargo oil. The statute also requires the regulations to be consistent with generally recognized principles of international law. Additionally, the legislative history of the section stipulates that the Coast Guard should consider gaugings by classification societies, if equivalent to the Secretary's requirements, to be acceptable evidence of compliance.

In accordance with its authority under section 4109 of OPA 90 and its additional authority to establish standards for structural integrity under 46 U.S.C. 3306, the Coast Guard is establishing requirements in this final rule that address these matters.

Discussion of Comments and Changes

Twenty-six public comments were received in response to the NPRM. The Coast Guard has reviewed all of the comments and, in some instances, revised the proposed regulations as appropriate. The comments have been grouped by issue, and are discussed as follows.

1. Comments From Classification Societies

Two classification societies specifically commented on the NPRM: the American Bureau of Shipping (ABS) and Det Norske Veritas (DNV) of Norway.

ABS made a general comment that vessel scantlings for ocean service are not always heavier than for inland service, but generally require more robust attachments (welding, bracketing, etc.). ABS also commented that it might have original construction information on barges built in the 1950s and 1960s (even though such barges may not be classed today) and, therefore, may be able to assist current owners of these barges.

DNV pointed out that the Coast Guard does recognize and approve DNV for certain purposes (*e.g.*, case-by-case load line assignments in accordance with the International Convention on Load Lines, fishing vessel inspections, and tonnage admeasurement). DNV believes that it is in the best economic interests of U.S. tank vessel owners and operators to have competitive services available from other classification societies and recommends that the proposed regulations allow for Coast Guard-approved societies other than ABS. The Coast Guard agrees that other classification societies in addition to ABS can be approved for purposes of the structural evaluations required by these regulations. Therefore, §§ 31.10-21a(d)(2) and (f), and § 32.59-1(a) have been revised accordingly.

2. "As-Built" Versus "As-Required" Standards

The NPRM proposed that the minimum section modulus and thickness standards be based upon the original "as-built" construction of the vessel. However, eight operators, as well as ABS, recommended that the standards be based upon the "as-required" standards of the appropriate Rules for the vessel's present service routes. The reason for this is that it is common practice for inland barges to be deliberately overbuilt when constructed, especially with thicker hull plating. These barges would, therefore, be penalized by having to maintain higher section modulus and plating thicknesses than barges built to the exact Rule requirements. Further, several comments were concerned that the proposed regulations left it solely to the discretion of the local Officer in Charge of Marine Inspection (OCMI) to decide whether or not an overbuilt vessel would be evaluated against "as-required" standards or "as-built" standards. These comments wanted to ensure that their overbuilt barges would be evaluated against appropriate standards and not be subject to a discretionary decision.

The Coast Guard concurs that "as required" standards in accordance with the current applicable Rules of a recognized classification society are an acceptable basis for any evaluation, regardless of the vessel's original construction. Section 32.59-1 has been revised accordingly. However, it will still be the responsibility of vessel operators to prepare the appropriate engineering analysis to establish the "as required" design of their vessels.

3. Implementing Schedule

Six comments stated that the proposed implementation schedule would result in numerous unscheduled drydockings, resulting in significant docking and gas-freeing costs. Two comments also noted that the legislative history of section 4109 indicates a

Congressional intention for the requirements to conform to existing inspection schedules to ensure minimum disruption of operations.

The Coast Guard agrees with these comments. Section 31.10–21a(b)(1) has been revised so that the initial gauging is now required no later than the next drydocking inspection after the vessel midbody becomes 30 years old.

4. Periodic Gauging Schedule

Five comments pointed out that ABS requires gauging surveys long before 30 years of age and recommended that the proposed regulations be revised to require gaugings at 20 years.

The Coast Guard does not concur with this suggestion. Section 4109 of OPA 90 specifically requires gauging of vessels more than 30 years old. However, the minimum thickness and section modulus standards apply to all vessels regardless of age.

Three comments pointed out that the proposed 5-year regauging interval does not necessarily coincide with the inspection schedules for all tank vessels (*e.g.*, the inspection schedule for double-hulled vessels in freshwater service is 10 years). The Coast Guard agrees with this comment and has revised § 31.10–21a(b)(2) accordingly.

5. Section Modulus Standards

One comment stated that the proposed section modulus requirements exceeded the statutory mandate of OPA 90. The Coast Guard agrees that a section modulus analysis is not specifically required by section 4109 of OPA 90; however, requiring a section modulus analysis is within the authority of 46 U.S.C. 3703. As previously noted, section 4109 of OPA 90 is a statutory footnote to 46 U.S.C. 3703 because it simply reflects a mandate for specific regulatory action under that broader statutory provision. Section 4109 of OPA 90 was prompted by the failure of the longitudinal hull structure of a 37-year-old tank barge, and section modulus analysis is the appropriate engineering approach to evaluating the longitudinal strength of a hull.

The same comment also included midship section modulus calculations of a double hull tank barge, demonstrating that it is possible to meet the minimum thickness standard but still fail the section modulus standard and vice versa. The Coast Guard agrees that a vessel might meet one standard and fail the other; it is for exactly this reason that both standards are necessary. The minimum thickness standards recognize that there is some redundant strength in the original structural design. Therefore, some amount of local thickness can be lost without compromising the overall structural integrity of the hull. However, widespread thickness losses, even within allowable limits at every point, can still reduce the midship section modulus below acceptable levels for a hull subjected to bending stresses. Conversely, a vessel might meet the section modulus requirement but still have excessive thickness losses in local stiffeners. If the hull is subjected to compressive stresses, then this local structure may suddenly fail by buckling, thereby dramatically reducing the midship section modulus and possibly leading to a larger structural failure. Therefore, the Coast Guard finds that both minimum thickness and midship section modulus standards are necessary to ensure adequate longitudinal strength.

Six comments argued that a midship section modulus requirement is unnecessary for barges on inland service (*i.e.*, rivers; lakes, bays, and sounds (LBS); and intracoastal waterways) because these vessels are not exposed to wave-induced bending stresses and because the minimum thickness requirements will indirectly preserve enough midship section modulus to tolerate the normal bending stresses during loading and discharging operations. The Coast Guard agrees with this argument in the case of tank barges in river service. However, the Coast Guard disagrees that vessels in LBS service do not see wave-induced bending stresses. In fact, Tank Barge 565 itself, whose structural failure precipitated this statutory requirement, broke apart as a result of three-foot waves in the Chesapeake Bay following a summer squall. Further, some barges built to river Rules are allowed on intracoastal routes that are legally inside the boundary lines but which are actually offshore (*i.e.*, along certain sections of the Florida and Gulf coasts). These routes can expose vessels to wave-induced bending loads. Therefore, the Coast Guard finds that it is appropriate to impose a midship section modulus requirement on these tank vessels.

Accordingly, § 32.59(c) has been revised so that a separate section modulus requirement is not necessary for tank barges limited by their Certificate of Inspection (COI) to river service only. For other tank vessels, the minimum section modulus must be 90 percent of the Rule requirement.

Several comments pointed out that ABS does not have an explicit midship section modulus requirement in its River Rules; therefore, imposing such a requirement on unclassed barges exceeds the standards imposed on classed barges. The Coast Guard disagrees with the implication of these comments that ABS does not have a concern for longitudinal strength of classed river barges even though it does not have an explicit section modulus requirement. The ABS comment to the NPRM recognized this problem and recommended that the minimum midship section modulus should be at least 90 percent of that required by the applicable ABS Rules or by the bending moments imposed on the vessel. However, the ABS comment did not specify any particular loading or wave conditions to be used in conjunction with the bending moment calculations. The Coast Guard agrees with using a bending moment approach when there are no other explicit section modulus requirements in the Rules but does not agree that the 90 percent minimum is appropriate. For tank vessels in LBS or intracoastal service, the Coast Guard finds that the minimum section modulus must be 100 percent of that which is necessary to meet the full-load/still water bending moment, using a permissible bending stress of 12.74 kN/cm² (1.30 tf/m², 8.25 Ltf/in²). This bending moment standard has been added to § 32.59–1(c)(2).

6. Minimum Thickness for Hull Stiffeners

Five comments stated that the proposed minimum thickness standards for hull stiffeners in § 32.59–1(d)(1) (85 percent without a buckling analysis or 80 percent with an analysis) is unnecessarily high and that 75 percent is adequate. One comment even recommended only a 70 percent minimum. The Coast Guard finds that buckling failure is an important consideration for deck and bottom stiffeners because they can be subjected to compressive forces during cargo loading and discharging as well as from wave-induced bending. The Coast Guard agrees, however, that side shell stiffeners are not subjected to the same amount of compressive forces and are not at the same risk of compressive buckling failure. Therefore, the originally-proposed standards will still apply to deck and bottom stiffeners, but side shell stiffeners must only meet a minimum of 75 percent; § 32.59–1(d) has been revised accordingly.

7. Minimum Thickness for Plating

ABS recommended that the minimum plating thickness for "trunks" be 75 percent rather than 70 percent as originally proposed. The Coast Guard concurs and has revised § 32.59–1(e)(3) accordingly.

8. Gauging Survey Standards

Three comments were concerned that different Coast Guard OCMIs will impose different requirements for the gauging surveys (*e.g.*, number and location of sampling points, evaluation of data, etc.), resulting in uneven practices and costs. They urged that specific guidelines be provided to OCMIs to ensure consistency from one district to another.

The proposed gauging surveys (*i.e.*, three transverse girth belts of plating and longitudinals) are based upon general classification society requirements for Special Hull Survey #4 for tank vessels. Coast Guard OCMIs and the marine industry already have established practices and procedures for conducting these surveys and evaluating the data for classed vessels. The Coast Guard intends that these established practices now also be applied to unclassed vessels. The Coast Guard does not believe that more specific guidelines need to be included in the regulations; however, if subsequently determined to be necessary, they can be provided by revising Navigation and Vessel Inspection Circular (NVIC) 7–68 "Notes on Inspection and Repair of Steel Hulls," or the Marine Safety Manual.

9. Engineering Analysis

Seven comments disagreed with the engineering analysis requirement. One comment stated that the need for such an analysis would be obviated by simply restoring all plating and stiffeners to "as new" thicknesses. The Coast Guard agrees that, in theory, this is true but concludes that, in practice, it would be far more expensive to restore all plating and stiffeners to "as new" condition than to prepare the analysis, especially for older barges. Other comments stated that ABS does not explicitly require submittal of engineering analyses; therefore, this requirement exceeds classification standards. The Coast Guard disagrees with the implication of this comment that ABS does not analyze longitudinal strength of classed vessels; ABS has its own in-house staff of engineers who review gauging results and perform structural analyses as appropriate. The specific purpose of transverse belt gaugings is to evaluate longitudinal strength. ABS imposes transverse (girth) belt gaugings on ocean service tank vessels at Special Hull Survey #3, which is generally 15 years after construction. For classed river barges, ABS allows its surveyors more discretion in gauging requirements; however, these barges have been subject to special hull surveys throughout their service lives. The Coast Guard believes the engineering analysis is necessary for unclassed barges for two reasons:

(1) To verify compliance with the minimum standards; and

(2) To ensure that they are especially evaluated for structural integrity after 30 years of service.

10. Required Use of Professional Engineers

Four comments objected to the requirement that the engineering analysis be signed by a registered Professional Engineer (PE). These comments contended that in-house staff may be capable of preparing the analysis with a corporate executive's signature on the results. The Coast Guard recognizes that the larger operating companies may have naval architects on staff who are capable of performing the analyses. However, the purpose of this requirement is to reduce, as much as possible, any potential conflict of interest in the analysis and evaluation process. Even if they are employees, by virtue of their registered status PEs are obligated to consider more than their employer's sole interests when required to sign off on any engineering work.

11. Determination of Vessel Age

The language of the proposed regulations in § 31.10–21a(a) of the NPRM referred to the original delivery date of the vessel. Because delivery dates as used on a vessel's COI may be changed as a result of a major conversion, it was necessary to add a definition of vessel "midbody" to § 31.10–21a of the Final Rule to ensure that the appropriate midship structure of the vessel is gauged, regardless of the date of delivery used for other documentation purposes. Midbodies that have been replated only, without complete replacement of all other scantlings, must still use their date of original construction when determining their age.

12. Other Design Standards

Two comments stated that the proposed standards do not go far enough to ensure adequate structural integrity. They specifically cited the National Research Council's study "Tanker Spills: Prevention by Design," which concluded that current strength criteria are inadequate. The comments urged the Coast Guard to develop its own standards instead of relying on standards of classification societies. The Coast Guard determined that this would require developing new design and construction standards for all tank vessels. This is action that is outside the scope of this rulemaking.

13. Major Conversion

Two comments were concerned that the Coast Guard may consider any structural renewals or replacements to restore longitudinal strength as a major conversion, thereby forcing them into compliance with the double hull regulation.

OPA 90 did not change the statutory definition of major conversion per 46 U.S.C. 2101(14a), which is used in 33 CFR 157.03(k). Therefore, determinations of major conversion for application of this rule must be consistent with determinations that have been or will be made under this same definition for the application of other safety or pollution prevention requirements. The Coast Guard will continue to make major conversion determinations on a case-by-case basis, using the definition in 33 CFR 157.03(k). Owners anticipating structural renewals or replacements are strongly encouraged to request such a determination from Commandant (G–MVI), through the cognizant OCMI, at the earliest possible stage.

14. Other Regulatory Amendments

One comment pointed out that 46 CFR 30.01 must also be revised in order for the proposed regulations to be applicable to foreign flag tank vessels. The Coast Guard is revising 46 CFR 30.01(e)(2) to include the new section 31.10–21a and subpart 32.59.

15. Other Comments

One comment was a petition from various fishing organizations and individuals from Cook Inlet, Alaska, requesting requirements for reinforced or double plating for tank vessels operating in ice conditions in Cook Inlet waters. The requested measures constitute an improved puncture-resistance construction standard and are outside the longitudinal strength concerns of section 4109.

One comment concurred with the proposed standards and further suggested that hull strength and integrity also be examined following any casualty resulting in significant damage to the hull. This is already Coast Guard practice. Coast Guard inspectors already examine vessels involved in casualties and have the authority to require gaugings and other structural evaluations as appropriate.

One operator questioned how the Coast Guard will identify tank vessels that do not carry pollution category I cargoes and, therefore, will not be affected by the regulations. A tank vessel's COI indicates the cargoes that it is certificated to carry, and it may also

be annotated to indicate that it does not carry petroleum category I cargoes.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). A draft Regulatory Evaluation (RE) was prepared and put into the docket. The final RE for this rulemaking is available in the docket (CGD 91–209) for inspection or copying, as indicated in "ADDRESSES." A copy of the final RE also has been placed in a special file (CGD 91–207) established to facilitate review of the programmatic Regulatory Impact Analysis (RIA) for titles IV and V of OPA 90.

As a result of comments to the NPRM, the proposed regulations were revised in certain respects. These revisions also affected some of the economic assumptions and calculations in the draft RE. Accordingly, the final RE reflects four significant economic revisions:

(1) The original NPRM proposed a 3½-year implementation period for compliance with the periodic gauging requirements, based upon the tank vessel's age. Several comments to the NPRM pointed out that this would force a number of vessels into premature drydockings, with considerable costs beyond the actual gauging survey cost, because the proposed compliance schedule was not based upon the vessel's drydock schedule. These comments pointed out that the legislative history of section 4109 indicates Congressional intent that the requirements conform to existing inspection schedules. Accordingly, the proposed regulations were revised so that compliance must be accomplished at the next drydocking inspection after the vessel becomes 30 years old. Because most vessels are on a 5-year drydock cycle, the short-term economic effect of this revision is that the initial compliance effort by industry will be spread out over 5 years rather than 3½ years. However, over the long term this change makes no significant economic difference. Because of this change to the implementation schedule, the number of expected surveys during the initial 3½-year program period (mid-1993 through 1996) was substantially reduced from 1,225 to 872 surveys, although the expected totals for the initial 5½-year period are not significantly different (1,434 versus 1,292 surveys).

(2) The proposed NPRM included plating thickness and section modulus standards that were based upon the original "as-built" construction of the vessel. The draft RE estimated that this would require only a minor amount of reverse-engineering effort. However, several comments to the NPRM pointed out that inland barges are typically overbuilt in excess of ABS Rule requirements and, therefore, using an "as-built" standard would penalize them in comparison to vessels built exactly to the Rule. Accordingly, the proposed regulations were revised to use an "as-required" standard. The economic effect of this revision is that more reverse-engineering efforts will be necessary. The final RE, therefore, reflects an additional 16 labor-hours of professional engineer time, raising the total estimated cost of the first gauging survey from $3,990 to $4,790. The cost of subsequent regauging surveys, however, is not affected because they do not require any reverse-engineering effort.

(3) The draft RE estimated that a total of 4,446 gauging surveys would be accomplished over the period from mid-1993 to 2015. However, the draft RE did not take into account the effect of other OPA 90 regulations on the periodic gauging regulations. Specifically, the double hull requirements of section 4115(a) of OPA 90 mandate that all single hull tank vessels less than 5,000 gross tons—which encompasses most unclassed tank vessels—must be either double-hulled or removed from service by January 1, 2015. Because it is not economically feasible to retrofit double hulls to tank barges and harbor tankers, the practical effect of section 4115(a) will be to force the premature retirement of tank vessels before they reach their normal service retirement age of 50 years. The economic effect of this premature retirement on the gauging regulations is to reduce the number of gaugings during the end years of the program. This is because vessel operators are not expected to conduct gauging surveys after 2010 (*e.g.*, the last 5 years before their vessels will be forced into retirement). This premature retirement effect will reduce the estimated number of gauging surveys by approximately 767 surveys.

(4) The draft RE discounted all costs and benefits at 7 percent back to 1992. However, in order to be consistent with the OPA 90 programmatic RIA, the final RE discounts back to 1990. The economic effect of this revision is that the discounted costs and benefits are lower. For example, the draft RE estimated the total program cost at $8.61 million in 1992 dollars. Discounted to 1990 dollars, however, this cost is $7.52 million.

The net economic effect of these four revisions is to slightly reduce the original estimated 22-year program cost from $7.52 million (per the draft RE) to $7.34 million (both in 1990 dollars). The final program benefit cost, therefore, is $2,248 to $9,962 per barrel of unspilled oil.

Small Entities

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

No comments on the NPRM specifically identified themselves as small business entities.

As a result of the revised implementation schedule, the impact on most small entities has been lessened to the extent that they may have up to 5 years before their vessels must undergo the initial gauging survey, rather than up to 3½ years as originally proposed. Operators of double-hulled tank vessels in freshwater service may even have up to 10 years before the first required gauging. This will ensure that they will not be required to prematurely drydock any vessel before its next scheduled drydock inspection.

The small entity impact analysis is incorporated into the final RE for this rulemaking.

Collection of Information

This rule contains collection of information requirements. The Coast Guard submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB has approved them. The section number is § 31.10–21a and the OMB Control Number is 2115–0603.

Federalism

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

Environment

The Coast Guard has considered the environmental impact of this proposal under COMDTINST M16475.1B. An Environmental Assessment (EA) is available in the docket for copying and inspection as indicated in the

"ADDRESSES" section of this preamble. The EA discusses and compares the proposed action and alternatives, subsequent expected environmental impacts, and overall need for the action.

As previously discussed, structural hull failures like that which occurred to Tank Barge 565 are infrequent. The EA has no statistical basis for projecting how much oil spillage might be prevented by the proposed regulations.

Therefore, although some reduction in environmental damage will probably accrue, the actual benefits cannot be reasonably predicted beyond making an assumption of effectiveness. The EA assumes that the regulations will prevent at least one catastrophic hull failure, averting a spill of 4,000 barrels. (This quantity is the approximate capacity of a set of port/starboard cargo tanks on a typical barge.)

Although this averted spillage may be significant to a local environment, generally the regulations are not expected to result in significant impact on the quality of the human environment. Therefore, the Coast Guard has issued a Finding of No Significant Impact.

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire protection, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 30, 31 and 32 as follows:

SUBCHAPTER D—TANK VESSELS

PART 30—GENERAL PROVISIONS

1. The authority citation for 46 CFR part 30 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. app. 1804; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–5 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

2. Section 30.01–5(e)(2) is revised to read as follows:

§ 30.01–5 Application of regulations—TB/ALL.

* * * * *

(e) * * *

(2) A foreign flag vessel, except a public vessel, which operates on or enters the navigable waters of the United States, or which transfers oil in any port or place subject to the jurisdiction of the United States, must comply with the provisions of § 31.10–21a and subparts 32.53, 32.59 and 34.05 of this chapter, as applicable.

* * * * *

PART 31—INSPECTION AND CERTIFICATION

3. The authority citation for part 31 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46; Section 31.10–21a also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

4. Section 31.10–21a is added as follows:

§ 31.10–21a Periodic gauging of tank vessel midbodies more than 30 years old that carry certain oil cargoes—TB/ALL.

(a) As used in this section, the term "midbody" means the 40-percent midship length (0.40L) of the tank vessel. The age of the midbody is determined from its year of original construction.

(b) Midbodies of all tank vessels certificated to carry a pollution category I oil cargo listed in 46 CFR Table 30.25–1 must undergo an initial gauging survey and periodic regauging surveys as follows:

(1) An initial midbody gauging survey must be accomplished no later than the next drydocking inspection after the midbody becomes 30 years old.

(2) Regaugings:

(i) Midbodies of double hull tank vessels, or single hull tank vessels with independent tanks, that operated in fresh water at least 6 months in every 12-month period since the last drydock examination must be regauged at intervals not exceeding 10 years;

(ii) Midbodies of all other tank vessels must be regauged at intervals not exceeding 5 years.

(c) The midbody gauging survey must be comprised of at least three transverse (girth) belts of deck, bottom, side, inner hull, trunk, and longitudinal bulkhead plating and attached longitudinal members. The number and specific locations of the gauging points shall be to the satisfaction of the Officer in Charge of Marine Inspection (OCMI).

(d) Except as provided in paragraph (f) of this section, within 60 days of the vessel's required compliance date the owner or operator shall submit the following to the OCMI that issued the vessel's current Certificate of Inspection:

(1) The gauging survey results.

(2) An engineering analysis signed by a registered Professional Engineer licensed by any state of the United States or the District of Columbia, or signed by a Coast Guard-approved organization, that—

(i) Certifies the vessel's compliance with the minimum section modulus and plating thickness requirements of subpart 32.59 of this chapter; or

(ii) Proposes structural repairs and/or modifications that will bring the vessel up to the required strength standards.

(e) The vessel owner or operator shall keep a permanent copy of the Coast Guard-approved gauging report available for inspection by the OCMI.

(f) Instead of the submittals required by paragraphs (c) and (d) of this section, current classification with the American Bureau of Shipping or another recognized classification society, or a load line certificate issued in accordance with the International Convention on Load Lines or the International Voyage Load Line Act, may be submitted as evidence of compliance with the requirements of this section.

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

5. The authority citation for part 32 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

6. Subpart 32.59 is added to read as follows:

Subpart 32.59—Minimum Longitudinal Strength and Plating Thickness Requirements for Unclassed Tank Vessels That Carry Certain Oil Cargoes—TB/ALL

§ 32.59–1 Minimum section modulus and plating thickness requirements—TB/ALL.

(a) As used in this seciton, *Rule* means the current Rules of the American Bureau of Shipping or other recognized classification society, as appropriate for the vessel's present service and regardless of the year the vessel was constructed.

(b) The requirements of this section apply to all in-service, unclassed tank vessels certificated to carry a pollution category I oil cargo listed in 46 CFR Table 30.25–1.

(c) For all vessels except those limited on their Certificate of Inspection to river

routes only, the minimum midship section modulus must be—

(1) At least 90 percent of that required by Rule; or

(2) Where there is no specific Rule requirment, at least 100 percent of that which is necessary to meet the bending moment developed under a full load condition in still water, using a permissible bending stress of 12.74 kN/cm² (1.30 t/cm², 8.25 Ltf/in²).

(d) Within the 40-percent midship length, the average flange and web thicknesses of each longitudinal stiffener must be as follows:

(1) For deck and bottom stiffeners: at least 85 percent of Rule thickness, unless a buckling analysis demonstrates that lesser thicknesses can be safely tolerated. However, the average thickness must never be less than 80 percent of Rule thickness; and

(2) For side stiffeners: at least 75 percent of Rule thickness.

(e) Within the 40-percent midship length, the average thickness for longitudinal strength plating must be at least as follows:

(1) Weather deck: 75 percent of Rule thickness;

(2) Hatch: 70 percent of Rule thickness;

(3) Trunk: 75 percent of Rule thickness;

(4) Sheer strake: 75 percent of Rule thickness;

(5) Outer sideshell: 75 percent of Rule thickness;

(6) Inner sideshell: 75 percent of Rule thickness;

(7) Outer bottom; 75 percent of Rule thickness;

(8) Inner bottom: 70 percent of Rule thickness;

(9) Keel: 75 percent of Rule thickness;

(10) Bulkheads: 75 percent of Rule thickness.

Dated: October 4, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–24806 Filed 10–7–93; 8:45 am]

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Friday
October 8, 1993

Part VII

Department of Education

34 CFR Part 386
Rehabilitation Long-Term Training; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 386

RIN 1820–AB21

Rehabilitation Training; Rehabilitation Long-Term Training

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The regulations are needed to implement the Rehabilitation Act Amendments of 1992. These amendments direct the Secretary to issue regulations as appropriate to carry out the provisions of the Act. The Rehabilitation Long-Term Training program is authorized by section 302 of Title III of the Rehabilitation Act of 1973, as amended. The purpose of this discretionary grant program is to fund projects to provide academic training in areas of personnel shortages identified by the Secretary.

DATES: Comments must be received on or before December 7, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to the Acting Commissioner, U.S. Department of Education, 400 Maryland Avenue, SW., room 3028 Switzer Building, Washington, DC 20202–2531.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Richard Melia, U.S. Department of Education, 400 Maryland Avenue, SW., room 3324 Switzer Building, Washington, DC 20202–2649. Telephone (202) 205–9400. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These proposed regulations would implement the changes to the Rehabilitation Long-Term Training program made by the Rehabilitation Act Amendments of 1992, Public Law 102–569, enacted October 29, 1992. Commenters are invited to comment on the regulations in their entirety.

The proposed regulations are substantially technical, updating definitions, referencing changes in Education Department General Administrative Regulations, and incorporating new phraseology from the Act. However, program reviews and audits have identified several problem areas for which new rulemaking is proposed. In particular, stricter standards are needed to ensure effective implementation of the work-or-repay provision. The Secretary proposes additional changes in the "work-or-repay" provisions to ensure that—

(1) Grantees disburse awards to individuals only after required certifications and agreements have been executed;

(2) Scholars receiving awards clearly understand their obligations under this program by participating in an exit certification when they leave their educational program; and

(3) Grantees maintain adequate tracking, record, and report systems for verifying that scholars have met their work-or-repay responsibilities.

The proposed changes to the work-or-repay provision are presented in greater detail in the following paragraphs. Major proposed changes are identified by section.

Section 386.1 has been revised to respond to increasing numbers of proposals under the long-term training program that do not include academic training subject to the work-or-repay provision. The purpose of the Rehabilitation Long-Term Training program and the work-or-repay provision is to prepare professionals for jobs in designated State and related rehabilitation agencies in areas of shortage. This provision clarifies that grants awarded under this program must support academic outcomes.

Section 386.30 proposes that the Federal share of the cost of the project may not be more than 90 percent of the total cost of the project. The current regulations do not specify a specific amount for Federal participation and leave the amount of non-Federal match to be determined during the negotiation process. Currently most grantees provide a matching component greater than 10 percent, and the Department believes this level of match is appropriate for all grantees under this program.

Section 386.31 would require grantees to use at least 75 percent of the grant award for scholarships. This provision is consistent with the work-or-repay requirement and responds directly to a recommendation of a report by the Department's Office of Inspector General. Exceptions to this requirement may apply under unique circumstances, such as the establishment of a new training program that does not award degrees or certificates.

Section 386.33 would incorporate statutory language on employment that qualifies for the work-or-repay provision and would add a requirement that each scholar complete a Certification of Eligibility for Federal Assistance established in 1992 by the Education Department for all scholarship, direct student grant, fellowship, and loan programs.

Section 386.34 would require grantees to obtain necessary assurances before scholarship assistance is provided to an individual. New statutory provisions for the work-or-repay requirement are addressed. The provision for an exit certification addresses a recommendation of the Office of Inspector General report that scholars be reminded of their obligations as they leave their educational program (similar to the exit requirements for student loans) and that they confirm the accuracy of the information in their record. The expanded tracking and records requirements ensure that grantees verify requirements of the work-or-repay provision and maintain accurate records until the requirement is met.

Section 386.35 would require institutions of higher education that are grantees under the Rehabilitation Long-Term Training program to provide information necessary for designated State agencies to meet the requirements of section 101(a)(7) of the Act. The Act places a significant burden on designated State agencies to collect information on numbers of students enrolled in rehabilitation programs in the State and related information. This provision will ensure that institutions of higher education receiving Federal rehabilitation training funds will cooperate in compiling the mandated information.

This program supports National Education Goal 5 that every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The Department supports a variety of training activities for vocational rehabilitation personnel so that they may assist individuals with disabilities in gaining the knowledge and skills to obtain employment and compete in a global economy.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected are small colleges and universities. The regulations would impose minimal requirements to ensure

the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 386.20, 386.33, 386.34, 386.35, and 386.42 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, that participate in the Rehabilitation Long-Term Training program would have to comply with the information collection requirements in these proposed regulations. The Department needs and uses the information to make grants and to ensure compliance with work-or-repay requirements for scholarship recipients.

Annual public reporting and recordkeeping burden for this collection of information is estimated to average 80 hours per response for 300 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3214, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 386

Rehabilitation training, Grant programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.129, Rehabilitation Training: Rehabilitation Long-Term Training)

Dated: October 5, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 386 to read as follows:

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

Subpart A—General

Sec.
386.1 What is the Rehabilitation Long-Term Training program?
386.2 Who is eligible for an award?
386.3 What regulations apply?
386.4 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

386.20 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met after an Award?

386.30 What are the matching requirements?
386.31 What are requirements for directing grant funds?
386.32 What are allowable costs?
386.33 What are the requirements for grantees in disbursing scholarships?
386.34 What assurances must be provided by a grantee that intends to provide scholarships?
386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?

Subpart E—What Conditions Must Be Met by a Scholar?

386.40 What are the requirements for scholars?
386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?
386.42 What must a scholar do to obtain a deferral or exception to performance or repayment under a scholarship agreement?
386.43 What are the consequences of a scholar's failure to meet the terms and conditions of scholarship agreement?

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

Subpart A—General

§ 386.1 What is the Rehabilitation Long-Term Training program?

(a) The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in one of those fields of study identified in paragraph (b) of this section;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in one of those fields of study identified in paragraph (b) of this section; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

(b) The Rehabilitation Long-Term Training program is designed to provide academic training in areas of personnel shortages identified by the Secretary and published in a notice in the Federal Register. These areas may include—

(1) Vocational rehabilitation counseling;

(2) Rehabilitation technology;

(3) Rehabilitation medicine;

(4) Rehabilitation nursing;

(5) Rehabilitation social work;

(6) Rehabilitation psychiatry;

(7) Rehabilitation psychology;

(8) Rehabilitation dentistry;

(9) Physical therapy;

(10) Occupational therapy;

(11) Speech pathology and audiology;

(12) Physical education;

(13) Therapeutic recreation;

(14) Community rehabilitation program personnel;

(15) Prosthetics and orthotics;

(16) Rehabilitation of individuals who are blind;

(17) Rehabilitation of individuals who are deaf;

(18) Rehabilitation of individuals who are mentally ill;

(19) Undergraduate education in the rehabilitation services;

(20) Independent living;

(21) Client assistance;

(22) Administration of community rehabilitation programs;

(23) Rehabilitation administration;

(24) Vocational evaluation and work adjustment;

(25) Services to individuals with specific disabilities or specific

impediments to rehabilitation, including individuals who are members of populations that are unserved or underserved by programs under this Act;

(26) Job development and job placement services to individuals with disabilities;

(27) Supported employment services, including services of employment specialists for individuals with disabilities;

(28) Specialized services for individuals with severe disabilities;

(29) Recreation for individuals with disabilities; and

(30) Other fields contributing to the rehabilitation of individuals with disabilities.

(Authority: Secs. 12 and 302 of the Act; 29 U.S.C. 711 and 771a)

§ 386.2 Who is eligible for an award?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Sec. 302(a) of the Act; 29 U.S.C. 771a(a))

§ 386.3 What regulations apply?

The following regulations apply to the Rehabilitation Training: Rehabilitation Long-Term Training program:

(a) The regulations in this part 386.

(b) The regulations in 34 CFR part 385.

(Authority: Sec. 302 of the Act; 29 U.S.C. 771a)

§ 386.4 What definitions apply?

The following definitions apply to this program:

(a) Definitions in 34 CFR 385.4.

(b) *Other definitions.* The following definitions also apply to this part:

Academic year means a full-time course of study—

(1) Taken for a period totaling at least nine months; or

(2) Taken for the equivalent of at least two semesters, two trimesters, or three quarters.

Certificate means a recognized educational credential awarded by a grantee under this part that attests to the completion of a specified series of courses or program of study.

Professional corporation or professional practice means—

(1) A professional service corporation or practice formed by one or more individuals duly authorized to render the same professional service, for the purpose of rendering that service; and

(2) The corporation or practice and its members are subject to the same supervision by appropriate State regulatory agencies as individual practitioners.

Related agency means—

(1) An American Indian rehabilitation program; or

(2) Any of the following agencies that provide services to individuals with disabilities under an agreement with a designated State agency in the area of specialty for which training is provided:

(i) A Federal, State, or local agency.

(ii) A nonprofit organization.

(iii) A professional corporation or professional practice group.

Scholar means an individual who is enrolled in a certificate or degree granting course of study in one of the areas listed in § 386.1(b) and who receives scholarship assistance under this part.

Scholarship means an award of financial assistance to a scholar for training and includes all disbursements or credits for student stipends, tuition and fees, and student travel in conjunction with training assignments.

State rehabilitation agency means the designated State agency.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 386.20 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Plan of operation.* (30 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (5 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points) The Secretary evaluates each application on the basis of criterion in § 385.32(e).

(f)(1) *Evidence of need.* (10 points) The Secretary reviews each application for information that shows that the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows that the need for the training project has been established in terms of rehabilitation supply and demand for qualified rehabilitation personnel and includes an assessment of how the project will respond to personnel needs established in local, State, or national studies.

(g)(1) *Relevance to State-Federal rehabilitation service program.* (10 points) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either to increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of individuals with physical or mental disabilities through degree or certificate granting programs, or to improve the skills and quality of professional personnel in the rehabilitation field in which the training is to be provided through the granting of a degree or certificate.

(h)(1) *Nature and scope of curriculum.* (20 points) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that ensure student involvement in the provision of vocational rehabilitation, supported employment, or independent living rehabilitation services to individuals with disabilities, especially individuals with severe disabilities;

(iv) The coursework includes student exposure to vocational rehabilitation, supported employment, or independent living rehabilitation processes, concepts, programs, and services; and

(v) If applicable, there is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 771a)

Subpart D—What Conditions Must Be Met After an Award?

§ 386.30 What are the matching requirements?

The Federal share may not be more than 90 percent of the total cost of a project under this program.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 386.31 What are the requirements for directing grant funds?

(a) A grantee must use at least 75 percent of the total award for scholarships as defined in § 386.4.

(b) The Secretary may award grants that use less than 75 percent of the total award for scholarships based upon the unique nature of the project, such as the establishment of a new training program or long-term training in an emerging field that does not award degrees or certificates.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 771a)

§ 386.32 What are allowable costs?

In addition to those allowable costs established in the Education Department General Administrative Regulations in §§ 75.530 through 75.562, the following items are allowable under long-term training projects:

(a) Student stipends.

(b) Tuition and fees.

(c) Student travel in conjunction with training assignments.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 771a)

§ 386.33 What are the requirements for grantees in disbursing scholarships?

(a) Before disbursement of scholarship assistance to an individual, a grantee—

(1)(i) Shall obtain documentation that the individual is—

(A) A U.S. citizen or national; or

(B) A permanent resident of the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, or the Commonwealth of the Northern Mariana Islands; or

(ii) Shall confirm from documentation issued to the individual by the U.S. Immigration and Naturalization Service that he or she—

(A) Is a lawful permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; and

(2) Shall have documentation that the individual is not an employee of the Federal Government;

(3) Shall confirm that the applicant has expressed interest in a career in clinical practice, administration, supervision, teaching, or research in the vocational rehabilitation, supported employment, or independent living rehabilitation of individuals with disabilities, especially individuals with severe disabilities;

(4) Shall have documentation that the individual expects to maintain or seek employment in a designated State rehabilitation agency or in a nonprofit rehabilitation, professional corporation, professional practice group, or related agency providing services to individuals with disabilities or individuals with severe disabilities under an agreement with a designated State agency;

(5) Shall reduce the scholarship by the amount in which the combined awards would be in excess of the cost of attendance, if a scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV of the Higher Education Act, would otherwise exceed the scholar's cost of attendance;

(6) Shall limit scholarship assistance to the individual's cost of attendance at the institution for no more than four academic years except that the grantee may provide an extension consistent with the institution's accommodations under section 504 of the Act if the grantee determines that an individual has a disability that seriously affects the completion of the course of study; and

(7) Shall obtain a Certification of Eligibility for Federal Assistance from each scholar as prescribed in 34 CFR 75.60, 75.61, and 75.62.

(Authority: Secs. 12(c) and 302(b) of the Act; 29 U.S.C. 711(c) and 771a(b))

§ 386.34 What assurances must be provided by a grantee that intends to provide scholarships?

A grantee under this part that intends to grant scholarships for any academic year beginning after June 1, 1992, shall provide the following assurances before an award is made:

(a) *Requirement for agreement.* No individual will be provided a scholarship without entering into a written agreement containing the terms and conditions required by this section. An individual will sign and date the agreement prior to the initial disbursement of scholarship funds to the individual for payment of the individual's expenses, such as tuition.

(b) *Disclosure to applicants.* The terms and conditions of the agreement that the grantee enters into with a scholar will be fully disclosed in the application for scholarship.

(c) *Form and terms of agreement.* Each scholarship agreement with a grantee will be in the form and contain the terms that the Secretary requires, including at a minimum the following provisions:

(1) The scholar will—

(i) Maintain employment—

(A) In a nonprofit rehabilitation agency or related agency or in a State rehabilitation agency or related agency, including a professional corporation or professional practice group through which the individual has a service arrangement with the designated State agency;

(B) On a full- or part-time basis; and

(C) For a period of not less than the full-time equivalent of two years for each year for which assistance under this section was received, within a period, beginning after the recipient completes the training for which the scholarship was awarded, of not more than the sum of the number of years required in this paragraph and two additional years; and

(ii) Repay all or part of any scholarship received, plus interest, if the individual does not fulfill the requirements of paragraph (c)(1)(i) of this section, except as the Secretary by regulations may provide for repayment exceptions and deferrals.

(2) The employment obligation in paragraph (c)(1) of this section as applied to a part-time scholar will be based on the accumulated academic years of training for which the scholarship is received.

(3) Until the scholar has satisfied the employment obligation described in paragraph (c)(1) of this section, the scholar will inform the grantee of any change of name, address, or employment status and will document employment satisfying the terms of the agreement.

(4) Subject to the provisions in § 386.41 regarding a deferral or exception, when the scholar enters repayment status under § 386.43(e), the amount of the scholarship that has not been retired through eligible employment will constitute a debt owed to the United States that—

(i) Will be repaid by the scholar, including interest and costs of collection as provided in § 386.43; and

(ii) May be collected by the Secretary in accordance with 34 CFR part 30, in the case of the scholar's failure to meet the obligation of § 386.43.

(d) *Executed agreement.* The grantee will provide an original executed agreement upon request to the Secretary.

(e) *Standards for satisfactory progress.* The grantee will establish, publish, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution, if the institution is accredited by such an agency, and if the agency has those standards;

(2) For a scholar enrolled in an eligible program who is to receive assistance under the Rehabilitation Act, are the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under the Rehabilitation Act; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum timeframe in which the scholar shall complete the scholar's educational objective, degree, or certificate.

(iii) Consistent application of standards to all scholars within categories of students; e.g., full-time, part-time, undergraduates, graduate students, and students attending programs established by the institution.

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(v) Specific procedures for appeal of a determination that a scholar is not making satisfactory progress and for reinstatement of aid.

(f) *Exit certification.* The grantee has established policies and procedures for receiving written certification from scholars at the time of exit from the program acknowledging the following:

(1) The name of the institution and the number of the Federal grant that provided the scholarship.

(2) The scholar's field of study.

(3) The number of years the scholar needs to work to satisfy the work requirements in § 386.34(c)(1)(i)(C).

(4) The total amount of scholarship assistance received subject to the work-or-repay provision in § 386.34(c)(1)(ii).

(5) The time period during which the scholar must satisfy the work requirements in § 386.34(c)(1)(i)(C).

(6) All other obligations of the scholar in § 386.34.

(g) *Tracking system.* The grantee has established policies and procedures to determine compliance of the scholar with the terms of the agreement. In order to determine whether a scholar has met the work-or-repay provision in § 386.34(c)(1)(i), the tracking system must include for each employment position maintained by the scholar—

(1) Documentation of the employer's name, address, dates of the scholar's employment, and the position the scholar maintained;

(2) Documentation of how the employment meets the requirements in § 386.34(c)(1)(i); and

(3) Documentation that the grantee, if experiencing difficulty in locating a scholar, has checked with existing tracking systems operated by alumni organizations.

(h) *Reports.* The grantee shall make reports to the Secretary that are necessary to carry out the Secretary's functions under this part.

(i) *Records.* The grantee shall maintain the information obtained in paragraphs (g) and (h) of this section for a period of time equal to the time required to fulfill the obligation under § 386.34(c)(1)(i)(C).

(Authority: Secs. 12(c) and 302(b) of the Act; 29 U.S.C. 711(c) and 771a(b))

§ 386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?

A grantee that is an institution of higher education provided assistance under this part shall cooperate with the following requests for information from a designated State agency:

(a) Information required by section 101(a)(7) of the Act which may include, but is not limited to—

(1) The number of students enrolled by the grantee in rehabilitation training programs; and

(2) The number of rehabilitation professionals trained by the grantee who graduated with certification or licensure, or with credentials to qualify for certification or licensure, during the past year.

(b) Information on the availability of rehabilitation courses leading to certification or licensure, or the credentials to qualify for certification or licensure, to assist State agencies in the planning of a program of staff development for all classes of positions that are involved in the administration and operation of the State agency's vocational rehabilitation program.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 771a)

Subpart E—What Conditions Must Be Met by a Scholar?

§ 386.40 What are the requirements for scholars?

A scholar—(a) Shall receive the training at the educational institution or agency designated in the scholarship; and

(b) Shall not accept payment of educational allowances from any other Federal, State, or local public or private nonprofit agency if that allowance conflicts with the individual's obligation under § 386.33(a)(4) or § 386.34(c)(1).

(c) Shall enter into a written agreement with the grantee, before starting training, that meets the terms and conditions required in § 386.34;

(d) Shall be enrolled in a course of study leading to a certificate or degree in one of the fields designated in § 386.1(b); and

(e) Shall maintain satisfactory progress toward the certificate or degree as determined by the grantee.

(Authority: Secs. 12(c) and 302(b) of the Act; 29 U.S.C. 711(c) and 771a(b))

§ 386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?

A deferral or repayment exception to the requirements of § 386.34(c)(1) may be granted, in whole or part, by the Secretary as follows:

(a) Repayment is not required if the scholar—

(1) Is unable to continue the course of study or perform the work obligation because of a disability that is expected to continue indefinitely or result in death; or

(2) Has died.

(b) Repayment of a scholarship may be deferred during the time the scholar is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Serving as a volunteer under the Peace Corps Act;

(4) Serving as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973;

(5) Temporarily totally disabled, for a period not to exceed three years; or

(6) Unable to secure employment as required by the agreement by reason of the care provided to a disabled spouse for a period not to exceed 12 months.

(Authority: Secs. 12(c) and 302(b) of the Act; 29 U.S.C. 771(c) and 771a(b))

§ 386.42 What must a scholar do to obtain a deferral or exception to performance or repayment under a scholarship agreement?

To obtain a deferral or exception to performance or repayment under a scholarship agreement, a scholar shall provide the following:

(a) *Written application.* A written application must be made to the Secretary to request a deferral or an exception to performance or repayment of a scholarship.

(b) *Documentation.* (1) Documentation must be provided to substantiate the grounds for a deferral or exception.

(2) Documentation necessary to substantiate an exception under § 386.41(a)(1) or a deferral under § 386.41(b)(5) must include a sworn

affidavit from a qualified physician or other evidence of disability satisfactory to the Secretary.

(3) Documentation to substantiate an exception under § 386.41(a)(2) must include a death certificate or other evidence conclusive under State law.

(Authority: Secs. 12(c) and 302 of the Act; 29 U.S.C. 711(c) and 771a)

§ 386.43 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

In the event of a failure to meet the terms and conditions of a scholarship agreement or to obtain a deferral or an exception as provided in § 386.41, the scholar shall repay all or part of the scholarship as follows:

(a) *Amount.* The amount of the scholarship to be repaid is proportional to the employment obligation not completed.

(b) *Interest rate.* The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(c) *Interest accrual.* (1) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (e) of this section.

(2) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(3) No interest is charged for the period of time during which repayment has been deferred under § 386.41.

(d) *Collection costs.* Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(e) *Repayment status.* A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(1) The date the scholar informs the Secretary he or she does not plan to fulfill the employment obligation under the agreement.

(2) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the employment obligation within the number of years required in § 386.34(c)(1).

(f) *Amounts and frequency of payment.* The scholar shall make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(Authority: Secs. 12(c) and 302(b) of the Act; 29 U.S.C. 711(c) and 771a(b))

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Friday
October 8, 1993

Part VIII

Department of Education

34 CFR Part 370

Client Assistance Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 370

RIN 1820-AB16

Client Assistance Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Client Assistance Program (CAP). These amendments are needed to implement recent changes to the Rehabilitation Act of 1973 (Act) made by the Rehabilitation Act Amendments of 1992 (1992 Amendments) enacted on October 29, 1992. The proposed regulations describe the process a Governor would be required to use to designate a public or private agency to conduct the CAP authorized by section 112 of the Act (i.e., the designated agency), identify the authorized activities a designated agency would be required to carry out under the CAP, and specify the conditions that would apply to a State and the designated agency in the operation of its CAP. The proposed regulations also would implement changes to section 112 of the Act made by the 1992 Amendments, clarify certain program requirements, and make other changes that are needed to increase program effectiveness. The proposed regulations would implement the requirement in the 1992 Amendments that CAPs expand the services they provide to include dissemination of information related to title I of the Americans with Disabilities Act of 1990 (ADA), especially with regard to individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs. Finally, the proposed regulations would implement the due process requirements added by the 1992 Amendments that apply if a Governor of a State chooses to redesignate the agency designated to conduct the State's CAP.

This program is an important part of the National Education Goals. The program addresses Goal 5, that every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

DATES: Comments must be received on or before November 22, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to RSA Commissioner, U.S. Department of Education, 400 Maryland Avenue, SW., room 3028, Switzer Building, Washington, DC 20202-2735.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Deborah Havens, U.S. Department of Education, 400 Maryland Avenue, SW., room 3220, Switzer Building, Washington, DC 20202-2735. Telephone: (202) 205-8733. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-9362 between 8 a.m. and 8 p.m. EDT, Monday through Friday.

SUPPLEMENTARY INFORMATION: The CAP is authorized by section 112 of the Act (29 U.S.C. 732). The CAP provides support to States for programs that assist clients and client applicants to secure the benefits and services available to them under the Act.

Regulations for this program were last published on March 12, 1985 (50 FR 9960) and are currently codified in 34 CFR part 370. These proposed regulations would implement section 112 of the Act, as recently amended by the 1992 Amendments, Public Law 102-569 and incorporate certain provisions of the Education Department General Administrative Regulations (EDGAR).

A summary of the proposed regulations follows:

Proposed § 370.1 would make only minor revisions to current § 370.1 to reflect that the 1992 Amendments have included the provision of information on the ADA.

Proposed § 370.2(a) through (d) concerning who is eligible for a grant under the CAP would remain the same as current § 370.2(a) through (d). The provisions in current § 370.2(e) and (f) concerning the redesignation of the agency designated to carry out the State's CAP would be revised and would be placed in proposed Subpart B as §§ 370.10 through 370.17.

Proposed § 370.2(e) would prohibit a designated agency from subgranting to or entering into a contract with an agency that provides services under the Act for either carrying out the CAP or providing any services under the CAP. For purposes of § 370.2, services under the Act" would not include services and activities carried out under the protection and advocacy program authorized by section 509 of the Act (i.e., the Protection and Advocacy of Individual Rights (PAIR) program, 34 CFR part 381). The purpose of this prohibition would be to stop the practice by some States of circumventing the independence requirement in section 112(c)(1)(A) of the Act by having the designated agency contract with another entity that provides services under the Act to carry out the State's CAP or to provide services under the CAP. A designated agency would be able to contract with an entity or individual that does not provide services under the Act to provide services under the CAP.

Under proposed § 370.3, any individual who applies for or receives services under the Act would be eligible for services under the CAP. For purposes of this section, services under the Act would not include services provided to an individual under the PAIR program.

Proposed § 370.4 would revise the list of activities and services in current § 370.10 that a designated agency would be required or authorized to carry out under this part to reflect the activities added by the 1992 Amendments. These activities now include the provision of information on available services and benefits related to title I of the ADA, especially with regard to individuals with disabilities who have been traditionally unserved or underserved by vocational rehabilitation programs. Also, in providing assistance and advocacy with respect to services under title I of the Act, a designated agency is now permitted to provide assistance and advocacy with respect to services that are directly related to facilitating the employment of the individual. The proposed regulations would clarify that a designated agency may engage in both individual and systemic advocacy, as defined in these proposed regulations, under the CAP. The proposed regulations would permit the designated agency to facilitate access by individuals with disabilities exiting from public school programs to the services funded under the Act.

Proposed § 370.5 would revise and update the list of regulations in current § 370.3 that would apply to the CAP. Except as specifically prohibited by or as otherwise provided in State law, section 112(e)(3) of the Act requires that CAP funds be paid directly to the designated agency, even though only the State may submit an application to the Secretary for a grant under the CAP. However, even if State law prevents the CAP funds from going directly to the designated agency, the designated agency is the eventual "recipient" of the CAP funds. Therefore, in those cases where the designated agency is not a State or local government agency or Indian tribal organization, proposed § 370.5(a)(1) would make the regulations

in 34 CFR part 74 applicable to the designated agency.

Moreover, pursuant to section 112(f) of the Act, only the State, rather than the designated agency, may apply for, and receive, a grant under the CAP. Therefore, proposed § 370.5(a)(2) would make the regulations in 34 CFR part 76 (except for certain provisions) applicable to the State in its administration of its CAP grant. Part 76 (except for those provisions so identified in proposed § 370.5(a)(2)) would apply to the State, whether or not the designated agency is a State agency and even if State law does not prevent the designated agency from receiving the CAP grant funds directly, as required by section 112(e)(3) of the Act. As the grantee, the State remains responsible under parts 76 and 370 for ensuring that the provisions of section 112 of the Act and these regulations are carried out.

In addition, because each State's CAP would not be carried out through multiple competitive or formula-based awards, the Secretary would not regard the designated agency as a "subgrantee," as that term is used in 34 CFR parts 74, 76, or 80 of EDGAR. (See the note at the end of proposed § 370.5.) Accordingly, the provisions of 34 CFR part 76 governing the relationship between grantees and subgrantees, such as subparts D and E of part 76 (34 CFR 76.300 through 76.401), are inapplicable to the CAP, whether or not the designated agency is a State agency.

Under proposed § 370.5(a)(5), the regulations in 34 CFR part 80 would apply to the State because the State is the grantee. In addition, part 80 would apply to a designated agency if the designated agency is a State or local government agency.

Finally, proposed § 370.5(a)(6) would make 34 CFR part 81 applicable to the designated agency. Section 112(c)(3) of the Act specifically states that the designated agency shall be accountable for the proper use of the CAP funds it receives. In addition, as discussed above, the designated agency is the eventual, if not the direct, recipient of the CAP funds. Therefore, whether or not the designated agency is the actual recipient of the CAP grant (e.g., if the designated agency is a State agency), proposed § 370.5(a)(6) would make the regulations in 34 CFR part 81 applicable to the designated agency.

Proposed § 370.6 would revise or add the following definitions in current § 370.4 that apply to the CAP: "Advocacy," "Class action," "Client or client applicant," "Designated agency," "Mediation," and "State." Although already previously allowed as part of the assistance provided to clients under this program, the 1992 Amendments specifically added "advocacy" and "systemic advocacy" to the activities permitted under section 112 of the Act.

Proposed §§ 370.10 through 370.17 would implement the due process requirements added by the 1992 Amendments that apply if a Governor of a State chose to redesignate the agency designated to conduct the State's CAP. Proposed § 370.10 would require that a redesignation could be made only for good cause and would describe when the requirements for redesignation apply.

The Secretary would require that an action giving rise to good cause for redesignation be of a substantial nature. The regulations would not define good cause. However, the Secretary would not consider merely technical or minor shortcomings as good cause sufficient to support a redesignation. Furthermore, the Secretary would not consider a proposed redesignation as supported by good cause if the proposed redesignation is based on a designated agency carrying out any actions or activities that are authorized under section 112 of the Act or the regulations implementing the CAP.

What constitutes good cause for redesignation would be determined on a case-by-case basis. Examples of activities that the Secretary would consider as constituting good cause for redesignation under proposed § 370.10(a) would include, but would not be limited to, the following: Misappropriation of CAP funds; substantial failure to carry out the assurances prescribed in section 112 of the Act; substantial failure to carry out the intent of section 112 of the Act; substantial inability or unwillingness to provide the spectrum of CAP services; engaging in activities prohibited in section 112 of the Act; or commission of other substantial infractions, such as illegal activities sanctioned, encouraged, or carried out by the designated agency implementing the CAP. However, even if a designated agency engaged in one of these activities, a Governor of a State might not choose to redesignate the client assistance agency of his or her State. Therefore, what constitutes good cause for redesignation is left for the Governor of each State to determine, subject to review by the Secretary if the redesignation is properly appealed to the Secretary.

Proposed § 370.11 describes the requirements for a proposed redesignation. Proposed § 370.12 describes what a designated agency must do to preserve its right to appeal a Governor's written decision to redesignate. Proposed § 370.13 describes the requirements for a decision to redesignate. Proposed § 370.14 describes how a designated agency could appeal a Governor's written decision to redesignate. If the Governor of a State did not issue a written decision to redesignate (subsequent to the issuance of a notice of proposed redesignation), the client assistance agency would have no reason (and no basis) to appeal to the Secretary. Proposed § 370.15 describes what a Governor must do after receipt of a copy of a designated agency's written appeal to the Secretary. Proposed § 370.16 describes how the Secretary reviews an appeal of a redesignation. Proposed § 370.17 describes when a redesignation would become effective.

Proposed § 370.20 is substantially the same as current § 370.20. However, the provision related to the evaluations and studies of the CAP would be deleted because the 1992 Amendments deleted section 112(h) of the Act, which formerly required the Secretary to conduct studies and evaluations of the CAP. In addition, proposed § 370.20(d) would ensure the proper implementation of section 112(e)(3) of the Act by requiring a State to provide an assurance with its application for assistance under this part that direct payment to the designated agency is not prohibited or inconsistent with the laws, regulations, or policies of the State in which the designated agency plans to carry out the CAP. The State's failure to provide this assurance with its application would prohibit the designated agency from receiving the CAP funds directly from the Secretary.

Proposed § 370.30(c) is substantially the same as current § 370.30(c). However, proposed § 370.30(c) would add that, as the eventual, if not the direct, recipient of the CAP funds, 34 CFR parts 74 and 81 would apply to the designated agency, whether or not the designated agency is the actual recipient of the CAP grant. However, because it is the State that submits an application for and receives the CAP grant, the State remains the grantee for purposes of 34 CFR parts 76 and 80. In addition, both the State and the designated agency are considered recipients for purposes of 34 CFR part 81.

Proposed § 370.31 would revise current § 370.31 by adding a new paragraph (b) that would require a designated agency to inform the Secretary 90 days before the end of the fiscal year for which CAP funds were received whether the designated agency is making available for reallotment any of those CAP funds that it will be unable to obligate in that fiscal year.

Proposed § 370.40 would revise current § 370.40 to clarify that a designated agency must apply the cost principles referenced in subpart Q of 34 CFR part 74 or 34 CFR 80.22 to determine what are allowable costs. If a designated agency is an NPO, the cost principles in Office of Management and Budget (OMB) Circular A–122 would apply (34 CFR 74.174). If a designated agency is a State or local agency, the cost principles in OMB Circular A–87 would apply (34 CFR 80.22(b)). Although the cost principles under these circulars are similar, each circular treats some items of cost differently. Therefore, it is important for a designated agency to apply the correct circular, depending on whether the designated agency is an NPO or a State or local agency.

Proposed § 370.40(d) is substantially the same as current § 370.30(d). As discussed above, the State is the grantee and the designated agency is the eventual, if not the direct, recipient of the CAP funds. Therefore, the State and the designated agency would be accountable, both jointly and severally, for the proper use of funds made available under the CAP. This provision would implement section 112(c)(3) of the Act and, because the State remains the grantee, also would keep the State accountable for the funds made available under the CAP. However, the Secretary would be free to choose to recover funds under the procedures in 34 CFR part 81 from either the State or the designated agency, or both, depending on the circumstances of each case.

Proposed § 370.40(e) would prohibit a designated agency from using expenditures as an offset against disallowed costs unless those expenditures had been reported prior to the audit or compliance review on which the disallowance of costs is based.

Proposed § 370.41 would revise current § 370.41 to clarify that employees of a designated agency would be prohibited, while so employed, from serving concurrently as a staff member of, or consultant to, or in any other capacity within, any other rehabilitation project, program, or facility receiving assistance under the Act in the State, including a designated agency that is not subject to the independence requirement of section 112(c)(1) of the Act. Proposed § 370.41(c) would exempt from this prohibition those individuals who are employed by a designated agency that is also participating in the PAIR program.

Proposed § 370.43 would revise current § 370.43 to clarify that, consistent with the Executive Order on Civil Justice Reform (E.O. No. 12778), which became effective on January 21, 1991, good faith negotiations or mediation, or both, should be used to the maximum extent possible, before a designated agency may resort to formal administrative or legal remedies. The Secretary will encourage but not require a designated agency to maintain records that will support its decision to engage in formal administrative or legal remedies. However, if a question arises about a designated agency's failure to use good faith negotiations or mediation to the maximum extent possible, the burden of demonstrating its compliance with this section will be upon the designated agency.

Proposed § 370.44 would revise current § 370.44 to implement the new requirement added by the 1992 Amendments that a designated agency must report annually the number of requests for assistance under the CAP that the designated agency received, the number of those requests that the designated agency was unable to address, and the reasons why the designated agency was unable to serve all of those requests. Proposed § 370.44 would implement both old section 112(g)(4) and new section 112(g)(5) of the Act.

Proposed § 370.45 would remain the same as current § 370.45, which prohibits a designated agency from bringing a class action in carrying out its responsibilities under this part. Even though the 1992 Amendments revised section 112(a) of the Act to clarify that a designated agency may engage in both individual and systemic advocacy, the 1992 Amendments did not remove or revise section 112(d) of the Act, which prohibits a designated agency from bringing a class action in carrying out its responsibilities under this part. The prohibition on class actions by a designated agency applies only to the use of CAP funds to support in whole or in part a class action. These regulations do not apply to a designated agency's use of non-CAP funds.

Proposed § 370.46 would revise current § 370.46 so that the consultation requirement for the designation of a CAP agency also would apply to the redesignation of a CAP agency under proposed § 370.10(a).

Proposed § 370.47 would revise current § 370.47 to implement the change made by the 1992 Amendments allowing funds appropriated for a fiscal year that are not expended or obligated during that year to be carried over to the next fiscal year. In addition, proposed § 370.47(b) would require a designated agency to inform the Secretary within 90 days after the end of the fiscal year for which the CAP funds were made available whether the designated agency carried over to the succeeding fiscal year any CAP funds that it was unable to obligate by the end of the fiscal year.

Proposed § 370.48 would be based on current § 369.47, which is made applicable to the CAP by current § 370.3(b). Proposed § 370.48 (a) and (b) would require a designated agency to keep personal information about individuals served under the CAP strictly confidential and would allow a designated agency to release personal information only under very limited conditions.

Proposed § 370.48(d) would state that the Secretary will not require a designated agency to disclose personally identifiable information about clients or client applicants for purposes of a periodic audit, report, or performance evaluation. However, proposed § 370.48(e) would state that, if the Secretary has independent and reliable evidence that the designated agency has violated its legislative mandate or misused Federal funds, the designated agency must provide access to personally identifiable information if requested by the Secretary. Finally, proposed § 370.48(f) would state that the right of an individual or the designated agency not to disclose information or records also would be governed by the common law of privileges, as interpreted by the courts of the United States.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Less than 60 designated agencies would be funded under section 112 of the Act. The small entities that would be affected by these proposed regulations would include a small number of private, nonprofit organizations. The proposed regulations would not have a significant economic impact on the designated agencies affected because the proposed regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 370.11, 370.12, 370.13, 370.14, 370.15, 370.16, 370.20, 370.31, 370.40, 370.44, and 370.47 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of

Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

A State, through its Governor, must apply to the Secretary for a grant under this program. The Department needs and uses the information in a State's application about a previous year's grant results for program evaluation and monitoring purposes.

Annual public reporting and recordkeeping burden for this collection of information is estimated to average 35 hours for 57 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3220 Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Education Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 370

Administrative practice and procedure, Education, Client assistance, Grant program—education, Grant program—social programs, Reporting and recordkeeping requirement, Vocational rehabilitation.

Dated: October 5, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.161, Client Assistance Program)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 370 to read as follows:

PART 370—CLIENT ASSISTANCE PROGRAM

Subpart A—General

Sec.
370.1 What is the Client Assistance Program (CAP)?
370.2 Who is eligible for an award?
370.3 Who is eligible for services?
370.4 What kinds of activities may the Secretary fund?
370.5 What regulations apply?
370.6 What definitions apply?

Subpart B—What Requirements Apply to Redesignation?

370.10 When do the requirements for redesignation apply?
370.11 What requirements apply to a notice of proposed redesignation?
370.12 How does a designated agency preserve its right to appeal a redesignation?
370.13 What are the requirements for a decision to redesignate?
370.14 How does a designated agency appeal a written decision to redesignate?
370.15 What must the Governor of a State do upon receipt of a copy of a designated agency's written appeal to the Secretary?
370.16 How does the Secretary review an appeal of a redesignation?
370.17 When does a redesignation become effective?

Subpart C—How Does a State Apply For a Grant?

370.20 What must be included in a request for a grant?

Subpart D—How Does the Secretary Allocate and Reallocate Funds to a State?

370.30 How does the Secretary allocate funds?
370.31 How does the Secretary reallocate funds?

Subpart E—What Post-Award Conditions Must Be Met by a Designated Agency?

370.40 What are allowable costs?
370.41 What conflict of interest provision applies to employees of a designated agency?
370.42 What access must the CAP be afforded to policy making and administrative personnel?
370.43 What requirement applies to the use of mediation procedures?
370.44 What reporting requirement applies to each designated agency?
370.45 What limitation applies to the pursuit of legal remedies?
370.46 What consultation requirement applies to a Governor of a State?
370.47 When must grant funds be obligated?
370.48 What are the special requirements pertaining to the protection, use, and release of personal information?

Authority: 29 U.S.C. 732, unless otherwise noted.

Subpart A—General

§ 370.1 What is the Client Assistance Program (CAP)?

The purpose of this program is to establish and carry out CAPs that—

(a) Advise and inform clients, client applicants, and individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of all services and benefits available to them through programs authorized under the Act and title I of the Americans with Disabilities Act of 1990; and

(b) Assist and advocate for clients and client applicants in their relationships with projects, programs, and facilities providing services under the Act.

(Authority: 29 U.S.C. 732(a))

§ 370.2 Who is eligible for an award?

(a) Any State, through its Governor, is eligible for an award under this part.

(b) The Governor of each State shall designate a public or private agency to conduct the State's CAP under this part.

(c) Except as provided in paragraph (d) of this section, the Governor shall designate an agency that is independent of any agency that provides treatment, services, or rehabilitation to individuals under the Act.

(d) The Governor may, in the initial designation, designate an agency that provides treatment, services, or rehabilitation to individuals with disabilities under the Act if, at any time before February 22, 1984, there was an agency in the State that both—

(1) Was a grantee under section 112 of the Act by serving as a client assistance agency and directly carrying out a CAP; and

(2) Was, at the same time, a grantee under any other provision of the Act.

(e) An agency designated by the Governor of a State to conduct the State's CAP under this part may not award a subgrant to or enter into a contract with an agency that provides services under this Act either to carry

out the CAP or to provide services under the CAP. For purposes of this paragraph, "services under the Act" do not include services and activities carried out under the protection and advocacy program authorized by section 509 of the Act (i.e., the Protection and Advocacy of Individual Rights (PAIR) program, 34 CFR part 381). A designated agency may contract with an entity or individual that does not provide services under the Act to provide services under the CAP.

(Authority: 29 U.S.C. 711(c) and 732(a) and (c)(1)(A))

§ 370.3 Who is eligible for services?

Any individual who applies for or receives services under the Act is eligible for services under the CAP. For purposes of this section, services under the Act do not include services provided under the PAIR program.

(Authority: 29 U.S.C. 732(a))

§ 370.4 What kinds of activities may the Secretary fund?

(a) Funds made available under this part must be used for activities consistent with the purposes of this program, including—

(1) Advising and informing clients, client applicants, and individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of—

(i) All services and benefits available to them through programs authorized under the Act, Title I of the Americans with Disabilities Act of 1990, and related Federal and State assistance programs; and

(ii) Their rights in connection with those services and benefits;

(2) Upon the request of a client or client applicant, assisting a client and client applicant in his or her relationship with projects, programs, and facilities that provide services under the Act by engaging in individual or systemic advocacy and pursuing, or assisting them in pursuing, legal, administrative, and other available remedies, if necessary—

(i) To ensure the protection of the rights of a client or client applicant under the Act; and

(ii) To facilitate access by individuals with disabilities and individuals with disabilities who are exiting public school programs to services funded under the Act; and

(3) Providing information to the public concerning the CAP.

(b) In providing assistance and advocacy under this subsection with respect to services under this title, a designated agency may provide the assistance and advocacy with respect to services that are directly related to facilitating the employment of the client or client applicant.

(Authority: 29 U.S.C. 732(a))

§ 370.5 What regulations apply?

The following regulations apply to the CAP:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations) applies to the designated agency if the designated agency is not a State agency, local government agency, or Indian tribal organization. As the entity that eventually, if not directly, receives the CAP grant funds, the designated agency is considered a recipient for purposes of part 74.

(2) 34 CFR part 76 (State-Administered Programs) applies to the State and, if the designated agency is a State or local government agency, to the designated agency, except for—

(i) Section 76.103;

(ii) Sections 76.125–76.137;

(iii) Sections 76.300–76.401;

(iv) Section 76.704;

(v) Section 76.734; and

(vi) Section 76.740.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) applies to the State and, if the designated agency is a State or local government agency, to the designated agency.

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement) applies to both the State and the designated agency, whether or not the designated agency is the actual recipient of the CAP grant. As the entity that eventually, if not directly, receives the CAP grant funds, the designated agency is considered a recipient for purposes of part 81.

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this part 370.

(c) The regulations in 34 CFR 369.43, 369.46 and 369.48, relating to various conditions to be met by grantees.

(Note: Any funds made available to a State under this program that are transferred by a State to a designated agency do not comprise a subgrant as that term is defined in 34 CFR 77.1. The designated agency is not, therefore, in these circumstances a subgrantee, as that term is defined in that section or in 34 CFR parts 74, 76, or 80.)

(Authority: 29 U.S.C. 711(c) and 732)

§ 370.6 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Award
EDGAR
Fiscal year
Nonprofit
Private
Public
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Act means the Rehabilitation Act of 1973, as amended.

Advocacy means pleading an individual's cause or speaking or writing in support of an individual. Advocacy may be formal, as in the case of a lawyer representing an individual in a court of law or in formal administrative proceedings before government agencies (whether State, local or Federal). Advocacy also may be informal, as in the case of a lawyer or non-lawyer representing an individual in negotiations, mediation, or informal administrative proceedings before government agencies (whether State, local or Federal), or as in the case of a lawyer or non-lawyer representing an individual's cause before private entities, organizations, or government agencies (whether State, local or Federal). Advocacy may be on behalf of—

(1) a single individual, in which case it is *individual advocacy;*

(2) more than one individual or a group or class of individuals, in which case it is *systems* (or *systemic*) *advocacy;* or

(3) oneself, in which case it is *self advocacy.*

Class action means a formal legal suit on behalf of a group of individuals filed in a court of law, whether Federal or State, that meets the requirements for a "class action" under Federal or State law.

Client or client applicant means an individual receiving or seeking services under the Act, respectively. However, for purposes of this definition, an individual does not become a client or client applicant merely by receiving "information and referral" from the designated agency. In addition, for purposes of this definition, "services

under the Act" do not include services and activities carried out under the PAIR program.

Designated agency means the agency designated by the Governor under § 370.2 to conduct a client assistance program under this part.

Mediation means the act or process of using an independent third party to act as a mediator, intermediary or conciliator to settle differences or disputes between persons or parties. The third party who acts as a mediator, intermediary or conciliator must be independent of the parties to the dispute and may not be any entity or individual who is connected in any way with the eligible system, with the agency, entity, or individual with whom the individual with a disability has a dispute, or with the individual with a disability or his or her guardian, parent, or other legally authorized representative or advocate (including the individual's advocate from the designated agency). Mediation may involve the use of professional mediators or any other independent third party mutually agreed to by the parties to the dispute.

State means, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, The United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association takes effect), except for purposes of the allotments under section 112 of the Act, in which case "State" does not mean or include Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

(Authority: 29 U.S.C. 711(c) and 732)

Subpart B—What Requirements Apply to Redesignation?

§ 370.10 When do the requirements for redesignation apply?

(a) The Governor may not redesignate the agency designated pursuant to section 112(c) of the Act and § 370.2(b) without good cause and without complying with the requirements of §§ 370.10–370.17.

(b) For purposes of §§ 370.10–370.17, a "redesignation of" or "to redesignate" a designated agency means any change in or transfer of the designation of an agency previously designated by the Governor to conduct the State's CAP to a new or different agency, unit, or organization. A "redesignation of" or "to redesignate" a designated agency includes either the decision by a designated agency to cancel or not to renew its existing contract with another entity with which it has previously contracted to carry out and operate the CAP or the decision by a designated agency to enter into a new contract with another entity to carry out and operate the CAP. Therefore, an agency that is carrying out a State's CAP under a contract with a designated agency is considered a designated agency for purposes of §§ 370.10–370.17.

(c) The requirements for redesignation in §§ 370.10–370.17 apply to any redesignation that is proposed for whatever reason, unless the designated agency finds it necessary, for purposes of complying with § 370.2(e), to cancel or not to renew its existing contract with an agency that provides services under the Act. For purposes of this paragraph, "services under the Act" do not include services and activities carried out under the PAIR program.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.11 What requirements apply to a notice of proposed redesignation?

(a) Prior to any redesignation of the agency that conducts the CAP, the Governor shall give written notice of the proposed redesignation to the designated agency and publish a public notice of the Governor's intention to redesignate. Both the notice to the designated agency and the public notice must include, at a minimum, the following:

(1) The Federal requirements for the CAP (section 112 of the Act).

(2) The goals and function of the CAP.

(3) The name of the current designated agency.

(4) A description of the current CAP and how it is administered.

(5) The reason or reasons for proposing the redesignation, including why the Governor believes good cause exists for the proposed redesignation.

(6) The effective date of the proposed redesignation.

(7) The name of the agency the Governor proposes to administer the CAP.

(8) A description of the system that the redesignated (i.e., new) agency would administer.

(b) The notice to the designated agency must—

(1) Be given at least 30 days in advance of the Governor's written decision to redesignate; and

(2) Advise the designated agency that it has at least 30 days from receipt of the notice of proposed redesignation to respond to the Governor and that the response must be in writing.

(c) The notice of proposed redesignation must be published in a place and manner that provides individuals with disabilities or their representatives and the public with at least 30 days to submit oral or written comments to the Governor.

(d) Following public notice, public hearings concerning the proposed redesignation must be conducted in an accessible format that provides individuals with disabilities or their representatives an opportunity for comment. The Governor shall maintain a written public record of these hearings.

(e) The Governor shall fully consider any public comments before issuing a written decision to redesignate.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.12 How does a designated agency preserve its right to appeal a redesignation?

(a) To preserve its right to appeal a Governor's written decision to redesignate (see § 370.13), a designated agency must respond in writing to the Governor within 30 days after it receives the Governor's notice of proposed redesignation.

(b) The designated agency shall send its response to the Governor by registered or certified mail, return receipt requested, or other means that provides a record that the Governor received the designated agency's response.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.13 What are the requirements for a decision to redesignate?

(a) If, after complying with the requirements of § 370.11, the Governor decides to redesignate the designated agency, the Governor shall provide to the designated agency a written decision to redesignate that includes the rationale for the redesignation. The Governor shall send the written decision to redesignate to the designated agency by registered or certified mail, return receipt requested, or other means that provides a record that the designated agency received the Governor's written decision to redesignate.

(b) If the designated agency submitted to the Governor a timely response to the Governor's notice of proposed redesignation, the Governor shall inform the designated agency that it has at least 15 days from receipt of the Governor's written decision to redesignate to file a formal written appeal with the Secretary.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(A))

§ 370.14 How does a designated agency appeal a written decision to redesignate?

(a) A designated agency may appeal to the Secretary a Governor's written decision to redesignate only if the designated agency submitted to the Governor a written response to the Governor's notice of proposed redesignation.

(b) To appeal to the Secretary a Governor's written decision to redesignate, a designated agency shall file a formal written appeal with the Secretary within 15 days after the designated agency's receipt of the Governor's written decision to redesignate. The date of filing of the designated agency's written appeal with the Secretary will be determined in a manner consistent with the requirements of 34 CFR 81.12, as amended in 57 FR 56794 (November 30, 1992).

(c) If the designated agency files a written appeal with the Secretary, the designated agency shall send a separate copy of this appeal to the Governor by registered or certified mail, return receipt requested, or other means that provides a record that the Governor received a copy of the designated agency's appeal to the Secretary.

(d) The designated agency's written appeal to the Secretary must state why the Governor has not met the burden of showing that good cause for the redesignation exists or has not met the procedural requirements under §§ 370.11 and 370.13.

(e) The designated agency's written appeal must be accompanied by the designated agency's written response to the Governor's notice of proposed redesignation and may be accompanied by any other written submissions or documentation the designated agency wishes the Secretary to consider.

(f) As part of its submissions under this section, the designated agency may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.15 What must the Governor of a State do upon receipt of a copy of a designated agency's written appeal to the Secretary?

(a) If the designated agency files a formal written appeal in accordance with § 370.14, the Governor shall, within 15 days of receipt of the designated agency's appeal, submit to the Secretary copies of the following:

(1) The written notice of proposed redesignation sent to the designated agency.

(2) The public notice of proposed redesignation.

(3) Transcripts of all public hearings held on the proposed redesignation.

(4) Written comments received by the Governor in response to the public notice of proposed redesignation.

(5) The Governor's written decision to redesignate, including the rationale for the decision.

(6) Any other written documentation or submissions the Governor wishes the Secretary to consider.

(7) Any other information requested by the Secretary.

(b) As part of the submissions under this section, the Governor may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.16 How does the Secretary review an appeal of a redesignation?

(a) If either party requests a meeting under § 370.14(f) or § 370.15(b), the meeting is to be held within 30 days of the submissions by the Governor under § 370.15, unless both parties agree to waive this requirement. The Secretary promptly notifies the parties of the date and place of the meeting.

(b) Within 30 days of the informal meeting permitted under paragraph (a) of this section or, if neither party has requested an informal meeting, within 60 days of the submissions required from the Governor under § 370.15, the Secretary issues to the parties a final written decision on whether the redesignation was for good cause.

(c) The Secretary reviews a Governor's decision based on the record submitted under §§ 370.14 and 370.15 and any other relevant submissions of other interested parties. The Secretary may affirm or, if the Secretary finds that the redesignation is not for good cause, remand for further findings or reverse a Governor's redesignation.

(d) The Secretary sends copies of the decision to the parties by registered or certified mail, return receipt requested, or other means that provide a record of receipt by both parties.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

§ 370.17 When does a redesignation become effective?

A redesignation does not take effect for at least 15 days following the designated agency's receipt of the Governor's written decision to redesignate or, if the designated agency appeals, for at least 5 days after the Secretary has affirmed the Governor's written decision to redesignate.

(Authority: 29 U.S.C. 711(c) and 732(c)(1)(B))

Subpart C—How Does a State Apply for a Grant?

§ 370.20 What must be included in a request for a grant?

(a) Each State seeking assistance under this part shall submit to the Secretary, in writing, each fiscal year, an application that includes, at a minimum—

(1) The name of the designated agency; and

(2) An assurance that the designated agency meets the independence requirement of section 112(c)(1)(A) of the Act and § 370.2(c), or that the State is exempted from that requirement under section 112(c)(1)(A) of the Act and § 370.2(d).

(b)(1) Each State also shall submit to the Secretary an assurance that the designated agency has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of rights of individuals with disabilities who are receiving treatments, services, or rehabilitation under the Act within the State.

(2) The authority to pursue remedies described in paragraph (b)(1) of this section must include the authority to pursue those remedies against the State vocational rehabilitation agency and other appropriate State agencies. The designated agency meets this requirement if it has the authority to pursue those remedies either on its own behalf or by obtaining necessary services, such as legal representation, from outside sources.

(c) Each State also shall submit to the Secretary assurances that—

(1) All entities conducting, administering, operating, or carrying out programs within the State that provide services under the Act to individuals with disabilities in the State will advise all clients and client applicants of the existence of the CAP, the services provided under the program, and how to contact the designated agency;

(2) The designated agency will meet each of the requirements of this part; and

(3) The designated agency will provide the Secretary with the annual report required by section 112(g)(4) of the Act and § 370.44.

(d) To allow a designated agency to receive direct payment of funds under this part, a State must provide to the Secretary, as part of its application for assistance, an assurance that direct payment to the designated agency is not prohibited by or inconsistent with State law, regulation, or policy.

(Authority: 29 U.S.C. 732 (b) and (f))

Subpart D—How Does the Secretary Allocate and Reallocate Funds to a State?

§ 370.30 How does the Secretary allocate funds?

(a) The Secretary allocates the funds available under this part for any fiscal year to the States on the basis of the relative population of each State. The Secretary allocates at least $50,000 to each State, unless the provisions of section 112(e)(1)(D) of the Act, which provides for increasing the minimum allotment, are applicable.

(b) The Secretary allocates $30,000 each to American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Republic of Palau (except that the Republic of Palau may receive an allotment under this section only until the Compact of Free Association with Palau takes effect), unless the provisions of section 112(e)(1)(D) of the Act are applicable.

(c) Unless prohibited or otherwise provided by State law, regulation, or policy, the Secretary pays to the designated agency, from the State allotment under paragraph (a) or (b) of this section, the amount specified in the State's approved request. Because the designated agency is the eventual, if not the direct, recipient of the CAP funds, 34 CFR parts 74 and 81 apply to the designated agency, whether or not the designated agency is the actual recipient of the CAP grant. However, because it is the State that submits an application for and receives the CAP grant, the State remains the grantee for purposes of 34 CFR parts 76 and 80. In addition, both the State and the designated agency are considered recipients for purposes of 34 CFR Part 81.

(Authority: 29 U.S.C. 732 (b) and (e))

§ 370.31 How does the Secretary reallocate funds?

(a) The Secretary reallocates funds in accordance with section 112(e)(2) of the Act.

(b) A designated agency shall inform the Secretary at least 90 days before the end of the fiscal year for which CAP funds were received whether the designated agency is making available for reallotment any of those CAP funds that it will be unable to obligate in that fiscal year.

(Authority: 29 U.S.C. 711(c) and 732(e)(2))

Subpart E—What Post-Award Conditions Must Be Met by a Designated Agency?

§ 370.40 What are allowable costs?

(a) If the designated agency is a State or local government agency, the designated agency shall apply the cost principles in accordance with 34 CFR 80.22(b).

(b) If the designated agency is a private nonprofit organization, the designated agency shall apply the cost principles in accordance with subpart Q of 34 CFR part 74.

(c) In addition to those allowable costs established in EDGAR, and consistent with the program activities listed in § 370.4, the cost of travel in connection with the provision to a client or client applicant of assistance under this program is allowable. The cost of travel includes the cost of travel for an attendant if the attendant must accompany the client or client applicant.

(d) The State and the designated agency are accountable, both jointly and severally, to the Secretary for the proper use of funds made available under this part. However, the Secretary may choose to recover funds under the procedures in 34 CFR part 81 from either the State or the designated agency, or both, depending on the circumstances of each case.

(e) Expenditures in a particular fiscal year that are not reported as costs charged to the CAP by the designated agency on its financial status reports prior to the commencement of an audit or compliance review for that year may not be used as an allowable cost to offset any costs disallowed in a notice of disallowance decision or preliminary departmental decision based on that audit or compliance review.

(Authority: 29 U.S.C. 711(c) and 732(c)(3))

§ 370.41 What conflict of interest provision applies to employees of a designated agency?

(a) Except as permitted by paragraphs (b) and (c) of this section, no employee of a designated agency, while so employed, shall serve concurrently as a staff member of, consultant to, or in any other capacity within, any other rehabilitation project, program, or facility receiving assistance under the Act in the State, including a designated agency that is not subject to the independence requirement of section 112(c)(1) of the Act, as implemented by § 370.2(d) of this part.

(b) Paragraph (a) of this section does not prohibit a designated agency from employing an individual receiving a traineeship under section 302 of the Act during the traineeship.

(c) Paragraph (a) of this section does not prohibit the employment of individuals by a designated agency that is also participating in the PAIR program.

(Authority: 29 U.S.C. 732(g)(1))

§ 370.42 What access must the CAP be afforded to policy making and administrative personnel?

The CAP must be afforded reasonable access to policy making and administrative personnel in State and local rehabilitation programs, projects, and facilities. One way in which the CAP may be provided that access would be to include the director of the designated agency among the individuals to be consulted on matters of general policy development and implementation, as required by section 101(a) (18) and (23) of the Act.

(Authority: 29 U.S.C. 721(a) (18) and (23) and 732(g)(2))

§ 370.43 What requirement applies to the use of mediation procedures?

Each designated agency shall implement procedures designed to ensure that, to the maximum extent possible, good faith negotiations and mediation procedures are used before resorting to formal administrative or legal remedies.

(Authority: 29 U.S.C. 732(g)(3))

§ 370.44 What reporting requirement applies to each designated agency?

In addition to the program and fiscal reporting requirements in EDGAR that are applicable to this program, each designated agency shall submit to the Secretary, no later than 90 days after the end of each fiscal year, an annual report on the operation of its CAP during the previous year, including a summary of the work done and the uniform statistical tabulation of all cases handled by the program. The annual report must contain information on—

(a) The number of requests for assistance under the CAP that the designated agency received;

(b) The number of these requests the designated agency was unable to serve;

(c) The reasons that the designated agency was unable to serve all of these requests; and

(d) Any other information that the Secretary may require.

(Authority: 29 U.S.C. 732(g) (4) and (5))

§ 370.45 What limitation applies to the pursuit of legal remedies?

A designated agency may not bring any class action in carrying out its responsibilities under this part.

(Authority: 29 U.S.C. 732(d))

§ 370.46 What consultation requirement applies to a Governor of a State?

In designating a client assistance agency under § 370.2, redesignating a client assistance agency under § 370.10(a), and carrying out the other provisions of this part, the Governor

shall consult with the director of the State vocational rehabilitation agency (or, in States with both a general agency and an agency for the blind, the directors of both agencies), the head of the developmental disability protection and advocacy agency, and representatives of professional and consumer organizations serving individuals with disabilities in the State.

(Authority: 29 U.S.C. 732(c)(2))

§ 370.47 When must grant funds be obligated?

(a) Any funds appropriated for a fiscal year to carry out the CAP that are not expended or obligated by the designated agency prior to the beginning of the succeeding fiscal year remain available for obligation by the designated agency during the succeeding fiscal year in accordance with 34 CFR 76.705–76.707.

(b) A designated agency shall inform the Secretary within 90 days after the end of the fiscal year for which the CAP funds were made available whether the designated agency carried over to the succeeding fiscal year any CAP funds that it was unable to obligate by the end of the fiscal year.

(Authority: 29 U.S.C. 718)

§ 370.48 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any designated agency under this part, including lists of names, addresses, photographs, and records of evaluation, must be held strictly confidential.

(b) The designated agency's use of information and records concerning individuals must be limited only to purposes directly connected with the CAP, including program evaluation activities. Except as provided in paragraphs (c) and (e) of this section, this information may not be disclosed, directly or indirectly, other than in the administration of the CAP, unless the consent of the individual to whom the information applies, or his or her guardian, parent, or other legally authorized representative or advocate (including the individual's advocate from the designated agency), has been obtained in writing. A designated agency may not produce any report, evaluation, or study that reveals any personally identifying information without the written consent of the individual or his or her representative.

(c) Except as limited in paragraphs (d) and (f) of this section, the Secretary or other Federal or State officials responsible for enforcing legal requirements are to have complete access to all—

(1) Records of the designated agency that receives funds under this program; and

(2) All individual case records of clients served under this part without the consent of the client.

(d) For purposes of any periodic audit, report, or evaluation of the performance of the CAP established or assisted under this part, the Secretary does not require the designated agency to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the CAP.

(e) Notwithstanding paragraph (d) of this section, if an audit, monitoring review, State plan assurance review, evaluation or other investigation has already produced independent and reliable evidence that there is probable cause to believe that the designated agency has violated its legislative mandate or misused Federal funds, the designated agency shall disclose, if the Secretary so requests, the identity of, or any other personally identifiable information (i.e., name, address, telephone number, social security number, or any other official code or number by which an individual may be readily identified) related to, any individual requesting assistance under the CAP.

(f) In addition to the protection afforded by paragraph (d) of this section, the right of a person or designated agency not to produce documents or disclose information is governed by the common law of privileges, as interpreted by the courts of the United States.

(Authority: 29 U.S.C. 711(c) and 732(g)(6))

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federal register

Friday
October 8, 1993

Part IX

Department of Transportation

Federal Aviation Administration

Effects of Changes of Aircraft Flight Patterns Over New Jersey; Extension of Comment Period; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 26987]

Draft Environmental Impact Statement; Effects of Changes of Aircraft Flight Patterns Over the State of New Jersey; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of the comment period.

SUMMARY: On November 12, 1992, the FAA issued a Draft Environmental Impact Statement (DEIS) to assess the impact of changes in aircraft flight patterns caused by the implementation of the Expanded East Coast Plan (EECP) over the State of New Jersey for public review and comment. The DEIS evaluates the EECP and alternatives to its continued use.

In December, 1992, the FAA initiated an extension of the public comment period from January 22, 1993 to March 5, 1993 because of the technical complexity of the DEIS. On March 15, 1993 the FAA reopened the comment period through June 14, 1993 at the request of the New Jersey Citizens for Environmental Research (NJCER) and a joint request from the Governor of New Jersey and the Chairman of the Port Authority of New York and New Jersey.

In response to a request from NJCER, the FAA further extended the comment period through August 6. These parties requested another extension and the FAA reopened the comment period from August 10 through October 8, 1993.

In response to a fourth request from the NJCER, FAA has decided to extend the comment period an additional 45 days through November 23, 1993.

DATES: The comment period is extended through November 23, 1993.

ADDRESSES: Written comments on the document should be addressed to: Federal Aviation Administration, Office of the Chief Counsel: Docket Number 26987, 800 Independence Avenue SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: The FAA will consider and respond to all comments directly within the scope of the DEIS. The most useful comments are those which provide facts and analyses to support the reviewer's recommendations or conclusions. The FAA will consider comments received after the close of the comment period to the extent practicable. The FAA will issue a final EIS that includes corrections, clarifications and responses to comments on the DEIS.

Issued in Washington, DC, on October 6, 1993.

Bill F. Jeffers,

Deputy Associate Administrator for Air Traffic.

[FR Doc. 93–24953 Filed 10–6–93; 2:45 pm]

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federal register

Friday
October 8, 1993

Part X

The President

Proclamation 6605—National Disability Employment Awareness Month, 1993

Federal Register
Vol. 58, No. 194
Friday, October 8, 1993

Presidential Documents

Title 3—

The President

Proclamation 6605 of October 6, 1993

National Disability Employment Awareness Month, 1993

By the President of the United States of America

A Proclamation

The United States has long been a champion of the civil rights of individuals, and it is only natural that we now serve in the forefront of efforts to ensure equal opportunity for persons with disabilities. Inspired by the enactment of the Americans with Disabilities Act (ADA) on July 26, 1990, other nations have begun to reexamine the challenges faced by their citizens with disabilities. The ADA, which prohibits discrimination in employment, public accommodations, government services, transportation, and communications, provides a practical model for people everywhere to ensure that individuals with disabilities will not be excluded from the social, cultural, and economic mainstream.

Together we have begun shifting disability policy in America from exclusion to inclusion; from dependence to independence; from paternalism to empowerment. And we have made a firm commitment—a national pledge of civil rights for people with disabilities—to enforce the Americans with Disabilities Act. We cannot be satisfied until all citizens with disabilities receive equal treatment under the law, whether in the workplace, in schools, in government, or in the courts. We will not be satisfied as a Nation until we have fully implemented the laws that offer equal opportunity for Americans with disabilities, including the ADA and the Rehabilitation Act of 1973.

We do not have a single person to waste. Citizens with disabilities want to lead full, independent, and productive lives. They want to work; they want to pay their fair share of taxes; they want to be self-supporting citizens. America must enable the 43 million talented Americans with disabilities to contribute by offering them the individualized training and education we offer everyone else.

Our Nation can ill afford to waste this vast and only partially tapped source of knowledge, skills, and talent. In addition to being costly—over $300 billion is expended annually at the Federal, State, and local levels to financially support potentially independent individuals—this waste of human ability cannot be reconciled with our tradition of individual dignity, self-reliance, and empowerment. As we work to achieve thorough and harmonious implementation of the Americans with Disabilities Act, we will open the doors of opportunity for millions of people, thereby expanding, not only the ranks of the employed, but also the ranks of consumers. These individuals and their families will thus be able to pursue the real American Dream.

I congratulate the small business and industry leaders, labor leaders, and community leaders from all walks of life who are working together to implement the ADA and the Rehabilitation Act, and I commit the resources and cooperation of the Federal Government toward that effort. Our ongoing progress attests to the fundamental vitality and openness of our free enterprise system and to our abiding commitment to civil rights for all. Every American needs a chance to contribute. Our work is far from finished. America needs the continued leadership of every citizen to fulfill the promise of the Americans with Disabilities Act and related laws.

The Congress, by joint resolution approved August 11, 1945, as amended (36 U.S.C. 155) has called for the designation of October of each year as "National Disability Employment Awareness Month." This month is a special time for all Americans to recognize the tremendous potential of citizens with disabilities and to renew our commitment to full inclusion and equal opportunity for them, as for every citizen.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 1993 as National Disability Employment Awareness Month. I call on all Americans to observe this month with appropriate programs and activities that affirm our determination to fulfill both the letter and the spirit of the Americans with Disabilities Act.

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

William J. Clinton

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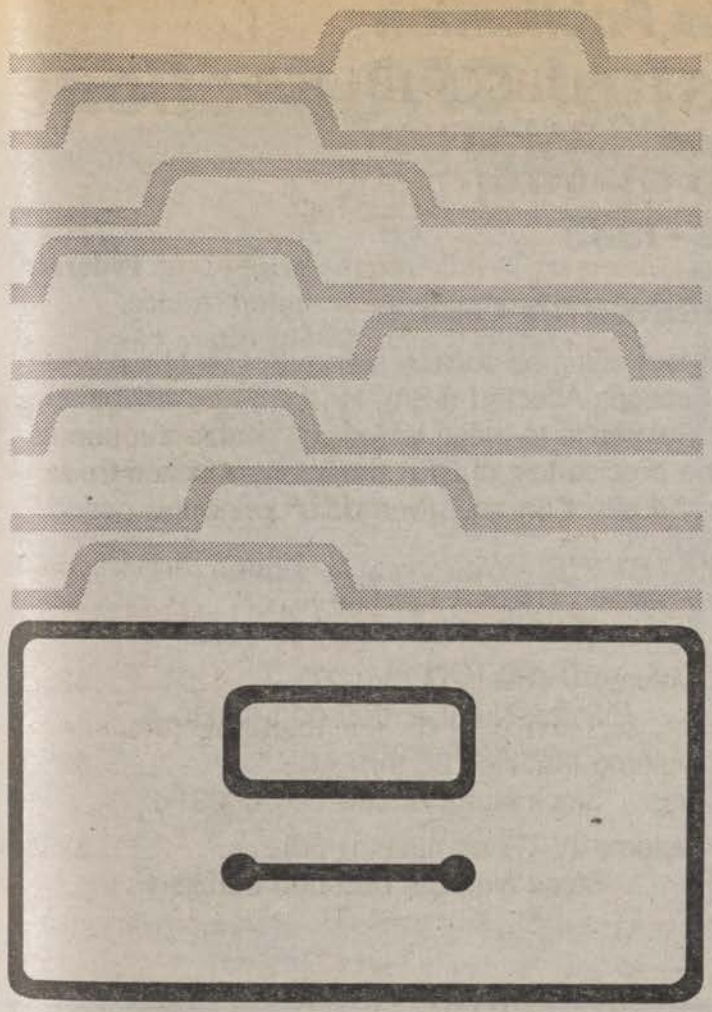

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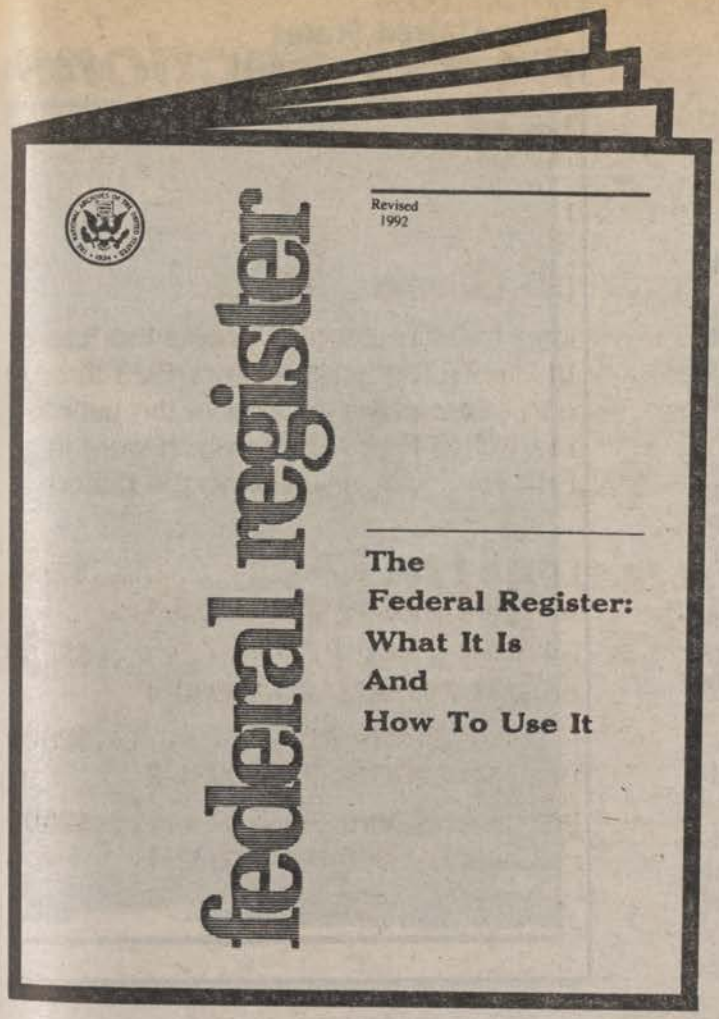

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